

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 8 February 2023

Public Authority: Cabinet Office

Address: 70 Whitehall

London
SW1A 2AS

Decision (including any steps ordered)

1. The complainant made a request for copies of correspondence between Boris Johnson and the British Government and the World Economic Forum over a specified period. The Cabinet Office 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 Cabinet Office was entitled to rely upon section 14(1) of FOIA to refuse it.
3. The Commissioner does not require any steps to be taken.

Request and response

4. On 21 December 2021, the complainant made the following request:
"I request to see all correspondence with Boris Johnson and Government and WEF/World Economic Forum Over last 2 year Dating back from August 2019 to present."
5. The Cabinet Office responded on 20 January 2022, refused the request on the basis that it was vexatious, relying on section 14(1) of FOIA.
6. The Cabinet Office upheld its position on internal review dated 4 April 2022.

Scope of the case

7. The complainant contacted the Commissioner on 4 April 2022 to complain about the way their request for information had been handled.
8. This notice covers whether the Cabinet Office correctly determined that the request was vexatious.

Reasons for decision

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 guidance on section 14(1)¹ 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.
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. Most people exercise their right of access responsibly. However, a few may misuse or abuse FOIA by submitting requests which are intended to be annoying, disruptive or which have a disproportionate impact on a public authority. The Commissioner’s guidance on what may typify a vexatious request stresses, however, that it is always the request itself, and not the requestor, which is vexatious. 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.
14. 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

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

County Council & Dransfield [2012] UKUT 440 (AAC), (28 January 2013) ("Dransfield")². Although the case was subsequently appealed to the Court of Appeal, the UT's general guidance was supported, and established the Commissioner's approach.

15. 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.

16. 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).

17. However, the UT emphasised that these four broad themes are not a checklist, and are not 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).

18. Sometimes it will be obvious that a request is vexatious and other times it will not. In considering such borderline cases, the key is to weigh up any purpose and value that the request represents against any disruption, irritation, or distress that compliance with the request may cause the public authority. 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. The UT stated in Dransfield that:

"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).

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

The Cabinet Office's arguments

19. In its internal review response dated 4 April 2022 the Cabinet Office explained that answering the complainant's request would impose an unreasonable burden on the Cabinet Office:

"Your request encompasses correspondence between every Government official and the World Economic Forum for a period of over two years prior to your request. Your request relates to every Government official at the Cabinet Office irrespective of their grade, responsibility or whether they are even still part of the civil service. The number of officials whose records would need to be checked is enormous and the quantity of correspondence to search through is beyond calculation. Within such a vast field of information, the Cabinet Office will inevitably be concerned that there shall be contained within it information which should be exempt under the Act. It would also appear to be inevitable that such information would be scattered widely throughout the information and that it would be necessary to review all of the information in order to establish what is exempt and what is not. In respect of your request, because you have asked for so much information, the time it would take to locate and review all of it is incalculable."

20. The Cabinet Office went on to consider whether the purpose or value of the request justified the impact on the Cabinet Office and its resources and concluded:

"While I note that the World Economic Forum is an important organisation, I do not consider that there is any purpose or value in disclosing the large quantity of information you are seeking. Although serious purpose and value could be said to characterise a more targeted request for correspondence between Government officials and the World Economic Forum, I consider that there is no such purpose or value in the indiscriminate disclosure that you seek. It is clear to me that complying with your request would require a considerable amount of work by a large number of officials. It is plain that the request would impose an unjustifiable burden on Cabinet Office officials. I have noted above that your request would require searches to be conducted by (and the correspondence of) every Cabinet Office official that has been employed in the period of over two years prior to your request. I consider that it is not possible for us to reach a reasonable time estimate as to how long this would take."

21. The Cabinet Office also argued that the request appeared to be part of a campaign. The Cabinet Office explained that since late December 2021 it had received a remarkably high volume of identical and similar requests concerning communications with the World Economic Forum (WEF).

22. The Cabinet Office provided the complainant with a breakdown of the number of similar requests it had received and summarised this as follows:

Dates	Requests received
21 December 2021	62
22 December 2021	59
23 December 2021	36
24 December 2021	15
26-28 December 2021	6
29 December 2021	23
30-31 December 2021	21
1 January-23 February 2022	24

The Cabinet Office received 157 similar requests in three days and 246 in just over two months. The Cabinet Office received 631 FOIA requests in total in December 2021, 222 (35%) of which related to the WEF. In contrast, the total number of requests received in September, October and November 2021 on all subjects was 158, 168 and 184, respectively. Between 21 and 23 December 2021, the Cabinet Office received almost as many requests on the subject of the WEF as it received requests on all subjects in the month of September 2021.

23. The Cabinet Office argued that it was implausible that there was a spontaneous surge in interest in the Government's communications with the WEF from people acting on their own initiative and that there must have been some prompting or coordination for so many similar requests to be received in such a short space of time.
24. Due to this evidence of identical and similar wording and unprecedented volume of requests, the Cabinet Office argued that the requests appeared to be part of a coordinated effort to disrupt the functioning of the Cabinet Office through a weight of requests from multiple sources.
25. The Cabinet Office concluded that the request would cause an unjustified level of "disruption, irritation or distress."

The complainant's view

26. The complainant is of the view that the Cabinet Office is withholding potentially damaging information about the relationship between the British Government and the WEF. The basis for the complainant's concerns is that they believe there is a WEF conspiracy to influence world governments.
27. The complainant also argued that the volume of requests received of a similar nature demonstrated the high level of public interest in the matter.

The Commissioner's decision

28. 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. As previously discussed, there is a high bar for engaging section 14(1).

Value or serious purpose

29. In cases where the issue of whether a request is vexatious is not clear cut, the key test is to determine whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation, or distress.
30. When considering this issue, the Upper Tribunal in Dransfield asked itself, "Does the request have a value or serious purpose in terms of there being an objective public interest in the information sought?" (paragraph 38). The public interest can encompass a wide range of values and principles relating to what is in the best interests of society, including, but not limited to:
 - holding public authorities to account for their performance;
 - understanding their decisions;
 - transparency; and
 - ensuring justice.
31. In this instance the request appears to focus on an issue of concern about the British Government's relationship with the WEF and it is one where it would be expected that a public authority would demonstrate openness and transparency. The complainant has a clear belief that dishonesty or conspiracy has been committed, and believes the request is a legitimate pursuit to uncover this.

32. However, even if the request does have a value or serious purpose, there may be factors that reduce that value. One such factor is the burden the request places on the public authority.

Burden

33. The Cabinet Office argued that the amount of work that would be involved in dealing with the request would be "incalculable" and would cause an unjustified level of "disruption, irritation or distress."
34. The Cabinet Office explained that the request was for correspondence between every Government official at the Cabinet Office and the WEF for a period of over two years, irrespective of their grade, responsibility or whether they are even still part of the civil service. The Cabinet Office explained that it would be inevitable that such a vast field of information would be scattered widely throughout the Cabinet Office and that it would be necessary to review all of the information in order to establish whether any exemptions under FOIA applied.
35. The Commissioner considers that there is a high threshold for refusing a request on such grounds and a public authority is most likely to have grounds for refusal when:
- The requestor has asked for a substantial volume of information, and
 - The authority has real concerns about potentially exempt information, which it will be able to substantiate if asked to do so by the ICO, and
 - Any potentially exempt information cannot easily be isolated because it is scattered through the material.
36. The volume of information indicated by the Cabinet Office that could fall within the request could potentially be within the threshold for refusing the request. Requests considered by the Commissioner previously in which this argument has been supported have involved exceptional circumstances; large volumes of information and a task of redacting such volumes that would not be straightforward but rather complex and very time consuming.
37. Furthermore, the Commissioner does consider that a 'scattergun' approach has been taken here. When a request appears to be part of a completely random approach, lacks clear focus, or seems to have been solely designed for 'fishing' for information without any idea of what might be revealed, the Commissioner may agree that a scattergun approach has been taken.

38. The Commissioner considers that this is the case here. The request is very wide and unfocussed, and the complainant appears to be attempting to uncover information on an unsubstantiated conspiracy theory.
39. In terms of size and work involved, therefore, the Cabinet Office has convinced the Commissioner that preparing this information for disclosure would impose a grossly oppressive burden.

Context & history

40. The context and history of the request is often a major factor in determining whether the request is vexatious and may support the view that section 14(1) applies.
41. The Commissioner does accept there is a serious value to the request in this case. But when considered in the context of the numerous similar requests about the WEF received by the Cabinet Office over a short period of time (especially in December 2021 when the complainant's request was received), the Commissioner considers the request can be considered vexatious as it appears to be part of an ongoing campaign to pressure the Cabinet Office.
42. Moreover, the Commissioner has received at least one other complaint about the Cabinet Office's handling of a request with remarkably similar wording to the complainant's request in this case. That case is currently under investigation.
43. The Commissioner considers that the request in this case is not only burdensome on its own but can also be considered to be a burden when seen in context of the volume of similar requests received by the Cabinet Office in a short space of time.
44. In summary, the Commissioner has taken into account all of the above, and considered whether, on a holistic basis, he considers that the request is one that typically characterises a vexatious request - and he finds that it does. While the request does have a value or serious purpose, there are several factors that reduce that value, namely, the burden that the request would place on the Cabinet Office due to its wide-ranging nature and the fact that it appears to part of a campaign about the WEF and conspiracy theories.
45. In the Commissioner's opinion, this indicates that the complainant's intention was to cause a disproportionate or unjustified level of disruption to the Cabinet Office and therefore the Cabinet Office was entitled to rely on section 14(1) of FOIA to refuse the request.

[Other Matters

46. The Commissioner also notes that the Cabinet Office failed to carry out an internal review within 20 working days and took considerably longer. The section 45 Code of Practice advises public authorities to carry out an internal review promptly and within 20 working days. As the Cabinet Office failed to do this and took considerably longer, the Commissioner would like to remind the Cabinet Office of the requirements of this Code.]

Right of appeal

47. 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

48. 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.
49. 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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