

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 23 November 2021

**Public Authority:** Avon Fire Authority  
**Address:** Police & Fire Headquarters  
PO Box 37  
Valley Road  
Portishead  
Bristol  
BS20 8JJ

### Decision (including any steps ordered)

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1. The complainant has requested information from Avon Fire Authority (AFA) about its financial accounting. AFA refused the request as vexatious under section 14(1) of the FOIA.
2. The Commissioner's decision is that AFA was entitled to rely on section 14(1) to refuse the request.
3. The Commissioner requires no steps as a result of this decision.

### Background

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4. On 2 February 2017, the Home Office was commissioned to conduct a statutory inspection of AFA, following persistent allegations of bullying and financial mis-management which AFA had not satisfactorily addressed.

5. The inspection report was published on 19 July 2017<sup>1</sup>. It was critical of AFA's governance and leadership and it highlighted a number of areas which required change<sup>2</sup>.
6. AFA conducted an investigation into the findings of the report. Several senior members of staff subsequently left their posts.
7. The complainant started to make enquiries of her own about AFA's financial accounting practices, which she believed had not been covered in the Home Office inspection. She uncovered a number of anomalies and secured an investigation by AFA's external auditor, Deloitte, into various matters. However, she was not satisfied with the investigation, which she felt had not kept to the terms agreed, or its outcome, and she continued to submit requests for information on accounting matters.

## Request and response

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8. On 25 June 2020, the complainant wrote to AFA and requested the following information under the FOIA:

*"Please provide details of all manual entry errors identified in RAM [Real Asset Management – AFA's accounting software] including journal type entries etc (i.e. all entries not created by the automated calculations of the reconfigured RAM software), and the corrections made in RAM and/or in the accounts, as well as indicating those errors that have not been corrected in RAM and/or in the annual accounts, including those made in the dozens of RAM categories where I found clearly wrong manual adjustments, some in the millions of pounds.*

*This information should be readily available, in Deloitte's detailed investigation and/or audit papers which they will have provided to/consulted over with AFRS [Avon Fire & Rescue Service], and also in the RAM audit trail. I wish to see all such details, no matter what year they relate to, that were incorrect (including historically) as per the RAM entries/figures at the time the figures for the draft 2018/19 accounts were produced.*

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<sup>1</sup>[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/630183/6\\_3502\\_HO\\_KG\\_Avon\\_Report\\_Web.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/630183/6_3502_HO_KG_Avon_Report_Web.pdf)

<sup>2</sup> <https://www.bbc.co.uk/news/uk-england-bristol-40485853>

*Please also provide details of the value of individual entries that Deloitte chose to disregard, if these were neither identified nor reported.*

*Please also provide an explanation of the corrections made to the RAM configuration, i.e. impairment treatment etc, following which recalculated depreciation, impairment and revaluation adjustment figures etc were produced from the manual entries.*

*Please provide the details of all vehicles exported (SWAP [South West Audit Partnership] having reportedly confirmed these with the DVLA [Driver and Vehicle Licensing Agency]) including descriptions, registration numbers and dates of export and transfer of ownership.*

*Please also provide a list of all other Assets including appliances, ancillary vehicles, IT equipment etc donated by Avon Fire to the Gambia, since these donations began.*

*It is alarming that, when numerous corrections needed to be made to the Asset Register and several years annual accounts, management asked auditors Deloitte not to correct a £714k Balance Sheet misstatement in the 2018/19 accounts, even when the accounts, containing restatements of figures for 2016/17 and 2017/18, the years in question, had not yet been finalised. Please explain how with the error remaining on the Balance Sheet for numerous future years how the RAM and Balance Sheet are to be reconciled each year, or confirm that the RAM has been altered to contain false information.*

*Having raised the matter in March 2019 I continue to receive no details regarding the capital expenditure totalling £765,297.60 in 2014/15, to land at Temple Back HQ £498,602.98 and Temple Back Fire Station £ 266,694.62, whilst no land appears to have been purchased. Please provide all invoices/sales documents and tenders including any related documents, journals, relating to these Asset purchases/enhancements, clearly showing the itemised details and itemised costs of what was purchased, together with all other of the above mentioned paperwork relating to transactions with the same suppliers if there is any inter-relation with other purchases/expenditure.*

*Please also provide all detailed invoices, sales documents and tenders (successful and unsuccessful, original and subsequent) relating to past, current and future capital expenditure on the New (or currently being refurbished) Stations: Temple Back Fire Station, Hicks Gate Fire Station and training facilities, and Avonmouth Fire Station. I wish to see the above listed documents for all capital amounts relating to these property and land assets, including legal fees etc.*

*Please provide the same documents for the Command Unit purchased around 2017. And also for the refurbishment/rebuilding/resiting of Weston-Super-Mare and Bath, as I see several hundreds of thousands of pounds of expenditure has been approved for pre-construction etc.*

*Please also provide tenders (successful and unsuccessful) for the contract for valuing land and buildings for the financial year 2019/20 onwards, which is reported as being provided by Deloitte.*

*Having given huge amounts of my time, pursuing the correction of the significant inaccuracies in Avon Fire's Capital Accounting and therefore annual accounts covering the period 2008 to 2019, please provide me with all the corrected RAM balances as at 31 March 2019 for each asset including purchase cost, enhancements, depreciation, revaluation and impairment balances, and revaluation and impairment adjustment balances, in the various categories used in RAM, to date.*

*Please provide all versions (from 2007/08 onwards) of, both, Avon's Finance Policy and Disposal Policy (including any other documents referred to within these that are relevant to Capital Accounting, Procurement and Asset Disposal.*

*I imagine AFRS or their auditors will have needed to gather the CIPFA Regulations relating specifically to Capital Accounting, that were applicable during the years since 2007/08 onwards in order to make the required corrections, and if so, please could I have copies of these.*

*Please provide the detailed reports including external professional assessments of the estimated costs of around £7m (elsewhere £9m) mainly re structural building failings at Temple Back HQ used to justify the writing off of HQ buildings, and evidence that an insurance claim for these structural failings was looked into.*

*Please note I wish to see the RAM information requested above for the years the RAM was in operation including all details up to the point of production of finalised and fully audited accounts to 31 March 2019. At the AGECE [Audit, Governance and Ethics Committee] meeting of 22 May 2020, Deloitte indicated that all outstanding matters should be finalised in about a week from then. If this is not the case I would like to be provided with all details as they stand now, with the further details occurring between now and the finalised and fully audited accounts to 31 March 2019 being provided as soon as possible."*

9. AFA responded on 24 July 2020. It said that the information the complainant requested did not raise any new points beyond the ones it had previously dealt with and that it "forms part of a matter the Authority now considers closed". It declined to comply with the request, and, noting "...the substantial time and resource expended by the

*Authority to investigate these issues, which has been well over the 18 hours indicated in the FoIA”, it said that further, similar requests would likely engage the provisions at section 14 (Vexatious or repeated request) of the FOIA.*

10. AFA also said that:

- matters pertaining to its accounts were, in any case, exempt from disclosure under section 22 (Information intended for future publication) of the FOIA, as the information would shortly be published in accordance with Regulation 15(2)(b) of the Accounts and Audit Regulations 2015.
- Similarly, it said that information relating to vehicles sent to the Gambia was due to be published on its website by the end of September 2020, and would also be exempt under section 22.
- It said its document disposal policy is updated annually and is based on legislative requirements and good practice guidance from the Information Commissioner.
- It said that it could not disclose information which was held by third parties.

11. The complainant requested an internal review on 28 July 2020. She expressed concerns about AFA’s handling of this, and previous, FOIA requests. She said that she had identified significant inconsistencies and irregularities with its accounting procedures, which had required correction, and that the concerns she had raised had not been thoroughly investigated. She also disagreed with AFA’s suggestion that section 22 would apply to some information.

12. AFA responded on 24 August 2020. It upheld its decision to refuse to comply with the request.

### **Scope of the case**

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13. Subsequently, on 7 September 2020, the complainant submitted an access request to AFA under the Accounts and Audit Regulations 2015, asking for substantially similar information to that which she had requested under the FOIA on 25 June 2020. She referred AFA to its statements that information would be published in accordance with Regulation 15(2)(b) of those Regulations.

14. AFA responded to the access request on 23 September 2020, confirming the complainant’s right to inspect the accounts for the year 2019/20. It also disclosed the following information, with redactions:

- Invoices and sales documents relating to capital expenditure on the station at Avonmouth during the year to 31 March 2020.
  - Invoices and sales documents relating to capital expenditure on the stations at Bath and Weston-super-Mare during the year to 31 March 2020.
  - The correct opening balances for all assets in RAM as at 31 March 2019.
15. AFA acknowledged that the information being made available did not include everything that the complainant had requested. Referring to the FOIA request of 25 June 2020, AFA said that it stood by its decision not to disclose all the requested information, for the reasons previously set out in its refusal of the FOIA request.
16. Following further correspondence with AFA about her concerns involving expenditure relating to Temple Back, which she believed could not be accounted for, the complainant contacted the Commissioner on 28 January 2021 to complain about the way her FOIA request had been handled. She disagreed with AFA's decision to refuse her request, in light of its response to her later access request.
17. The analysis below considers whether AFA was entitled to rely on section 14 of the FOIA to refuse the request of 25 June 2020.

The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the FOIA. The FOIA is concerned with transparency and provides for the disclosure of information held by public authorities. It gives an individual the right to access recorded information (other than their own personal data) held by public authorities. The FOIA does not require public authorities to generate information or to answer questions, provide explanations or give opinions, unless this is recorded information that they already hold.

## **Reasons for decision**

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### **Section 14 – Vexatious or repeated requests**

18. Section 1(1) of the FOIA states that an individual who asks for information is entitled to be informed whether the information is held and, if the information is held, to have that information communicated to them.



19. However, 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. The section is not subject to a public interest test.
20. 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 (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.
21. In the *Dransfield* case, the Upper Tribunal assessed 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.
22. The Upper Tribunal explained 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).
23. The Commissioner has published guidance on dealing with vexatious requests<sup>3</sup> which includes a number of indicators that may signify that a request is vexatious. However, even if a request contains one or more of these indicators it will not necessarily mean that it must be vexatious. All the circumstances of a case will need to be considered in reaching a judgement as to whether a request is vexatious.

*"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"*.

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<sup>3</sup> <https://ico.org.uk/media/for-organisations/documents/1198/dealing-with-vexatious-requests.pdf>

24. 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".*

25. However, the Commissioner would stress that, in every case, it must be the request itself that is shown to be vexatious and not the person making it.

#### *Complainant's position*

26. The complainant provided a great deal of background information in support of her complaint to the Commissioner. The Commissioner understands the following.
27. The complainant noted that the Home Office's 2017 statutory inspection of AFA did not specifically address financial accounting matters. Concerned to "*reassure [myself] that things were in order*", she started to conduct her own enquiries into AFA's capital accounting, which uncovered discrepancies and concerns.
28. During 2017 and 2018 the complainant pursued further enquiries and made further information requests, but said that AFA did not accept that her findings showed accounting irregularities. In June 2018, she made a complaint to AFA, saying that she wanted a formal investigation into the matters she had raised. She also raised "*significant*" capital accounting discrepancies with AFA's external auditors, who she says declined to look into "*...errors made in previous years or that are below their approx. £1 million materiality level*".
29. In August 2018, the complainant met with AFA's senior management team and she secured an agreement to the investigation of ten concerns, to be specified by her in a Public Access Statement, which she made on 21 September 2018, to AFA's Audit, Governance & Ethics Committee.
30. The Public Access Statement set out ten concerns, which AFA summarised as follows:
1. Concerns about entries in the Asset Register (overstatement of depreciation and impairment costs).
  2. Disposal of vehicles for less than £10K.



3. Asset Register entries for vehicles.
  4. Depreciation on a property owned in Yate.
  5. Paying more for appliances than other Fire and Rescue Services.
  6. Expenses recorded for Bedminster Fire Station should be 'capital' not 'maintenance'.
  7. Purchaser of land at Temple Back has not paid in full.
  8. Depreciation and impairment charges/written off for buildings at Temple.
  9. Impairment for new Temple Fire Station building.
  10. Raising council tax charge despite income from sale of land at Temple.
31. AFA consulted the Local Government Association (LGA) who recommended a differentiated approach to investigating the concerns, involving AFA's new external auditors (Deloitte), and the use of internal audit or, if this was not possible, freelance auditors. LGA commented that, in light of the Home Office's 2017 investigation, the complainant's concerns would "*implicitly raise questions about possible fraud and corruption*" if AFA did not respond to them "*robustly*".
32. The complainant felt that AFA did not keep to the agreed terms of the investigation. She said she was led to believe that an auditor of her choice would conduct the investigation, but in the event, AFA's new external auditor, Deloitte, conducted a "Value for Money" assessment of the 2018/19 accounts, which the complainant described as "*unthorough*". She said Deloitte provided little information on its findings in its report, and that she was forced to correct it regarding one item, which it accepted. She said that in May 2020, AFA officers vetoed a similar interrogation of earlier years' accounts, despite its annual Governance Statement containing a risk score for financial matters of 'Catastrophic'.
33. The complainant accepts that, for the past three years, she has persistently invoked her access rights under various pieces of audit and access legislation to obtain information in furtherance of her enquiries. Where the information she requested was not provided to her, or was lacking in detail, she has made FOIA requests for it. She believes it is unreasonable for AFA to take into account its responses to her other requests for information in determining this request as vexatious because, in her view, its failure to responded to them properly, necessitated that she make further FOIA requests. She also feels her

enquiries were justified, in view of the fact that formal investigations were subsequently commissioned.

34. The complainant said that her requests had merit and a serious purpose. She had consistently found serious discrepancies in AFA's accounts figures, involving "7 & 8 figure items" which she felt AFA had not satisfactorily accounted for. She produced a letter from AFA itself, dated 14 June 2019, thanking her for her work in bringing her concerns to the attention of the Audit, Governance and Ethics Committee, saying that it "*recognise[d] their potential importance*".

#### *AFA's position*

35. AFA also provided the Commissioner with a highly detailed submission in support of its position. It maintained that the request was vexatious. It said that the complainant was not satisfied with the outcome of investigations into complaints she had made about its accounts, and that she was continuing to request related information, presumably in the hope that she could find something which conflicted with the investigation outcomes.
36. AFA said that it had engaged fully with the complainant's earlier approaches for information across various access regimes and that much of the information she is requesting here has previously been made available to her. AFA said that this request largely relates to the concerns raised in the complainant's Public Access Statement of 21 September 2018, which had been properly investigated. It said it remains open to considering future requests from the complainant under the FOIA, if they do not seek to re-open matters which have already been comprehensively dealt with.
37. AFA said that entries and corrections to the RAM system, and entries relating to Temple Back HQ and Fire Station, were the subject of thorough investigation by auditors in response to the complainant's Public Access Statement.
38. It conceded that information about vehicles donated to the Gambia is proving difficult to collate, but a draft document has been prepared and, subject to checking, the intention remains to publish that on AFA's website.
39. It clarified that there is no separate Finance Policy and Asset Disposal Policy in place.
40. It also commented that information about new and refurbished stations and the purchase of command units was published in the 'over £500 spend' category of its annual accounts statements and would previously have been provided to the complainant in response to her regular requests to inspect documents supporting the annual accounts.

41. On that point, it said that each year the complainant asks AFA to provide documents during the public inspection period of annual accounts under the Accounts and Audit Regulations 2015. The Regulations do not permit access to commercially confidential information. AFA provided the Commissioner with a copy of a letter to the complainant, explaining this point, but the complainant continues to insist she be provided with all the information she asks for (her public access request of 7 September 2020, and subsequent correspondence, maintaining AFA's response was incorrect, being an example).
42. Explaining the action it had taken, AFA said that one of the concerns expressed by the complainant in her Public Access Statement of 21 September 2018 was addressed by way of an audit adjustment in AFA's accounts. The remaining nine concerns were investigated by two external auditors (SWAP Internal Audit Services and Deloitte) which were specifically engaged by AFA to investigate the issues she had raised. The complainant was contacted by both during their investigations.
43. AFA said that it has carefully considered the two resultant reports and their findings and recommendations have been implemented<sup>4</sup>. Those audit reports are regarded by the Audit, Governance and Ethics Committee as comprehensive, requiring no further investigation of the concerns which underpinned them.
44. It followed that AFA considered that its response to the complainant's Public Access Statement was complete. However, the complainant remains dissatisfied and seems intent on conducting her own 'fishing expedition' in an attempt to uncover evidence of wrongdoing.
45. AFA noted that the independent investigations had cost in the region of £17,000 of public money. It said that the complainant nevertheless continues to submit correspondence relating to the same topics covered by the investigations, demanding responses. Between 29 January 2017 and 25 November 2019, it recorded over 240 hours of work in dealing with requests from the complainant. Further significant time had been expended answering questions on a 'normal course of business' basis. AFA believed that to continue to respond to correspondence regarding

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<sup>4</sup>[https://www.google.co.uk/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwiyeubhKL0AhUQgFwKHWwYB\\_8QFnoECAwQAQ&url=https%3A%2F%2Fwww.avonfire.gov.uk%2Fdocuments%2Fcategory%2F189-audit-governance-and-ethics-committee%3Fdownload%3D1801%3Aitem-10-public-access-statement-amended-20-may&usq=AOvVaw1PXaiKvoBnaI8VLR39mUhE](https://www.google.co.uk/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwiyeubhKL0AhUQgFwKHWwYB_8QFnoECAwQAQ&url=https%3A%2F%2Fwww.avonfire.gov.uk%2Fdocuments%2Fcategory%2F189-audit-governance-and-ethics-committee%3Fdownload%3D1801%3Aitem-10-public-access-statement-amended-20-may&usq=AOvVaw1PXaiKvoBnaI8VLR39mUhE)

these same allegations would involve a disproportionate and unjustified level of disruption to its work and would not be a good use of public money.

46. It said it has tried to take a conciliatory approach, but has been rebuffed by the complainant. It cited an example where the complainant had put further questions to it about the concerns expressed in her Public Access Statement, some of which it could not answer without further consideration. It treated the questions as a request under FOIA, but the complainant objected to this approach, saying:

*"...it is clear you are doing your best to delay and be as unhelpful and untransparent as you can.*

*If I wish to submit a FOI request or make a complaint I will do this on my own terms".*

47. When dissatisfied with responses she has received from AFA and external investigators, the complainant has sent emails repeating her allegations to various Fire Authority Councillors, including the Chair of the Audit, Governance and Ethics Committee, a former Councillor, a former Finance Manager, and the current Fire Authority Clerk. AFA also felt that she used the *WhatDoTheyKnow* website<sup>5</sup> to publicly make unreasonably critical statements about AFA, in light of the time and public money that it has spent on investigating the concerns she had raised with it.
48. AFA said that prior to the COVID-19 lockdown, the complainant would regularly attend public meetings for AFA and the Audit, Governance and Ethics Committee and would submit members of staff, officers, elected Fire Authority members and auditors to heckling. It said the complainant has also been verbally abusive to AFA's Chair, its Chief Fire Officer, and various members of AFA staff.
49. AFA concluded that, in view of the wider context of her interactions with it, the request met the definition of vexatious.

*"In view of the time already spent in responding to FOIA requests, issues raised in Public Access Statements, and requests for further information resulting from public inspection of accounts, AF&RS [Avon Fire & Rescue Service] believes that engaging any further with this request has caused a disproportionate or unjustified level of*

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<sup>5</sup> <https://www.whatdotheyknow.com/>

*disruption, irritation or distress to the staff and AFA members who the requester regularly attempts to request information from.*

*The effort required to meet the voluminous and overlapping requests from the requester has been so grossly oppressive in terms of the strain on time and resources that AF&RS can no longer reasonably be expected to comply, no matter how legitimate the subject matter was at the beginning or how valid her intentions remain.*

*It is submitted that, save for the two issues highlighted above (vehicles sent to The Gambia, and Finance and Asset Disposal Policy), the remaining elements of the FOIA relate to historical Real Asset Management (RAM) software entries and capital expenditure relating to refurbished fire stations and the sale of land/redevelopment of the Temple Back site. These issues have already been the subject of full investigation and disclosures to the requester.*

*To continue to respond to the requester's attempts to re-open these topics would be a disproportionate use of FOIA.*

*The purpose of the request is a 'fishing expedition' to disprove the findings of independent scrutiny and to request large amounts of information in the hope of finding some evidence of fraud. Without any cogent basis for doing so, the requester has an entrenched view and continues to assert that financial recording relating to assets amounts to wrongdoing and loss of public money."*

#### *Commissioner's decision*

50. In the Commissioner's view, section 14(1) of the FOIA is designed to protect public authorities by allowing them to refuse requests which have the potential to impose a disproportionate or unjustified level of burden, disruption, irritation or distress. Balancing the impact of a request against its purpose and value can help to determine whether the effect on the public authority would be disproportionate. 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.

#### *Was the request vexatious?*

51. The Commissioner has considered both the complainant's position and AFA's arguments regarding the request in this case. In reaching a decision she has balanced the purpose and value of the request against the detrimental effect on AFA of responding to it.
52. Regarding the first issue considered in *Dransfield*, as to whether or not the request was burdensome, AFA has argued that a large amount of information would have to be consulted to collate the information falling

within scope of the request, and that there would be a cost to it of doing so. This would be on top of the considerable costs it has already expended in investigating and responding to the complainant's concerns on the same subject matter.

53. The request in this case comprises 15 questions, several of which themselves contain multiple parts, and cover a timescale of many years. Only one is a straightforward request for documents (being for a Finance Policy and Asset Disposal Policy, which AFA has clarified it does not hold) as opposed to 'information'. The Commissioner considers that to comply with the request, a wide range of information would need to be consulted and the relevant information, if held, collated and presented in a form which would need to be intelligible (ie it is likely that some contextual narrative would need to be provided to respond intelligibly to some questions). Considerable work would be required in order to achieve this and AFA would be required to expend significant resources in order to comply with the request. The question is, therefore, whether, in all the circumstances of the case, it is reasonable and proportionate that it do this.
54. On that point, the Commissioner notes that the Upper Tribunal case of *Cabinet Office v Information Commissioner v Ashton [2018] UKUT 208 (AAC)* made clear that section 14(1) of the FOIA can apply on the basis of the burden placed on the public authority, even where there was a public interest in the request being addressed and where there was a 'reasonable foundation' for the request.
55. It is also noted that the request contains several requests for explanations. As mentioned above, the Commissioner would clarify that the FOIA does not require public authorities to provide explanations or give opinions, unless this is information which is already held as recorded information.
56. The complainant's persistence, and the detailed nature of her numerous approaches for information, has undoubtedly placed demands on the small team of staff at AFA. Her requests are extensive and detailed. She has analysed information provided by AFA meticulously and sought further clarification and detail in new requests. AFA estimates that it has spent over 240 hours of work dealing with just some of her approaches. The Commissioner notes that the timeframe cited by AFA includes the period in which it agreed to investigate her initial concerns, which it seems to have accepted were justified. Nevertheless, it has dealt with further approaches for information outside of that timeframe and is being asked to continue to do so. These demands on its time are not something which can be absorbed by an authority of AFA's size without impacting on service provision to other users.



57. The complainant considers that the issues AFA has identified with regard to burden are of its own making. She says it has failed to respond satisfactorily to concerns she has raised about its capital accounting practices and, in her view, the continued need for proper scrutiny has necessitated further requests for information on the matter.
58. The Commissioner considers that there is significant public interest in the issues identified by the complainant in her Public Access Statement of 21 September 2018 being properly investigated. This is evidenced by the LGA's comments, the comments in AFA's letter thanking the complainant and the investigations it commissioned by Deloitte and SWAP. These investigations also took place against a backdrop of an earlier statutory Home Office investigation, which itself found that AFA was failing to comply with the 'best value' duty, under section 3 of the Local Government Act 1999<sup>6</sup>.
59. However, those investigation have been completed and AFA has accepted their findings and publicly set out the steps it intends to take to address them. The Commissioner considers that the appropriate route to resolve any ongoing concerns the complainant continues to have about AFA's accounting practices is not by continuing to make requests for similar information under the FOIA. Rather, the National Audit Office states that concerns about "*corruption, fraud or misuse of public money*" should be referred to the appointed auditor for a fire authority – in this case, Deloitte<sup>7</sup>.
60. The Commissioner has then looked to the second element identified in *Dransfield*: the motive of the requester.
61. Having read the complainant's detailed submissions to her, the Commissioner is satisfied that her interest in the matter appears to be genuinely held. The Commissioner has seen no evidence that the complainant is simply using the request as a vehicle to pursue a wider grievance against AFA. The Commissioner also does not see any evidence that the request was made merely with the intention of monopolising AFA's resources or causing irritation or distress. The Commissioner therefore accepts that the complainant's motives are based on genuinely held concerns.
62. Turning to the third issue identified in *Dransfield*, the purpose and value of the request, the Commissioner looked at its wider context and

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<sup>6</sup> <https://www.legislation.gov.uk/ukpga/1999/27/section/3>

<sup>7</sup> <https://www.nao.org.uk/contact-us/contact-us/>

background. In particular, she has considered AFA's claims that the request is unreasonable in view of the actions it has already taken to investigate the concerns the complainant has raised with it and which the request largely relates to.

63. In light of AFA's submissions, the Commissioner has considered whether the request might reasonably be characterised as 'obsessive'. She accepts that at times there is a fine line between obsession and persistence and although each case is determined on its own facts, the Commissioner considers that an obsessive request can be most easily identified where a complainant continues with the request(s) despite being in possession of other independent evidence on the issue (although the Commissioner considers that a request may still be obsessive even without the presence of independent evidence).
64. The complainant has, by her own admission, demonstrated persistence in her pursuit of information about AFA's capital accounting. The Commissioner recognises that this persistence has resulted in certain deficiencies being identified and addressed by AFA. However, the Commissioner questions the extent to which this persistence continues to be justified, in light of the action AFA has taken to investigate her concerns.
65. The Commissioner notes that the LGA has been involved in addressing the complainant's concerns, in that it advised AFA on how they would best be investigated. The resultant investigations were carried out by external bodies, Deloitte (AFA's external auditors) and SWAP. The subsequent findings (which did find technical accounting errors, identified by the complainant) were shared with the complainant. A summary of conclusions was published, together with details of action points identified. There was a commitment to follow-up action, checking progress on the action points, later in the year.
66. Having regard to this, the Commissioner considers that AFA has followed established, formal procedures for investigating the concerns put to it and it has been transparent about the process. The complainant's concerns have been subject to proper, external scrutiny and formal investigation, at some considerable cost to the taxpayer.
67. However, the complainant is not satisfied with the manner and outcome of the investigations. She appears to be using the FOIA to go over old ground, and to attempt to conduct her own investigation, to her satisfaction. It is therefore difficult to see what more AFA could do in terms of responding to her concerns in a way that would ever satisfy the complainant, short of allowing her to personally audit its accounts (which is clearly not feasible) or admitting total liability in respect of every suggestion of wrongdoing that she has made. This would contradict the findings of the two investigations and it leads the

Commissioner to conclude that there would be little public interest in resources being expended in pursuit of further disclosures being made. Seen in this context, the Commissioner considers that the request could reasonably be described as obsessive. In light of the investigations that have already taken place, she finds it to have limited purpose and value.

68. Turning to the final consideration in *Dransfield*, AFA has commented that on occasion, the complainant's conduct towards its staff could be considered abusive. However, it has not provided sufficient detail of the incidents or how they have affected staff for the Commissioner to give this significant weight in her considerations.

### *Conclusion*

69. The complainant would presumably argue that there is a public interest in AFA being required to process requests for information in compliance with the requirements of the FOIA, and the Commissioner would agree with that. However, as explained above, section 14(1) of the FOIA exists to protect public authorities by allowing them to refuse requests which have the potential to cause a disproportionate or unjustified level of disruption, irritation or distress.
70. The Commissioner is satisfied that AFA's actions have been subject to public scrutiny by virtue of the external investigations conducted by Deloitte and SWAP, and the oversight of the LGA. A significant amount of information summarising the findings is available in the public domain to satisfy the public interest in transparency.
71. The complainant appears to be seeking to reopen and obtain opinions and further reasoning on matters that have been fully investigated and are now considered to be closed. Having regard to her previous pattern of engagement with AFA, the provision of a response under the FOIA in this case would be highly likely to generate further requests and related correspondence, which would of necessity, require further public resources to be expended.
72. The Commissioner acknowledges that there was merit to the complainant's earlier pursuit of information and that it resulted in issues and deficiencies being brought to light and dealt with. However, as those matters have since been addressed, the Commissioner has taken into consideration the Upper Tribunal's comments on the importance of "*...adopting a holistic and broad approach to the determination of whether a request is vexatious*".
73. Accordingly, the Commissioner's decision is that the purpose and value of the request are not sufficient to justify the impact on the public authority of dealing with it. AFA was therefore entitled to consider this request vexatious and to refuse to comply with it by virtue of section 14(1) of the FOIA.

## Right of appeal

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74. 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: 0203 936 8963  
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)

75. 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.

76. 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 .....**

**Samantha Bracegirdle**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**