

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 26 June 2020

Public Authority: Natural History Museum
Address: Cromwell Road
London
SW7 5BD

Decision (including any steps ordered)

1. The complainant has requested information from the Natural History Museum (NHM) on research papers and evidence for evolutionary theory. NHM refused the request as vexatious under section 14(1) of the FOIA.
2. The Commissioner's decision is that NHM has correctly found the request to be vexatious and section 14(1) was correctly applied by NHM. She requires no steps to be taken.

Request and response

3. On 20 May 2019 the complainant made a request to the Natural History Museum (NHM) in the following terms:

"According to the NHM, 'The human lineage split from the chimpanzee lineage around seven million years ago. Fossil evidence relating to the earliest hominins that lived after this split is scarce, but it provides important clues about how our ancient relatives lived. From the six-to-seven-million-year-old Sahelanthropus tchadensis skull found in Chad, we know that they have evolved small canines, while six-million-year-old Orrorin tugenensis leg bones show that they exhibited primitive bipedalism (walking on two legs)'.

- 1) *What is all the 'fossil evidence' for the reference above?*
- 2) *What is the empirical evidence to support the date for the 'human lineage split from the chimpanzee lineage'?*

- 3) *What are the mechanism(s), procedure(s) and processes to support said split and from where did they originate?*
 - 4) *Who are the 'earliest hominins' and what is the empirical evidence for the dates attributed to them?*
 - 5) *Does the NHM agree that human evolution from an apelike common ancestor requires millions of DNA mutations?*
 - 6) *Does the NHM agree with the synopsis above [not included for brevity] and if not, please explain why?*
 - 7) *Does the NHM agree that the change from apelike common ancestor to mankind requires substantial new genes and, if so, from where did they originate?*
 - 8) *What is the empirical evidence for the apelike common ancestor and from where did said ancestor originate?*
 - 9) *What caused the demise of the apelike common ancestor? According to the NHM, 'Using pollen in sediment layers, the beach at Happisburgh, in Norfolk. Follow the progress of the research team as they realise they have found human footprints that are around 900,000 years old.'*
 - 10) *Please supply the empirical evidence from the 'pollen in sediment layers' to support the NHM statement above?"*
4. The NHM responded on 18 June 2019. It stated that in response to questions 1-9 it did not hold fossils of *Sahelanthropus* or *Orrorin* and had not undertaken research directly on this material or directly researched the common ancestry of chimpanzees or humans. For question 10 the NHM stated the information had been published in the open literature and therefore considered it was exempt from providing this on the basis of section 21 and provided a link to the information.
 5. On 20 June 2019 the complainant responded and asked, in relation to the first questions, where the categorical empirical evidence was. In regard to question 10 the complainant asked how footprints could last 900,000 years if they were found in tidal mudflats and asked the NHM to agree with an explanation he provided from answersingenesis.org. On 29 June 2019 the complainant clarified he was looking for a mathematical equation or formula showing that the footprints were 900,000 years old.
 6. NHM responded on 1 July 2019 and reiterated that the open literature explores the evidence on 900,000 year dating. In terms of asking the NHM to comment on the statement, references were provided to relevant research.
 7. The complainant wrote again on 3 July 2019 reiterating his previous questions and providing a new list of questions directed at the Happisburgh authors. NHM responded on 9 July 2019 and again stated

the answers to the questions could be found in the publications which it had already pointed to in previous correspondence.

8. The complainant wrote again on 14 July 2019 quoting a number of articles and asking further questions, many of which were statements the complainant was asking NHM to confirm as correct or explain otherwise. This correspondence was treated as a new information request by NHM who responded on 8 August 2019 stating it had considered this request to be vexatious under section 14(1) of the FOIA. The request of 14 July 2019 refused as vexatious was contained within other correspondence to the NHM, the following are the numbered (lettered) requests within this correspondence:

"(A) When one mathematically determines today's population of mankind (from the 'bottleneck' at the time of Noah – a far more accurate mathematical assessment than mankind originating hundreds of thousands of years ago – refer to my previous correspondence with [name redacted]), from a 'founding pair', does the NHM agree that makes the 'founding pair' Adam and Eve?

(B) Is the dating above correct?

(C) Furthermore has the OoAM been falsified by its own evolutionary data and if not, please explain why?

(D) Does the NHM concur the OoAM cannot possibly have a 'founding pair'?

(E) Does the NHM agree with the dating difficulties raised in the 'associated content' immediately above and if not, please explain why?

(F) With reference to the above [not quoted for brevity] doe the NHM agree:

(i) the plunging of tectonic plates causes 'magnetic polarity' and if not, please explain why?

(ii) that the 'magnetic polarity' process happens very quickly i.e. not millions or billions of years and if not, please explain why?

iii) does the model referred to above also explain 'why the sun reverses its magnetic field every 11 years' and if not, please explain why?

(iv) does the NHM agree that Dr Humphries model showing, 'magnetic reversals should be found in rocks known to have cooled in days or weeks' and if not, please explain why?

(v) does the NHM agree in respect of the earth's magnetic field, 'The clear decay pattern shows the earth could not be older than about 10,000 years' and if not, please explain why?

(vi) does the NHM agree with the sentiments expressed in reference 11 above in respect of the earth's core and magnetic field and if not, please

explain why?

(vii) is the earth's magnetic field decaying according to the Second Law of Thermodynamics and if not, please explain why?

(viii) is the earth's magnetic field billions of years old and if so, please explain why?

(ix) does the NHM agree with the figures from Dr Humphries CRSQ paper and if not, please explain why?

(x) does the NHM and evolutionists generally have a 'workable, mathematically-analyzable theory of reversals (referred to above) and if not, please explain why?

(xi) if there is no evolutionary 'workable, mathematically-analyzable theory of reversals, please explain how the earth's magnetic field has lost no energy for billions of years?

(xii) does the NHM agree with everything Dr Humphries stated above, particularly his model referred to above and if not, please explain why?

(xiii) does the NHM agree with the comments of [named redacted] above and if not, please explain why?

(G) When will the NHM fully explain and reveal everything about evolution to the public, particularly that which is contradictory and disputed and if not, please explain why?

(H) The answer given to question 11 below states the information 'should be published in a reputable peer-reviewed scientific journal'. For what purpose when there are so many disagreements and disputes between evolutionists on origins generally and with the OoAM and 'magnetic polarity' just two of many examples (please refer to all my previous correspondence and I have just scratched the surface)? Hard science should never be about consensus, that is for politicians!!

(I) When will the NHM give equal status to scientific creationism and let the public decide which they want to believe, if either?"

9. The complainant responded again on 12 August 2019 stating his belief he had been fully compliant with NHM's procedures and that although he had made a number of FOI requests these were all in a genuine attempt to illicit information from NHM to trigger debate. The complainant asked NHM to proceed with an internal review.
10. NHM conducted an internal review and responded on 6 September 2019. The internal review upheld the decision to refuse the request as vexatious under section 14(1) of the FOIA.

Scope of the case

11. The complainant contacted the Commissioner following the internal review on 6 September 2019 to complain about the way his request for information had been handled.
12. The Commissioner considers the scope of her investigation to be to determine if NHM has correctly refused to respond to the request of 14 July 2019 as vexatious under section 14(1) of the FOIA.

Reasons for decision

Section 14 – vexatious requests

13. 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.
14. 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*¹. The Tribunal commented that vexatious could be defined as the “*manifestly unjustified, inappropriate or improper use of a formal procedure.*” The Tribunal’s definition establishes that the concepts of proportionality and justification are relevant to any consideration of whether a request is vexatious.
15. In the *Dransfield* case, the Upper Tribunal also found it instructive to assess the question of whether a request is 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 or distress of and to staff.
16. 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.*”

¹ <https://www.judiciary.uk/judgments/info-commissioner-devon-county-council-tribunaldecision-07022013/>

17. 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.
18. The Commissioner has identified a number of indicators which may be useful in identifying vexatious requests, these are set out in her published guidance². The fact that a requests 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.

NHM's position

19. NHM has provided the Commissioner with its reasons as to why it applied section 14(1) of the FOIA to the requests. In doing so, it has considered the history and context leading up to the requests being made.
20. NHM explained that at the time of this request it had received eight FOI requests (10 in total including the two referred to in this decision notice) containing in excess of 100 questions in the space of less than a year (November 2018 to August 2019). In addition to this NHM had received other correspondence and questions via other channels, directed to specific individuals and to the Museum's contact centre.
21. NHM accepts that this may not on the fact of it seem to be a vast number of requests but it only receives approximately 50-60 requests a year so receiving 10 from one applicant is quite considerable. In addition to this each request contains multiple questions and are often overlapping causing a disproportionate and unjustified level of disruption to the Museum.
22. NHM states it has been engaged with the complainant for a long period of time and the volume and nature of his request, often multi-part, complex and technical in nature, require the input of various teams. NHM is not clear that there is wider public interest in the subject matter although it acknowledges it is clearly of great interest to the complainant. NHM therefore considers the burden of dealing with continued requests is disproportionate to the value of the requests.

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

23. NHM argues that the central subject of the requests is always focused on evolution and the origins of the universe. The requests can be focused on a specific article that has been published but they are centrally always about evolution. NHM has endeavoured to respond to these requests and enquiries, providing recorded information (when held), published research papers and references to wider reading in an effort to comply with the FOIA and advise and assist. NHM argues that this continued correspondence and efforts to assist lead to further arguing of points and the raising of repeated issues which have already been considered and addressed.
24. NHM states that each request that it answers leads to further requests and it is common that any article that appears on its website on the subject of evolution can generate a new information request. This impacts significantly on NHM's resources and NHM does not believe that responding to this request would be the end of the matter and instead, based on previous patterns of correspondence, would generate further requests and enquiries.
25. Turning to motive; the NHM is of the view that the requests stem from a dissatisfaction with the Museum and its scientific research areas. NHM states that it has provided the complainant with links to its published information but the requests continue to be received and take the form of questions rather than directly asking for recorded information which makes them more time consuming as they require NHM to consider if information is held that may answer the questions asked. NHM does not believe the requests are in the interests of the public or with the intention of making NHM more transparent or accountable but are to obtain information to allow the complainant to continue the debate for his own personal interests.

The complainant's position

26. The complainant is of the view that his requests are in the public interest and that NHM should continue with his requests as the bulk of his questions have gone unanswered. The complainant argues that he has asked questions of specific named members of staff who had published on the NHM website in order to try and focus his requests and reduce the number of questions. In addition he states he intentionally asked questions on a range of subjects and topics so as not to subject one individual to an excessive workload.
27. The complainant considers that some NHM staff do not want the public to object with constructive critiques or to offer a plausible alternative to evolution by way of promoting creationism.

28. He argues that NHM receives large sums of public money and this should obligate them to place in the public domain an alternative to the theory of evolution and not favour only one worldview. In addition he argues that even within evolutionary communities there is disagreement on certain subjects and topics and NHM should provide information to illicit debates.
29. In his request for internal review, the complainant stated he asked questions as often direct requests were met with a 'not held' response from NHM. The questions asked are intended to ascertain the areas the NHM may hold information on. The complainant also disputed the claim that he has made numerous requests via other channels directly to targeted staff. He argues that it was in fact a staff member at NHM veering off on a tangent in correspondence that prompted further discussion and questions from the complainant. This same member of staff directed the complainant to other staff who had published on the NHM website for further questions.

The Commissioner's decision

30. The Commissioner has carefully considered both the complainant's and NHM's arguments. She has reviewed the relevant information and evidence presented to her by both parties in order to reach her decision.
31. There are many different reasons why a request may be vexatious. 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.
32. When considering whether or not a request is vexatious, public authorities must essentially consider whether the purpose and value of a request outweighs the impact that responding to the request would have on its resources.
33. The context and history in which a request is made will often be a major factor in determining whether a 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.
34. The Commissioner does not consider this request in isolation to be vexatious. In fact it is likely that many of the questions asked and requests for opinion would not be considered requests for information under the FOIA. That being said, there are parts of the correspondence that would be requests for information as they would require NHM to consider if it held recorded information that could answer the questions.

35. When considering this request alongside the other requests and series of correspondence submitted by the complainant, the Commissioner considers the requests would place a strain on NHM's resources and contribute to the aggregated burden of complying with his requests. NHM provided the Commissioner with a log of the information requests received by the complainant and she must consider that NHM only receives a relatively small number of information requests each year of which the complainant's requests account for a significant proportion. The Commissioner considers that this does amount to a strain on resources as the requests, due to their technical and voluminous nature will require consultation with other staff and draw resources from other areas of the Museum.
36. The Commissioner's guidance states that the requester's past pattern of behaviour may also be a relevant consideration. For example, if the public authority's experience of dealing with the complainant's previous requests suggests they will not be satisfied with any response and will submit numerous follow-up enquires no matter what the response, this evidence could strengthen any argument that responding to the current request will impose a disproportionate burden on the public authority.
37. In this case, NHM considers that the complainant will continue to submit further requests for information on related matters. The Commissioner agrees that the complainant is likely to continue to submit requests regarding NHM's stance on evolution. The Commissioner notes that the complainant has been prompted to ask further questions based on the information given in response to previous requests or enquiries.
38. Turning to the serious purpose of the requests, the Commissioner understands that the complainant has a keen interest in the subject matter believing there are alternative origin theories that should be explored in the Museum, specifically creationism.
39. The complainant argues he is seeking to obtain information to illicit debate and to challenge the NHM position to only exhibit and display information on evolution rather than exploring alternatives. The Commissioner can recognise the complainant's legitimate interest in this area and is of the view that the complainant is not intending to place NHM under any undue burden by asking questions. That being said, the consequence of the requests is that NHM staff have been under an undue burden and the Commissioner is not convinced that the requests and follow questions and enquiries will have the desired purpose, should they be answered, that the complainant is looking for. The complainant is hoping that NHM will display and produce exhibits promoting other viewpoints but it is clear from NHM's responses and stance that this will not be the case.

40. The Commissioner recognises there is some merit to the complainant's arguments and she can see that this is an issue he believes in strongly and wants to promote but she is not minded to accept there is a wider interest in this subject matter. In weighing up all the factors involved here, the factor the Commissioner considers carries the most weight is NHM's reasoning that it should not be required to spend significant time answering questions and debating points when there is published research it can point to that provides its views and the reasons for this and when answering these questions and requests is placing an undue burden on NHM and diverting resources from other areas. The Commissioner also accepts that responding to this request is very unlikely to draw this matter to a close as the pattern of previous correspondence would demonstrate.
41. The Commissioner does not find that the purpose of the request outweighs the impact responding to the request would have on NHM's resources.
42. Taking all of the factors into consideration, the Commissioner finds that the request was vexatious and NHM was correct to apply section 14(1).

Right of appeal

43. 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@justice.gov.uk

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

44. 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.
45. 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

Jill Hulley
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