

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 27 February 2023

Public Authority: Department for Work and Pensions

Address: Caxton House
Tothill Street
London
SW1H 9NA

Decision (including any steps ordered)

1. The complainant submitted a request to the Department for Work and Pensions (DWP) seeking a copy of the Secretary of State's ministerial diary for the period 1 March 2020 to 16 April 2020. The DWP refused the request on the basis of section 14(1) (vexatious) of FOIA given the burden in complying with it as well as section 14(2) (repeated requests).
2. The Commissioner's decision is that neither section 14(1) nor section 14(2) provide a basis to refuse the request.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation:
 - Provide a fresh response to the request without relying on section 14(1) or section 14(2) of FOIA.
4. The public authority must take these steps 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 FOIA and may be dealt with as a contempt of court.

Request and response

5. The complainant submitted the following request to DWP on 21 April 2022:

'This is a request for information under the Freedom of Information Act. I would like to request the following information:

From 1st March 2020 to 16th April 2020, please provide a copy of Secretary of State at the Department for Work and Pensions Thérèse Coffey's ministerial diaries.

Please note, I am making this request out of the public interest. It is absolutely essential for the public to know - in full detail - the calls, events and meetings that took place across the year when the pandemic gripped the UK and beyond.

I would like to highlight that I recently received the ministerial diaries of Dominic Raab (request sent to the FCDO, FOI reference: FOI2021/27787). This did not engage section 12 or 14, and I had asked for more than six week's worth of diaries. There is a clear precedent of government departments releasing ministerial diaries'.

6. The DWP responded on 20 May 2022 and refused to comply with the request on the basis of sections 14(1) (vexatious) and 14(2) (repeated) of FOIA. In support of its reliance on section 14(1), DWP argued that the request was random and speculative and that complying with the request would also be burdensome.
7. The complainant contacted DWP on 31 May 2022 and asked it to conduct an internal review.
8. DWP informed her of the outcome of the internal review on 30 June 2022. This upheld the application of section 14(1) of FOIA because of the burden placed on DWP in complying with the request. The internal review did not refer to section 14(2).

Scope of the case

9. The complainant contacted the Commissioner on 30 September 2022 in order to complain about DWP's refusal of her request. The Commissioner has therefore considered whether DWP is entitled to rely on either section 14(1) or section 14(2) to refuse the request.

Reasons for decision

Section 14(1) – vexatious

10. Section 14(1) of FOIA allows a public authority to refuse to comply with a request if it is considered to be vexatious.
11. In the Commissioner's view, 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. This will usually involve weighing the evidence about the impact on the authority and balancing this against the purpose and value of the request. This should be judged as objectively as possible; in other words, would a reasonable person think that the purpose and value are enough to justify the impact on the public authority.
12. In particular, the Commissioner accepts that there may be cases where a request could be considered to be vexatious because the amount of time required to review and prepare the information for disclosure would place a grossly oppressive burden on the public authority. This is, in part, the DWP's rationale for relying on section 14(1) in this case.
13. The Commissioner believes that there is a high threshold for refusing a request on such grounds. This means that a public authority is most likely to have a viable case where:
 - The requester 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 Commissioner **and**
 - any potentially exempt information cannot easily be isolated because it is scattered throughout the requested material.¹

¹ This approach is set out in the Commissioner's guidance on section 14(1) of FOIA <https://ico.org.uk/for-organisations/guidance-index/freedom-of-information-and-environmental-information-regulations/dealing-with-vexatious-requests-section-14/how-do-we-deal-with-a-single-burdensome-request/#section-12>

The DWP's position

14. In its refusal notice the DWP stated that it was treating the complainant's request as vexatious for the following reasons:

'Random and Speculative – We do not consider the release of this information will be of value or provide a clear purpose to the request. Therefore, the authority cannot reasonably be expected to comply, no matter how legitimate the subject matter or valid the intentions of the requester.'

15. Furthermore, DWP explained that:

'There is also the aspect of the burden that is placed on the Department to meet this request. Whilst we might be able to locate the information within the cost limit we will have to spend time going through each entry to carefully [sic] remove information out of the scope of the FOI Act e.g. where it relates to non-departmental business or business where Secretary of State is acting in her capacity as a Member of Parliament. Then a range of exemptions will need to be considered, such as, but not limited to:

- Section 35(1)(a) which exempts information related to policy in development
- Section 35(1)(b) which exempts communications between ministers and any information relating to those communications
- Section 35(1)(d) which exempts information relating to the operation of ministerial private offices
- Section 36 – which exempts information that would [cause] prejudice to effective conduct of public affairs
- Section 40(2) which exempts personal information of third parties.

Any information that we could provide would therefore be heavily redacted and will not provide that much detail to you.'

16. In its internal review response, DWP focused on the burden that complying with the request would create as its basis for citing section 14(1) of FOIA:

'As explained in our original response (FOI2022/310705) we treated your request as vexatious, under Section 14(1) of the FoI Act owing to the increased burden placed upon us to comply with you[r] request.

As your request was seeking the diaries for the Secretary of State for Work and Pensions, Rt Hon. Therese Coffey MP from 1st March 2020 to 16 April 2020 this would require us to review each entry for every

individual day over the period within the scope of your request. We would then have to review each diary entry to consider whether the information could be disclosed or if any of the exemptions applied. On balance we considered that the amount of time required to review and prepare the information for disclosure would impose a significant burden on the organisation.

As already mentioned should we be able to release copies of the Secretary of State's diaries this would likely be subject to a number of exemptions owing to their nature, and whilst we agree that we have an underlying commitment to transparency and openness we have to balance that against the need to protect information which is exempt from disclosure.

On this occasion we did not have to consider the public interest test as this is not required for Section 14(1) of the FoI Act however we did consider the value of your request versus the burden it would place on us and on balance we determined that the burden was too great.

Furthermore, we have pointed you to the Government's Quarterly Transparency publication, where information regarding meetings that the Secretary of State has had with external stakeholders is published.'

17. During the course of his investigation the Commissioner informed DWP that in his view neither section 14(1) nor section 14(2) provided a basis upon which to refuse this request. (The Commissioner's rationale for this position is set out in more detail below, but drew heavily on a previous complaint he had considered involving a much wider request for ministerial diaries also submitted to DWP.²)
18. In response, DWP asked for the opportunity to provide the Commissioner with submissions in response to this. The Commissioner asked DWP to provide such submissions by 3 February 2023. To date, no such submissions have been provided.

The Commissioner's position

19. With regard to DWP's position that complying with the request would be burdensome, the Commissioner notes that the request seeks information from the Secretary of State's ministerial diary for a six week period.

² IC-129066-D1G1 - <https://ico.org.uk/media/action-weve-taken/decision-notices/2022/4022383/ic-129066-d1g1.pdf>

20. Based on DWP's submissions provided to the Commissioner in relation to the request considered in IC-129066-D1G1, the Commissioner understands that there are likely to be an average of 8.65 diary entries per working day falling within the scope of the request.³ This equates to approximately 285 entries in the scope of the request which is the focus of this complaint, based on the request covering 33 working days. In case IC-129066-D1G1 DWP explained to the Commissioner that it would take around 2 minutes per entry to fully review and workout if the information is in scope and if so, what exemptions may apply, if any.⁴ Using this figure, it would therefore take around 570 minutes, or approximately 9.5 hours to process this request. The Commissioner does not accept that this amount of time or use of resource represents such a burden that the request could be legitimately refused on the basis of being vexatious.
21. The Commissioner notes that the refusal notice also suggested that the request was vexatious because it was random and speculative as release of the information would not be of value or provide a clear purpose to the request. The Commissioner also notes that such reasoning was not repeated in the internal review. In any event, in the Commissioner's view the request is not random or speculative; rather it is a refinement of the complainant's previous broader, request. Furthermore, for the reasons set out in the ICO's decision notice in relation to that request (see paragraph 42), in the Commissioner's opinion there is a legitimate interest in the disclosure of ministerial diaries.
22. For the above reasons the Commissioner has concluded that DWP has failed to demonstrate that the request of 21 April 2022 is vexatious and therefore section 14(1) does not apply to this request.

Section 14(2) – repeated requests

23. Section 14(2) of FOIA states that:

'Where a public authority has previously complied with a request for information which was made by any person, it is not obliged to comply with a subsequent identical or substantially similar request from that person unless a reasonable interval has elapsed between compliance with the previous request and the making of the current request.'

³ See paragraph 18 of decision notice IC-129066-D1G1.

⁴ See also paragraph 18 of the previous decision notice.

24. As the Commissioner's guidance on this section explains⁵, in order to rely on this provision a public authority has to have previously provided the information to the requester or confirmed that the information is not held in response to a previous request. Neither of these scenarios apply here, and as a result DWP cannot apply section 14(2) to this request.

⁵ <https://ico.org.uk/for-organisations/guidance-index/freedom-of-information-and-environmental-information-regulations/dealing-with-repeat-requests/#whatdoesfoia>

Right of appeal

25. 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

26. 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.
27. 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

Jonathan Slee
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