

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 3 June 2021

Public Authority: National Museum of Science and Industry
Address: Liverpool Road
Manchester
M3 4FP

Decision (including any steps ordered)

1. The complainant requested terms of reference for various members of staff. The National Museum of Science and Industry ("the Museum") refused the request as vexatious.
2. The Commissioner's decision is that the request was vexatious and the Museum was entitled to rely on section 14(1) of the FOIA to refuse it.
3. The Commissioner does not require further steps.

Request and response

4. On 13 December 2019 the complainant wrote to the Chief Operating Officer requested information of the following description:

"Please supply a copy of the Terms of Reference of yourself, Jonathan Newby, Chief Operating Officer of the National Museum of Science and Industry.

"Please advise what progress has been made in the improvement of educational facilities in your Aerospace division, which you stated in your letter following our meeting was "lacking".

"Please supply a copy of the terms of reference of (a) the Chair of Trustees, and (b), each trustee.

"A copy of the terms of reference of the manager of the Wroughton site."

5. On 10 January 2020, the Museum responded. It refused the request as vexatious.
6. The complainant requested an internal review on 16 January 2020. The Museum concluded its internal review on 30 March 2020. It upheld its original position.

Scope of the case

7. The complainant contacted the Commissioner to complain about the way his request for information had been handled. The letter itself was undated, but was received by the Commissioner's Office on 14 September 2020.
8. The Commissioner considers that the scope of her investigation is to determine whether the request was (or was not) vexatious.

Reasons for decision

Section 14 - Vexatious

9. Section 1(1) of the FOIA states that:

Any person making a request for information to a public authority is entitled –

- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and*
- (b) if that is the case, to have that information communicated to him.*

10. Section 14 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.

11. The term "vexatious" is not defined within the FOIA. The Upper Tribunal considered the issue of vexatious requests in *Information Commissioner v Devon CC & Dransfield* [2012] UKUT 440 (AAC). It commented that "vexatious" could be defined as the "manifestly unjustified, inappropriate or improper use of a formal procedure". The Upper

Tribunal's approach in this case was subsequently upheld in the Court of Appeal.

12. The *Dransfield* definition establishes that the concepts of proportionality and justification are relevant to any consideration of whether a request is vexatious.
13. *Dransfield* also considered 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. It explained that these considerations were not meant to be exhaustive and also explained 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).
14. The Commissioner has published guidance on dealing with vexatious requests¹, which includes a number of indicators that may apply in the case of a vexatious request. However, even if a request contains one or more of these indicators it will not necessarily mean that it must be vexatious.
15. When considering the application of section 14(1), a public authority can consider the context of the request and the history of its relationship with the requester, as the guidance explains: "*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*".
16. However, the Commissioner is also keen to stress that in every case, it is the request itself that is vexatious and not the person making it.
17. In some cases it will be obvious when a request is vexatious but in others it may not. 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 complainant's position

¹ <https://ico.org.uk/media/for-organisations/documents/1198/dealing-with-vexatious-requests.pdf>

18. Although stressing that he was under no obligation to do so, the Commissioner gave the complainant an opportunity to set out why he considered his request was not vexatious and to describe why the request had value.
19. The complainant explained that he had previously attempted to negotiate an extended lease for land owned by the Museum to be used by a Model Aircraft Group. Since then, he stated that he had "continuously encountered obstructive behaviour" on behalf of the Museum.

20. He further stated that:

"Further, certain written allegations of improper, indeed, illegal activity by members of [the group] by the airfield manager have been completely discounted by the NMSI office. A formal complaint against this individual and a request for a retraction of these allegations, to the Director, went unanswered."

21. The complainant noted that his MP had been involved in the dispute and stated that:

"I wrote to the Chair of Trustees (twice) and all trustees expressing my concerns at my findings and requesting their response(s). None was received, suggesting to me that the trustees are in dereliction of their duties, OR my letters were never transmitted from NMSI at Kensington, despite assurances from the Director's secretary that they were. I addressed a recorded delivery letter to the Chair of Trustees at her [redacted] home, which also went unanswered!"

22. In conclusion, the complainant stated that:

"The management at NMSI know that I have uncovered incompetence and dishonesty within their organisation and I am resolved, in the public interest, to get to the bottom of the matter. We, the taxpaying public, deserve better."

The Museum's position

23. The Museum agreed that its dealings with the complainant had begun with discussions of a lease at its Wroughton site. It noted that since those discussions in 2014, the complainant had been "in continuous correspondence since this date" – although it noted that he had not made an FOI request since 2016. However, more recently the correspondence has focused on attempts by the complainant to secure a visit, by two aviation groups that he is part of, to the Wroughton site.

24. The Museum explained that the Wroughton site was currently undergoing renovation and that it wasn't able to accommodate such a visit – although it was happy to arrange a visit once works had been completed. The Museum noted that the complainant appeared unwilling to accept this position, despite it having been explained on more than one occasion and that his request was merely a method of pressurising it to reverse its decision.
25. In addition, the Museum noted that the complainant's correspondence had become focused on the manager of the Wroughton site and now appeared to be targeting him at a personal level both with this request and with his correspondence more generally.
26. Finally, the Museum noted that the complainant had been in contact with the Department for Digital, Culture, Media and Sport (DCMS) numerous times since 2012. It informed the Commissioner that DCMS had informed the complainant in 2018 that there was "no case to answer" and that it would no longer be engaging with his correspondence.
27. The Museum furnished the Commissioner with copies of correspondence it had exchanged with the complainant in the six months prior to the request. In particular, it drew the Commissioner's attention to the repeated targeting of the manager of the Wroughton site, with the complainant referring to
 - "[his] inability to manage the hangar"*
 - "[his] inaction and indifference beggars belief"*
 - "on his side I have uncovered incompetence and dishonesty"*
 - "[his] clear hostility to aviation, in all forms"*
28. The Museum noted that part of the requests seeks copies of this individual's terms of reference which is, it argued, an attempt to place further pressure on this individual.
29. Furthermore, the Museum noted that the complainant's correspondence constantly belittles or disparages its work by comparing it with other institutions. In one piece of correspondence, in which he recorded having being permitted to visit an RAF facility not open to the public, the complainant argued that it "should be straightforward" to accommodate his groups on a visit. In another piece of correspondence, the complainant argues that:
 - "If the Chief of the Air Staff, Air Chief Marshall Wigston, who runs the Royal Air Force, a rather larger and vastly more important*

organisation than the NMSI, can give his time to both the Company and PC then I do not accept that [the Museum's management] have too little time!"

30. On another occasion, having highlighted a visit he had made to RAF Marham, he noted that:

"The 'station commander' at Wroughton is under rather less pressure."

31. In conclusion, the Museum stated that:

"The context of this request makes it clear that it is intended to be threatening. It targets particular office holders with the aim of securing access to NCC earlier than [the Museum] are able to allow.

"As such, [the request] is understood to be vexatious under the following guidance from the ICO:

- The requester continues to challenge SMG for alleged wrongdoing without any cogent basis for doing so.*
- It is pursuing a relatively trivial or highly personalised matter of little if any benefit to the wider public.*

The Commissioner's view

32. In the Commissioner's view, the request, when seen in context, was vexatious.
33. It is clear to the Commissioner that the relationship between the complainant and the Museum has suffered significant damage. However, it is equally clear that responding to this request (or indeed any other request) is unlikely to bring about any form of resolution – indeed, the Commissioner considers that responding to the request is only going to prolong the correspondence.
34. There is, in the Commissioner's view, a clear link between the complainant's refusal to accept the Museum's decision not to allow his groups to have privileged access to the Wroughton site and the request.
35. The Museum has made a decision that it cannot accommodate the groups at the present time (nor, for that matter, can it accommodate the general public). The complainant is entitled to disagree with that decision, but it is not a decision that is so obviously unreasonable as to justify the volume and tone of the complainant's correspondence.
36. The Commissioner agrees with the Museum that the complainant's correspondence has targeted the manager of the Wroughton site in

terms designed to belittle him. The Commissioner considers that this individual is entitled to feel a certain degree of harassment and that this would be distressing for him.

37. More concerningly, the Commissioner notes that the complainant has now taken to writing to individual trustees at their home address. Whilst the Commissioner notes the complainant's explanation that he shares a mutual friend with this particular trustee, she nevertheless considers that that trustee may well have found such an experience distressing. Were the request to be responded to, the Commissioner considers that the complainant would be likely to use any information he received to target those trustees further.
38. The tone of the complainant's correspondence, whether intentionally or not, is written in terms that are belittling and disparaging towards the Museum, its employees and its work.
39. Whilst the Commissioner would not describe the tone as intemperate, she recognises that, over a prolonged period, the staff tasked with reading and responding to it would begin to feel a certain degree of harassment.
40. In particular, the Commissioner notes that the complainant, usually refers to individuals by their surname alone when writing something uncomplimentary about them (eg. "Smith says" rather than "Mr Smith says"). When seeking responses, he also refers several times to individuals of senior military rank who are apparently "awaiting an update." The Commissioner accepts that these are rhetorical devices designed to pressurise and intimidate the Museum's staff into accepting the complainant's demands. Similarly, she notes that the complainant has signed off at least one of his emails with:

"I will most certainly not be letting the matter drop."

41. The complainant has not put forward any persuasive evidence of maladministration at the Museum and the Commissioner notes that his previous attempts to raise the matter with the appropriate authorities do not appear to have resulted in findings in his favour.
42. The Commissioner agrees that responding to this particular request would be unlikely to resolve matters and the complainant is merely seeking ammunition to commence the next phase of his attacks on the Museum.
43. The underlying matter does not relate to the access of the general public to the Wroughton site, it only relates to the Museum affording privileged access to two particular groups. The Commissioner therefore agrees that this a matter which will be of little interest to the wider public.

44. Whilst accepting that information falling within the scope of this request would enable the public to better hold the Museum to account, she is not persuaded, in the circumstances of this case, that such concerns outweigh the manner in which the complainant is pursuing his broader grievance with the Museum.
45. The Commissioner is therefore satisfied that the Museum was entitled to rely upon section 14(1) of the FOIA to refuse the request.

Other matters

Request for internal review

46. On 16 January 2020, the complainant, responding to its refusal notice, complained about the Museum's general attitude towards him, stated that:

"I repeat my request for the information under the FOI or I WILL refer my request to the Information Commission...I trust you will meet your legal obligations at the first opportunity."
47. On 20 February 2020, the Museum responded to that correspondence, noting that the complainant had a right to make use of its internal review process – if he wished to do so. The complainant noted that he considered his earlier correspondence to have been a request for an internal review.
48. The Commissioner encourages those seeking an internal review to be explicit about the fact and, where possible to set out why they consider that the initial response did not satisfy their request. In her view, the complainant's correspondence could have emphasised this point more clearly – rather than seeking to "repeat my request."
49. Nevertheless, the Commissioner's guidance for public authorities states that their internal review process should be triggered by "whenever a requestor expresses dissatisfaction with the outcome [of their request]."
50. The Commissioner is satisfied that the complainant's correspondence of 16 January should have triggered the Museum's internal review process. The Museum therefore failed to comply with the Commissioner's guidance that internal reviews should never exceed 40 working days from the date they are requested. Even if the Museum had been generally unsure as to whether an internal review was being requested, it should not have waited until 20 February 2020 to seek clarification. This represents poor request-handling practice on behalf of the Museum.

Right of appeal

51. 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

52. 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.
53. 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

Pamela Clements
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