

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

### **Decision notice**

**Date:** **8 December 2021**

**Public Authority:** **The Information Commissioner's Office (ICO)**

**Address:** **Wycliffe House  
Water Lane  
Wilmslow  
SK9 5AF**

Note: This decision notice concerns a complaint made against the Information Commissioner ('the Commissioner'). The Commissioner is both the regulator of the FOIA and a public authority subject to the FOIA. She is therefore under a duty as regulator to make a formal determination of a complaint made against her as a public authority. It should be noted, however, that the complainant has a right of appeal against the Commissioner's decision, details of which are given at the end of this notice. In this notice the term 'ICO' is used to denote the ICO dealing with the request, and the term 'Commissioner' denotes the ICO dealing with the complaint.

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

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1. The complainant made a request for information relating to how DVLA processes personal information, and how that processing complies with the General Data Protection Regulations and the Data Protection Act 2018, how much the ICO has spent on legal fees and the ICO audit of the DVLA from 2016. The ICO has refused to comply with the request under section 14(1) FOIA as it considers the request to be vexatious and has refused to respond to parts of the request under section 17(6) FOIA.
2. The Commissioner considers that the ICO correctly applied section 14(1) and 17(6) FOIA.
3. The Commissioner requires no steps to be taken.

## Request and response

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4. On 29 March 2021 the complainant made the following request for information under the FOIA for:

1/Disclose all information held relating (broad scope, please) to you how the DVLA processes personal information, and how that processing complies with the General Data Protection Regulations and DPA18. I am particularly interested in information which relates to para 27(1) of The Road Vehicles (Registration and Licensing) Regulations 2002. The period covered for the request is 27 May 2020 to date (today).

2/How much did you spend on barrister's advice and which barrister did you use?

3/Provide the ICO audit of the DVLA from 2016. You may remove any personal data as defined by FOIA.

5. On 16 April 2021 the Information Commissioner's Office asked for the following clarification in relation to the second part of the request:

"In your second request you have asked us "how much did you spend on barrister's advice and which barristers did you use". It is not clear to me whether you are asking this question in the context of the ICO's investigation into the DVLA, or if this is a general request about barristers engaged by the ICO."

6. On the same date the complainant provided the following clarification:

"I want to know which barristers you used with regard to the ICO current investigation into the way the DVLA processes personal data, in particular its use of regulation 27 of The Road Vehicles (Registration and Licensing) Regulations 2002."

7. On 28 April 2021 the Information Commissioner's Office responded. It relied on section 17(6) in respect of the first and third parts of the request. This is on the basis of a section 14 refusal notice provided to the complainant on 31 July 2020 (case reference IC-46929-Q5Z8). In respect of the second request, it considers this to be vexatious, and therefore refused to respond pursuant to section 14 of the FOIA.

8. The complainant requested an internal review on 29 April 2021. The Information Commissioner's Office sent the outcome of its internal review on 10 May 2021. It upheld its original position.

## **Scope of the case**

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9. The complainant contacted the Commissioner to complain about the way his request for information had been handled.
10. The Commissioner has considered whether the ICO was correct when it says it is entitled to rely on section 17(6) FOIA in respect of the first and third request and whether it is entitled to refuse to comply with the requests under section 14 FOIA.

## **Reasons for decision**

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### **Section 14(1) – vexatious request**

11. In this case, the ICO had applied section 14(1) FOIA, the Commissioner has therefore considered whether the request has been correctly categorised as vexatious in this case.
12. The term 'vexatious' is not defined in the FOIA but the Commissioner has identified a number of 'indicators' which may be useful in identifying vexatious requests. These are set out in her published guidance<sup>1</sup> and, in short, they include:
  - Abusive or aggressive language;
  - Burden on the authority – the guidance allows for public authorities to claim redaction as part of the burden;
  - Personal grudges;

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<sup>1</sup> <https://ico.org.uk/media/for-organisations/documents/1198/dealing-with-vexatious-requests.pdf>

- Unreasonable persistence;
  - Unfounded accusations;
  - Intransigence;
  - Frequent or overlapping requests;
  - Deliberate intention to cause annoyance.
13. 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.
  14. The Commissioner's guidance goes on to suggest that, if a request is not patently vexatious, 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. In doing this the Commissioner considers that a public authority should weigh the impact of the request on it and balance this against the purpose and value of the request.
  15. Where relevant, public authorities also need to take into account wider factors such as the background and history of the request.
  16. The ICO explained that it has taken into account the context and history of the complainant's contact and dealings with it in ascertaining whether this request was vexatious. Firstly the complainant has made a number of FOI requests to the ICO, both via the 'What do they know' (WDTK) website and from personal email addresses - a number of these have been refused as vexatious.
  17. In respect of the second part of the request, the ICO has already highlighted to the complainant that he had made a similar request, (regarding information about legal counsel engaged by the ICO and payments made to this legal counsel). At the time it considered this information to be exempt from disclosure and the complainant was advised of this accordingly. Following this refusal a complaint was made to the Commissioner (handled under FS50856917), who determined that the ICO's application of exemptions to the requested information was appropriate. As there has already been one regulatory consideration of a similar request, it seems appropriate to say that the repetition at the second part of this request is intended to cause

annoyance to the ICO and waste the limited resources of the Information Access Team and is therefore clearly vexatious.

18. The ICO considers that the complainant has continued with a pattern of unreasonable information requests and other, general contact. It appears that this pattern of continued information requests, review requests, complaints to the regulator (as well as the other types of contact the complainant has with the ICO) is designed to cause a disproportionate and unjustified level of disruption, irritation and distress. It does not consider that there is any purpose to the request, save to cause the aforementioned irritation, and for this reason complying with the request would have a significant detrimental impact on the Information Access Team.
19. The ICO went on that overall, against just one of the complainant's email addresses, there are 162 pieces of ICO casework (complaints, advice, requests) currently on the case management system ICE360 – this does not include any of the requests the complainant has made via WDTK. A number of these pieces of casework relate either directly or indirectly to the DVLA. Whilst, of course, each request is judged on its own merits, the ICO provided this information as context for the specific information relating to the use of section 14 in relation to this request. Responding to the level of correspondence as previously described, clearly has a detrimental impact on other people who wish to use the ICO's service and serves to further justify the application of section 14 FOIA.
20. The Commissioner considers that the complainant is using the second part of the request to reopen a matter that has already been dealt with in a previous complaint under reference FS50856917.
21. In relation to all three requests, given the volume of previous requests and other correspondence relating to DVLA using one email address (which does not include requests submitted via WDTK) it is clear that this is going to cause an unjustified burden and disruption to respond to one service user.
22. For these reasons the Commissioner is satisfied in this case that the complainant's requests are vexatious under section 14(1) FOIA.

## **Section 17(6)**

23. Section 17(5) states that:

"A public authority which, in relation to any request for information, is relying on a claim that section 12 or 14 applies must, within the time for complying with section 1(1), give the applicant a notice stating that fact."

24. Section 16 (6) states that:

Subsection (5) does not apply where—

(a) the public authority is relying on a claim that section 14 applies,

(b) the authority has given the applicant a notice, in relation to a previous request for information, stating that it is relying on such a claim, and

(c) it would in all the circumstances be unreasonable to expect the authority to serve a further notice under subsection (5) in relation to the current request.

25. In relation to the first part of the request, the ICO confirmed that it is satisfied that section 14(1) did apply to this element of the request. The ICO had previously withheld information from a very similar request from the complainant, covering a three year period up to April 2020. This request was refused pursuant to section 31 on 26 May 2020 (IC-38738-F7S5). This refusal was subject to a section 50 complaint, which upheld the ICO's application of section 31 on the basis that the ICO's investigation into the DVLA was ongoing. The Decision Notice was provided to the complainant on 29 March 2021 (IC-45065-D8H5), the same day he made this new request.

26. It went on that the Information Access Officer who originally responded to the information request has documented that she checked the complainant's open DP complaint regarding the DVLA/reasonable cause issue (IC-80806-F4G1) and could see that he received an update on 22 March 2021 advising him that the ICO's investigation into the DVLA was ongoing.

27. Therefore, despite knowing that the investigation was ongoing and the regulator considered the application of section 31 appropriate whilst the

investigation was ongoing, the complainant chose to make another request, which wholly fits with the s.14(1) refusal and warning about future requests provided on IC-46929-Q5Z8.

28. In relation to the third part of the request, regarding the audit, the Information Access Team has already considered this request from the complainant multiple times and it has also been subject to a previous s.17(6) refusal in IC-48989-T5Z1 on the basis of the IC-46929-Q5Z8 s.14(1) refusal.
29. An earlier request for the unredacted audit, to which the ICO applied section 31, was the subject of a section 50 complaint. The ICO upheld the ICO's application of section 31, and the complainant received the Decision Notice on 16 April 2021 (IC-39673-F2Z8). Despite being aware that the matter was being considered, he continued to make repeat requests to the ICO for information it had already refused to provide.
30. The ICO considers that it would be unreasonable to expect it to serve a refusal notice under section 14(1) in respect of the first and third parts of the request as there has been a previous section 14 refusal provided in relation to the complainant's unreasonable persistence in his contact with the ICO regarding the DVLA. The refusal notice, sent 31 July 2020 (case reference IC-46929-Q5Z8), provided the complainant with a comprehensive overview of his contact with both the Information Access Team and the Data Protection Complaints department.
31. In this case the ICO is relying on a claim that section 14 applies, it has given the complainant a notice in relation to a previous request for information (IC-46929-Q5Z8) stating that it was relying upon section 14 FOIA in relation to the first and third parts of the request and the Commissioner considers that in all the circumstances it would not be reasonable to expect the ICO to issue a further refusal notice confirming its continued reliance upon section 14 FOIA. The ICO was therefore correct to rely upon 17(6) in relation to the first and third parts of the request.

## Right of appeal

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32. 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](mailto:grc@Justice.gov.uk)  
Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

33. 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.
34. 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.....**

**Gemma Garvey**

**Senior Case Officer**

**Information Commissioner's Office**

**Wycliffe House**

**Water Lane**

**Wilmslow**

**Cheshire**

**SK9 5AF**