

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 21 January 2016

Public Authority: Home Office
Address: 2 Marsham Street
London
SW1P 4DF

Decision (including any steps ordered)

1. The complainant requested information relating to a previous request made under the FOIA. The Home Office refused to comply with the request because it considered it vexatious under section 14(1) of the FOIA. The Commissioner's decision is that the Home Office was not entitled to refuse to comply with the request under section 14(1) of the FOIA.
2. The Commissioner requires the Home Office to take the following steps to ensure compliance with the legislation.
 - Issue a fresh response to the request that does not rely on section 14(1).
3. The Home Office must take this step within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Background

4. On the 28 December 2013 the complainant initially made a request for information relating to immigration law. After an exchange in correspondence, the complainant requested an internal review. However the Home Office stated that it could not carry out an internal review as the complainant's request had not been handled under the FOIA but as "business as usual".

5. The complainant made a complaint to the ICO and the Commissioner issued a decision notice in regards to this complaint (FS50568921¹) instructing the Home Office to respond to the request under the FOIA.

6. That earlier request was for:

"Could you provide me with any guidance, legislation or otherwise which might outline a prevention of a dual irish/british national from benefiting from the case of surinder singh via ireland."

7. In the request the complainant refers to *"corrective action"*. This relates to correspondence received by the complainant from the Home Office on whatdotheyknow.com. In this the Home Office refers to *"corrective action"*, which led to it being identified that one item of correspondence to the Home Office from the complainant had been received a month later than previously thought².

Request and response

8. On 10 January 2015, the complainant wrote to the Home Office requesting an internal review in relation to an earlier request. In this request for internal review the complainant also made a further request for the following information:

"Can you please provide all sorted information relating to this 'corrective action' (AKA: Fraud? / False Record Keeping).

I have also attached new guidance recently issued for completing the new Template and standard wording for FOI responses.

Can you please provide them as per my request..."

9. On the 23 February 2015 the Home Office responded to the complainant's request for information and refused to comply with it under section 14(1) (vexatious request) of the FOIA.

¹ https://ico.org.uk/media/action-weve-taken/decision-notices/2015/1424172/fs_50568921.pdf

²

<https://www.whatdotheyknow.com/request/190917/response/588969/attach/html/8/Annex%206%2032642%20Singh%20handling%202%202014%2003%2013%20RC.pdf.html>

10. After the Commissioner contacted the Home Office stating that a complaint had been received in relation to this request, the Home Office confirmed that it would be content to proceed without conducting an internal review.
11. In view of this, the Commissioner has progressed the case without requiring the complainant to request an internal review.

Scope of the case

12. The Complainant contacted the Commissioner on 27 March 2015 to complain about the way his request for information had been handled.
13. The Commissioner has considered whether or not the Home Office was entitled to rely on the vexatious provision at section 14(1) of the FOIA.

Reasons for decision

Section 14(1)

14. Section 14(1) of the FOIA states that section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious. There is no public interest test.
15. The FOIA does not define the term vexatious, but it was discussed before the Upper Tribunal in the case of *Information Commissioner vs Devon County Council & Dransfield* ([2012] UKUT 440 (AAC), 28 January 2013). Arising from this case, the key question for public authorities to consider when determining whether a request is vexatious is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress. This is reflected in the Commissioner's published guidance on vexatious requests.³
16. The request in this case is a "meta request". A meta request is a request for recorded information about the handling of a previous information request. Meta requests do not have any special status under the FOIA, nor are there any specific exemptions for this type of request, therefore a public authority should treat a meta request in the same way as any

³ <https://ico.org.uk/media/for-organisations/documents/1198/dealing-with-vexatious-requests.pdf>

other information request. This was confirmed by the High Court in *Home Office and Ministry of Justice vs Information Commissioner's Office* ([2009] EWHC 1611 (Admin), 6 July 2009) when it stated:

"It is important to emphasise that information about how previous requests were handled is not accorded any special treatment in the Act. There is no provision in the Act which specifically permits requests about such information to be refused...The Information Tribunal recognised that when it said its decision in this case that 'Parliament intended that meta-requests should be dealt with in the same way as any other requests otherwise Parliament would have provided this, which in our view they have not done so'."

17. The Home Office stated that it believed the burden imposed on it in providing the information requested would be disproportionate to any value the request might have and referred to the following from the *Dransfield* judgement:

"The purpose of section 14 ... must be to protect the resources (in the broadest sense of that word) of the public authority from being squandered on disproportionate use of the FOIA".

18. However, the Home Office acknowledged the fact that previous correspondence from the complainant had not been handled particularly well, mainly the substantial delay in responding to one of the complainant's emails. The Home Office explained that they believed that if the complainant's original enquiry and subsequent concerns had been answered within a reasonable time, and regardless of whether they were answered under the FOIA, he would not have felt the need to submit internal reviews or meta requests. In essence, the Home Office acknowledged that its poor handling of the complainant's correspondence may have encouraged the complainant to make internal review requests and meta requests.
19. The Home Office argued that it is no longer clear what the complainant's source of dissatisfaction is or what he wants that has not already been provided to him. It is clear to the Commissioner, however, from the explanation given by the Home Office, that the complainant is unhappy with the Home Office's handling of his previous correspondence and request for information and this is likely to be why he felt it necessary to make a meta request.
20. The Home Office also referred to other wording from the complainant's email dated 10 January 2015 in which he made his request and alleged Home Office fraud, cover up and other malpractice. The Commissioner notes that the complainant did mention the words fraud and cover up in

that email, but he does not believe that this language is of such severity that it amounts to harassment of the Home Office or its staff.

21. The Home Office stated that the resources which would be required to provide the information requested would be disproportionate. The Home Office however provided no evidence to show how this would be the case and so the Commissioner has given little weight to this statement.
22. The Home Office argued that the request was unreasonable and had no serious purpose or value given the responses provided previously and the internal review that had been carried out. However, due to the history of the Home Office's dealings with the complainant's previous correspondence and requests for information it would appear the request did have purpose and value to the complainant. The Commissioner is of the opinion that it may be justifiable for an applicant to make a meta request to a public authority for information relating to a previous request if that earlier request had been handled poorly. Further justification is given in this case through the decision notice issued by the Commissioner upholding the complaint in relation to the earlier request.
23. Given the poor handling of his earlier request and the lack of evidence from the Home Office about the burden that would be imposed by this request, the Commissioner's decision is that the Home Office was not entitled to rely upon section 14(1) of the FOIA to refuse to comply with this request. At paragraph 2 above, it is now required to issue a fresh response to this request.

Right of appeal

24. 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: <http://www.justice.gov.uk/tribunals/general-regulatory-chamber>

25. 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.
26. 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

Ben Tomes
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF