

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 10 July 2019

Public Authority: The Foreign and Commonwealth Office

Address: King Charles Street
London
SW1A 2AH

Decision (including any steps ordered)

1. The complainant submitted a request to the Foreign and Commonwealth Office (FCO) seeking a copy of its information asset register (IAR). The FCO refused to disclose a copy of this on the basis of section 14(1) (vexatious) of FOIA. During the course of the Commissioner's investigation the FCO published a version of its IAR, albeit it explained to the Commissioner that certain information had not been published as it would attract the exemptions contained at sections 24 (national security), 31 (law enforcement) and 40 (personal data) of FOIA. The complainant did not seek to dispute the application of these exemptions but continued to dispute the FCO's original reliance on section 14(1) of FOIA. The Commissioner has concluded that the FCO was entitled to initially refuse to comply with the request on the basis of section 14(1).

Request and response

2. The complainant submitted the following request to the FCO on 2 July 2018:

'I am sending this request under the Freedom of Information Act.

1) Please provide me a copy of your authority's latest information asset register.

2) Please provide me a list of all cost codes used by your authority.'

3. The FCO responded on 6 July 2018 and explained that the request was too broad and invited him to submit a refined version of it.

4. The complainant contacted the FCO on 10 July 2018 and refined the request as follows:

'Thanks for coming back to me on this. I am happy to limit my request to the UK only.

For 2) I just require a list of account codes and headings.'
5. The FCO explained to the complainant that this request would be progressed in two parts, question 1) under reference 0780-18 and question 2) under reference 0735-18.
6. The FCO provided the complainant with a substantive response to question 1) on 8 August 2018. It explained that complying with the request would place an excessive burden on it and therefore it was refusing the request on the basis of section 14(1) of FOIA.
7. The complainant contacted the FCO on the same day and asked it to conduct an internal review of this refusal. He provided the FCO with a copy of the asset register the Department for Environment, Food and Rural Affairs had disclosed to him as an indication of the information he was seeking.
8. The FCO informed the complainant of the outcome of the internal review on 12 September 2018. The review upheld the application of section 14(1).

Scope of the case

9. The complainant contacted the Commissioner on 17 September 2018 in order to complain about the FCO's refusal to provide him with a copy of its IAR on the basis of section 14(1) of FOIA. (He did not seek to challenge how the FCO had responded to his request for account codes and headings).
10. During the course of the Commissioner's investigation, the FCO published a version of its IAR online in May 2019. The FCO explained to the Commissioner that certain information had been redacted from the published version of the IAR because it considered it to be exempt from disclosure on the basis of sections 24 (national security), 31 (law enforcement) and 40 (personal data) of FOIA.
11. The complainant did not seek to challenge the FCO's reliance on these exemptions to withhold the remaining information. However, he explained to the Commissioner that he remained concerned with FCO's position that at the point he submitted his request it had refused to

answer this on the basis of section 14(1) of FOIA. The scope of this decision notice is therefore simply to consider whether the FCO was entitled to rely on section 14(1) when it initially refused this request.

Reasons for decision

Section 14(1) – vexatious requests

12. Section 14(1) of FOIA allows a public authority to refuse to comply with a request if it is considered to be vexatious.
13. In the Commissioner's view, section 14(1) is designed to protect public authorities by allowing them to refuse any requests which have the potential to cause a disproportionate or unjustified level of disruption, irritation or distress. This will usually involve weighing the evidence about the impact on the authority and balancing this against the purpose and value of the request. This should be judged as objectively as possible; in other words, would a reasonable person think that the purpose and value are enough to justify the impact on the public authority.
14. In particular, the Commissioner accepts that there may be cases where a request could be considered to be vexatious because the amount of time required to review and prepare the information for disclosure would place a grossly oppressive burden on the public authority. This is the position adopted by the FCO in this case.
15. The Commissioner believes that there is a high threshold for refusing a request on such grounds. This means that a public authority is most likely to have a viable case where:
 - The requester has asked for a substantial volume of information **and**
 - The authority has real concerns about potentially exempt information, which it will be able to substantiate if asked to do so by the Commissioner **and**
 - Any potentially exempt information cannot easily be isolated because it is scattered throughout the requested material.

The FCO's position

16. The FCO provided the Commissioner with submissions to support its view that the three criteria set out at paragraph 15 were met.
17. With regard to the first criterion, the FCO explained that at the time it received the FOI request it was in the middle of updating its IAR, with the intention of publishing a version of it, and at that point it had over 300 assets listed on it. However, the FCO explained that the IAR had been updated and by February 2019 it currently included 466 assets. The IAR was in spreadsheet form.
18. With regard to the second criterion, the FCO explained that it had genuine concerns that some of the information contained on the asset register would be exempt from disclosure on the basis of sections 24 (national security) and 31 (law enforcement) of FOIA because it contained detailed information about its IT systems. The FCO explained that section 40 (personal data) also applied to some of the entries on the IAR.
19. With regard to the third criterion, in its submissions to the Commissioner the FCO explained that it had originally estimated that an average of 30 minutes total effort would be required for each asset prior to publication of the IAR. However, given that during the course of the Commissioner's investigation the FCO had published a version of its IAR, albeit be it with certain information redacted, it was in a position to give a more informed estimate of the time taken to prepare the IAR for publication.
20. The FCO explained that its experience had shown that had in fact the time requires for this process far exceeded 5 working days. The FCO explained that this was partly due to the fact that information asset owners (IAO) in the organisation were located in devolved directorates. Inevitably the level of detail and clarity in the IAOs' own registers varied and the FCO explained that it considered it necessary to consult with the IAOs before publication and to ensure that it was publishing a clear, accurate and informative register.
21. The FCO explained that the desk officer responsible for the IAR had spent in excess of 10 working days on this work which involved requesting IAOs' permission to publish, dealing with questions from individual directorates, and, collating and editing the text to ensure that it is consistent and liaising with others. The FCO explained that the desk officer's manager and other senior officials had spent an estimated 2 days supporting this work. Staff in individual directorates acting on behalf of the IAOs had consulted with their seniors and with colleagues, and in some cases more widely. After consolidating duplicates and

editing for clarity, the FCO explained that it had consulted with around 40 individuals, some of who had to consult other colleagues in their respective departments. The FCO explained that some consultation involved face to face meetings or teleconferences so its prior estimate of 30 minutes per individual in their respective departments (just under 3 days) is likely to have been considerably exceeded, in addition to the time taken by the desk officer responsible for creating a version of the IAR ready for publication.

22. Finally the FCO explained that others have been involved in publishing the IAR, eg in its communications department and legal advisers, although it did do not have figures for time taken.

The complainant's position

23. In his original submissions to the Commissioner the complainant suggested that it seemed unlikely that it would prove particularly burdensome on the FCO to provide him simply with the name of an asset and a description of it. He noted that other central government departments had managed to fulfil requests he had submitted to them for their IARs without any such burden. The complainant argued that following the publication of the IAR, he remained of the view that the information must have been readily available and disclosable at the point that he made his request.

The Commissioner's position

24. The Commissioner considers this to be an unusual case, not least because unlike in many cases where a public authority has sought to rely on section 14(1) of FOIA, the FCO has now released – via the publication of the public version of the IAR – a considerable amount of the information falling within the scope of the request. Furthermore, the three criteria above do not necessarily provide a perfect framework for providing a clear or simple answer as to whether the request was vexatious. Nevertheless, the Commissioner does consider them useful in guiding her decision.
25. In relation to the first criterion, whilst the Commissioner accepts that information held on the asset register at the time of the request, ie about 300 assets, is not an insignificant amount of information, she is not convinced that this is necessarily a substantial amount of information. In other cases where public authorities have sought to rely on section 14(1) of FOIA on the basis of burden the information has extended to several hundred, if not thousands of pieces of paper. The same cannot be said for the information in the scope of this request.

26. However, in relation to the second criterion, the Commissioner accepts that the FCO had, and indeed have, genuine concerns about some of the information contained in the IAR being exempt from disclosure on the basis of sections 24, 31 and 40. Furthermore, during the course of her investigation the Commissioner has examined this information and is satisfied that such exemptions are applicable to the redacted and withheld information.
27. In terms of the third criterion, the Commissioner is not entirely convinced that such exempt information could be described as difficult to isolate. The information which the FCO has sought to withhold from its published version of the IAR largely falls into particular classes of information and therefore is simply listed in particular columns on a spreadsheet. Redacting or withholding such information in and of itself is therefore not particularly onerous. Whilst the FCO has also sought to withhold all information about a certain number of assets these are few in number and again, isolating such information does not appear to have proved particularly difficult.
28. Based on three criteria alone then, the Commissioner is not persuaded that the request represents a particular burden on the FCO. However, in the Commissioner's view focusing strictly, or simply, on these three criteria risks ignoring the work undertaken by the FCO in producing a published version of its IAR, which for all intents and purposes is akin to the information that was disclosable (ie not exempt under FOIA) in response to the complainant's request. As the Commissioner understands it, the burden incurred by the FCO in producing the published version of the IAR, or indeed in fulfilling the request, stemmed from the fact that at the point the request was submitted it did not have a complete or collated version of its IAR. (This is in contrast to some other government departments who at the point the complainant submitted similar requests to them were in a position to provide the established versions of the IARs they held, albeit potentially with some redactions.) In order to fulfil the complainant's request then at the point it was submitted, the Commissioner accepts that the FCO did have to undertake a considerable amount of work in collating information for the IAR and also a considerable amount of work in liaising with colleagues across the organisation in order to determine what information could, or could not, be disclosed. The Commissioner has no reason to doubt the figures provided to her by the FCO with regard to the amount of time the desk officer, and associated colleagues, took to produce the published version of the IAR. In light of this, the Commissioner is persuaded that complying with the request at the point that it was submitted would have been likely to be burdensome for the FCO, despite the fact that not all of the three criteria above are obviously or necessarily met. Rather, in the circumstances of this case the Commissioner has found it useful to consider the question of whether

fulfilling the request would be burdensome more holistically. In reaching this conclusion the Commissioner can understand the complainant's scepticism that section 14(1) would not apply given the fact that other government departments had been able to fulfil similar requests he had submitted without any such problems. However, given the particular way the FCO held information about its IAR at the point the request was submitted the Commissioner is satisfied that complying with it would have been burdensome.

29. This of course leaves the question as to whether a reasonable person would think that the purpose and value are enough to justify the impact on the public authority. In the Commissioner's view there is clear public interest in the FCO being transparent about the information assets that it holds. As the above analysis suggests, a number of other public authorities have already released similar documents in response to FOI requests. Therefore, in the Commissioner's view there is some considerable merit in the argument that there was a sufficient purpose and value in the request that regardless as to the impact on the FCO, section 14(1) did not apply. If it were not for the fact that the FCO was, at the time of the request, intending to publish a version of its IAR and actively taking steps to do so then that is the decision that the Commissioner would have reached. However, taking into account all of the circumstances of the request, the Commissioner considers it relevant to acknowledge that the FCO had this intention. In her view, this means that the purpose and value of the request is lessened slightly such that the balance tips in favour of protecting the FCO from the burden of complying with the request at the point it was submitted, and thus completing all of the necessary work within the 20 working days required to provide a response to FOI request. The Commissioner has therefore concluded that the FCO were entitled to refuse the request on the basis of section 14(1) of FOIA.

Right of appeal

30. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0870 739 5836

Email: grc@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

31. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
32. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

Jonathan Slee
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