

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 7 November 2022

Public Authority: Bank of England
Address: Threadneedle Street
London
EC2R 8AH

Decision (including any steps ordered)

1. The complainant has requested information regarding the Bank of England's legal costs in defending an employment tribunal matter.
2. The Commissioner's decision is that Bank of England correctly relied on section 14 (vexatious or repeated requests) to not provide the requested information.
3. The Commissioner does not require the public authority to take steps to ensure compliance with the legislation.

Request and response

4. On 29 May 2020, the complainant wrote to the public authority and requested information in the following terms:
"...the overall costs to the Bank of England on their defence through the Employment Tribunal process in the case of (*name redacted*) v Bank of England".
5. On 25 June 2020, the public authority responded and refused to provide the requested information. It cited the section 14 provision as its reason for doing so:
 - Section 14 (vexatious or repeated requests)

6. The complainant requested an internal review on 22 August 2020. The public authority sent him the outcome of its internal review on 29 September 2020. It upheld its original position.

Scope of the case

7. The complainant contacted the Commissioner 15 December 2020 to complain about the way his request for information had been handled.
8. The Commissioner considers he has to determine whether the public authority's reliance on section 14, not to provide the requested information to the complainant, was correct.

Reasons for decision

9. Section 1(1) of the FOIA provides a general right of access to recorded information that is held by public authorities. Section 14(1) of the FOIA states that section 1 does not oblige a public authority to comply with a request for information if that request is vexatious.
10. The analysis that follows looks at the criteria for vexatiousness and whether this particular request can be considered vexatious in that light.
11. 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 term 'vexatious' is not defined in the FOIA. The Commissioner's previous guidance had identified a number of 'indicators' which were useful in identifying vexatious requests. These were set out in his then published guidance (which has since been updated) on vexatious requests. In short, they included:
- Unreasonable persistence
 - Abusive or aggressive language
 - Burden on the authority
 - Personal grudges
 - Unfounded accusations
 - Intransigence
 - Frequent or overlapping requests
 - Deliberate intention to cause annoyance
15. The fact that a request contains one or more of these indicators 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.
16. The Commissioner's guidance suggests that if a request is not patently vexatious the key question the public authority must ask itself is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress. In doing this the Commissioner considers that a public authority should weigh the impact of the request on it and balance this against the purpose and value of the request.
17. Where relevant, public authorities may also need to consider wider factors such as the background and history of the request.

Public Authority's Submissions

18. The complainant was employed at the Bank's cash centre in Leeds from May 2006 until his dismissal in June 2016 for conduct related reasons. This dismissal was considered by an Employment Tribunal in October 2017, which upheld the dismissal and concluded it was fair. There was no further appeal by the complainant and therefore the employment tribunal proceedings then concluded.
19. The complainant's first request to the Bank (i.e. the public authority) under the FoI Act was on 19 November 2014, while still in the Bank's employment. Up to the date of the request that is the subject of this

complaint (29 May 2020), the complainant made 12 (often overlapping) Subject Access Requests ("SARs") and a further 11 FoI Act requests to the Bank. As of May 2020, the Bank's correspondence in respect of the complainant involved over 200 letters or emails.

20. In addition to these information rights requests, the complainant also engaged in a wide range of ancillary correspondence with a number of individuals across the Bank, in some cases targeting and harassing particular individuals which has caused them some distress. Specifically, up to the date of the request that is the subject of this complaint, the Bank's correspondence in respect of the complainant has involved over 200 letters or emails. In addition, in the period since May 2020, there has been approximately a further 100 pieces of correspondence.
21. The Bank has therefore had to devote considerable staff time (it estimates hundreds of hours) and resources in dealing with the complainant's voluminous correspondence and requests over time. This in turn, given the limited resources available to it, has had some impact on the Bank's ability to deal effectively and expeditiously with the other legitimate information rights requests it has received from others.
22. The complainant first made a request to the Bank for information under the FoI Act in November 2014 and his first SAR was made in December 2014. As at the date of the request, the complainant had made a total of 11 requests to the Bank under the FoI Act. Twelve SARs had also been made, along with voluminous and frequent correspondence accompanying each such request.
23. The amount of time and resource that the Bank has had to devote to matters involving the complainant is further illustrated by the fact that by the time of his FoI request on 29 May 2020, three other appeals had been made to the ICO by the complainant in respect of the Bank's handling of his various information requests¹.
24. A further example of the complainant's intention to annoy and harass the Bank is illustrated by him frequently specifying differing and unreasonable methods of delivery for the responses to his requests. The only obvious reason for doing so has been to cause annoyance and disruption to the Bank. For example, the complainant has frequently insisted on postal responses to his requests, despite at the same time being happy to email his own requests to the Bank. While the Bank has

¹ The Commissioner finding in favour of the public authority on two occasions (RFA0637759 and RFA0875119) and once in favour of the complainant (FS50909799).

taken reasonable measures to accommodate many of the complainant's wishes, by May 2020 the requests had become increasingly unreasonable and seem designed to accomplish little other than to waste the Bank's time and resources.

25. Examples of this include the following:

a. 4 May 2020 – the complainant replied by email to state that he would not be opening a response sent by the Bank as an attachment to an email. Due to a requirement that staff work from home for Covid-19 reasons, the Bank was unable to send hard copy printed responses at this time, which was explained to the complainant. The Bank therefore then sent the response back to the complainant pasted into the body of the email (rather than as an attachment), and quickly received a response back from the complainant saying he had had stopped reading the email upon realising what it was, and re-iterated his insistence that the response be sent by post.

b. 12 May 2020 – the complainant requested an internal review of a previous FoI Act response, and stated that any further replies to his requests should be sent to his former manager at the Bank's Cash Centre located in Leeds so that he could arrange to collect these in person. The Bank was not prepared to accede to this request given its responsibility for the health and wellbeing of its staff, which would have been negatively impacted by the presence of the complainant at his former workplace given his past inappropriate conduct towards his former colleagues (particularly his former manager).

Further, in the Bank's view, the complainant has been misusing the FoI and Data Protection legislation to continue a grudge brought about by his dismissal in 2016, and seeking to cause a disproportionate and unjustified level of disruption and irritation for the Bank and its staff. The FoI and SAR requests made by the complainant are frequently repetitive in nature, often involving an obsessive focus on a certain piece of information the complainant believes the Bank has not provided to him, despite assurances that the Bank has provided all such information – a view supported by the ICO in a number of cases. When one avenue of enquiry is exhausted, the complainant proceeds to open another, and has frequently approached multiple different individuals within the Bank in an attempt to re-open such matters. The Bank believes that the request that is the subject of this complaint should therefore be viewed in that context, and is of the view that if responded to it would lead to yet further correspondence, requests and complaints.

26. The Bank believes that this case bears many similarities to the case of *Betts vs ICO* (EA/2007/0109, 19 May 2008) referred to in the ICO's previous Guidance as mentioned above. The decision in that case noted

that while there was nothing vexatious in the content of the request itself, there had been a dispute between the council and the requester which had resulted in ongoing FoI Act requests and persistent correspondence over two years. The Tribunal considered the request was therefore vexatious when viewed in context. It was a continuation of a pattern of behaviour and part of an ongoing campaign. The request on its own may have been simple, but experience showed it was very likely to lead to further correspondence, requests and complaints. Given the wider context and history, the request was harassing.

The Commissioner's view

27. The Commissioner considers that the request in itself is innocuous. However when placed in the context of the complainant's previous interactions with the public authority the public authority rightly considered the request to be vexatious as per section 14.
28. The public authority has recorded that the complainant had, earlier to this request, made 11 requests for information under FOIA, 12 subject access requests which involved over 200 letters and emails.
29. The Commissioner accepts the public's authority's explanation for the complainant's behaviour, as arising out of the termination of his employment with them. This is, the Commissioner finds, the most reasonable and logical explanation for his behaviour. Additionally the Commissioner has been persuaded by the public authority that the complainant's behaviour did harass or annoy some of its employees and this was the primary purpose of the behaviour.
30. In reaching a decision in this case, the Commissioner has considered that section 14(1) of FOIA 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.
31. He also recognises 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.
32. The Commissioner has balanced the purpose and value of the request against the detrimental effect on the public authority. The Commissioner is not aware that complying with the request, in isolation, would cause a disproportionate or unjustified level of disruption. However in this case, the ongoing burden placed on the public authority, and issues of prior harassment and distress to members of staff, are the significant factors which make the request vexatious.
33. On the basis of the evidence provided, and considering the findings of the Upper Tribunal in Dransfield that a holistic and broad approach

should be taken in respect of section 14(1), the Commissioner is satisfied that the request was a manifestly unjustified and improper use of FOIA such as to be vexatious. Accordingly, he is satisfied that the public authority was entitled to rely on section 14(1) of FOIA not to meet the complainant's request for information.

Right of appeal

34. 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

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

35. 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.
36. 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

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