

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 18 September 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 has requested information about the final pension details for all senior ICO executive staff. The ICO refused to comply with the request under section 14(1) of the Freedom of Information Act 2000 (FOIA) as it considered it to be vexatious.
2. The Commissioner's decision is that the ICO has correctly applied section 14(1) FOIA.
3. The Commissioner requires no steps to be taken.

Request and response

4. On 12 February 2014 the complainant made the following request for information under the FOIA for:

"Please provide [me] with full details of the final pension details for all senior ICO executive staff."

5. On 11 March 2014 the ICO responded. It refused to comply with the request as it said it was vexatious under section 14 FOIA.
6. The complainant requested an internal review on 11 March 2014. The ICO sent the outcome of its internal review on 8 April 2014. It upheld its original position.

Scope of the case

7. The complainant contacted the Commissioner on 10 April 2014 to complain about the way his request for information had been handled.
8. The Commissioner has considered whether or not the ICO was correct to apply section 14(1) FOIA in response to this request.

Reasons for decision

9. Section 14(1) FOIA provides that a public authority is not obliged to comply with a request if it is vexatious.
10. The Commissioner's guidance¹ on the application of section 14(1) FOIA refers to an Upper Tribunal decision² which establishes the concepts of 'proportionality' and 'justification' as central to any consideration of whether a request is vexatious.
11. The Upper Tribunal decision has been appealed and is due to be considered by the Court of Appeal in January 2015. Until the Court of Appeal issues its decision, the Upper Tribunal decision is binding law which the Commissioner must follow.
12. The 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 of the request.

¹http://www.ico.org.uk/for_organisations/guidance_index/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/dealing-with-vexatious-requests.ashx

² *Information Commissioner vs Devon County Council & Dransfield* [2012] UKUT 440 (AAC) (28 January 2013)

13. The ICO stressed that it does not use the application of section 14(1) lightly. It does not employ a blanket operation of section 14(1) but will consider each request on its own merits. It referred to an earlier request from the complainant that is considered to be of a different nature to others he had submitted and to which the ICO had responded in full.
14. The ICO explained that it was relying upon the same arguments as presented and recorded in the Decision Notice for case reference FS50532725, where the Commissioner had upheld the ICO's characterisation of 15 requests as vexatious. This Decision Notice can be accessed using the following link:

http://search.ico.gov.uk/ico/search/decisionnotice#dn_searchTop
15. The ICO explained that it considers that there are continuing and overarching themes to the requests covered in case reference FS50532725 and the request made in this case.
16. As the request which is the subject of this complaint focuses upon staff at the ICO (in this case the pension entitlements of senior staff), the Commissioner considers that there is a continuing and overarching theme which applies to this request and the requests relevant to case reference FS50532725. The ICO has previously explained that the complainant's correspondence frequently contains derogatory remarks about the ICO and specific and serious allegations and complaints about named individuals. The previous Decision Notice referred to above covered 15 requests relating to such subjects as qualifications of staff, audit information, how the Commissioner discharges his functions and the use of external lawyers. The Commissioner considers that taking into account the previous requests, this demonstrates a pattern of behaviour and that this request is symptomatic of an unreasonable and disproportionate campaign against the ICO. The Commissioner acknowledges that the Decision Notice relating to case reference FS50532725 has been appealed by the complainant to the First-tier Tribunal (Information Rights) but this is not a bar to his reaching a decision in this case.
17. The ICO provided the Commissioner with some further emails, post-dating the request, which demonstrate that the complainant continues to make various allegations against ICO staff and external individuals due to his dissatisfaction with the way in which his previous and ongoing complaints have been dealt with linked to the ICO's and the Tribunal's interpretation and application of section 14(1) FOIA.
18. The ICO explained that in *Sivier v ICO EA/2013/0277*, the Tribunal commented at paragraph 12, "In *Dransfield* the Upper Tribunal approved the consideration of events earlier in time when considering an

information request within its context and we have concluded that it is also appropriate to consider post-request events when they are, as here, so closely connected with the Request that they can be interpreted as part of the implementation of a single strategy.”

19. The Commissioner considers that this ongoing correspondence further demonstrates that the complainant’s request in this case is as a result of his dissatisfaction with the way in which the ICO interprets and applies section 14(1) FOIA rather than a genuine desire to receive the information.
20. The Commissioner considers that, viewed in isolation, this request and other individual requests made by the complainant may not seem to impose an unreasonable burden and they are arguably not without a serious purpose. However taking into account the pattern of behaviour and the overarching theme and volume of the requests described above, the aggregate disproportionate burden test is met and justifies the conclusion that this request is vexatious. The Commissioner considers that the same reasoning relied upon in case reference FS50532725, can be extended to apply to the request which is the subject of this complaint and the ICO was justified in applying section 14(1) FOIA in this case.

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: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

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

Graham Smith
Deputy Commissioner
Information Commissioner's Office
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Water Lane
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Cheshire
SK9 5AF