

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 10 November 2022

**Public Authority:** Information Commissioner  
**Address:** Wycliffe House  
Water Lane  
Wilmslow  
SK9 5AF

Note: This decision notice concerns a complaint made against the Information Commissioner ('the Commissioner'). The Commissioner is both the regulator of FOIA and a public authority subject to FOIA. He is therefore under a duty as regulator to make a formal determination of a complaint made against him as a public authority. It should be noted, however, that the complainant has a right of appeal against the Commissioner's decision, details of which are given at the end of this notice. In this notice the term 'ICO' is used to denote the ICO dealing with the request, and the term 'Commissioner' denotes the ICO dealing with the complaint.

#### **Decision (including any steps ordered)**

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1. The complainant requested information from the Information Commissioner ("the ICO") about when the ICO last had communication with the DVLA. The ICO refused the request under section 14(1) of FOIA (vexatious requests).
2. The Commissioner's decision is that the request was vexatious and therefore the ICO was entitled to rely upon section 14(1) of FOIA to refuse it.
3. The Commissioner does not require any steps.

## **Request and response**

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4. On 13 December 2021, the complainant made the following request for information to the ICO:  
  
"Could you tell me the date of the last communication the ICO had with the DVLA, please?"
5. On 11 January 2022, the ICO responded and said the request was being refused because it was vexatious under section 14(1) of FOIA.
6. Following an internal review, the ICO wrote to the complainant on 8 February 2022, upholding its position.

## **Scope of the case**

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7. The complainant contacted the Commissioner on 8 February 2022 to request a decision notice about the way their request for information had been handled.
8. This notice covers whether the ICO correctly determined that the request was vexatious.

## **Reasons for decision**

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### **Section 14(1) – vexatious requests**

9. Section 14(1) of FOIA states that a public authority is not obliged to comply with a request for information if the request is vexatious.
10. The word "vexatious" is not defined in FOIA. However, as the Commissioner's updated guidance on section 14(1)<sup>1</sup> states, it is established that 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.

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<sup>1</sup> <https://ico.org.uk/for-organisations/dealing-with-vexatious-requests-section-14/>

11. FOIA gives individuals a greater right of access to official information in order to make bodies more transparent and accountable. As such, it is an important constitutional right. Therefore, engaging section 14(1) is a high hurdle.
12. However, the ICO recognises that dealing with unreasonable requests can strain resources and get in the way of delivering mainstream services or answering legitimate requests. These requests can also damage the reputation of the legislation itself.
13. The emphasis on protecting public authorities' resources from unreasonable requests was acknowledged by the Upper Tribunal (UT) in the leading case on section 14(1), *Information Commissioner vs Devon County Council & Dransfield* [2012] UKUT 440 (AAC), (28 January 2013) ("Dransfield")<sup>2</sup>. Although the case was subsequently appealed to the Court of Appeal, the UT's general guidance was supported, and established the Commissioner's approach.
14. Dransfield established that the key question for a public authority to ask itself is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress.
15. The four broad themes considered by the Upper Tribunal in Dransfield were:
  - the burden (on the public authority and its staff);
  - the motive (of the requester);
  - the value or serious purpose (of the request); and
  - any harassment or distress (of and to staff).
16. However, the UT emphasised that these four broad themes are not a checklist, and are not exhaustive. They stated:

"all the circumstances need to be considered in reaching what is ultimately a value judgement as to whether the request in issue is vexatious in the sense of being a disproportionate, manifestly unjustified, inappropriate or improper use of FOIA" (paragraph 82).

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<sup>2</sup> <https://administrativeappeals.decisions.tribunals.gov.uk/Aspx/view.aspx?id=3680>

### **The public authority's view**

17. The ICO has confirmed that this information request was "the latest in a series of requests" made by the complainant relating to their own complaint about the DVLA.
18. The ICO further confirmed that, at the time of the request, the complainant's DVLA complaint was ongoing and the complainant had already been made aware they would be "updated when there was substantive information to provide".
19. In the initial response to this request, the ICO advised that the request was being refused "taking into account its context and history", stating that the complainant's:  
  
"contact with the ICO about this topic has been prolific. You have also made a number of similarly themed requests about the DVLA, many of which have been refused under Section 14(1)"
20. The ICO has confirmed that as the complainant's DVLA complaint has now been concluded, it has now provided the complainant with the information held, in scope of the request, as at the time the request was made on 13 December 2021. This is a voluntary disclosure and the ICO maintains that, at the time of the request, it was correct to refuse it as vexatious.

### **The complainant's view**

21. The complainant is of the opinion that the request was not vexatious.

### **The Commissioner's decision**

22. In cases where a public authority is relying on section 14(1), it is for the public authority to demonstrate why it considers that a request is a disproportionate, manifestly unjustified, inappropriate or improper use of FOIA.
23. The Commissioner considers that the complainant's "prolific" contact and series of "similarly themed requests" to the ICO about the DVLA, placed a burden on the ICO's resources.
24. The motive of the request appears to have been to pursue the complainant's own grievance about the DVLA. The request appears to have been of value only to the requester rather than to the wider public.

25. Given the context and history of the complainant's demands on the ICO's services and taking into account that the complainant had previously been informed that the ICO would not "provide any further acknowledgements or refusal notices in response to any similarly themed requests in the future" and that the complainant would be updated on their DVLA complaint when there was "substantive information to provide", it is considered that this request was designed to cause harassment.
26. The Commissioner believes that the request was vexatious and therefore the ICO was entitled to rely on section 14(1) of FOIA to refuse the request.

## Right of appeal

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27. 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)

28. 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.
29. 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 .....**

**Michael Lea**  
**Team Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**