

Freedom of Information Act 2000 (FOIA)

Decision Notice

Date: 14 June 2016

Public Authority: Department for Communities
Address: Lighthouse Building
1 Cromac Place
Belfast
BT7 2JB

Decision (including any steps ordered)

1. The complainant has requested information from the Department for Communities relating to a number of named individuals. The Department refused the requests under section 14(1) of the FOIA on the grounds that the requests were vexatious. The Commissioner's decision is that the Department was entitled to rely on section 14(1) and does not require any further steps to be taken.

Requests and responses

Request 1

2. On 3 August 2015 the complainant requested the following information from the Department (at that time the Department for Social Development):

"The names of all organisations, both legal & illegal that each of the following individuals belongs to/belonged to, during their civil service (sic) time."
3. The complainant named six individuals. On 4 August 2015 the complainant named a further individual to be added to the scope of this request.
4. On 25 August 2015 the Department issued a refusal notice citing the exemption at section 40(2) of the FOIA. The complainant requested an internal review on the same day.

5. The Department communicated the outcome of the internal review to the complainant on 23 September 2015. The Department advised that it now sought to rely on section 14(1) of the FOIA since it considered the request vexatious.

Request 2

6. On 7 August 2015 the complainant requested the following information from the Department:

"I now request the list of all qualifications held by the following individuals".

7. The complainant named seven individuals, some of whom were also the subject of request 1.
8. On 1 September 2015 the Department issued a refusal notice citing section 40(2) of the FOIA, as it had done with request 1. On 10 September 2015 the complainant requested an internal review of this refusal.
9. As with request 1 the Department communicated the outcome of the internal review on 23 September 2015. Similarly the Department now sought to rely on section 14(1) in respect of request 2.

Scope of the case

10. The complainant contacted the Commissioner on 30 September 2015 to complain about the way his requests for information had been handled. The complainant did not accept that his requests were vexatious and asked the Commissioner to investigate whether section 14 had been applied appropriately.

Reasons for decision

Section 14: vexatious request

11. Section 14(1) of the FOIA states that a public authority is not obliged to comply with a request if the request is vexatious, but the term vexatious is not itself defined in the legislation. In *Information Commissioner v*

*Devon County Council & Dransfield*¹ the Upper Tribunal defined a vexatious request as one that is

"manifestly unjustified, inappropriate or improper use of a formal procedure."

12. The Commissioner's published guidance² sets out a number of indicators that public authorities may find it useful to consider when determining whether a request is vexatious. The guidance clarifies that the fact that a particular request contains one or more of these indicators will not necessarily mean that it must be vexatious. All the circumstances of the case must be taken into consideration in order to determine whether the request is vexatious.
13. 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 a public authority should weigh the impact of the request upon it and balance this against the purpose and value of the request. Where relevant, public authorities will also need to take into account wider factors such as the background and history of the request.

The complainant's position

14. The complainant disputes that his requests are vexatious. He told the Department, and the Commissioner, that he made his request because he wished

"...to prevent bigots treating anyone the way they treated me".

15. He also alleged that:

"...there is a strong possibility that fraudulent behaviour is involved".

16. However the complainant has not provided the Commissioner with any evidence to support this allegation. Nor has the complainant provided any specific or detailed arguments as to why the requested information would be of value to the public.

¹ Information Commissioner v Devon County Council and Dransfield [2012] UKUT 440 (AAC), 28 January 2013

² <https://ico.org.uk/media/for-organisations/documents/1198/dealing-with-vexatious-requests.pdf>

The Department's position

17. In its internal review letter relating to request 1 the Department advised the complainant that it considered the request vexatious on the basis of:
"The nature of the contents of your letter and the unsubstantiated assertions made by yourself in terms of named members of staff...".
18. The Department also reminded the complainant that he could raise any issues he had regarding departmental staff *"through established internal mechanisms"*.
19. The Department told the Commissioner that the tone and language of the complainant's correspondence went beyond the level of criticism that a public authority or its employees should reasonably expect to receive. The complainant's references to "bigots" were considered deliberately offensive since he accompanied this with various allegations about the individuals named in the requests. The Department said that the complainant had not explained why he referred to the individuals as "bigots", and that those individuals had not had any opportunity to defend themselves against the use of a term which, particularly in the context of a public authority, is a serious allegation.
20. The Department also pointed out that request 1 asked for details of named individuals' membership of organisations both *"legal & illegal"*. The Department considered that this demonstrated the futility of the request, since membership of an illegal organisation would be incompatible with the conduct and discipline policy in the Northern Ireland civil service. It was therefore extremely unlikely that the Department would be expected to hold information relating to membership of illegal organisations.
21. The Department stressed to the Commissioner that it did not seek to dismiss the requests as vexatious in an effort to avoid having to respond to them. The Department did in fact issue refusal notices citing the exemption at section 40(2) to both requests because the requested information was personal data and the Department considered that its disclosure into the public domain would be unfair. However the Department was increasingly concerned at the complainant's tone and use of language in his requests, therefore it decided at internal review stage to consider reliance on section 14.

The Commissioner's conclusions

22. The Commissioner has considered the information provided by both the complainant and the Department. The Commissioner has also had regard to his own published guidance and case law.

23. The Commissioner is mindful that the FOIA is motive-blind and applicants are not required to explain why they are making any request. However, the Upper Tribunal commented in *Dransfield* that when considering reliance on section 14 it may be appropriate to ask the question:

"Does the request have a value or serious purpose in terms of the objective public interest in the information sought?" (para 38)

24. The complainant maintains that his requests have a serious purpose, but the Commissioner has seen no evidence to suggest that the Department's compliance with either request would be of benefit to the public. The Commissioner does not follow the complainant's reasoning that disclosure of the information would prevent anyone from being treated unfairly. Nor is it clear how disclosure would inform the public as to any fraudulent behaviour as alleged by the complainant. In any event, as the Department has pointed out there are existing channels of complaint for such concerns, which the complainant has not chosen to pursue. For these reasons the Commissioner is unable to identify an objective public interest in the actual information sought.
25. The Department is of the strong view that the complainant's requests are plainly and objectively vexatious. The Department has pointed to the language and tone of the requests, and the fact that the requests have been made in the context of accusations of bigotry and fraudulent behaviour. The Department says that the complainant's language is *"deliberate and intended solely to cause offence"*.
26. The complainant's arguments as set out above suggest that his language reflects his own views about the individuals named. This does not in itself demonstrate that the requests are vexatious, but whilst the complainant may not have intended to cause offence, the Commissioner must also consider whether that was in fact the effect of the requests.
27. The Commissioner is of the view that public authorities dealing with the public will routinely receive correspondence which may reflect dissatisfaction or frustration, and this will not always be expressed appropriately. However the Commissioner would also refer to his own guidance for requesters, which advises them to avoid using language which may have the effect of harassing the public authority:

"We also accept requests can be challenging in their language but using threatening or abusive language increases the risk that your request will be refused."³

28. In this case the Commissioner accepts that describing individuals as "bigots" while requesting their personal information is likely to be interpreted as offensive. The complainant says he wishes to prevent "bigots" treating anyone else the way they treated him, but as pointed out above the Commissioner does not see how compliance with the requests would achieve this aim.
29. The Commissioner further notes that the Department initially issued refusal notices citing exemptions, but changed its position following the internal review. This is in line with the Commissioner's guidance, which suggests that public authorities consider any "viable alternatives" to section 14. When requesting the internal reviews the complainant provided no grounds for disagreeing with the Department's reliance on the exemptions, but merely reasserted that the individuals named in the request were "bigots". This does not indicate to the Commissioner that the complainant was committed to pursuing a legitimate request for information under the FOIA. Rather it suggests an underlying grievance that would arguably be better addressed by the complainant following the Department's internal procedures.
30. In conclusion, the Commissioner accepts the Department's assessment of the two requests as vexatious. The language used is likely to cause disproportionate irritation and offence, and there is no objective public interest in the requested information. Therefore the Commissioner finds that section 14(1) is engaged, and the Department was not obliged to comply with either request.

³ <https://ico.org.uk/for-the-public/official-information/>

Right of appeal

31. 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

32. 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.
33. 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

**Sarah O’Cathain
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Information Commissioner’s Office
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