

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 31 January 2019

Public Authority: The Foreign and Commonwealth Office
Address: King Charles Street
London
SW1A 2AH

Decision (including any steps ordered)

1. The complainant submitted a request to the Foreign and Commonwealth Office (FCO) about a complaint he made to it regarding its consular service. The FCO refused to comply with the request on the basis of section 14(1) of FOIA because it considered it to be vexatious. The Commissioner has concluded that the request is vexatious and therefore the FCO is not obliged to respond to the request by virtue of section 14(1) of FOIA.

Request and response

2. The complainant submitted the following request to the FCO on 28 July 2018:

'I made an FCO complaint, 2016/03/S2/0011. As confirmed by your Feedback Consular Services on 16th March 2016, this complaint included everything made in my emails to the FCO of 10th, 11th and 14th March 2016. In particular, these included a complaint against a named FCO manager in relation to a photo of them drinking champagne apparently at the Lazy Bear Bar in the West End of London on, I believe, the 10th March 2016. The champagne promotion was described by the bar as a tea time event and indicated it was for office hours purchases / consumption only. The FCO manager can be clearly seen in business / office attire in the photo previously provided to you

but which is omitted from the FCO Request itself in order to conform with the Data Protection Act 1998.

The photo in question being accessed by me by way of a simple public search on Google and which photo contained accompanying text identifying the FCO manager, that they were / are an FCO manager, and the details of the event. It was also made clear that the two people in the photo were not FCO / government employees but private sector businesspeople. The identity of the person taking the photo is unknown, though it may have been the FCO director previously identified to you.

My complaint 2016/03/S2/0011 included whether this FCO manager was actually taking time off work when they were meant to be working and being paid to be at work. And / or, whether the champagne was paid for by the FCO, perhaps through the FCO manager's expenses. And / or whether the champagne was paid for by the said businesspeople as a potential bribe.

My FOI questions are;

- 1) Did the FCO conduct an investigation into the champagne event? If not, why? If so, what were the findings as they were never reported to me?*
 - 2) Was this FCO manager drinking champagne during work hours (were they paid while they were drinking champagne)? If so, who ultimately paid for the champagne?*
 - 3) If the champagne was paid for by the businesspeople, given the context of the photo text (that the FCO manager was clearly known to be an FCO manager), does this breach any FCO code of conduct?*
 - 4) Was the previously named FCO director present at this champagne event?*
 - 5) Did the FCO manager return to their office at the FCO after having drunk champagne? If so, how long were they absent from their office given the Lazy Bear Bar is some distance from their place of work?'*
3. The FCO responded on 28 August 2018 and explained that it considered the request to be vexatious and therefore it was refusing to answer it on the basis of section 14(1) of FOIA.
 4. The complainant contacted the FCO on the same day and asked it to conduct an internal review of this response.

5. The FCO informed him of the outcome of the internal review on 21 September 2018. The review upheld the decision to apply section 14(1) of FOIA as a basis to refuse to answer the request.

Scope of the case

6. The complainant contacted the Commissioner on 24 September 2018 to complain about the FCO's decision to refuse to comply with his request on the basis of section 14(1) of FOIA.

Reasons for decision

Section 14(1) - vexatious

7. In the Commissioner's view section 14(1) is designed to protect public authorities by allowing them to refuse any requests which have the potential to cause a disproportionate or unjustified level of disruption, irritation or distress.
8. This will usually involve weighing the evidence about the impact on the authority and balancing this against the purpose and value of the request. This should be judged as objectively as possible; in other words, would a reasonable person think that the purpose and value are enough to justify the impact on the public authority. Where relevant, this will involve the need to take into account wider factors such as the background and history of the request.

The FCO's position

9. In order to support its position, the FCO set out what it considered to be the relevant background to this complaint. It explained that in January and February 2016 the complainant sent it a number of emails regarding his dissatisfaction with assistance he had received from Consular staff in relation to legal proceedings he was subject to in Portugal. The FCO explained that it had informed the complainant that it had accepted this complaint and it would consider this under its consular complaints procedure.
10. According to that procedure the FCO explained that the complainant received a stage 1 response on 7 March 2016 (a copy of which was shared with Commissioner). The FCO noted that this letter outlined the nature of the original complaint and the advice to the complainant in that regard; namely that the complaint related to his legal situation and that the FCO could not interfere in the legal processes of another

country. The stage 1 response also concluded that the consular staff had acted properly.

11. The FCO explained that following receipt of this stage 1 response, the complainant sent numerous emails to the Consular team in London and the Consulate in Lisbon expressing his dissatisfaction with that response. The FCO explained that these emails contained abusive and threatening language and specifically targeted the officer who had signed the stage 1 response, including making personal allegations against her which are the same as those raised in the FOI request which is the subject of this decision notice. The FCO explained that the complainant also made allegations and threats against the officer in question on social media.
12. The FCO explained that as part of the consular complaints procedure, the original complaint and the stage 1 response were reviewed by the Director of Consular Services. The outcome of that further review was communicated to the requester in a stage 2 response letter dated 3 May 2016 (a copy of which was also shared with the Commissioner). In addition to addressing the original complaint, the letter also addressed the abusive emails sent by the complainant and his harassment of FCO staff. The letter explained that it would not respond to further correspondence with him in relation to his original complaint unless he raised new and relevant information in that regard. The FCO noted that as is standard the stage 2 letter advised the complainant that should he wish to take his complaint further he should contact the Parliamentary Ombudsman. The FCO understood that he did this but the Ombudsman chose not to investigate.
13. The FCO emphasised to the Commissioner that the personal allegations made against the officer who signed the stage 1 response letter were not acknowledged as a separate complaint and the FCO did not undertake to investigate them. The FCO explained that such allegations were considered to be irrelevant to the original complaint as well as being unfounded and defamatory.
14. With regard to the complainant's FOI request itself, the FCO explained that it raised the same personal allegations he made in his earlier correspondence with the Consular Complaints team. It explained that in taking into account the FCO's wider interactions with the complainant, it considered his FOI request to clearly be vexatious for the following reasons:

15. It argued that in the words of the Upper Tribunal decision in Dransfield, this request was a '*manifestly unjustified, inappropriate or improper use of a formal procedure*'.¹ In support of this view the FCO noted that after exhausting the consular complaints process, the complainant was now using the FOI process inappropriately as a means of continuing to vent his anger at its legitimate responses to that complaint, and to pursue unrelated, and unfounded, allegations against a specific member of staff who was involved in responding to that complaint.
16. The FCO suggested that it appeared that the complainant had developed a personal grudge against the member of staff who signed the stage 1 consular complaint letter due to his dissatisfaction with the response. In support of this view, the FCO noted that on receiving the letter he started making accusations against her which had no relevance to the complaint, and continued to target her, and other colleagues, in an abusive, invasive and threatening manner. The FCO explained that this has caused her, and her colleagues, an unjustified level of distress. The FCO explained that it had a clear duty of care to protect its employees from this type of abuse. It deemed that further consideration of this FOI request, which continued to raise the same unfounded and defamatory allegations against its staff, would add to that distress.
17. The FCO pointed to the comments of Lady Arden in Court of Appeal case Dransfield v Information Commissioner and Devon County Council [2015] EWCA Civ 454 (14 May 2015)); she observed that '*...the emphasis should be on an objective standard and that the starting point is that vexatiousness primarily involves making a request which has no reasonable foundation, that is, no reasonable foundation for thinking that the information sought would be of value to the requester or to the public or any section of the public.*' (Para 68).
18. The FCO argued that in its view there was no reasonable basis for making this request. The complainant had obtained a photograph from the internet of a member of staff against whom he has a personal grudge and sought to infer a number of defamatory allegations against this individual on the basis of it. The FCO considered that the complainant was pursuing a highly personalised matter and that the information sought had no inherent purpose or value to the complainant (other than to allow him to continue his harassment of its staff) or to the wider public.

¹ Information Commissioner v Devon County Council & Dransfield [2012] UKUT 440 (AAC), 28 January 2013), paragraph 27

19. Finally, the FCO explained that it also considered the request to be vexatious because it was linked to correspondence the tone and language of which is abusive and aggressive, and which went beyond the level of criticism that a public authority or its employees should reasonably expect to receive.

The complainant's position

20. The complainant explained that he submitted a complaint to the FCO in March 2016 about the conduct of the particular member of staff. In this complaint he alleged that the staff member in question was *'drinking champagne with friends at a West End bar while they should have been at work /while they were on duty'*. The complainant explained that he provided evidence to support this allegation. However, he argued that although the FCO accepted his complaint for consideration, it never reported its findings back to him as it said it would. The complainant argued that it seemed very clear that the FCO were covering up for the staff member in question and trying to protect the reputation of the FCO itself.
21. The complainant acknowledged that he was dissatisfied with the outcome of the FCO's stage 1 review process, but that did not change the fact that this was a matter of significant public interest. He argued that if he was correct that the staff member in question was drinking alcohol whilst on duty, and this was covered up by her seniors, then this amounted to a criminal offence. He explained that he had raised this matter with the Metropolitan Police but it refused to investigate citing a lack of sufficient evidence. The complainant therefore argued that he needed the FCO to confirm whether or not it had conducted an investigation into his allegations or not so that he could then a) raise this matter with his MP and the Foreign Secretary and b) perhaps in order to hand evidence to the Metropolitan Police.

The Commissioner's position

22. As noted above, as part of its submissions to the Commissioner the FCO explained that the personal accusations made by the complainant following the stage 1 response were not acknowledged as a separate complaint and the FCO did not undertake to investigate them.
23. As noted above, the Commissioner has had the benefit of reviewing the FCO's responses to the complainant, both the stage 1 and stage 2 letters. She notes that the stage 2 letter – which post-dated the complainant's allegations of behaviour by the FCO employee in question – explained that:

'I have seen the letter that [name redacted, author of stage 1 response] sent to you on 16 March 2016. I have also seen the numerous emails containing disparaging, abusive and threatening language that you have sent to consular staff in London, in Portugal, and directly to [name redacted, author of stage 1 response]. This is unacceptable and, in some cases, is incorrect and defamatory. Our customer charter asks that you treat our staff with respect and that if you are abusive we may refuse to help you. We are seeking advice on whether your actions might be deemed to be an offence under the Protection from Harassment Act 1997 and the Malicious Communications Act 1988. The FCO has a duty of care to its staff and we will not accept abusive or threatening behaviour. I would request that you now refrain from contacting [name redacted, author of stage 1 response] or any of her associates either directly or indirectly.'

24. In the Commissioner's view, considered objectively it would be reasonable to infer from this part of the FCO's response that it did not, and nor was it intending to, look in the complainant's allegations about the employee in question. On this basis the Commissioner considers that there is arguably little value in the disputed FOI request being answered precisely because the FCO's position in respect of the part 1) of the request is contained within the stage 2 response letter. Namely that no such investigation took place for the reasons outlined in that response letter and parts of 2) to 5) of the FOI request are only relevant if an investigation into these allegations actually took place.
25. Nevertheless, the Commissioner's acknowledges that from the complainant's point of view there was, at the point he submitted his request, a lack of clarity as to the scope of the FCO investigation.
26. Despite this being the case, the Commissioner is not persuaded that the purpose and value of the request are enough to justify the impact on the public authority. In reaching this decision the Commissioner has taken into account the background and history of this request. Having done so, she agrees with the FCO that the complainant appears to be pursuing a highly personalised matter aimed at a particular member of FCO staff. The Commissioner also accepts that the complainant's continued pursuance of this issue, in this context in the form of an FOI request, was likely to have the effect of harassing the member of staff in question particularly taking into account the tone and content of the previous communications the complainant had sent the FCO. The Commissioner notes that the complainant has explained that he needs the FCO to respond to his request so that he can raise this matter with his MP and/or once again approach the Metropolitan Police. For the reasons set above, the Commissioner is not clear how the FCO complying with this request would particularly assist the complainant given that the answer to his request arguably lies within the stage 2

response letter. For these reasons the Commissioner agrees with the FCO that the complainant's request is vexatious and it is therefore entitled to rely on section 14(1) of FOIA to refuse to comply with the request.

Right of appeal

27. 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

28. 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.
29. 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

Jonathan Slee
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