

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 13 November 2023

Public Authority: Cabinet Office

Address: 70 Whitehall
London
SW1A 2AS

Decision (including any steps ordered)

1. The complainant has requested information about any involvement the Cabinet Office has had with 'Stonewall'. The Cabinet Office refused to comply with the request on the basis that it is vexatious, citing section 14(1) of FOIA.
2. The Commissioner's decision is that the request is not vexatious. The Commissioner requires the Cabinet Office to take the following step to ensure compliance with the legislation:
 - Issue a fresh response which does not rely on section 14(1) of FOIA.
3. The Cabinet Office must take this step within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Background

4. The following background information is taken from decision notice IC-129040-Y4T2¹. It provides some background information about Stonewall:

“Stonewall first published its Workplace Equality Index (originally known as the Corporate Equality Index) in 2005. Participation in the scheme itself is voluntary and free. Each member employer receives a score from Stonewall based on how well the organisation’s policies and general culture reflect Stonewall’s criteria for judging what an organisation supportive of LGBTQ+² employees should offer. Stonewall publishes an annual list of the 100 employers who have received the highest ranking in that year’s survey.

For those employers which sign up to the Diversity Champions Programme, Stonewall also provides detailed feedback on their applications, noting how the employer could better meet its criteria. Participants pay a fee to join the programme...

The scheme attracted controversy in 2021 when Ofcom decided to withdraw from the Diversity Champions Programme citing a “risk of perceived bias” arising from its membership. Documents disclosed under FOIA indicated that Ofcom had, in its submission, highlighted some of its regulatory decisions as part of its evidence of work it had done to “promote LGBT equality in the wider community”.³

A number of public authorities such as Channel 4, Ofsted, the Cabinet Office and the Equalities and Human Rights Commission

¹ <https://ico.org.uk/media/action-weve-taken/decision-notices/2022/4022502/ic-129040-y4t2.pdf>

² The Commissioner has used the abbreviation LGBTQ+ (which stands for Lesbian, Gay, Bisexual, Transsexual, Queer (or Questioning) and others (the “+”) who do not consider themselves to fall within any of those categories, but do consider themselves part of this community) as this is the abbreviation used by Stonewall and is thus the definition most appropriate in this context. The Commissioner is aware that both longer and shorter abbreviations are used.

³ <https://www.bbc.co.uk/news/uk-58917227>

have also withdrawn from the Diversity Champions Programme saying that it no longer represents value for money.

Stonewall maintains that both the Index and the Diversity Champions Programmes are only intended to promote the rights of LGBTQ+ employees and make them feel welcome in the workplace”.

Request and response

5. On 2 August 2022, the complainant wrote to the Cabinet Office and requested the following information:

“Please can you

1. Confirm whether your organisation applied to be part of the Stonewall Workplace Equality Index in A) 2018 (for 2019), B) 2019 (for 2020) or C) 2021 (for 2022) (NB the index was suspended in 2020/21 because of Covid)
2. Give details of the total amount of money you paid to Stonewall in 2021 whether or not as payment for goods or services.
3. State whether you intend to continue your membership of any Stonewall scheme in the future, and if so which.

If the answer to any part of 1 is yes please supply:

4. Any application you made in 2021 to be included on Stonewall’s Workplace Equality Index, including any attachments or appendices to those applications. Please redact personal details if necessary.
5. Any feedback you received in 2018/19 or 2019/20 or 2021/22 from Stonewall in relation to either application or programme. This must include the priorities or objectives written by your organisation’s representative at the end of the feedback form (under the heading ‘Priorities for the year ahead’ in 2019; ‘Your priorities’ in 2020).

EXEMPTIONS?

If your organisation is considering refusing to disclose feedback received as part of the Stonewall scheme by relying on section 41 (confidential information) and/or section 43 (commercial interest) of FOI, please note the recent ICO decisions IC-129040-Y4T2 and IC-125081-Q8J6 which rejected these reasons.”

6. On 25 August 2022, the Cabinet Office responded. It refused to provide any information on the basis that the request was vexatious, citing section 14(1) of FOIA.

7. The complainant requested an internal review on 11 September 2022. She said:

“May I remind you that the FOI Act requires an 'applicant blind' approach, which is to say that it embodies the principle that information is available to anyone and requests must be assessed without consideration of who made them.

Contrary to the ICO's guidance ... your decision has been influenced by your knowledge or view of me as the requester, rather than an assessment of the request in isolation.

For that reason I am asking you to review your response and, if the exemption is upheld, to provide an assessment which does not take your knowledge of the requester into consideration”.

8. The Cabinet Office provided an internal review on 22 September 2022, in which it maintained its position.

Scope of the case

9. The complainant contacted the Commissioner on 22 September 2022 to complain about the way her request for information had been handled. She disagreed that the request was vexatious.

10. The Commissioner will consider whether or not the request is vexatious below.

Reasons for decision

Section 14(1) – Vexatious requests

11. 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.

12. The word "vexatious" is not defined in FOIA. However, as the Commissioner's updated guidance on section 14(1)⁴ states, 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.
13. 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.
14. 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.
15. 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")⁵. Although the case was subsequently appealed to the Court of Appeal, the UT's general guidance was supported, and established the Commissioner's approach.
16. 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.
17. 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).
18. However, the UT emphasised that these four broad themes are not a checklist, and are not exhaustive. They stated:

⁴ <https://ico.org.uk/for-organisations/dealing-with-vexatious-requests-section-14/>

⁵ <https://administrativeappeals.decisions.tribunals.gov.uk/Aspx/view.aspx?id=3680>

"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).

19. In this case the Cabinet Office is maintaining that this request (and another that the Commissioner is also considering at the same time as this investigation under reference IC-193141-S7L7) is vexatious as it places an unreasonable burden on its resources and is also part of a campaign.

Burden

20. In response to the Commissioner's investigation, the Cabinet Office advised that the request appeared to be part of a coordinated campaign to, in part: "disrupt the functioning of the Cabinet Office through a weight of requests from multiple sources".
21. The Cabinet Office went on to explain that this request, and the other one referred to in paragraph 19 above, were identical and were received by it on the same day. It said that it had received a total of 7 requests related to the Stonewall campaign during this weekly period. It added:

"It is implausible that there was a spontaneous surge in interest in the Stonewall Workplace Equality Index from people acting on their own initiative in such a short space of time to issue identical FOI requests. Three further internal reviews were requested for the identical FOI requests".

22. In further evidence of the burden it advised the Commissioner:

"...the two requesters noted here [this case and the other referred to above], as well as others who did not complain to the ICO, were acting together as part of a campaign designed to harass or disrupt the work of the Cabinet Office, and thus put a significant burden on the department. Dealing with multiple, identical requests in virtually the same 20-day period would put an unfair strain on resources and affect the delivery of mainstream services or answering legitimate requests".

Campaign

23. The Cabinet Office told the complainant that it had reason to believe she was acting as part of a campaign involving "Sex Matters". In its refusal notice it said:

"Under section 14(1), the Cabinet Office is not obliged to comply with a request for information if the request is vexatious. This exemption applies in this case because this request is one of a

series of requests submitted both recently and historically (albeit it with different dates for the historical requests), via the whatdotheyknow.com forum which are identical or similar in nature. The origin of the requests is the Sex Matters website⁶ which is instructing supporters to copy and submit specific wording and linking to a previous campaign in February 2021 where Legal Feminist⁷ previously posted almost identical instructions. The author of the Legal Feminist post is one of the two founders of Sex Matters. For these reasons we believe you and other requesters are acting together as part of a campaign designed to harass or disrupt the work of the Cabinet Office which puts a significant burden on the department. We have decided that your request should be refused under section 14(1) of the FOIA on the grounds that it is vexatious”.

24. The complainant told the Commissioner:

“Whilst similar requests have been made to several public bodies these are not a campaign against the Cabinet Office, they are just requesting the same details from several different bodies. I do not consider that these are vexatious against the Cabinet Office. Indeed, if the issue is that they have received several requests these will likely be for the same information, whilst this will generate some admin it will not require time to be taken to obtain the details after the first request has been complied with. It is unfortunate if the same request has been made by several different people, but I do not consider it to be vexatious and so the exemption as S14 does not apply”.

25. When determining if a complainant can be seen as acting in concert for the purposes of deciding if the request is vexatious, the Commissioner defers to his guidance on this, which explains:

“If the requests are motivated by a genuine desire to gather information about an underlying issue, section 14(1) may still apply. This is if the aggregated burden of dealing with all the requests has become disproportionate to their value.

However, it is important to recognise that campaigns are not in themselves vexatious. The existence of a campaign may be the

⁶ <https://sex-matters.org/take-action/take-action-archive/shine-a-light-on-stonewall/>

⁷ <https://www.legalfeminist.org.uk/tag/stonewall/>

result of a legitimate public concern about an issue and so reflect a weighty public interest in the disclosure of the information”.

26. In respect of the complainant’s position that the Cabinet Office had not dealt with her request in an ‘applicant blind’ way, the Cabinet Office advised that it was relying on the Commissioner’s guidance for section 14 which states that this exemption can be applied if there is evidence that “a group’s website makes an explicit reference to a campaign against your authority”.⁸ It said that it had received similar requests from different applicants due to the Sex Matters campaign (see footnote 6 above), which it said explicitly invited supporters to make this request. However, the Commissioner notes here that the focus of the requests is not the Cabinet Office *per se*, rather it is Stonewall.

27. The Cabinet Office has further advised the Commissioner:

“... the requesters show a degree of intransigence and indifference to the fact that the campaign takes no account of the positions of the public authorities it encourages people to submit FOIs to. For example, the Cabinet Office as an organisation has not been a part of the Stonewall membership since 2020. When the index was suspended in 2020/21, the Cabinet Office paused their membership and this was never renewed. It is clear that the requester has not given any specific consideration or undertaken any research of the authorities they are requesting information from. Instead, they are sending a blanket request as part of a campaign to multiple public authorities. The campaign has been run for several years and the Cabinet Office has provided responses previously.

The Cabinet Office acknowledges that there is some serious purpose and value in the complainant’s request. The Stonewall Workplace Equality Index is a well known product, and there is a wider public interest in knowing how public authorities might interact with such products. However, this does not justify the detrimental impact which would be had on the department in complying with these requests from a significant campaign. The campaign of requests to the Cabinet Office which was frequent and identical would involve a disproportionate amount of effort to handle. Therefore, the Cabinet Office upholds its refusal to comply with these requests for information under the grounds of section 14(1)”.

⁸ <https://ico.org.uk/for-organisations/foi-eir-and-access-to-information/freedom-of-information-and-environmental-information-regulations/section-14-dealing-with-vexatious-requests/>

The Commissioner's view

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. The Commissioner's guidance states that:
- "...a request which would not normally be regarded as vexatious in isolation may assume that quality once considered in context. An example of this would be where an individual is placing a significant strain on an authority's resources by submitting a long and frequent series of requests, and the most recent request, although not obviously vexatious in itself, is contributing to that aggregated burden".
29. The Dransfield tribunal said that "the purpose of section 14 must be to protect the resources (in the broadest sense of that word) of the public authority from being squandered on disproportionate use of FOIA".
30. In considering this case, the Commissioner has taken account of both the Cabinet Office's and complainant's submissions, and his own guidance.
31. Regarding the burden imposed on the Cabinet Office, the Commissioner accepts that seven identical requests in a short time-frame, representing 16% of the total requests during that time, would clearly have an onerous effect on the Cabinet Office. However, although it refers to the cumulative effect of dealing with these requests, the Cabinet Office has provided no evidence to suggest that there were any further such requests and the Commissioner can only assume that it received the seven in totality. The Commissioner is therefore not convinced that this short term rise is overly burdensome or oppressive for the Cabinet Office to deal with.
32. The Commissioner also notes that the Cabinet Office has itself advised that, although it had dealt with Stonewall in the past, it ceased association with it during 2020 and has not been a member since. In this regard, the Commissioner finds that the burden of dealing with the request is significantly reduced as anything after this date will not require any work to be undertaken as, presumably, no information will be held. This means that the Cabinet Office would likely only need to give partial responses to parts (1) and (5) of the request.
33. Regarding the campaign element to the request, it is clear to the Commissioner that interested parties were being encouraged to submit requests to various public authorities, hence the similarly worded requests which the Cabinet Office has received here. The Commissioner considers this to be evidence suggesting that the complainant was part of a wider group of requesters, seeking to gain information on this issue.

34. The Commissioner also accepts the Cabinet Office's view that the request seems to be generic and not focussed on the Cabinet Office itself. Therefore, he agrees that the request could be considered to be part of a campaign, albeit this is a broad campaign, which seeks information about Stonewall's work across the public sector; it is not specifically directed at the Cabinet Office itself.
35. As noted above, the Commissioner's guidance advises that campaigns are not in themselves vexatious. Whilst the Cabinet Office may consider that the requests being made show "a degree of intransigence and indifference" as their wording treats all public authorities in the same way, the Commissioner notes that the request is founded in a legitimate public concern about an issue which was, and remains of current interest. This is something which the Cabinet Office has itself accepted, agreeing that there is some purpose and value to the request.
36. The Cabinet Office has also advised the Commissioner that the campaign has: "been run for several years and the Cabinet Office has provided responses previously". However, it did not provide any evidence to suggest that this request is vexatious because of a continued onus of complying with previous requests, and it did not advise what information had previously been disclosed. Indeed, it may be that some of the information requested here has already been disclosed which could again reduce the burden of compliance.
37. As regards the Cabinet Office's argument that it is being asked to respond to multiple identical requests, the Commissioner acknowledges the complainant's point that, whilst there will be a burden associated with complying with the first request, the costs associated with responding to subsequent requests for the same information should be minimal, as the information has already been collated.
38. The Commissioner considers that, although the current request does obviously impose a burden upon the Cabinet Office's resources, this is not disproportionate to the inherent purpose and value of the request and is not a grossly excessive burden.
39. The Commissioner has concluded that, given the public interest in the subject matter, the fact that the clear purpose of any related campaign is to ascertain information across the public sector in general rather than focusing solely on the Cabinet Office, and the limited, temporary burden placed upon the Cabinet Office, compliance with the request would not be disproportionate to its clear inherent purpose and value.
40. The Commissioner's decision is therefore that the request was not vexatious and he orders the Cabinet Office to issue a fresh response which does not rely on section 14(1) of FOIA

Right of appeal

41. 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

42. 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.
43. 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

Carolyn Howes
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