

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 14 November 2016

**Public Authority:** The National Archives  
**Address:** Kew  
Richmond  
Surrey  
TW9 4DU

#### Decision (including any steps ordered)

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1. The complainant made requests for information relating to vexatious requests. The National Archives (TNA) refused the request as vexatious under section 14(1) of the FOIA. The Commissioner's decision is that TNA has correctly applied the vexatious provision at section 14(1) of the FOIA. He does not require any steps to be taken.

#### Request and response

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2. On 26 January 2016 the complainant requested the following information:  
*'Would you please let me know with respect to the last FIVE years:*
  1. *How many FOI requests have been refused by TNA on grounds of their being 'vexatious'?*
  2. *How many Health and Safety FOI requests have been refused on grounds of their being 'vexatious'?*
3. TNA responded on 23 February 2016 stating that it considered the request to be vexatious and therefore covered by section 14(1) of the FOIA.
4. The complainant requested an internal review. TNA provided the outcome of its internal review on 29 April 2016 and upheld its original position.

## Scope of the case

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5. The complainant has been in correspondence with the Commissioner since December 2015 and the case was accepted in June 2016.
6. The Commissioner has examined the request and related correspondence from both the complainant and TNA. The Commissioner has considered the scope of the case to be whether TNA handled the request in accordance with the FOIA, specifically, whether TNA is entitled to rely on the vexatious provision at section 14(1) of the FOIA as a basis for refusing to provide the withheld information.
7. The Commissioner made it clear to the complainant on 16 August and 26 September 2016 that she is unable to look at issues that do not fall within FOIA: *'to be clear my investigation will not consider whether TNA has an appropriate process in place to deal with requests to reclose files, nor its complaints procedure as these do not fall within the remit of the Information Commissioner.'*

## Reasons for decision

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### Section 14 – Vexatious requests

8. Section 14(1) of 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.
9. The term “vexatious” is not defined in the FOIA. The Upper Tribunal considered the issue of vexatious requests in the case of the *Information Commissioner v Devon CC & Dransfield*<sup>1</sup>. The Tribunal commented that vexatious could be defined as the “*manifestly unjustified, inappropriate or improper use of a formal procedure.*” The Tribunal’s definition clearly establishes that the concepts of proportionality and justification are relevant to any consideration of whether a request is vexatious.
10. The Upper Tribunal also found it instructive to assess the question of whether a request is truly vexatious by considering four broad issues: (1) the burden imposed by the request (on the public and its staff); (2) the motive of the requester; (3) the value or serious purpose of the request; and (4) any harassment or distress of and to staff. The Upper

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<sup>1</sup> GIA/3037/2011

Tribunal did, however, also caution that these considerations were not meant to be exhaustive. Rather, it stressed the

*"importance of adopting a holistic and broad approach to the determination of whether a request is vexatious or not, emphasising the attributes of manifest unreasonableness, irresponsibility and, especially where there is a previous course of dealings, the lack of proportionality that typically characterise vexatious requests" (paragraph 45).*

11. In the Commissioner's view, the key question for public authorities to consider when determining if a request is vexatious is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress.
12. The Commissioner has identified a number of "indicators" which may be useful in identifying vexatious requests. These are set out in his published guidance on vexatious requests<sup>2</sup>. The fact that a request contains one or more of these indicators will not necessarily mean that it must be vexatious. All the circumstances of a case will need to be considered in reaching a judgement as to whether a request is vexatious.

### **Is the request obsessive?**

13. The Commissioner would characterise an obsessive request as one where the requester is attempting to reopen an issue which has already been comprehensively addressed by the public authority, or otherwise subjected to some form of independent scrutiny.
14. In the Commissioner's view, the test to apply here is reasonableness. Would a reasonable person describe the request as obsessive in the circumstances? For example, the Commissioner considers that although a request in isolation may not be vexatious, if it is the latest in a long series of overlapping requests or other correspondence then it may form part of a wider pattern of behaviour that makes it vexatious.
15. The Commissioner accepts that at times there is a fine line between obsession and persistence and although each case is determined on its

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

own facts, the Commissioner considers that an obsessive request can be most easily identified where a complainant continues with the request(s) despite being in possession of other independent evidence on the same issue. However, the Commissioner also considers that a request may still be obsessive even without the presence of independent evidence.

16. By way of background and in order to provide context and history to this FOIA request of January 2016, TNA explained that under FOIA the complainant had made requests for two closed files to be opened: [file names redacted]. Both files concerned inspections in 1956 and 1963 of an approved school in Darlington.
17. After considerations in line with legislative requirements, both files were opened to the public for viewing.
18. In January 2014 the complainant applied to TNA for the same 2 files to be re-closed. In his application, the complainant stated that having viewed the files he was unhappy about their content [redacted] and asked that section 38 (Health and Safety) of FOIA be applied to reclose the files.
19. TNA arranged for a Reclosure Panel (the Panel) to consider the application. On 7 February 2014 the Panel recommended that the files remain open and in the public domain on the grounds that there were no legal grounds to allow TNA to reclose the files.
20. In February 2014 the complainant wrote to TNA of his '[redacted]' and that the decision against reclosure seemed to '*contradict, even deny the whole purpose, spirit and protection (to living relatives) underpinning Section 38.*' He asked to appeal the decision.
21. The appeal went to the Acting Keeper and Acting Chief Executive (the Keeper) who upheld the decision on 2 April 2014 as there were no legal grounds for reclosure of the files. Section 38 of FOIA had been considered but the Keeper was under a statutory obligation to make the records available for inspection.
22. The complainant appealed to the Independent Complaints Reviewer (ICR) who asked TNA to undertake a further complaint review. A review of the complaint process took place and the outcome issued on 10 July 2014.
23. The complainant asked the ICR to undertake an independent review.
24. The ICR provided the outcome of its independent review on 14 November 2014 that:

- Given these facts, I cannot find that the processes employed in this case were inappropriate in light of the issues raised and your own [redacted] background and situation, as there is no evidence of maladministration and all of your representations were taken into account in reaching decisions. Accordingly I do **not uphold** this aspect of your complaint.
- Hence I cannot find that TNA has failed to take account of the effect what has happened might have on your [redacted], and I do **not uphold** this aspect of your complaint.
- I am satisfied that a thorough review of your complaint was carried out and that the Service Quality and Complaints Manager spent time and care to ensure that she had understood what had happened throughout the processes of consideration of your reclosure application and appeal, and to explain this to you in a straightforward way.

25. In addition to this complaint process the complainant made 10 FOIA requests to TNA:

- May and October 2014 - 2 requests for the viewing figures of the 2 BN62 files. (information provided)
- November 2014 – copies of 2 documents used by the Reclosure Panel. (Some information provided)
- November 2014 – Identities of members of the public who viewed the file [redacted] (information withheld)
- June and August 2015 – 2 requests about statistics for reclosure requests relating to files within the BN series. (information provided)
- September 2015 – Identities of the Reclosure Panel (information withheld)
- September 2015 - request for the viewing figures of the 2 BN62 files. (information unchanged and provided)
- December 2015 - information relating to the TNA application of the 'substantial distress test' referred to in tribunal case decision notices. (Explanation provided. Also guidance that continued correspondence on the same or similar subject had the potential to be refused by TNA as vexatious.)

- January 2016 – the request of this case concerning the number of FOI requests that have been refused by TNA on grounds of their being 'vexatious' in the last 5 years.
26. TNA have stated to the Commissioner that it accepts that taken in isolation, the final request in January 2016 *'does not seem particularly vexatious'*. However, TNA observe that *'almost without exception (the) information requests...can be traced back to his original enquiry into the opening of the two files within the BN series.'*
  27. TNA stated that over the course of the correspondence the complainant has *'persisted in his argument that [file names redacted] be re-closed from public view'*. The issue that the complainant *'is pursuing has "already been conclusively resolved" and has been "subjected to some form of independent investigation"*.
  28. The complainant has provided much correspondence for the Commissioner and on 5 September wrote to provide a number of reasons why he should not proceed [redacted] but confirmed that he wished to proceed - to see this part of the process through to a conclusion.
  29. The complainant has made references to section 38 (Health and Safety)  
*'If my faith in Section 38, or the Freedom of Information Act, or those interpreting it has been misinformed, misplaced or misguided, then so be it: my aim throughout this most difficult journey has been to pursue what I understood to be JUSTICE. It was never my intention to be disrespectful, offensive or provocative...'*
  30. The Commissioner understands that the content of the BN62 files caused [redacted]. However, section 38 (Health and Safety) was considered by TNA as part of the process to consider the reclosing of the 2 BN62 files and has not been used by TNA to withhold any information requested under FOIA. In this case, TNA cited the vexatious provision at section 14(1) of the FOIA to refuse the FOIA request and this is the focus and scope of the Commissioner's investigation.
  31. The Commissioner has taken into account the context and background to the request, the full correspondence provided by the complainant and the public authority and considers that the complainant is attempting to reopen an issue which has already been comprehensively addressed by TNA and which has been subjected to independent scrutiny by the Independent Complaints Reviewer.
  32. Therefore, the Commissioner considers that the complainant's persistence has reached the stage where it could reasonably be described as obsessive.

**Is the request designed to cause disruption or annoyance?**

**Does it have the effect of harassing the public authority?**

33. The Commissioner considers that a requester is likely to be abusing the section 1 rights of the FOIA if he uses FOIA requests as a means to vent anger at a particular decision, or to harass and annoy the authority, for example by submitting a request for information which he knows to be futile. When assessing whether a request or the impact of dealing with it is justified and proportionate, it is helpful to assess the purpose and value of the request.
34. The FOIA is generally considered applicant blind, but this does not mean that a public authority may not take into account the wider context in which the request is made and any evidence the applicant has imparted about the purpose behind their request.
35. TNA have stated that in comparison with some of their large volume enquirers, the complainant has not made a large volume of requests but it is the nature of the requests which are being considered as imposing a detrimental effect. TNA took several precautionary steps to mitigate the use of section 14. For example, it established a single point of contact to manage the correspondence and understand the nature of the many requests.
36. TNA has considered the purpose and value of these ongoing requests. Over the 5 years, the requests have become increasingly of little further public interest or value. The volume of correspondence all relates to the single issue to reclose the 2 BN62 files and serves no wider benefit to the public. From the Commissioner's guidance, TNA's position is that the complainant is 'abusing their rights of access to information by using the legislation as means to vent their anger at a particular decision.'

*'Taking into account this long and complex history TNA was forced to come to the conclusion that no matter how helpful, accommodating, professional or understanding we may be (the complainant) would continue to make information requests which related to this same topic.'*

37. TNA stated that over the years it has provided advice but has now concluded that

*'additional information, guidance or advice (be that in a formal Freedom of Information capacity or via business as usual channels) only leads to more information requests. These additional requests have the clear intention to reopen issues that have already been considered at length...and closed.'*

38. The Commissioner has considered all the correspondence presented to him and found that there is sufficient evidence to suggest that the requests were vexatious in that they were in pursuit of a personal matter and are without merit or value to the public. The complainant is attempting to reopen an issue which has already been comprehensively addressed and conclusively resolved by TNA and the Independent Complaints Reviewer.
39. The Commissioner has also considered the purpose of the request in the context of the other correspondence and taking into account the obsessive persistence of the complainant, finds that the effect is to harass the public authority.

### **The Commissioner's decision**

40. The Commissioner has considered both TNA's arguments and the complainant's position regarding the information request. Taking into consideration the findings of the Upper Tribunal in Dransfield that a holistic and broad approach should be taken in respect of section 14(1), the Commissioner has decided that TNA was correct to find the request vexatious. She has balanced the purpose and value of the request against the detrimental effect on the public authority and is satisfied that the request is obsessive and has the effect of harassing the public authority. Accordingly, the Commissioner finds that section 14(1) has been applied appropriately in this instance.



## Right of appeal

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41. 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](mailto:GRC@hmcts.gsi.gov.uk)

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

42. 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.
43. 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**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**