

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 17 March 2023

Public Authority: Information Commissioner's Office

Address: Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Decision (including any steps ordered)

1. The complainant requested information from the Information Commissioner's Office (ICO) relating to ICO staff resources and internal policy documents. The ICO refused the request under section 14(1) of FOIA (vexatious request).
2. The Commissioner's decision is that the request was vexatious and therefore the ICO was entitled to rely upon section 14(1) of FOIA to refuse it.
3. The Commissioner does not require any steps to be taken as a result of this decision notice.

Jurisdiction and Nomenclature

4. This decision notice concerns a complaint made against the Information Commissioner. The Information Commissioner is both the regulator of FOIA and a public authority subject to FOIA. He is therefore under a duty, as regulator, to make a formal determination of a complaint made against him in his capacity as a public authority – a duty confirmed by the First Tier Tribunal (“FTT”). It should be noted however that the complainant has a right of appeal against the Commissioner’s decision, details of which are given at the end of this notice. This notice uses the term “the ICO” to refer to the Information Commissioner dealing with the request and dealing with previous complaints brought under FOIA. It uses the term “the Commissioner” when referring to the Information Commissioner dealing with this complaint.

Request and response

5. On 18 January 2023, the complainant made the following request for information:

“Thank you for your helpful reply to my FOIA request.

There are some issues that arise following your response:

In regards to the "ICO Operations Directorate Service guide: How we use public concerns, self-reported incidents and complaints to improve information rights practice V4 24/11/16" linked to in your email and available on the ICO website:

This is clearly out of date - is there a revised version or an equivalent or successor document? Kindly disclose or point me to it if available. If not, how are Caseworkers and other staff made aware of what they need to know to do their jobs?

I would also like copies of the latest versions of the documents referred to therein or to their successors/equivalents as follows:

"The keeping it Clear guide" (referred to at P.76)

"Opportunity assessment framework" (p.22, 77)

"Policy delivery knowledge base"; "Policy delivery legal group, Retention and disposal - preservation criteria - casework"; and the "Security manual" (all referred to on p.77)

"Security manual - use of email" (p.53)

the "need some policy advice? pages on ICON" and "policy delivery legal group pages on ICON" referred and linked to on p. 60

I would also like a copy of "Your personal information concerns (Request for Assessment) process" referred to at p. 10 of "Ways to progress a complaint case" in the disclosure log as linked to in your email.

If these documents no longer exist or are outdated, how are ICO staff to be made aware of the type of information they contain(ed)?

Can you confirm the ICO's policy on whether it will ask a data controller who seeks to rely on the disclosures of another data controller (NB: not processor) to meet its own DSAR obligations or fails to disclose personal data on the grounds that it reasonably believes it is already known to a data subject, to disclose the data it holds (i.e. whether these are acceptable reasons to fail to comply with a

DSAR) and what criteria would influence such a decision? Kindly provide any relevant ICO documents that address these scenarios?

Further to my email of 09/01/2023, 22:25, can you confirm for the avoidance of doubt that your response has dealt fully with my request for "the full content of the internal guidance for handling DSAR cases and case reviews"?

I am still awaiting "the job description and person specification for the roles of Case Officer and Lead Case Officer" and, if different, Reviewing Officer also."

6. On 15 February 2023, the ICO responded that the request was being refused because it was vexatious under section 14(1) of FOIA.
7. The complainant requested an internal review on 21 February 2023. The ICO upheld its decision via internal review on 28 February 2023.

Scope of the case

8. The complainant contacted the Commissioner on 2 March 2023 to complain about the way their request for information had been handled.
9. This notice covers whether the ICO determined correctly that the request was vexatious.

Reasons for decision

Section 14(1) – vexatious requests

10. 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.
11. The word “vexatious” is not defined in FOIA. However, as the Commissioner’s updated 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.
12. 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.
13. However, the Commissioner 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.
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 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:

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 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. 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).

The ICO's view

18. The ICO has said that before making their request of 18 January 2023, the complainant had recently made other requests, in which they made repeated and overlapping requests for copies of policy documents, job descriptions and other material relating to the way that the ICO handles certain complaint matters. The ICO considered that these requests appeared to relate directly to its handling of past complaints that the complainant had made.
19. The ICO has explained that it has tried to provide the complainant with the information that they require to assist them in understanding how the ICO has dealt with their concerns and how it handles complaints in general as part of its role as a regulator. However, the ICO considers that the pattern of the complainant's correspondence indicates that their aim is to keep the ICO engaged in perpetual dialogue with no intention of reaching a reasonable and satisfactory conclusion.
20. The ICO added that the most recent request from the complainant, the subject of this decision notice, is evidence of the complainant's motive to cause disruption to the ICO's daily activities. The ICO stated that the complainant had reviewed a piece of guidance that the ICO had provided in a previous request, compiled a list of further documentation referred to in it and made a further request for that documentation. From the documents requested in the list, the ICO considered it highly unlikely that the complainant has any genuine interest in the information and providing it would lead to further requests of a similar nature.
21. The ICO added that continuing to make such specific requests appears to be a means for the complainant to continue to create work for its staff when they have already provided the complainant with enough

information for them to understand how the ICO handles complaints. It is the ICO's opinion that the series of requests is aimed more at querying the competence of ICO staff and expressing dissatisfaction with the way that it has dealt with the complainant's past complaints, than to obtain information that they genuinely require.

The complainant's view

22. The complainant has said that the ICO was wrong to consider their request of 18 January 2023 as a new request for information as they were asking for clarification and further information following the ICO's previous response.
23. The complainant therefore does not agree with the ICO's reliance on section 14(1) of FOIA.

The Commissioner's decision

24. 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 negative impacts of the request - burden, motive, and harassment

25. The Commissioner acknowledges that the ICO considers that the motive of the requester is to cause undue disruption.
26. The Commissioner has reviewed the other requests made by the complainant, as referred to by the ICO. He notes the frequency of the requests and that the requests follow a similar theme. While the complainant does not consider the request of 18 January 2023 as a new request, the Commissioner finds the ICO was correct to handle it as such, as it concerned a request for additional information not included in the previous request.
27. He notes that the complainant has indeed requested a large number of different policies and documents referenced in a piece of guidance that was previously disclosed by the ICO, and that the ICO had already previously provided the complainant with enough information to provide a good understanding of its complaint handling process.
28. He considers that, in the circumstances of this case, this lessens the value of the request and supports the argument that the request is vexatious.

Balancing the value of the request against the negative impacts

29. In reaching a decision in this case, the Commissioner has balanced the purpose and value of the request against the detrimental effect on the public authority.
30. He has also considered, in light of the nature, and degree, of the dealings between the complainant and the ICO, whether, at the time, the request crossed the threshold of what was reasonable.
31. The purpose of section 14 of FOIA is to protect public authorities and their employees in their everyday business. In his guidance, the Commissioner 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.
32. Having balanced the purpose and value of the request against the detrimental effect on the ICO, the Commissioner is satisfied that the request was not an appropriate use of FOIA procedure.
33. The Commissioner considers that the request was vexatious and therefore the ICO was entitled to rely on section 14(1) of FOIA to refuse the request.

Right of appeal

34. 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

35. 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.
36. 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
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