

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 10 September 2013

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

Decision (including any steps ordered)

1. The complainant has requested information from the Department for Transport (DfT) about airport security scanners (scanners). The Commissioner considers that this request relates to similar matters dealt with in previous decision notices¹. The analysis and conclusions reached in these previous notices are applicable in this instance, and are supported by a new analysis using updated guidance. The Commissioner's decision is that the DfT was correct to deem the request considered here as vexatious for the purposes of section 14(1) of the FOIA.
2. Furthermore, the Commissioner has concluded that under section 17(6) of the FOIA (further refusal notice not required) the DfT was entitled not to issue a refusal notice in respect of the request.
3. In view of the above, he does not require the DfT to take any further action.

¹ Reference FS50411835 and FS50443225 on the ICO website:
http://www.ico.gov.uk/tools_and_resources/decision_notices.aspx

Request and response

4. On 21 February 2013, the complainant wrote to the DfT and requested information in the following terms:

(1) There is no current security scanner direction for Manchester Airport available on the DfT website.

Could you please supply me with a copy of this direction?

(2) Which UK airports currently only use security scanners that employ automatic target recognition (ATR) software (i.e do not currently review naked images of passengers)?

(3) The DfT appears to be citing legislation that simply does not exist.

The current DfT security scanner regulations all quote point 4.1.1.10 of Regulation(EU)No 185/2010, Annex.

Could the DfT please supply me with a copy of Regulation (EU) No 185/2010 which includes point 4.1.1.10?

5. The DfT did not respond to the request.

Scope of the case

6. The complainant contacted the Commissioner to complain about the way their request for information had been handled. Specifically, they complained that the DfT had not replied to their request.
7. The DfT informed the Commissioner that it had not responded to the request as it was relying on sections 14(1) and 17(6) of the FOIA. The Commissioner's investigation therefore focussed on whether the DfT had correctly applied these parts of the FOIA to the request.

Reasons for decision

8. Section 14(1) of the FOIA provides that:

"Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious."

9. As stated in paragraph 1, the Commissioner has issued decision notices relating to requests on the subject matter similar to the request in this decision notice. The previous decision notices found that the DfT had correctly relied on section 14(1) in these instances.
10. The complainant has been in correspondence with the DfT about airport body scanners since March 2010.

The UK brought in the scanners via the issuing of Directions under the Aviation Security Act 1982 with the aim of addressing perceived gaps in airport security. The complainant has long-standing concerns that scanners may breach personal privacy and pose a risk to health, and that there is no 'opt out' alternative to those scanners. The DfT has received 22 FOIA requests and approximately 80 additional pieces of correspondence from the complainant on the subject of scanners at the time it refused the request of 21 February 2013.

11. The Commissioner considers that the request featured above represents a continuation of the complainant's previous correspondence with, and requests to, the DfT about similar matters. The analysis and conclusions set out in the previous decision notices are therefore also applicable in this instance. For brevity, the Commissioner will not reproduce the content of those decision notices here but he has adopted the analysis and concluded that the DfT correctly applied section 14(1) to this request.
12. The ICO released new guidance on section 14 in May 2013². This guidance includes further indicators of vexatiousness, namely:
 - Abusive or aggressive language;
 - Unreasonable persistence;
 - Unfounded accusations;
 - Intransigence;
 - Frequent overlapping requests;
 - Deliberate intention to cause annoyance.
13. In determining whether section 14 was applied correctly in this case, the Commissioner also considered the evidence provided by the DfT and the complainant under each of the above headings. Whilst recognising the complainant's more emollient approach of late, he has taken into account the context and history of the correspondence and contact between the complainant and DfT up until the date of complainant's request of 21 February 2013.
14. Applying the new guidance, the Commissioner has found that the DfT correctly applied section 14(1) to this request.
15. The Commissioner understands that the complainant disagreed with previous decision notices and he has taken their arguments into account.

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[http://www.ico.org.uk/for_organisations/guidance_index/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/dealing-with-vexatious-requests.ashx](http://www.ico.org.uk/for_organisations/guidance_index/~/media/documents/library/Freedom_of_Information/Detailed_specialist_guides/dealing-with-vexatious-requests.ashx)

However, for the request that is the subject of this notice, he is of the view that the previous analysis continues to hold, and is now supported by the new analysis.

Section 17

16. Section 17(5) of the FOIA provides that:

"A public authority which, in relation to any request for information, is relying on a claim that section 12 or 14 applies must, within the time for complying with section 1(1), give the applicant a notice stating that fact."

17. Section 17(6) of the FOIA states that a public authority is not required to provide a refusal notice where:

"(a) the public authority is relying on a claim that section 14 applies,

(b) the authority has given the applicant a notice, in relation to a previous request for information, stating that it is relying on such a claim, and

(c) it would in all the circumstances be unreasonable to expect the authority to serve a further notice under subsection (5) in relation to the current request."

18. In this case, the DfT did not respond to the request and it is relying on section 14(1) in regard to that request. On 31 August 2011 it provided a refusal notice to the complainant in respect of the request that was the subject of the decision notice in FS50411835. That refusal notice stated that the DfT would not provide any further responses to the complainant on the subject of the request.

19. The DfT has informed the Commissioner that in accordance with section 17(6), it considers that it would be unreasonable to expect the DfT to continue to give further notices of the application of section 14(1) of the FOIA for subsequent related requests.

20. The Commissioner is of the view that, in all the circumstances, it would be unreasonable to expect the DfT to issue a separate notice regarding this request. He considers that this is the case because he has already determined that a previous request about the underlying subject matter was vexatious, which renders the issuing of a further notice unreasonable. He has therefore concluded that section 17(6) has been appropriately applied to this request.

Right of appeal

21. 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: 0300 1234504

Fax: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

22. 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.
23. 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

Pamela Clements
Group Manager, Complaints Resolution
Information Commissioner's Office
Wycliffe House
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