

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 23 July 2024

Public Authority: Cabinet Office
Address: 70 Whitehall
London
SW1A 2AS

Decision (including any steps ordered)

1. The complainant has requested information regarding section 36 FOIA and its application. The Cabinet Office refused the request under section 14(1) of FOIA (vexatious requests).
2. The Commissioner's decision is that the request was vexatious and therefore the Cabinet Office was entitled to rely upon section 14(1) of FOIA to refuse it.
3. The Commissioner does not require further steps.

Request and response

4. On 10 June 2023, the complainant wrote to the public authority and purported to request information from it.
5. On 13 June 2023, the public authority wrote to the complainant saying, "So that we may best assist you, are you able to clarify what exact recorded information you are seeking?"
6. The complainant replied to the public authority on 15 June 2023. He said, amongst other things, that his letter of the 10 June 2023 containing a "16-point list of specific new requests" had been "corrupted by IT gobbledegook".

7. He then went on to “clarify” his request by saying as follows.

“...please note that in respect of each sub-request, I sought information which comprises, records or relates to the subject-matter. I shall cross-refer thus, [12], to each sub-request.

I wish to have any document on which the assertion that the CO is responsible for FOI policy is based [1] and [2] any document as to applying a distinction between FOI policy and ICO operational matters, as applied to 3 areas of governance. (My Request at sub-request 2 listed the 3 specific areas to be addressed, which I need not repeat.) As a corollary, I wish [3] to have any document that concerns the operational independence of the ICO.

Sub-requests [4] to [6] concern the process by which the CO sought to arrive at a response to my MP’s concerns, via contact with the ICO. Note that the drafting of the Minister of State’s response of 9 January 2023 would be ‘related to’ that contact.

I wish to see the document and terms of any transmission from the DCMS to the CO of the MP’s letter under reply [4], including transmission of the exchanges between the MP and the ICO referred to in his letter to the DCMS [5]. As an updating of my Request of 26 January 2023 I seek records of CO-ICO contact not caught by that request [6] (under FOIA case law each FOI request is time-limited).

Sub-requests [7] to [11] relate to the process by which the CO sought and obtained a QPO. I seek [7] any document stating, identifying or defining the CO’s statutory QPO. (My understanding is that its QP is identified by FOIA as a minister, but the ICO Guidance may have been treated as undermining that principle.) I seek any recorded decision that section 36 was engaged [8a] or [8b] that it would be engaged upon receipt of a QPO. I seek this at the points in time corresponding to CO assertions that (all) the information was exempt. I seek the record of requests, submissions and/or evidence submitted to the person identified as the CO’s QP [9] and then of any QPO [10]. I also seek records of any contact with the ICO during the process of obtaining the QPO, in particular relating to any ICO advice about the section 36 requirements [11].

Sub-request [12] relates to the second stage process of balancing public interests and I seek the record of all such process (in which weight should be given to the QPO as to potential prejudice to effective governance). (This stage may have been between 23.02.23 and 25.05.23 but after the first assertion that all the information was already exempt.)

Sub-requests [13] and [15] are for any record of contact between the ICO and CO referred to in disclosed e-mails: [13] which led the CO on 21.12.22 to remember that the ICO was to revise Guidance and [15] which was scheduled to take place on 11.01.23.

Sub-requests [14] and [16] relate to information amounting to [14] ministerial correspondence about delegation and [16] advice circulated to other government departments about section 36 FOIA. (I specified the source of my knowledge of the [13] to [16] material in my Request of 10 June 2023.)

I am sorry to say that, having gone to the trouble of complying with your request for clarification, I do not believe that it was necessary, and I urge you to proceed without unnecessary delay in complying with the Cabinet Office's obligations both as to substance and as to time".

8. On the 29 August 2023, the public authority acknowledged receipt of the request and said as follows.

"We refer to your emails of 10, 11 and 15 June and 29 July 2023 about the handling of your FOI request related to ministerial correspondence and which are annexed to this letter. For background and ease of reference, below is a chronology of the correspondence:

25 May 2023 Cabinet Office responded to your FOI request (FOI2023/01124)

10 June You emailed expressing your dissatisfaction with the response to your FOI request and making "specific new requests for information held by the Cabinet Office"

11 June You emailed again expressing your dissatisfaction with the response to your FOI request and asking for an internal review.

12 June Cabinet Office acknowledged your request of 11 June for an internal review (our ref: IR2023/06944).

13 June Cabinet Office responded to your email of 10 June asking for clarification of the information you were seeking.

15 June You responded to our email of 13 June expressing dissatisfaction with the request for clarification and referencing the request you made on 10 June.

29 July You requested an internal review of your handling of correspondence of 10 June.

2 August We apologised for the confusion caused and logged a new request under reference number FOI2023/09292 We accept that there has been a lack of clarity on the handling of your correspondence subsequent to our original decision of 25 May 2023 and we apologise for that.

We agree that your correspondence of 15 June should have been acknowledged and that consequently the content of your email of 10 June should have been processed as a 'new' FOI request sooner.

As it is, on 29 July you wrote again questioning the handling and on 2 August we apologised for the confusion caused and logged a new request under reference number FOI2023/09292. We also apologise for the delay.

"Section 14(1) of the Freedom of Information Act (the Act) says that a public authority is not obliged to comply with a request for information if the request is vexatious. After careful consideration we have concluded that your request is vexatious and we are therefore refusing it under section 14(1) of the Act".

9. The public authority then went on to say that it was not obliged to comply with the request of the 10 June 2023 on the grounds that it was vexatious for the purposes of section 14(1) of the Act. It explained why it was doing so.
10. On the 1 September 2023, the complainant requested that the public authority review its decision.
11. Following the internal review the public authority wrote to the complainant on 8 December 2023. It stated that it upheld its decision that section 14(1) applied to his request of 10 June 2023.

Scope of the case

12. The complainant contacted the Commissioner on 7 November 2023 to complain about the way his request for information had been handled.
13. The Commissioner considers that the scope of his investigation is to determine whether the public authority was entitled to rely on section 14 not to meet his information request dated 10 June 2023.

Reasons for decision

14. 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.
15. 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.
16. FOIA gives individuals a right of access to official information in order to make bodies more transparent and accountable. As such, it is an important right. Therefore, engaging section 14(1) is a high hurdle.
17. 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.
18. 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.

Public authority’s submissions

19. This request follows, and is related to, a long chain of events. The requester has been making FOI requests related to the Information Commissioner’s Office (ICO) guidance on section 36 (prejudice to effective conduct of public affairs) of FOIA since at least 2015.
20. The public authority referred the Commissioner to an Upper Tribunal (UT) decision (the parties being the complainant and another public authority) which sets out some of the history and context to this matter.
21. It appears to follow events occurring in 2013. The requester has subsequently pursued numerous requests for information directed at the ICO through to the First Tier Tribunal (FTT). It further noted that in 2021, following a further appeal to the FTT on a response from the other public authority that cited section 14(1) (vexatious) the FTT noted that the complainant’s behaviour, and in that case his request, was clearly vexatious. It notes in particular that the judge stated:

- "It is clear that the complainant's concern about the events at the hospital in 2013 have continued to motivate his actions and the outrage he felt on that occasion has transferred to the ICO and her staff. He is motivated by strongly felt personal feelings about the events at the hospital which has resulted in a series of information requests about the actions of the ICO. During those requests he has made unjustified slurs on the ICO's staff and legal representative in seeking information of no public value, in doing so he has imposed a very substantial burden on the ICO to investigate a number of issues and then defend her decisions in FTT and UT. This is a manifest abuse of a statutory right and is very clearly vexatious."
22. The requester is now showing similar behaviour, on the same topic, with the Cabinet Office, through numerous FOI requests (as well as Subject Access Requests and other correspondence), complaints and general accusations about the Cabinet Office and the work of its officials.
 23. The content of the request of 10 June 2023 overlaps and repeats the concerns raised in the email the following day asking for an internal review of the Cabinet Office decision. As it acknowledged on 12 June 2023, the contents of the email of 11 June form the basis of that review .
 24. The Cabinet Office consider that it is potentially disrupting and burdensome for it to divert resources from that internal review to answer his new request. This is particularly so as some of the parts of that request, for example items 1, 2 and 3, are scoped very broadly, and that other parts are directly related to the concerns he raised in his letter asking for an internal review. Should, once the review is completed, the complainant consider that he required further information it would, at that point, consider processing a request.
 25. It also considers that the complainant's request of 10 June 2023 illustrates 'vexatiousness by drift'. It relates to correspondence sent on his behalf by Bambos Charalambous MP to the Minister (Cabinet Office ref: MC2022/18026). The subject matter of that correspondence was ICO guidance on section 36 of the Act, the role of the 'Qualified Person' and the delegation of that role. The MP had previously raised this issue directly with ICO and, in his letter to the Minister, expressed his disappointment with the response received. He asked the Minister "to encourage the ICO to review the motivation of responsible officers within the ICO for the initial adoption of the 'principle of delegability' and then its deployment in the handling of my constituent (the complainant's case").

26. The Cabinet Office's understanding is that the ICO's position with regard to the delegation of the Qualified Person's role as set out at section 36 of the Act and associated guidance has been a matter the complainant has raised, including through the appeals process, since at least 2015. It recognises that the complainant remained dissatisfied with the ICO's handling of his concerns, and with the Minister's subsequent response to the Member of Parliament. It also acknowledges that a request asking for information about a previous FOI request (known as a meta request) is a valid request, and cannot, as a matter of course, be refused as vexatious. However, in this instance, it considers that the objective value and purpose of the new request is diminished as the complainant's underlying grievance is a long-running matter that has been considered in detail. Nor would processing of the new request serve a public interest beyond that which would be served by completing the internal review process initiated by his correspondence of 11 June 2023.
27. It also considers that the tone and some of the language in the complainant's correspondence, such as 'a bogus Act' and 'evasion', implies bad faith on the part of the civil servants who have dealt with both his and the MP's correspondence. Whilst it may not be the complainant's deliberate intention, the language he has used is both unnecessarily confrontational and inappropriate.
28. The public authority is satisfied that any value and purpose of his request (which it considers to be diminished in any event) certainly does not justify the disruption, irritation and distress which would be caused by handling his request. It therefore concluded that it is not obliged to comply with the request on the grounds that they regard it as vexatious for the purposes of section 14(1) of the Act.

Commissioner's reasonings

29. 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).
30. However, the UT emphasised that these four broad themes are not a checklist, and are not exhaustive. It 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).

31. The Commissioner is satisfied that the request is one that follows others of similar earlier requests and serves no easily discernible benefit to the public. The request forms part of "vexatious" conduct that the complainant has directed at another public authority and the Cabinet Office. This conduct being a continuation of conduct previously identified by the Commissioner and the Information Tribunal as vexatious, as defined by FOIA.
32. The Commissioner concurs with the public authority's assertion that the request was potentially disrupting and burdensome for it to divert resources from a pre-existing internal review to answer his new request. It is clear from a simple reading of the request that it is an unnecessarily convoluted and disorientating way of requesting information. Additionally, in parts, it would take a considerable amount of consideration time to understand what information was actually being sought.
33. The Commissioner notes that the complainant's request of 10 June 2023 had, as the complainant said in his letter to the Cabinet Office dated 15 June 2023, "been corrupted by IT gobbledegook". This meant, the Commissioner finds, that the information request was then to all intents and purposes unintelligible or at the very least extremely difficult to comprehend with any certainty. The Commissioner considers that the public authority request for clarity was a reasonable one and reasonably put to the complainant¹.
34. The complainant was unnecessarily combative and unhelpful in his reply, saying (amongst other things), "you seem to imply that I have disregarded ICO advice on 'how to write an effective request'. I am well aware of the need to be as specific as possible and I regard that suggestion as unhelpful to say the least. ... If you were in difficulty in understanding my Request of 10 June 2023, I would have expected you to be specific rather than write as if I have to guess what your difficulties might be". This accords with the Cabinet Office's assertion that the complainant uses language which is often "unnecessarily confrontational and inappropriate". Whether intended or not, the

¹ Paragraph 5 above.

Commissioner finds it would cause an element of avoidable distress to the public authority's staff.

35. The Commissioner is entirely satisfied that the complainant's request was a vexatious one for the purposes of FOIA. The public authority has clearly demonstrated this to be the case. The Commissioner is of the firm view that the request was a vexatious one for the purpose of section 14 and therefore the public authority was entitled not to process the request.

Right of appeal

36. 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

37. 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.
38. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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