

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 28 March 2023

**Public Authority:** Department for Transport  
**Address:** Great Minister House  
33 Horseferry Road  
London  
SW1P 4DR

#### **Decision (including any steps ordered)**

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1. The complainant requested information from the Department for Transport ('the public authority'). The Commissioner's decision is that the request was not a vexatious request.
2. The Commissioner requires the public authority to take the following step to ensure compliance with the legislation:
  - Issue a fresh response to the complainant, which does not rely on section 14(1) of FOIA.
3. The public authority 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.

#### **Request and response**

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4. On 18 October 2022, the complainant made the following request for information to the public authority (this is a refined request following two previous requests made on 1 and 27 September 2022 for similar information):

"Follow up to P0021601.

It is correct that I only have a couple of questions on Gatwick, this is one of them, I'm asking as I know you hold the information and it's simply to firm up the information the airport was sharing with stakeholders as events unfolded.

The Gatwick drone incident was dealt with by small teams, usually a single point of contact, with only 8 communications leads in total across all the stakeholders.

I've been trying to avoid naming individuals to respect their privacy especially given these have been provided before so you know who they are, I will provide elaboration below to assist:

If you refer to F0018764 (FOI 2 info for release F0018764) it has several e-mails from Gatwick airport so you can match the recipient at your end from that, see those noted as "Sent from my iPhone"

I simply require that you identify the sender from those e-mails using the existing FOIA which proves its information you are holding, then provide the rest of the e-mails that same sender sent from 19/12/2018 - 27/12/2018, irrespective of whether they sent them from their iPhone or back at the airport.

You'll be able to see the recipients at your end which you've redacted, I suspect it is [name redacted] though you'll know for sure."

5. The public authority said the request was being refused because it was vexatious under section 14(1) of FOIA.

## **Reasons for decision**

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### **Section 14(1) – vexatious requests**

6. This reasoning covers whether the public authority is correct to apply section 14(1) of FOIA to refuse the request. 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.<sup>1</sup>
  7. The word "vexatious" is not defined in FOIA. However, as the Commissioner's updated guidance on section 14(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
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<sup>1</sup> <https://www.legislation.gov.uk/ukpga/2000/36/section/14>

cause a disproportionate or unjustified level of disruption, irritation or distress.<sup>2</sup>

8. FOIA gives individuals a greater right of access to official information in order to make bodies more transparent and accountable. It is an important constitutional right. Therefore, engaging section 14(1) is a high hurdle.
9. 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.
10. 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").<sup>3</sup> Although the case was subsequently appealed to the Court of Appeal, the UT's general guidance was supported, and established the Commissioner's approach.
11. 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.
12. 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).
13. 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

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<sup>2</sup> <https://ico.org.uk/for-organisations/dealing-with-vexatious-requests-section-14/>

<sup>3</sup> <https://administrativeappeals.decisions.tribunals.gov.uk/Aspx/view.aspx?id=3680>

vexatious in the sense of being a disproportionate, manifestly unjustified, inappropriate or improper use of FOIA" (paragraph 82).

### **The public authority's view**

#### *Value or serious purpose of the request*

14. The public authority argued that there was limited public interest in the information given that the incident occurred four years ago. It also noted the volume of information already publicly available, including a police report produced on the incident. It said that this report should satisfy a reasonable person's interest in the incident. However, the Commissioner notes that large sections of this report are redacted. The public authority recognised the complainant's personal interest in the information, but stated that it was unclear how any relevant information held would satisfy this interest given that the numerous previous requests did not appear to have done so.

#### *Burden on the public authority*

15. The public authority stated that the request in question was the latest in a long running series of requests and email exchanges regarding the 2018 Gatwick drone incident. It believed that a tipping point had now been reached and concluded that the complainant's requests were taking a disproportionate toll on its resources.
16. Since 2020 the complainant submitted over 20 requests on the matter (including additions, clarifications or refined requests). It also said there were at least four other pieces of correspondence that were relevant in terms of considering the history of the complainant's behaviour.
17. The public authority identified two approaches it could take to locate, identify and provide the requested information, and included details of these in its submissions to the Commissioner. Given the nature of the information, the public authority advised that it would be required to consider the applicability of exemptions. In particular, it felt that section 40(2) (personal information) and section 41(1) (information provided in confidence) of FOIA were likely to apply. It believed that the work required to meet the request would amount to a substantial and grossly oppressive burden.

#### *Motive of the requester*

18. The public authority argued that the requests were a fishing expedition, as they were wide-ranging with no apparent focus and said they were drip fed over a period of three years. It said that the loose phrasing of the request in question reinforced its position that the requests were a fishing expedition. This was on the basis that the request sought emails

received from an unnamed individual, providing an indirect description of how the public authority might identify the individual in question.

19. The public authority said that the timing of the complainant's requests often coincided with those submitted by another individual who, it says, also made a large number of wide-ranging requests relating to the Gatwick drone incident. It believes that these individuals are working together in making their requests.

### **The Commissioner's decision**

20. The Commissioner considers that the Gatwick drone incident is of wider public interest. He accepts that some time has passed since the incident and that there is already some relevant information in the public domain. However, the complainant argued in their internal review that the incident was still having a damaging impact on the UK drone industry and the UK economy. They also explained "I'm simply trying to understand the information Gatwick Airport was providing to the DfT for each sighting". The Commissioner's view is that there is value and serious purpose to the request.
21. The public authority argued that the collective burden of the previous requests, together with the breadth of information sought by this request imposed a grossly oppressive burden. The Commissioner considers that the threshold for a grossly oppressive burden will be higher given the level of resources available to the public authority, as it is a central government department.
22. In this case, the Commissioner does not consider that 20 requests submitted over a period of three years is excessive, particularly where some of those represent refined or clarified versions of other requests. Similarly, the fact that there are four other pieces of correspondence from the complainant handled outside FOIA does not demonstrate a disproportionate level of engagement with the complainant.
23. The public authority told the Commissioner that it refused the complainant's previous request under section 12 (costs of compliance). It said that this request effectively sought the same information and the scope of the request was not reduced. It believed that in order to locate some of the requested information it would be required to carry out archival searches of the inboxes of 277 individuals who were employed during the time period covered by the request but no longer work for the public authority. It is not clear to the Commissioner why the public authority would not be able to better identify which former employees would have been involved in work connected to such a high profile incident. Without any further information as to why searches of so many archival email accounts would be necessary, this suggestion appears

unreasonable. With this in mind, the Commissioner's view is that the latest request was an attempt by the complainant to direct the public authority to the specific information they sought.

24. The Commissioner does not accept that the request is a fishing expedition. It is not random or speculative. The request seeks emails received in a 9 day time period which relate to a specific incident. The complainant also attempted to identify the sender and recipient(s), by referring the public authority to specific emails it already disclosed (with names and email addresses redacted), from which it should be able to identify the relevant email accounts.
25. With regard to the argument that the complainant is making requests in concert with another individual, the public authority did not provide evidence of any aggregated burden that dealing with both individuals' requests would impose. In any event, the Commissioner is not satisfied that there is sufficient evidence that the two individuals are acting together as part of a campaign.
26. The Commissioner's decision is that the request was not vexatious and he orders the public authority to issue a fresh response which does not rely on section 14(1) of FOIA.

## Right of appeal

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27. 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](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

28. 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.
29. 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 .....**

**Michael Lea**  
**Team Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**