

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 27 February 2023

Public Authority: Natural Resources Wales
Address Cambria House
29 Newport Road
Cardiff
CF24 0TP

Decision (including any steps ordered)

1. The complainant requested various information in relation to named individuals regarding Natural Resources Wales' (NRW) Strategic Review of Charging Programme (SRoC) for the period from June 2019 to the date of their request 6 (July 2022). NRW refused the request on the basis that it was vexatious citing section 14(1) FOIA. The Commissioner's decision is that NRW was entitled to rely on section 14(1) FOIA to refuse the request. The Commissioner does not require NRW to take any steps.

Request and response

2. On 6 July 2022, the complainant wrote to NRW and requested the following information for the time period June 2019 to the present day:
"1. All emails and documents to NRW HR (including HR-related business departments) from SRoC Delivery Team members and their Line Managers raising issues/concerns about the Strategic Review of Charging Programme (SRoC) and SRoC Programme Team Managers [named individual one, named individual two, named individual three and named individual four]."

This includes concerns related to SRoC programme malpractice (data issues/manipulation), SRoC programme mismanagement and SRoC unacceptable workplace conduct and behaviour by [named individual one] (SRoC external agency Manager) and her Line Managers [named individual two, three and four], in the time period from Summer 2019 – now.

This includes but not limited to concerns, issues and complaints raised by NRW SRoC Delivery Team members and their Line Manager to HR (and other HR-related departments by:

Flood:SRoC Programme Issues/complaint submitted to HR by [named individual five] with his Line Manager

Waste: SRoC Programme Issues/complaint submitted to HR by [named individual six] with his Line Manager

Marine: SRoC Programme Issues/complaint submitted to HR by [complainant] with her Line Managers: [named individual 7, named individual 8, and named individual 9]

Biodiversity: SRoC Programme Issues/complaint submitted to HR by [named individual 10] with his Line Managers [named individual 11 and named individual 12].

SRoC Legal: SRoC Programme Issues/complaint submitted to HR by [named individual 13 (Left NRW SRoC after a few months of issues, with a heart attack) with her Line Manager

2 Meeting notes from all 'Support Group' meetings coordinated by [named individual 14] and [named individual 11]. The SRoC issues discussed and reported by all staff at these meetings – related to SRoC Programme data integrity issues/manipulation etc, mismanagement of the programme with no direction and behavioural/misconduct by the SRoC Programme Team Manager and her Managers).

- a) All emails and documents between and from SRoC Delivery Team Line Managers in NRM Delivery Team 'Support Group' relating to the SRoC Programme.
- b) All emails and documents from SRoC Delivery Team members to the NRM Delivery Team 'Support Group' about the SRoC Programme.
- c) All email and documents from the NRM Delivery Team 'Support Group' (SRoC Delivery Team Line Managers: [named individual 14] [named individual 11] and others) to the SRoC Programme Team

[named individual one, named individual two, named individual three and named individual 4] and any others – raising the SROc issues discussed in the NRW Support Group meetings, whilst attempting to resolve the issues.

d) All meeting notes from meeting notes between the NRM Delivery Team 'Support Group' and the SROc Programme Team [named individual one, named individual two, named individual three and named individual four]."

3. The following additional clarification was provided on 8 July 2022:

"Emails, documents, meeting notes and any other communications – to/from and between the SROc Delivery Team staff, their Line Managers, NRM 'Support Team', NRW senior staff and managers, HR (or associated departments) and any others related to:

- SROc Programme data integrity issues
- Management issues with the SROc Programme
- Behavioural issues, workplace incidents and conduct concerns relating to the SROc Programme Team Manager: (External agency worker – [named individual one] and her SROc Line Managers who recruited her as a longterm friend: [named individual two, named individual three and named individual four]"

4. The following further clarification was provided on 13 July 2022:

"This FOI includes all; emails sent by the SROc Delivery Team staff sent **(to anyone)** raising concerns, issues or complaints about the SROc Programme data, SROc Programme management and SROc Programme Managers' behaviour/conduct (including: External agency worker [named individual one] and and her SROc Line Managers who recruited her as a longterm friend: **This FOI request involves requesting this information (emails and documents) from the NRW SROc Delivery Team staff.**

The SROc Delivery Team staff who discussed/raised repeated concerns/issues (**plus complaints**) via email related to the SROc Programme data, SROc Programme management and SROc Managers' - include but not limited to: ...and others.

This FOI includes all emails sent by the SROc Delivery Team Line Managers sent **(to anyone)** - raising concerns, issues or complaints about the SROc Programme data, SROc Programme management and SROc Programme Managers' behaviour/conduct (including: External

agency worker – [named individual one] and her SRoC Line Managers who recruited her as a longterm friend:.... This FOI request involves requesting this information (emails and documents) from the NRW SRoC Delivery Team Line Managers. The SRoC Delivery Team Line Managers include but not limited to:....”

5. NRW responded on 3 August 2022. In respect of item one of the request, NRW informed the complainant that it would be releasing all emails between the complainant and HR raising issues / complaints under the Subject Access Request (SAR) provisions of the DPA 2018. It added that the outstanding requested information regarding issues/ complaints of other internal staff members was exempt from disclosure under section 40(2) (third party personal information) FOIA.
6. In respect of item two of the request, NRW informed the complainant that it was withholding this information under section 14(1) FOIA on the basis that it was vexatious.
7. Following an internal review NRW wrote to the complainant on 24 August 2022 upholding its original decision to refuse item two of the request on the basis of section 14(1) FOIA.

Scope of the case

8. The complainant contacted the Commissioner on 24 August 2022 to complain about the way their request for information had been handled. They were not satisfied with NRW’s response to providing their own personal data or its reliance on section 14(1) FOIA.
9. The Commissioner would highlight, any information which would constitute the complainant’s own personal data would be exempt from consideration under section 40(1) FOIA.
10. Additionally, as the complainant has not expressed dissatisfaction with NRW’s reliance on section 40(2), (third party personal data) FOIA, this has not formed part of the Commissioner’s investigation.
11. The scope of the Commissioner’s investigation therefore, will solely be to consider whether NRW was correct to rely on section 14(1) FOIA to refuse item two of the request.

Reasons for decision

Section 14(1) – vexatious request

12. NRW has applied section 14(1) to item two of the complainant's request.
13. 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.
14. 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.
15. 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.
16. 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.
17. 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*")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.
18. *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.
19. 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);

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

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

- the value or serious purpose (of the request); and
 - any harassment or distress (of and to staff).
20. 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).

21. The Commissioner’s guidance based on the above case law states that:

“The key question to consider is whether the value and purpose of the request justifies the distress, disruption or irritation that would be incurred by complying with it. A public authority must judge this as objectively as possible. In other words, would a reasonable person think that the value and purpose of the request are enough to justify the impact on the authority?”

NRW’s view

22. NRW informed the Commissioner that since late March 2022, up until the request (6 July 2022), it has received an almost constant level of correspondence from the complainant relating to their concerns about the SRoC programme. It added that the complainant has sent in excess of 20 emails containing a total of 60 multi-part (FOIA or SAR) requests, each made within quick succession, before the authority has had time to respond to the previous ones. The complainant has also contacted internal members of staff directly. NRW further stated that there have been numerous members of staff involved in the collation and co-ordination of the requests.
23. NRW also question the motive of the complainant stating that the nature of the correspondence demonstrates an underlying grievance, seeking correspondence between various members of staff, their line managers and HR about workplace concerns. The complainant has emailed several NRW staff including the Chief Executive expressing derogatory views towards them. Some of the correspondence has included personal information about staff, including medical history.
24. NRW considers that the tone of the correspondence is forthright and judgemental towards NRW and outlined personal views of NRW’s effectiveness in completing the information requests.
25. In NRW’s view, the complainant’s frustrations and perceived failures regarding named staff members are clear throughout the

correspondence. The complainant alleges wrongdoing, in particular malpractice, maladministration with allegations of attempts to obstruct and delay via intimidation. This has resulted in certain members of staff feeling harassed by the volume and content of the correspondence.

26. Additionally, NRW considers that the request has limited value, with some of the information requested already in the complainant's possession.
27. NRW has argued that the resources needed to comply with this request, combined with its perceived limited purpose and value, places an unreasonable burden on the authority, particularly as it believes any response has the potential to generate further correspondence and requests.

The complainant's view

28. The complainant has alleged that the information they requested relates to organisational wrongdoing, which was subsequently covered up by the organisation, and is key evidence in a significant whistleblowing case currently in progress.
29. The complainant has further stated that they have many supporting documents and emails which confirm the full nature and scale of SROc issues. They allege that it is an important case of national significance with implications for stakeholders across Wales and they understand that collective action is likely.
30. The complainant has argued that they have the right to request meeting notes which evidence the full nature and scale of SROc malpractice and mis-management, that was openly discussed across a full team of NRW staff with their Line Managers in monthly meetings.

The Commissioner's conclusion

31. The Commissioner has considered the arguments and evidence provided by both parties. He has also undertaken some limited research to ascertain whether there is any reference to the complainant's alleged malpractice and mis-management in the public domain, and could find no evidence to support this.
32. Additionally, regardless of whether or not the complainant's allegations contain any substance, FOIA is not the avenue to pursue these concerns.
33. The Commissioner has considered NRW's arguments and key documents within the supporting evidence which corroborates its comments

regarding the volume, tone and content of the complainant's correspondence.

34. Revisiting the themes of vexatiousness within the Dransfield case, the Commissioner is satisfied that the complainant's motives behind this request are to further a personal campaign against NRW.
35. Balancing these factors against the limited value and purpose that the request appears to represent, the Commissioner deems the high bar contained within section 14(1) is met.
36. The Commissioner believes that the request was vexatious and therefore that NRW was entitled to rely on section 14(1) of the FOIA to refuse the request in its entirety.

Other matters

37. The Commissioner considers that it might be possible that a small part of the information requested under item two of the complainant's request would be their own personal data.
38. Whilst the Commissioner cannot require a public authority to take action under the GDPR via a FOIA decision notice, if this is the case, NRW should reconsider that part of the request as a subject access request for the complainant's own personal data, just as it did with item one of the request.

Right of appeal

39. 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

40. 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.

41. 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

**Catherine Dickenson
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