Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 6 May 2014

Public Authority: The Information Commissioner's Office ("ICO")
Address: Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Decision (including any steps ordered)

1. The complainant made a request to the ICO for extracts of any written guidance on dealing with the public offered in any training courses attended by ICO staff.

2. The ICO advised the complainant that it would not respond to the latest request as it dealt with substantially the same issues as previous requests and correspondence and was therefore considered vexatious under section 14(1) of the FOIA.

3. The Commissioner's decision is that the ICO has correctly applied section 14(1) to the request. There are no further steps to be taken.

Background

4. The complainant has consistently sought to communicate with the ICO about the way in which he believes the ICO could improve its organisational processes. These communications have consisted of FOIA requests and frequent correspondence about the FOI procedures manual, details of management training for ICO staff, guidance as to the Civil Service code, information about caseworker training, measures taken to manage case work queues, staff lists and duties, information about decision notices of the Commissioner, information about policies to accept or refuse suggestions from members of the public and various

requests related to the First Principle of Public Life.[1] This requires that holders of public office should act solely in terms of the public interest.

5. The ICO provided responses to the requests made between December 2010 and end of June 2013. From July 2013 it has refused requests related to the above matters relying upon section 14 of the FOIA as the basis for its refusal. On 1 October 2013 it advised the complainant that it also intended to rely upon section 17(6) of the FOIA and would not be formally refusing any further requests which were related to the same issues which it had previously advised it considered to be vexatious.

Request and Response

6. On 2 September 2013 the complainant contacted the ICO and requested information relating to the following:

"I would appreciate extracts of any written guidance on dealing with the public offered in any training courses attended by the ICO staff."

In addition he raised queries about correspondence received from the ICO on 3 June 2013 and 2 August 2013. These letters concerned previous requests for information which advised that future requests under the FOIA relating to certain matters would not be considered or responded to as such requests would be considered vexatious under section 14 of the FOIA.

7. On 1 October 2013 the ICO provided its response to the request dated 2 September 2013. It advised that it considered the request to relate to the view that ICO staff had failed to adhere to the First Principle of Public Life. It advised that it had informed the complainant on 3 June 2013 and 2 August 2013 that it would not answer any further queries about this issue or related matters such as organisational issues or matters relating to staff members.

8. It confirmed that it was relying on section 14(1) of the FOIA as it considered the request of 2 September 2013 to be vexatious. It further advised that it also intended to rely upon section 17(6) of the FOIA and would not be formally refusing any further requests which were related to the same issues which it had previously advised it considered to be vexatious.

[1] The Seven Principles of Public Life (the "Nolan Principles") were adopted by the Committee on Standards in Public Life and first set out by its first Chairman, Lord Nolan, in 1995 http://www.public-standards.org.uk/#

9. On 2 October 2013 the complainant submitted further correspondence to the ICO raising issues about ICO staff and asking for responses to correspondence sent earlier in the year.

10. On 4 October 2013 the complainant advised the ICO that he was not satisfied with the response dated 1 October 2013 and asked for an internal review of the response to his request dated 2 September 2013. In addition he asked for a reply to his letter of 2 October 2013 and made an additional request for information relating to ICO staff.

11. On 22 October 2013 the ICO provided the complainant with a response to the request for an internal review. It upheld the decision that had it reached in respect of the response to the request dated 2 September 2013 and confirmed that the request was considered vexatious. It advised that the request for information dated 4 October 2013 would not be responded to as it related to the same issues. The complainant was advised as to his rights of appeal.

Scope of the case

12. On 25 October 2013 the complainant lodged a complaint with the Information Commissioner's Office stating that he was not satisfied with the response he had received to his request.

13. The focus of the Commissioner's investigation has been to determine whether the ICO's application of section 14(1) of the FOIA is correct.

Reasons for decision

14. Section 14(1) of the FOIA states:

> *"14.—(1) Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious."*

15. When considering whether a request is "vexatious" under section 14 of the FOIA the Commissioner is mindful of his published guidance in respect of section 14 of the FOIA[2]. This refers to an Upper Tribunal decision[3] which establishes the concepts of 'proportionality' and

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

[3] *Information Commissioner vs Devon County Council & Dransfield [2012] UKUT 440 (AAC) (28 January 2013)*

'justification' as central to any consideration of whether a request is vexatious.

16. This guidance suggests that the key question the public authority must ask itself is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress. Where this is not clear, the Commissioner considers that public authorities should weigh the impact on the authority and balance this against the purpose and value of the request. Where relevant, public authorities will need to take into account wider factors such as the background and history to the request.

Background and history to this request

17. As part of its arguments to the Commissioner, the ICO has advised that the complainant has consistently sought to communicate with the ICO, over a considerable period of time, about the way in which he believes the ICO could improve its organisational processes. These communications have consisted of FOIA requests and frequent correspondence about the FOI procedures manual, details of management training for ICO staff, guidance as to the Civil Service code, information about caseworker training, measures taken to manage case work queues, staff lists and duties, information about decision notices of the Commissioner, information about policies to accept or refuse suggestions from members of the public and various requests related to the First Principle of Public Life.

18. The ICO has advised the Commissioner that it has received considerable correspondence from the complainant over a number of years much of which is repetitious in nature and requires similar responses to be provided by the ICO. It advised that the complainant had made twelve previous requests to the ICO between December 2010 and September 2013, nine of which were submitted between September 2012 and September 2013.

19. The ICO has outlined the nature of the communications which centre on the complainant's dissatisfaction with the workings of the ICO. From the evidence provided it would appear that the complainant has attempted over the years to suggest to the ICO the ways in which he believes the operation of the ICO could be improved. When these suggestions have not been taken up a series of requests for information under the FOIA are made which focus upon the way in which the ICO operates administratively and the way in which decisions are made.

20. The ICO has argued that because of the complaint's dissatisfaction with the way in which his suggestions are handled any response given by the ICO results in further correspondence from the complainant. The

frequency, volume and nature of correspondence received, in addition to the number of formal requests for information made under the FOIA, has resulted in a separate log being set up within the ICO to deal solely with the correspondence of the complainant. This amounts to 120 entries since 2011 with the ICO advising that each entry could amount to up to six letters. The ICO advised that this step was taken rather than placing correspondence on existing individual case files as the correspondence received has been extensive and it was necessary to ensure a co-ordinated approach to any responses given to the complainant. This correspondence was in addition to that related to specific FOIA matters which were placed on the individual files.

21. The ICO provided evidence of correspondence sent to the complainant on 3 June 2013 advising that it would not answer further requests or correspondence upon related matters and offering advice and assistance in respect of the application of section 14.

22. A similarly worded letter was provided to the complainant on 2 August 2013 in response to two requests for information on 9 and 11 July 2013, which sought information about policies that stated the basis on which suggestions from members of the public could be disregarded. This response relied upon section 14 of the FOIA and advised that this and any future requests on related matters would be considered "vexatious". In addition it stated that the ICO would not respond to any further correspondence on the following issues:

    - *"A central correspondence register and/or the Commissioner's oversight of all correspondence received;*
    - *'Backlogs' or time to respond to requests or complaints received;*
    - *The organisational structure of the ICO or the roles and responsibilities of ICO staff;*
    - *Decision notices previously served in response to your complaints;*
    - *The Civil Service Code or the First Principle of Public Life;*
    - *The ICO's interpretation of section 14 of the FOIA."*

23. The ICO has argued that because of its past experience with the complainant on this issue it is of the opinion that the complainant will never be satisfied with the outcome of any information provided and that he will continually seek to ask questions for the sole purpose of reopening the debate on these issues. It has argued that any responses given have led to further correspondence and requests for information. It maintains that this demonstrates unreasonable behaviour on the part of the complainant.

24. The complainant has advised the Commissioner that he does not regard his correspondence as excessive but considers that his questions should be fully answered by the ICO. He maintains that his questions are valid and do not fall within the parameters of those matters regarded as closed by the ICO. The Commissioner notes that the complainant continues to offer suggestions as to how the ICO may improve its processes and directs continued criticism towards members of staff who have not responded in the affirmative to his suggestions or correspondence.

25. Having considered the volume of correspondence received by the ICO, the Commissioner is satisfied that on any test this represents a considerable amount. The majority of this correspondence also required actions on the part of the ICO either by way of answering FOIA requests, responding to formal complaints or acknowledgment of letters where the ICO has been copied into correspondence with other government departments.

26. Page 7 of the Commissioner's guidance, already referred to in paragraph 13 of this decision notice, states that an attempt to reopen issues can be considered an indicator of vexatiousness. Having considered the details of this case, the Commissioner is similarly satisfied that the request of 2 September 2013 represents an attempt on behalf of the complainant to revisit issues that have already been reviewed and responded to on several occasions by the ICO and that this is an improper use of the FOIA.

Serious purpose or value

27. In its arguments to the Commissioner the ICO acknowledges that the complainant has a legitimate interest in the workings of the ICO, the application of the FOIA and the application of the FOIA within government departments. It also acknowledges that as a public body the ICO is accountable for its actions and the complainant has a right to question its practices. However it argues that in this case it has answered a considerable number of queries on essentially the same issues and that the point has been reached where it would be unreasonable to expend any further resources on dealing with further related requests for information.

28. The ICO is of the view that these requests for information represent unreasonable persistence on the part of the complainant which, whilst important to the complainant, lacks serious value or purpose to the public at large.

29. The Commissioner appreciates that the complainant holds very strong views about what he perceives to be "inadequate administrative

practices" by the ICO. This is evident from the information provided to the Commissioner by the complainant and also from the correspondence provided by the ICO to the Commissioner as part of the investigation. However, the Commissioner is satisfied, having considered the documentation provided to him, that this issue has been already considered at length by different officers at the ICO over a considerable period of time.

30. It is also clear from the tenor of correspondence from the complainant following previous complaints to the Commissioner that he will remain dissatisfied with any response he receives from the ICO.

31. Taking these factors into account and acknowledging that members of the public do have a right to scrutinise the workings of public bodies, the Commissioner is satisfied that, in these circumstances, the serious purpose and value of the request under consideration has diminished in the light of the background and history.

Detrimental impact: workload, irritation and distress

32. The ICO has put forward the argument that the correspondence received from the complainant has been unduly excessive in respect of FOIA requests and general correspondence and the effect of such correspondence has been very disruptive. This has been compounded by the fact that the complainant frequently duplicated his correspondence by sending it by both fax and letter and also copied the ICO into correspondence he had with other public bodies. As noted the extent of this correspondence required the setting up of an additional log to deal with the correspondence that did not fall under the FOIA and amounted to a considerable amount of correspondence which the ICO advises is still being received.

33. In addition the ICO has produced evidence that the tone of the language used by the complainant became increasingly critical of both the organisation and named individuals to whom he addresses his complaints against personally. This change of response was noted when the ICO attempted to make it clear to the complainant that it would not continue to answer his letters on the same issues and also that as an organisation it was not required to answer every issue raised in every letter. The response from the complainant also included a further request for information, which is a pattern evidenced in his correspondence.

For example - Letter from the complainant to the ICO dated 7 July 2013:

"*In my letter of 18 June I severely criticised [Name redacted] total refusal to consider any further correspondence from me regarding backlogs, or aimed at improving standards….*"

"This negative policy directly conflicts with your stated Mission

'to uphold information rights in the public interest, promoting openness by public bodies.'

This letter concludes by making a further FOI requests as follows:

"*I would therefore appreciate details of:*

(a) Any internal Rules or Guidelines laying down this extraordinary policy.

(b) Who authorised it.

(c) Any recorded reasons to justify it.

(d) Any recorded plans to streamline ICO."

34. Whilst the Commissioner accepts that public sector employees should be prepared to accept a level of scrutiny and criticism in their role, having considered the considerable correspondence in this matter the Commissioner considers that in this case the level of directed criticism towards individual employees goes beyond what would be deemed reasonable in the circumstances.

35. Having considered the volume and nature of the correspondence received, the Commissioner also considers that compliance with the request which is the subject of this decision notice would have a detrimental impact upon the ICO in terms of workload.

36. Whilst not particularly onerous in itself this request is one of many received by the ICO from the complainant. There is a clear pattern of each response generating more correspondence and FOIA requests. The Commissioner is therefore satisfied that, in the context of the ICO's previous dealings with the complainant, compliance with the request would result in a disproportionate burden on the resources of the ICO now and in the future.

37. The Commissioner is satisfied that the ICO has evidenced the complainant's general refusal to accept that the ICO is not prepared to take on board all of the suggestions he makes in respect of its administrative practices. Evidence has also been provided of the disproportionate time that is being spent on dealing with correspondence and requests from the complainant which the ICO states

is detracting resources from other work it is required to carry out under its statutory obligations.

38. For this reason the Commissioner is satisfied that responding to the request is likely to cause an unjustified level of irritation and disturbance to the ICO as it is very unlikely that the complainant will be satisfied by any response he receives from the ICO in respect of the way in which it carries out its statutory obligations.

39. Therefore the Commissioner is satisfied that responding to this request is likely to cause a disproportionate burden upon the ICO.

Conclusion

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40. The Commissioner has considered the arguments put forward by the ICO and by the complainant in light of the Upper Tribunal's view of the importance of 'proportionality' and 'justification' and has balanced this against the purpose and value of the request. The Commissioner has also taken into account wider factors such as the background and history to the request and the nature of the complainant's prior involvement with the ICO.

41. The Commissioner considers that the ICO was correct in its approach in these circumstances. Having considered all the evidence provided, the Commissioner is of the view that section 14(1) of the FOIA applies in this case. Therefore the ICO was not required to comply with the request. No further action is required on the part of the ICO.

Right of Appeal

42. 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

43. 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.

44. 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 .....

Graham Smith
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