

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 19 October 2020

**Public Authority:** Ministry of Justice  
**Address:** 102 Petty France  
London  
SW1H 9AJ

#### Decision (including any steps ordered)

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1. The complainant requested information relating to the subject of infected blood during a specified time period.
2. The MoJ refused to provide the requested information, relying on section 14(1) (vexatious request) of the FOIA.
3. The Commissioner's decision is that the MoJ was not entitled to rely on section 14(1) to refuse the request.
4. The Commissioner requires the MoJ to take the following step to ensure compliance with the legislation:
  - issue a fresh response to the request which does not rely on section 14(1) of the FOIA.
5. The MoJ must take this step within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

## Background

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6. The Infected Blood Inquiry<sup>1</sup>:

*"...is an independent public statutory Inquiry established to examine the circumstances in which men, women and children treated by national Health Services in the United Kingdom were given infected blood and infected blood products, in particular since 1970".*

## Request and response

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7. On 13 January 2020, the complainant wrote to the MoJ and requested information in the following terms:

*"Copies of all correspondence (including attachments) held by the Policy, Communications and Analysis Group (PCAG) concerning the subject of Infected Blood during the period 1st October 2018 - 31st October 2018".*

8. The request was made via the 'whatdotheyknow' website.

9. The MoJ responded on 6 February 2020. It refused the request in this case on the basis of its correspondence dated 25 September 2019. The Commissioner understands that that correspondence related to a different request for information made by the same complainant. The MoJ cited section 14(1) (vexatious request) of the FOIA as its basis for refusing to provide the requested information in that case.

10. Following an internal review the MoJ wrote to the complainant on 10 March 2020. It maintained its position, clarifying that section 14(1) of the FOIA applied in this case.

## Scope of the case

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11. The complainant contacted the Commissioner on 7 April 2020 to complain about the way his request for information had been handled. He disputed the MoJ's application of section 14.

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<sup>1</sup> <https://www.infectedbloodinquiry.org.uk/>

12. The analysis below considers the MoJ's application of section 14(1) of the FOIA to the requested information.

## Reasons for decision

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### *Section 14 vexatious request*

13. Section 14(1) of the FOIA states that section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious. There is no public interest test.
14. The term 'vexatious' is not defined in the FOIA. The Upper Tribunal considered the issue of vexatious requests in the case of the *Information Commissioner v Devon CC & Dransfield*. The Tribunal commented that vexatious could be defined as the "*manifestly unjustified, inappropriate or improper use of a formal procedure*". The Tribunal's definition clearly establishes that the concepts of proportionality and justification are relevant to any consideration of whether a request is vexatious.
15. In the Dransfield case, the Upper Tribunal also found it instructive to assess the question of whether a request is truly vexatious by considering four broad issues: (1) the burden imposed by the request (on the public authority and its staff), (2) the motive of the requester, (3) the value or serious purpose of the request and (4) harassment or distress of and to staff.
16. The Upper Tribunal did, however, also caution that these considerations were not meant to be exhaustive. Rather, it stressed the:
- "...importance of adopting a holistic and broad approach to the determination of whether a request is vexatious or not, emphasising the attributes of manifest unreasonableness, irresponsibility and, especially where there is a previous course of dealings, the lack of proportionality that typically characterise vexatious requests" (paragraph 45).*
17. The Commissioner has published guidance<sup>2</sup> on dealing with vexatious requests. That guidance includes a number of indicators that may apply in the case of a vexatious request. The fact that a request contains one

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<sup>2</sup> <https://ico.org.uk/media/for-organisations/documents/1198/dealing-with-vexatious-requests.pdf>

or more of these indicators will not necessarily mean that it must be vexatious. All the circumstances of the case will need to be considered in reaching a judgement as to whether or not a request is vexatious.

18. As discussed in the Commissioner's guidance, the relevant consideration is whether the request itself is vexatious, rather than the individual submitting it. However, a public authority may also consider the context of the request and the history of its relationship with the requester when this is relevant.

19. The Commissioner's guidance states:

*"The context and history in which a request is made will often be a major factor in determining whether the request is vexatious, and the public authority will need to consider the wider circumstances surrounding the request before making a decision as to whether section 14(1) applies".*

20. Sometimes it will be obvious when a request is vexatious, but sometimes it may not be. In that respect, the Commissioner's guidance states:

*"In cases where the issue is not clear-cut, the key question to ask is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress".*

#### *The MoJ's view*

21. During the course of her investigation, the MoJ provided the Commissioner with context to the request. It explained that on 1 June 2019 the requester had requested information relating to the period 1 September 2018 – 1 June 2019. He subsequently refined that request on 25 September 2019, narrowing the scope to cover the timeframe of 1 September - 30 September 2018 only.

22. The MoJ confirmed that the request of 1 June 2019 was refused on 25 September 2019 by virtue of section 14 of the FOIA and that the request of 25 September 2019 was responded to on 20 November 2019. It told the Commissioner that some information within the scope of that refined request was provided, with the remainder withheld by virtue of sections 40(2) (personal information) and 31(1)(c) (law enforcement).

23. In support of its application of section 14(1) in this case, the MoJ considered it was relevant to take the background and history of the request into account. In that respect, it acknowledged that it had refused the complainant's original request, that was much wider in scope, and had provided some information in relation to his next request, which had asked for information relating to September 2018 only. Referring to his previous requests, it told the complainant:

*"You have now asked for the next month's data; in view of the history of your requests, and the nature and scope of the original FOI (September 2019 [sic] to June 2019), we are satisfied on the balance of probabilities that you are attempting to obtain the information refused as a whole on 25 September 2019, through separate requests, each for one month's data".*

24. Similarly, it told the Commissioner that it considered that it was reasonable:

*"... [for the MoJ] to assume that the over-all aim of the requests is to obtain all the information for the period 1 September 2018 to 1st June 2019; that if we complied with the request dated 13 January 2020, we would receive further requests for the remaining months, i.e. November 2018 to June 2019".*

25. With respect to the likelihood of disruption being caused as a result of responding to the request, the MoJ provided the Commissioner with details of the nature and amount of information within the scope of the request. It told her that, in view of the amount of material within scope, reviewing the material, considering whether any exemptions are engaged, and applying those exemptions would be likely to cause a disproportionate level of disruption.
26. With respect to weighing the impact on its time and resources against the purpose and value of the request, the MoJ considered that the value of the request in FOI terms was limited. In that respect, it told the Commissioner:

*"Any clear and significant public interest in the information requested is satisfied by the existence of the Inquiry and the publications of its findings and recommendations in due course".*

27. It also argued that the request was an improper use of a formal procedure, namely the FOIA, arguing that:

*"... the Inquiry alone should be allowed to consider all matters arising from the material passed to it".*

#### *The complainant's view*

28. In support of his view that the request was not vexatious, the complainant told the MoJ that there was a reasonable foundation for thinking that his request was of value.
29. In correspondence with both the MoJ and the Commissioner, he also disputed that the request in this case was vexatious on the basis of the timing of this request in relation to his previous, related, request.

*The Commissioner's view*

30. The Commissioner acknowledges that there are many different reasons why a request may be vexatious, as reflected in her guidance. There are no prescriptive 'rules', although there are generally typical characteristics and circumstances that assist in making a judgement about whether a request is vexatious. A request does not necessarily have to be about the same issue as previous correspondence to be classed as vexatious, but equally, the request may be connected to others by a broad or narrow theme that relates them.
31. In her guidance on dealing with vexatious requests, the Commissioner recognises that the FOIA was designed to give individuals a greater right of access to official information with the intention of making public bodies more transparent and accountable.
32. While most people exercise this right responsibly, she acknowledges that a few may misuse or abuse the FOIA by submitting requests which are intended to be annoying or disruptive or which have a disproportionate impact on a public authority.
33. The Commissioner recognises that dealing with unreasonable requests can place a strain on resources and get in the way of delivering mainstream services or answering legitimate requests. Furthermore, these requests can also damage the reputation of the legislation itself.
34. The Commissioner does, however, recognise that public authorities must keep in mind that meeting their underlying commitment to transparency and openness may involve absorbing a certain level of disruption and annoyance.

*Was the request vexatious?*

35. The Commissioner considered both the complainant's position and the MoJ's arguments regarding the information request in this case.
36. As in many cases which give rise to the question of whether a request is vexatious, the evidence in the present case showed a previous engagement between the parties. Clearly in this case, the MoJ considered that the particular context and history strengthened its argument that, at the time of the request, the request was vexatious.
37. In reaching a decision in this case, the Commissioner has balanced the purpose and value of the request against the detrimental effect on the public authority.
38. She has also considered, in light of the nature, and degree, of the previous dealings between the complainant and the MoJ, whether, at the time, the request crossed the threshold of what was reasonable.

39. The request in this case was for information on the subject of infected blood.
40. The Commissioner recognises that the complainant had his reasons for pursuing information from the MoJ. Although not required to do so under FOIA, the complainant confirmed his interest in the information. The Commissioner recognises that the information is clearly of interest to him.
41. The Commissioner accepts that the subject matter of the request, relating as it does to a matter which is subject to a public inquiry, is a matter of public interest.
42. The Commissioner understands that, in addition to contacting people who are infected and/or affected, the Inquiry will contact others<sup>3</sup>:  
  
*"... such as government officials and medical professionals, and if they have relevant evidence will ask them to provide a written statement".*
43. With respect to the MoJ's view that the request had the potential to impact on the work of the Inquiry, the Commissioner is mindful that, where disclosure would prejudice a variety of interests, there are exemptions within the FOIA that a public authority can apply.
44. With respect to whether or not the request was burdensome, she acknowledges that the MoJ argued that there was a considerable amount of information within the scope of the request. However, from the evidence she has seen, she does consider that the MoJ has demonstrated the request under consideration to be grossly oppressive in terms of the strain on time and resources.
45. It follows that the Commissioner does not find that complying with the request, in isolation, would cause a disproportionate or unjustified level of disruption
46. The Commissioner acknowledges that, in most cases, authorities should consider FOI requests without reference to the identity or motives of the requester. Their focus should be on whether the information is suitable for disclosure into the public domain, rather than the effects of providing the information to the individual requester.

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<sup>3</sup> <https://www.infectedbloodinquiry.org.uk/sites/default/files/2018-09/2019-04-15%20Guide-to-Statements-of-Approach-v2.pdf>

47. However, she also accepts that a public authority may take the requester's identity and motivation for making a request into account when determining whether a request is vexatious.
48. In that respect, the Commissioner noted that the request in this case, although not obviously vexatious in itself, was made in the context of the related requests mentioned above.
49. She acknowledges that the MoJ considered that the context and history of the request in this case suggested that a response was likely to lead to further communications and more requests for other information on related matters from the complainant, with a further consequential impact on the MoJ.
50. However, she is not satisfied that two smaller requests, made as a result of a previous request with a wider scope having been refused, is sufficient to suggest a developing pattern of behaviour that would lead to the making of further requests.
51. In reaching a decision in this case, the Commissioner has taken into account that the purpose of section 14 of the FOIA is to protect public authorities and their employees from unreasonable demands in their everyday business.
52. While she recognises that, if the MoJ is able to justify it in the light of circumstances at the time of the request, there may come a point when a future request on the same subject, by the same complainant, would cross the threshold of vexatious, she does not consider the request in this case crossed that high threshold.
53. On the basis of the evidence provided, and taking into account the findings of the Upper Tribunal in Dransfield that an holistic and broad approach should be taken in respect of section 14(1), the Commissioner was not satisfied that the request was a manifestly unjustified and improper use of the FOIA such as to be vexatious for the purpose of section 14(1).
54. Accordingly, she was not satisfied that, at the time of the request, the MoJ was entitled to apply section 14(1) of the FOIA.



## Right of appeal

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55. 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](mailto:grc@justice.gov.uk)  
Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

56. 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.

57. 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 .....**

**Laura Tomkinson  
Group Manager  
Information Commissioner's Office  
Wycliffe House  
Water Lane  
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SK9 5AF**