

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 4 October 2017

**Public Authority:** Ministry of Justice  
**Address:** 102 Petty France  
London  
SW1H 9AJ

#### **Decision (including any steps ordered)**

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1. The complainant requested information about the duties and responsibilities of sessional prison chaplains and payments made to them.
2. The Commissioner's decision is that the Ministry of Justice relied correctly on the section 14(1) FOIA exemption (vexatious or repeated requests).
3. The Commissioner also decided that in failing to respond to the request within the statutory timescale, MOJ had breached section 10(1) FOIA (time for compliance). As a response has been provided, the Commissioner does not require MOJ to take any further steps.
4. The Commissioner does not require the Ministry of Justice to take any steps to ensure compliance with the legislation.

## Request and response

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5. The complainant wrote to the Ministry of Justice (MOJ) and requested information in the following terms:

On 18 August 2016 (request 1) he asked:

- "1. Please provide full details of the pay scale/attendance rate for sessional prison Chaplains?*
- 2. What funding – if any and or what purposes does the MOJ/NOMS provide to Jewish Visiting?*
- 3. Where in NOMS financial accounts are the figures for funding religious organisations to be found?*
- 4. Are such figures available in respect of each individual faith organisation?"*

On 29 August 2016 (request 2) he asked:

- "1. Please provide me with a copy of the PSO/PSI that details the remuneration rates and travelling expenses paid to sessional chaplains of all religious dominations*
- 2. Please provide the data that explains why*
  - a) only chapter 15 of PSI [Prison Service Instruction] 37/2013 is available in the prison library at HMP Wakefield*
  - b) who authorised the restriction."*

On 19 September 2016 he made a request (request 3), asking:

*"Please provide me with copies – not summaries – of all recorded information detailing the duties and responsibilities of sessional prison chaplains."*

Also on 19 September 2016 (request 4), he requested:

*"Monies distributed by the Ministry of Justice to Religious Organisations  
Ministry of Justice: Financial Accounts for 2013/14 and 2014/15*

*Please provide me with a list of the religious organisations which the Ministry of Justice funds – to any extent – through disbursements, grants or financial contributions of any kind.*

*Please provide me with a record of the amounts received by such religious organisations during the financial year 2013/14 and 2014/15."*

6. On 18 October 2016 MOJ responded. MOJ said that it had aggregated the requests as they all related to the funding and work of religious organisations within MOJ facilities and those of the then National Offender Management Servicer (NOMS). MOJ refused the request relying on the section 12(1) FOIA exemption (costs of compliance). MOJ said, outside of FOIA and on a discretionary basis, that copies of all PSIs should be held in the prison library and could be accessed there.
7. On 22 October 2016 the complainant wrote to MOJ accepting that requests 1 and 3 were substantially similar and that they sought the same recorded information which, he said, must be readily available. He said that MOJ had delayed responding to request 1 so he had been obliged to write again. He said that request 4, which was one of two FOIA requests submitted on the same day, should not have been conflated with requests 1 and 3.
8. Following an internal review MOJ wrote to the complainant on 19 December 2016. MOJ maintained its reliance on section 12(1) FOIA to refuse the request and additionally relied on the section 14(1) FOIA (vexatious or repeated requests) exemption. The internal review did, however, overlook the MOJ's breaches of section 10(1) FOIA (time for compliance) time limit in its late responses to requests 1 and 2. It also referred the complainant to website links which are available to members of the general public who have internet access but not to prisoners who do not have internet access.

## **Scope of the case**

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9. The complainant contacted the Commissioner on 27 December 2016 with concerns about the way his request for information had been handled. He said that MOJ had conflated three separate requests and that this conflated request was the fourth in a sequence of requests to MOJ on chaplaincy matters. The previous three requests had been denied by MOJ, decisions upheld by the Commissioner but his appeals to the First Tier Tribunal (Information Rights) ("the Tribunal") had all been upheld. He said that MOJ had been pre-disposed wrongly to refuse this request. He denied that the tone of his correspondence with MOJ had been aggressive or abusive. He said that MOJ had a vested and predetermined interest in claiming that the tone of his correspondence, which was a subjective opinion, was offensive - which he denied.
10. The Commissioner considered MOJ's application of section 14(1) FOIA. She has considered the detailed representations from the complainant and MOJ, including those representations to MOJ which predated his

appeal to the Commissioner, and MOJ's supplementary responses to questions she put to MOJ during her investigation.

11. In the light of her findings on the application of section 14(1) FOIA by MOJ, the Commissioner did not consider the MOJ application of section 12(1) FOIA.

## Reasons for decision

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### Section 14 - vexatious or repeated requests

12. Section 14(1) FOIA states that section 1(1) FOIA does not oblige a public authority to comply with a request for information if the request is vexatious. There is no public interest test.
13. 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 County Council & Dransfield*<sup>1</sup>. The Tribunal commented that the term 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.
14. In the Dransfield case, 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 authority and its staff), (2) the motive of the requester, (3) the value or serious purpose of the request and (4) harassment of or distress to staff.
15. The Upper 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). The Commissioner has*

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<sup>1</sup> <https://www.judiciary.gov.uk/judgments/info-commissioner-devon-county-council-tribunal-decision-07022013/>

*published guidance on dealing with vexatious requests<sup>2</sup>. That guidance includes a number of indicators that may apply in the case of a vexatious request. 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 the case will need to be considered in reaching a judgement as to whether a request is vexatious.*

16. As discussed in the Commissioner's guidance, the relevant consideration is whether the request itself is vexatious, rather than the individual submitting it. However, a public authority may also consider the context of the request and the history of its relationship with the requester when this is relevant. The Commissioner's guidance states:

*"The context and history in which a request is made will often be a major factor in determining whether the request is vexatious, and the public authority will need to consider the wider circumstances surrounding the request before making a decision as to whether section 14(1) applies".*

17. Sometimes it will be obvious when a request is vexatious, but sometimes it may not be. In that respect, the Commissioner's guidance states:

*"In cases where the issue is not clear-cut, the key question to ask is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress".*

18. The Commissioner considered the representations received from both parties.

#### *The complainant's view*

19. The complainant said that MOJ's Chaplaincy HQ appeared to be pre-disposed to wrongly refuse his requests, probably because he was a prisoner. The instant matter was the fourth in a series of requests he had put on chaplaincy matters within the past 12 months. MOJ had refused the three previous requests, and had been supported in them by

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

the Commissioner, but those previous decisions had all been overturned by the Tribunal on appeal.

20. He did not accept that it was correct for his requests to be conflated saying that simply enabled MOJ to claim that cost limits applied.
21. He accepted that requests 1 and 4 were for the same information but said that, because MOJ had breached the statutory time limit in its response to request 1, he had essentially resubmitted that request. He added that the recorded information requested in request 1 and 4 must be readily available.
22. The complainant said that the information requested in request 3 should be contained in Prison Service Instruction PSI 37/2013 and should have been available to him in the prison library but it was not.
23. As to abusive or aggressive language, he said that his remarks did not go beyond the level of criticism a public authority or its employees should reasonably expect to receive. He did not accept that the words he had used amounted to abusive or aggressive language, nor did they amount to a personal grudge. The relevant officer's name had been on almost all of the relevant documents and he had done no more than criticise the person he believed to have been responsible. He said that MOJ had made a subjective assessment of the tone of his correspondence, done by someone who had a vested and predetermined interest in claiming that his tone had been aggressive and abusive.
24. The complainant said that his letters had done no more than speak truth to power and the tone, where critical, was justifiably so; no one who behaved ineptly and in breach of statute was, or should be, exempt from criticism. Such improper behaviour had been repetitive and needed to be viewed in the context of the three MOJ decisions that the Tribunal had overturned on appeal; he said that a fourth Tribunal case had been abandoned by MOJ.
25. He was concerned at what he saw as a pattern of repeated delays by MOJ in responding to his information requests. He said that for MOJ to fail to comply with FOIA and the Commissioner's guidelines, and then take umbrage because a prisoner had said what MOJ took as the audacity to be critical, was complete and utter arrogance. The Tribunal cases that had been decided in his favour entitled him to be critical.

*The MOJ view*

26. MOJ said that it had reviewed the case extensively following the complaint to the Commissioner and before submitting representations to her. However, MOJ had decided to continue to rely on section 14(1) FOIA as it still considered the requests to be vexatious.

27. MOJ explained that the original requests had been handled by its Chaplaincy HQ team, now a part of Her Majesty's Prison and Probation Service (HMPPS). MOJ, in its response dated 18 October 2016, had conflated the four requests and refused to provide the requested information citing section 12(1) FOIA (cost of compliance). On 19 December 2016, following an internal review, MOJ had revised its position citing section 14(1) FOIA to refuse all three requests.
28. Despite ceasing to rely on section 12(1) FOIA, MOJ had continued to conflate the requests. Request 1, though dated 18 August 2016, had not been received by MOJ until 30 August 2016. Request 2, dated 29 August 2016, had been received by MOJ before it had been able to complete its response to request 1. The complainant had sent in three similar requests within 33 days of each other; they had then been aggregated as the subject matter all followed the theme of processes, funding and procedures of sessional chaplaincy services which supported the practice of religious faith in prisons. Other correspondence from the complainant had followed other themes and subject matters.
29. MOJ recognised that it had been responsible for delays in its responses but said that a coherent and comprehensive response to the four requests had been appropriate, which is what it had provided. MOJ also accepted that the delay, perhaps compounded by postal delays, had acted as a catalyst for further requests which had then overlapped. MOJ recognised that the delay had been frustrating for the requester but said that did not excuse the derogatory and abusive tone and language of his subsequent correspondence or his addressing personal insults to individual members of staff.
30. MOJ said it has been responding to the complainant's correspondence for many years. In the last year alone there had been 78 FOIA requests from him, some eight of which had led to ICO investigations. It considered that this request was part of a steady and persistent series of FOIA requests and that answering it offered no prospect of satisfying the complainant and would not result in the FOIA and other requests stopping. MOJ acknowledged that an individual request may not be vexatious in isolation, but said that when considered in the context of a long series of overlapping requests or other correspondence it may form part of a wider pattern of behaviour that is recognisably vexatious. It considered that this complainant's requests, when taken in context with the many other information requests and other correspondence received from him, could fairly be regarded as vexatious.
31. MOJ said that the complainant's tone and language had been correctly characterised as abusive on account of the aggressive words used and the personal insults directed to a named member of its staff which was not acceptable. MOJ said the complainant had written that:

*"[name redacted] seems blinded by motivated by [sic] obduracy due to a recent ruling by the Information Tribunal".*

*"Clearly [name redacted] lacks any informed understanding of the Freedom of Information Act and, in particular, the duty incumbent upon the public authority under s 16 of the Act to provide advice and assistance"*

*"It is entirely inappropriate that [name redacted] should use her laggardly incompetence and the breach of the provisions of an Act of Parliament in order to seek to justify her failure to provide a response".*

*"[She] not only omits to apologise for her incompetence in failing to provide a response within the time limits stipulated by the Act but she has the unmitigated gall to "advise" me regarding the cost to the public purse of my requests and the pressure placed on her department to respond."*

32. MOJ said that the complainant's actions had created the grounds for his own appeal. He had ignored MOJ's advice on how to refine his initial request, had submitted overlapping requests, including one for virtually the same information, and had directed inappropriate accusations and language against one member of staff. Abusive and derogatory language would not be tolerated by MOJ. Frustration was no excuse for such language; no member of staff deserved to feel threatened whilst carrying out their duties. MOJ said it had a duty to protect its staff from such abuse which amounted to harassment and caused them distress.
33. MOJ said that, added to the number of other requests the complainant had sent in at that time, the duplicate request, a request for an internal review and the additional requests had each been submitted within days of one another and were therefore overlapping requests. The continuing correspondence and overlapping requests added further burden to MOJ. While work was underway on the initial request, the additional requests were then added to the workload. The HMPPS Chaplaincy HQ Team was relatively compact with finite resources. The task of identifying exactly what information was needed was lengthy and the overlapping requests burdensome for the team.
34. MOJ added that its Chaplaincy team had been the most appropriate team to lead on these requests, which related to the same subject and only they had the appropriate subject knowledge and access to the relevant local teams. The requests from the complainant had a detrimental impact on the team's ability to undertake the full range of its duties and support all of the chaplains engaged by HMPPS. MOJ needed to protect its team from such burdens.



35. MOJ said it had weighed the value of the request against its burden and impact. In this regard MOJ considered that the burden from meeting the requests would be disproportionate as it was not clear that there was any wider value in them beyond the requester's own personal interests.
36. MOJ considered that the request was vexatious because of the volume, pattern, and frequency of correspondence; along with the burden it placed on MOJ and especially the relevant business unit.
37. The complainant referred to difficulty he had encountered in locating a specific PSI in the prison library. During her investigation, MOJ told the Commissioner that circulation of the PSI had been considered. It was not a sensitive document but was lengthy and contained mostly internal financial policy and process information, as well as some staff contact details. Given the length of the document, and the fact that it was largely an internal document, MOJ had decided to make only the chapter which was considered most relevant to prisoners, available in the library. MOJ explained that, as with any other official document not found in a prison library, prisoners could request it. If the requester wanted a copy they were charged a fee per sheet, or they could ask for it to be 'made available in the library' without charge. MOJ added that the complainant already made extensive use of his prison library and was understood to be familiar with its processes.

*The Commissioner's view*

38. The Commissioner acknowledges that there are many different reasons why a request may be vexatious, as reflected in her guidance. There are no prescriptive 'rules', although there are generally typical characteristics and circumstances that assist in making a judgement about whether or not a request is vexatious. A request does not necessarily have to be about the same issue as previous correspondence to be classed as vexatious, but equally, the request may be connected to others by a broad or narrow theme that relates them. A commonly identified feature of vexatious requests is that they can emanate from some sense of grievance or alleged wrong-doing on the part of the authority. As the Upper Tribunal in Dransfield observed:

*"There is...no magic formula – all the circumstances need to be considered in reaching what is ultimately a value judgement as to whether the request in issue is vexatious in the sense of being a disproportionate, manifestly unjustified, inappropriate or improper use of FOIA".*

39. In her guidance on dealing with vexatious requests, the Commissioner recognises that FOIA was designed to give individuals a greater right of access to official information with the intention of making public bodies

more transparent and accountable. While most applicants exercise this right responsibly, she acknowledges that a few may misuse or abuse FOIA by submitting requests which are intended to be annoying or disruptive or which have a disproportionate detrimental impact on a public authority.

40. The Commissioner expects public authorities to keep in mind that meeting their underlying commitment to transparency and openness may at times involve absorbing a certain level of disruption and annoyance and lead to their bearing a necessary burden.

*Was the request vexatious?*

41. The Commissioner considered both the MOJ arguments and the complainant's position regarding the information requested in this case.
42. As in many other cases which give rise to the question of whether or not a request is vexatious, the evidence in the present case showed a history of previous and subsequent information requests. In this case, MOJ considered that the context and history, which included a steady and persistent series of FOIA requests continuing over many years, strengthened its argument that the request was vexatious.
43. MOJ found that compliance with the request would impose a burden on it, arising from the resources and staff time that it has already spent on addressing the complainant's numerous information requests and related correspondence, and the resources it would expend if it were to comply with this request. MOJ felt that the burden imposed on the small chaplaincy team by some of the earlier requests had already been considerable and would be exacerbated by this request. It might have been possible for the request to be refined to make it less burdensome for MOJ but the complainant would not consider refining it.
44. MOJ believed the request was motivated by the complainant's wider grievances and had little serious motive or purpose beyond harassment and disruption to its work. MOJ considered, from its experience with earlier FOIA requests, that responding to this request would simply result in further requests which would also lack merit.
45. The Commissioner has noted that the complainant considers that MOJ has been unwilling to comply with his requests because he is a serving prisoner who had had the 'audacity' to 'speak truth to power'. The Commissioner, in her investigation, saw no evidence to support the complainant's view on this and she accepted the MOJ evidence that these four requests had no particular merit or added value to the wider public interest.

46. The complainant saw, in the overturning by the Tribunal of some earlier decisions by MOJ, evidence that he was being discriminated against. To the extent that the MOJ stance in those matters had been supported by the ICO he was inclined to see that as evidence of bias against him by the Commissioner. For the avoidance of doubt, the Commissioner makes clear that she has determined this matter on its merits and has not had regard for the complainant's past history with her Office in other matters.
47. The Commissioner noted the complainant's concerns that her staff had, in his view, poorly investigated some previous matters in which her decision was subsequently overturned by the Tribunal on appeal. She noted too his description of the ICO caseworker in this matter as "gullible and incapable of impartially investigating any issue involving MOJ", adding that, in his investigatory work, he had shown "either stupidity or unacceptable arrogance and had been more poodle than watchdog".
48. The Commissioner acknowledges the impact on MOJ's resources of dealing with the complainant's requests, when considered alongside the voluminous nature of the other requests, appeals and correspondence regularly submitted by him over a period of many years. She accepts that this has caused a significant level of disruption and irritation to it and that dealing with them created a burden on MOJ and risked impacting on service levels afforded to other FOIA applicants. She was concerned that the abrasive remarks the complainant had directed against individual MOJ staff, which in her view went beyond what could be considered "reasonable comment", constituted harassment and had caused distress.
49. Having looked at the pattern of the complainant's requests, the Commissioner also accepted that any response given by MOJ would be unlikely to be the end of the matter and would be likely to lead to follow-up requests from the complainant. She is of the view that this would extend the life of the complainant's use of the FOIA to address his grievances with MOJ which would impose a further consequential burden on it.
50. The Commissioner considers that a public authority should be mindful to take into account the extent to which oversights on its own part might have contributed to a request being generated. If the problems which an authority faces in dealing with a request have, to some degree, resulted from deficiencies in its own handling of previous enquiries by the same requester, then this will weaken the argument that the request, or its impact upon the public authority, is disproportionate or unjustified.

51. In these matters the Commissioner has recognised delay by MOJ and also that it misdirected the complainant to obtain information from websites, when it knows he has no access to the internet. The complainant alleged non-availability of a PSI but, following her investigation, the Commissioner did not accept that this aspect of the complaint had been justified. She found that MOJ had indeed chosen not to put the relevant PSI in the prison library. However, she also found that the complainant could have requested the PSI but had not done so; he had merely complained that it was not there and so had not sought to mitigate the consequences for himself which he could and perhaps should have done.
52. The Commissioner considered whether the delay and website reference lifted the requests out of the vexatious category but decided that they did not. The delays the complainant had experienced were not out of scale with similar delays by MOJ in handling other requests, a matter that she is addressing separately with MOJ.
53. Some aspects of MOJ's handling of these requests, the delays, the references to websites that he could not access as a prisoner, and changes in exemptions being relied upon, have caused a level of frustration for the complainant but they do not justify the level of abuse that the complainant directed at MOJ and a named individual officer.
54. MOJ told the Commissioner that it had not applied the section 14 FOIA exemption lightly; in 2016 only 33 out of 4495 cases had been treated as vexatious. The exemption was used sparingly and only after very careful consideration. The purpose of section 14 FOIA is to protect public authorities and their employees from unreasonable demands in their everyday business. In her guidance, the Commissioner recognises that dealing with unreasonable requests places a strain on public authorities' resources and interferes with the delivery of mainstream services and answering reasonable requests. Furthermore, these vexatious requests can also damage the reputation of the legislation itself.
55. On the basis of the evidence provided, and taking into account the findings of the Upper Tribunal in Dransfield that an holistic and broad approach should be taken in respect of section 14(1) FOIA, the Commissioner is satisfied that the request meets the Tribunal's definition of "*manifestly unjustified, inappropriate or improper use of a formal procedure*" and that it was vexatious within the meaning of section 14(1) FOIA.
56. Accordingly, the Commissioner decided that MOJ was entitled to apply section 14(1) FOIA to refuse the request.

### **Section 10 – time for compliance**

57. Section 10(1) of the FOIA states that on receipt of a request for information a public authority should respond to the applicant within 20 working days. From the information provided to the Commissioner in this case it is evident that MOJ did not respond to the requests within the statutory time frame and so it breached section 10(1) FOIA.

### **Other matters**

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58. As well as issuing this notice, the Commissioner has made a separate record of the failure by MOJ to respond to the complainant's requests within the statutory timescale. She has noted this as part of her work in monitoring the continuing performance of MOJ.

## Right of appeal

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59. 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: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

60. 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.
61. 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 .....**

**Jon Manners**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**