

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 22 November 2021

Public Authority: Ministry of Justice

Address: 102 Petty France
London
SW1H 9AJ

Decision (including any steps ordered)

1. The complainants asked the HM Courts and Tribunals Service of the Ministry of Justice whether any County Courts in England were allowed: not to comply with the Judiciary and Functions of Staffing Act 2018 and not to comply with the Civil Courts Rules, Procedures and Directives.
2. The Ministry of Justice decided that the request was vexatious and refused to comply with it. In corresponding at length with the Ministry of Justice, the complainants alleged wrongdoing by specified officers at a named County Court, and questioned the legality of the Court's decisions.
3. The purpose of section 14(1) FOIA is to protect public authorities and their employees from unreasonable demands in their everyday business. Having reviewed the evidence provided, and taking into account that a broad approach should be taken, the Commissioner found that the request was an unjustified and improper use of FOIA and was vexatious. Accordingly, the Commissioner decided that the Ministry of Justice was not obliged to comply with the request.
4. Accordingly the Commissioner did not require any steps to be taken as a result of this decision.

Request and response

5. On 9 July 2020 the complainants put the following information request to the Ministry of Justice (MOJ):

"Since Non-Compliance with Acts of Parliament is a Crime to be prosecuted by the Police have any County Courts in England been allowed:-

- 1. NOT to comply with the Judiciary and Functions of Staffing Act 2018? And,*
- 2. NOT to comply with the Civil Courts Rules, Procedures and Directives?*

If the answer to the above two questions is yes, please state which County Courts are exempt from prosecution by the Police for the two above offences?"

6. MOJ responded on 23 July 2020 and asked the complainants to provide clarification, saying:

"1. Please provide the specific part or parts of the Judiciary and Functions of Staffing Act 2018 you refer to when you ask if non-compliance of this Act has been allowed by any county courts in England. Please also provide an example of the type of court incident or incidents you may be referring to and the name of the court/s involved.

2. Please provide the specific civil court rules, procedures and directives you refer to when you ask if non-compliance of these has been allowed by any county courts in England. Please also provide an example of the type of court incident or incidents you may be referring to and the name of the court/s involved.

3. You may also wish to consider, for example, reducing the volume of your request, and specifying a narrower period of time. For example, if non-compliance of the Act in Point 1 above and Rules in Part 2 above occurred in the county courts in England from 1 January 2019 to 1 January 2020, or in the last 6 months."

7. On 17 September 2020 the complainants responded to MOJ with a 15 page email which MOJ found unsatisfactory. MOJ said that the complainants' response was not what had been asked for. MOJ said that it included a summary of correspondence sent to the Court and to the Chief Executive of MOJ's HM Courts and Tribunals Service; there had also been various Subject Access Requests.

8. The complainants also included references to legislation, cases and court hearings, as well as the names of judges and court administrative staff involved in those cases and hearings. The response included further questions and asked MOJ to investigate the operation of a Court. The complainants made allegations against named members of Court staff, and questioned the legality of some of its decisions.
9. MOJ concluded that the 17 September 2020 response from the complainants had not been the further particulars and information they had requested, nor did it ask for any information that could be considered to be a FOIA request.
10. On 11 November 2020, after further correspondence between the parties, MOJ issued a refusal notice declaring the request to have been vexatious in terms of section 14(1) FOIA (Vexatious or repeated requests). On 14 November 2020 the complainants asked MOJ to review the decision to treat their request as vexatious.
11. On 24 December 2020, following an internal review, MOJ confirmed to the complainants that they still considered the request to be vexatious.
12. MOJ's review also found that the MOJ refusal notice of 11 November 2020 had been issued late in breach of the 20 working day period from receipt required by section 10(1) FOIA (Time for compliance).

Scope of the case

13. The complaint arose out of civil proceedings tried at a named County Court ("the Court") in which the complainants had been interested parties. The complainants had been dissatisfied with the outcome of the proceedings and with the Court's subsequent handling of their concerns and representations. The complainants' concerns embraced the actions both of members of the judiciary sitting at the Court and members of MOJ's administrative staff employed there.
14. Some of the complainants' correspondence has been with MOJ's Courts and Tribunals Service, an executive agency of MOJ, as well as with the MOJ Disclosure Team. For brevity, in this Notice, the Commissioner refers throughout to 'MOJ'.
15. The Commissioner reviewed and considered the relevant correspondence between the parties and had regard for the extensive representations she received from both parties.

Reasons for decision

Section 14 - vexatious or repeated requests

16. 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.
17. The term 'vexatious' is not defined in FOIA. The Upper Tribunal considered the issue of vexatious requests in the case of the Information Commissioner v Devon CC & Dransfield (*Dransfield*). The Tribunal commented that vexatious could be defined as the "*manifestly unjustified, inappropriate or improper use of a formal procedure*" leading to a "*disproportionate, manifestly unjustified, inappropriate or improper use of FOIA*". This may be determined objectively, judging the evidence of the impact on the authority, and weighing this against evidence about the purpose and value of the request. The public authority may take into account the context and history of the request, where this is relevant. There is no requirement to conduct a public interest test.
18. In *Dransfield*, the Upper Tribunal assessed 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.
19. The *Dransfield* Tribunal, however, cautioned 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" (at paragraph 45).
20. The Commissioner has published guidance on dealing with vexatious requests¹ which 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

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

vexatious. All the circumstances of the case will need to be considered in judging whether or not a request is vexatious.

21. The Commissioner's guidance notes that the relevant consideration is whether the request itself is vexatious, rather than the person submitting it. A public authority can also consider the context of the request and the history of its relationship with the requester where this is relevant. The Commissioner's guidance says:

"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".

22. Sometimes it will be obvious when a request is vexatious, but at other times it may not be. In that respect, the Commissioner's guidance says:

"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".

The complainants' view

23. On 31 December 2020 the complainants contacted the Commissioner to complain about the way their request for information had been handled. They told the Commissioner:

"We have been unfairly / Falsely accused of being VEXATIOUS and MALFEASANCE which is Libel, without any Legal proof of evidence. The Commissioner has the power to direct the MOJ to provide this proof of evidence, or the MOJ to make a written apology, withdrawing all letters accusing us of wrong doing, and do their job of acting on the Crimes that we have reported by blowing the whistle on the Public Officers at [name redacted] County Court who are NOT complying with their Statutory Duties under Parliamentary Legislation. Please note that the CPC Guidance on Misconduct in Public Office includes Court Staff and District judges as Public Officers. "Nobody quoting the Law correctly need fear retribution"."

24. The complainants added that:

"for two years we have had to challenge every court order and decision that has been produced illegally by [the Court] for not complying with the civil court rules, procedures and directives. This is a documented fact that cannot be vexatious or malfeasance."

25. The complainants told the Commissioner they now recognised that they should have framed their questions as Subject Access Requests (SARs) under the Data Protection Act 2018 rather than as FOIA information requests. They complained that MOJ, in asking for further information, had caused them to take:

"weeks of work to go through two years of correspondence summarising each issue, in total 18 pages of work which has not been investigated."

26. The complainants said they accepted they had made frequent or overlapping requests but these had been to get justice, and to "get to the truth". They said it was their human right and they had proved the Court to have been wrong in not complying with its statutory duty by producing "illegal" court orders and decisions that did not comply with the civil court rule, procedures and directives. They said that District Judges at the Court were not complying with the civil court rules, procedures and directives. Two named officers at the Court had, in their view, been:

"guilty of misconduct in public office for allowing the current situation to continue for over two years and [it was] ongoing."

The Ministry of Justice view

27. In their representations of 9 September 2021, MOJ told the Commissioner that their response of 23 July 2020 to the complainants had asked for further particulars to enable them to identify and find the requested information.
28. The complainants had responded on 17 September 2020 but the 15 pages of representations they provided were not the further particulars and information MOJ had requested; instead the complainants had included a summary of correspondence sent to the Court, the Chief Executive of HM Courts and Tribunals Service (HMCTS), and listed various Subject Access Requests. They also included references to legislation, cases and court hearings, as well as the names of judges and court administrative staff involved in those cases and hearings. The complainants had included further questions asking MOJ to investigate the operation of the Court and questioned the legality of its decisions. The complainants had also made allegations of wrongdoing by named officers working at the Court.
29. MOJ said that, in arriving at their decision, they had taken into account other factors, including the context of the request. The complainants had made a number of related FOIA requests previously. A set of four FOIA requests to HMCTS, on the same or closely connected issues, was

further evidence of the complainants' overlapping and frequent requests about the same court case or cases and related matters. Other correspondence had been treated as official correspondence but MOJ's responses only led to repeated requests for the same information.

30. MOJ said that they had repeatedly explained to the requester that FOIA only covered recorded information. MOJ had also provided examples and guidance on making a FOIA request. Despite this, the complainants had continued to abuse the right of access to information, by making demands that were not FOIA requests. MOJ considered the volume and nature of the requests had become both disruptive and burdensome; addressing them would impose an administrative burden, and divert or distract staff resources from other essential duties.
31. MOJ added that they considered the numerous requests, letters and emails to officers at the Court, members of the judiciary, the HMCTS Chief Executive and other officials, and SAR and FOIA requests which had been experienced over a period of three years were having an adverse impact on staff. The complainants appeared to be targeting particular officers at the Court and making distressing and unsubstantiated accusations about individuals
32. MOJ concluded that they believed they had considered carefully, and in a fair and balanced way, all of the complainants' requests and correspondence and the MOJ responses. Having reviewed this evidence they had again concluded that the request was vexatious.
33. MOJ acknowledged the complainants' strong sense of injustice, but were clear that no MOJ officer could offer them advice and guidance about their individual cases. Instead MOJ said, they needed to seek professional advice and review their options for appealing the outcome of their proceedings. This was something the complainants had seemed reluctant to undertake.

The Commissioner's decision

34. The Commissioner considered representations received from the parties and had regard for the earlier correspondence between them.
35. The Commissioner considered the burden imposed by the request on MOJ and its staff. There had been four closely connected FOIA requests amid a plethora of other correspondence and subject access requests sustained over a period of some three years.
36. MOJ had explained that FOIA was not an appropriate vehicle for pursuing concerns about the outcome of the complainants' proceedings; this had been explained to them but they had been intransigent and persisted in making futile FOIA requests in spite of that and had

consequently imposed a significant burden on MOJ's staff. In their more recent correspondence with the Commissioner, the complainants did appear to begin to acknowledge that FOIA requests might not be appropriate to pursue the outcome they were seeking to achieve, but have been unreasonably persistent and not yet drawn back from those futile requests.

37. The Commissioner considered the motive of the complainants. The root cause of their concern, information requests and other communications with MOJ is their disagreement with the outcome of proceedings in which they were interested parties and the consequential actions of court officers. MOJ officials have no locus in the judicial decisions taken by the Court in proceedings and are bound to follow them. MOJ staff have no powers to intervene and cannot offer advice in individual cases. Where parties disagree with the outcomes of particular proceedings then they may need to obtain professional advice and opinion on the best way to access their options to appeal. Other appeal and complaint routes exist for the complainants to seek remedies in cases where they perceive maladministration by officials.
38. In considering the value or serious purpose of a request, the Commissioner follows the guidance of the Upper Tribunal in *Dransfield* that it may be appropriate to consider if the request has a value or serious purpose in terms of any objective public interest in the information sought.
39. The Commissioner found that this request was of personal value and interest to the complainants but of limited value to the wider public beyond providing assurance that officials at the Court were competent and just in their dealings with litigating parties. The complainants were serious and earnest in the outcome they were trying to achieve but were unreasonably persistent in not accepting that FOIA requests were very unlikely to deliver it to them.
40. The Commissioner then considered whether or not there had been harassment or distress of, and to, staff. The Commissioner found that there had been a sustained campaign by the complainants, including connected FOIA requests over a period of years. It is common ground that the complainants made frequent and overlapping requests. At times, complaints had included accusations and personally offensive remarks directed towards individuals that were distressing and could reasonably have been interpreted by officials as a personal grudge, sign of enmity or a form of harassment.
41. The Commissioner considers that a question can contain a valid request for information and that FOIA only extends to requests for recorded information. However FOIA does not generally require public authorities

to answer questions, unless they can be responded to by the provision of recorded information, which is already held.

42. The purpose of section 14(1) FOIA is to protect public authorities and their employees from unreasonable demands in their everyday business. Having reviewed the evidence provided, and taking into account the guidance of the Upper Tribunal in *Dransfield* that an holistic and broad approach should be taken, the Commissioner found that the request was a manifestly unjustified and improper use of FOIA and was vexatious. Accordingly, the Commissioner decided that MOJ were entitled to rely on section 14(1) FOIA and were not obliged to comply with the request.

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: 0203 936 8963

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

Dr R Wernham
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