

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 24 October 2022

Public Authority: Department of Health and Social Care

Address: 39 Victoria Street

London

SW1H 0EU

Decision (including any steps ordered)

1. The complainant has made a meta-request (a request for information relating to a previous request for information).
2. The DHSC refused the request, citing section 14(1) (vexatious requests) of FOIA.
3. The Commissioner's decision is that the request is vexatious and therefore the DHSC was entitled to rely upon section 14(1) to refuse to comply with it.
4. The Commissioner does not require the public authority to take any further steps.

Request and response

5. On 20 June 2021, the complainant wrote to the DHSC and requested the following:

"In addition, I would request under FOI all information held relating to the FOI request, its internal review and ICO investigation since the date of the last similar request (for the prevention of overlap)."
6. This is the second of two meta-requests that the complainant has made to the DHSC, relating to their original request. The DHSC provided its response to the first meta-request, disclosing relevant information, on 14 September 2020.

7. On 2 February 2022 the DHSC provided its response to the second meta-request. It refused to comply with the request, citing section 14(1).
8. The complainant requested an internal review on the same day.
9. The DHSC provided the outcome to its internal review on 10 February 2022. It upheld its previous position.

Scope of the case

10. The complainant contacted the Commissioner on 11 December 2021 to complain about the way that their request had been handled.
11. The Commissioner considers the scope of this case to be to determine whether the request is vexatious.

Background information

12. This meta-request relates to a request that the Commissioner has previously considered, twice. The original request was made on 17 April 2020 and asked for:

“Covid Tests Outside of Hospital for Ministers and Family

This as a FOI request for all information held, including any communications or requests relating to acquiring or requests for Covid tests for:

- Ministers (including Ministers of other government departments)
- Family Members of Ministers (including Ministers of other government departments)

Whilst I appreciate the sensitivity of this information potentially being personal information. Where any information is not in the public domain I would be more than happy to accept the redaction of employee, family member names or identifiable information if applicable.”

13. The Commissioner first considered this matter under IC-52724-Z6Z8¹. He determined that the DHSC was not entitled to rely upon section

¹ [ic-52724-z6z8.pdf \(ico.org.uk\)](https://ico.org.uk/foi/ic-52724-z6z8.pdf)

40(5B)(a)(i), to neither confirm nor deny that the requested information was held. The Commissioner ordered the DHSC to issue a fresh response.

14. The DHSC did and the Commissioner considered this revised response under IC-113150-R2K0.² The Commissioner determined that the DHSC was entitled to rely upon section 12(1) (cost of compliance exceeds appropriate limit) in order to refuse the request.

Reasons for decision

Section 14(1) – vexatious requests

15. Section 14 of FOIA states that:

“Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious.”

16. The term ‘vexatious’ is not defined within the FOIA. The Upper Tribunal considered the issue of vexatious requests in *Information Commissioner v Devon CC & Dransfield* [2012] UKUT 440 (AAC). It commented that ‘vexatious’ could be defined as the ‘manifestly unjustified, inappropriate or improper use of a formal procedure’. The Upper Tribunal’s approach in this case was subsequently upheld in the Court of Appeal.
17. The Dransfield case considered four broad issues: the burden imposed by the request (on the public authority and its staff), the motive of the requester, the value or serious purpose of the request and harassment or distress of and to staff. A public authority may take these factors into account when considering if a request is excessive.
18. The Dransfield definition confirms that it is important to consider proportionality and justification of any request before deciding it is vexatious.
19. The Commissioner has published guidance on the factors that may typify a vexatious request³. However, it is important to note that even if a request contains one or more of these indicators it will not necessarily mean that it must be vexatious and the request must be considered alongside the value and purpose that the request may hold.

² [ic-113150-r2k0.pdf \(ico.org.uk\)](#)

³ [Dealing with vexatious requests \(section 14\) | ICO](#)

20. When considering the question of vexatiousness, a public authority can consider the context of the request and the history of its relationship with the requestor, as the guidance explains: '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.'
21. In some cases it will be obvious when a request is vexatious but in others it may not. 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.'
22. A request might also be vexatious if the public authority can make a case that the amount of time required to review and prepare the information for disclosure would impose a grossly oppressive burden.
23. It is important to remember that section 14(1) can only be applied to the request itself, and not the individual who submits the request. It is also important to note that there is nothing inherently vexatious about a meta-request.

The complainant's position

24. The complainant is concerned with the way in which the DHSC handled their original request. Information disclosed in response to the first meta-request suggested that the original request would be referred to the Cabinet Office FOI Clearing House (the Clearing House) which has recently been the subject of regulatory action⁴ from the Commissioner and an internal review.⁵
25. The Cabinet Office has confirmed to the complainant that it holds information about the original request, its internal review and subsequent ICO investigations, despite it not being the recipient of the request.
26. The complainant notes 'In the first meta request to DHSC, no information relating to the Cabinet Office referral, other than the initial determination by DHSC on receipt of the substantive request that they would need to refer the draft response to the Cabinet Office' was

⁴ [ico-response-to-the-pacac-inquiry-into-the-cabinet-office-freedom-of-information-clearing-house.pdf](#)

⁵ [Freedom of Information - FOI Clearing House Review \(HTML\) - GOV.UK \(www.gov.uk\)](#)

disclosed. The complainant has concluded therefore that the actual referral must be within the scope of the second meta-request.

27. The complainant is ultimately concerned that their original request was treated 'less favourably' by the DHSC due to its nature.

The DHSC's position

28. The DHSC is relying upon section 14(1) for two reasons: it considers the request is vexatious and it considers that compliance with the request would impose a grossly oppressive burden.
29. The Commissioner will first consider the DHSC's argument that compliance with the request would cause a grossly oppressive burden. The Commissioner expects a public authority to provide an estimate on the cost, or time, that compliance would take and one that is based on cogent evidence. Usually, this involves the public authority conducting a sampling exercise.
30. The DHSC has stated that, at this stage, it has identified 292 emails within the scope of the request. The DHSC has explained that, upon reviewing some of these emails, it has identified staff who have been copied into correspondence and so it would have to consult those staff to ascertain if any further information was held.
31. The DHSC has explained to the Commissioner that 'For the sampling exercise, we reviewed 10 separate email trails. This took approximately 0.5 hours to separate them out of the list held even before starting to review them. We reviewed each email to see what information was within them, pulled out any emails that were not in scope of the request (information already released to [the complainant]), reviewed the emails in scope for any exemptions that could be applied and also took out any more duplicate emails that were on trails. During the exercise we found redactions would be required under section 40 and as you can see in the information we have provided, most of the content is of a nature that would not be in the public interest due to the majority of emails being chasers for responses or follow ups and very mundane information.'
32. Firstly, the Commissioner doesn't consider the DHSC needs to redact information that has already been provided to the complainant – it is simply creating more work for itself to do so.
33. The Commissioner accepts that section 40 would apply to some of the emails but does not accept that the DHSC is entitled to include 'renaming the emails' in its estimate that '10 email chains were reviewed – 3 minutes per email (chain) – total 30 minutes. This would not have included time to prepare the documents for release converting to pdfs, renaming and completing redactions.'

34. The DHSC has calculated that, for the 292 emails it has identified, compliance with the request would take 14.6 hours:
- (10 x 3 minutes = 30 minutes, 292/10 = 29.2, 29.2 x 30 minutes = 876 minutes = 14.6 hours).
35. The Commissioner has only seen a sample of the email chains in question. However, he notes that some email chains will be shorter than others and, as the DHSC has identified, some will contain duplicates which will not need to be considered and information already disclosed to the complainant, including redactions.
36. The DHSC has concluded that:
- “In addition, we need to add in the time it takes/took for all members of staff to search for emails in scope, which in total would be 60 minutes. A total of 292 emails were found, so they would all need to be sent to a central place to collate, and in addition, time would need to be taken to save the emails.
- We would also need to log the emails to ensure we had captured everything. (searches 60 minutes, sending 292 emails x 15 seconds = 73 minutes, saving down 292 emails x 15 seconds = 73 minutes, logging emails 1 minute x 292 = 292 minutes – 60+73+73+292 = 8.3 hours.
- Without finding any more emails in scope, the total time to comply with this request would be a minimum of 22.9 hours.”
37. There is a high burden for public authorities to engage section 14(1) on the basis of the grossly oppressive burden that compliance with a request would impose. The Commissioner notes that, under section 12 (cost of compliance exceeds appropriate limit) the limit for a central government department such as the DHSC is 24 hours. The Commissioner would only expect a public authority such as the DHS to claim a burden would be grossly oppressive if compliance exceeded this appropriate cost limit by a considerable margin.
38. The Commissioner recognises that the DHSC claims it might hold further information that falls within the scope of the request. However, it's also possible that certain staff were copied into correspondence but not expected to take any action, otherwise the DHSC would have approached them upon the Commissioner conducting his investigation.
39. Furthermore, the DHSC has included inappropriate activities in its estimate, which does not exceed 24 hours. Therefore the Commissioner feels he has no choice but to reject the DHSC's assertion that the request is vexatious based on the grossly oppressive burden that

compliance would cause. He will now go onto consider whether the request is vexatious on the grounds that it is an abuse of process.

40. The DHSC has explained that 'In our opinion, the requester is attempting to reopen an issue which has already been comprehensively addressed by the public authority and has been subject to independent scrutiny (ICO complaint). It seems reasonable that the requestor is trying to find out the answer to FOI-1218254 which was refused under S12(1) in IC-52724-Z6Z8, the ICO upheld this response. We believe this to be an improper use of FOIA.'
41. The Commissioner notes that the complainant explained to the DHSC, in their internal review request, that there was a public interest in seeing how public authorities deal with requests under FOIA.
42. The DHSC has also explained 'We cannot see any value or serious purpose in taking this time to release this information we hold. There is none/little public interest in how we work internally when dealing with FOI requests. As explained, most of the emails are chasers, discussions and generally very mundane information. If the requestor is concerned with the overall response to his original request, he has had internal reviews and ICO complaints dealt with to resolve that.'
43. The Commissioner disagrees, his guidance⁶ on meta-requests states 'When a requester makes a meta request, they are exercising their right of access to the recorded information an authority holds about the handling of the original request. This is distinct from a request for internal review, which is a complaint about how the authority dealt with the original request.'
44. The DHSC has finally stated that 'The time working on all the cases associated with the original case is substantial and to dedicate at least nearly 23 more hours on responding would cause distress on the team. This is exacerbated by the pattern and frequency of requests by this requestor.'
45. The DHSC explained 'We have attached screen shots of cases submitted by the requestor around the time of this request. The majority are in regard to testing and many of them are duplicates or follow ups that had already been responded to, showing the burden he has put on the department in regard to his requests.'

⁶ [Requests about previous information requests \(meta requests\) | ICO](#)

46. The Commissioner notes that the screen shots in question demonstrates that the complainant made approximately 50 FOI enquiries (requests, requests for internal reviews and meta-requests) to the DHSC but the time 'around the request' that the DHSC refers to is a period of two years.

The Commissioner's view

47. In the Commissioner's view this is a borderline case. On the one hand, the Commissioner disagrees with the DHSC when it says that 'There is none/little public interest in how we work internally when dealing with FOI requests.' The Commissioner also notes that the request was initially mishandled by the DHSC which he considers relevant.
48. The Commissioner agrees with the DHSC when it says 'We also believe that the requester is asking for this information due to his dissatisfaction of DHSC and how we deal with his individual FOI requests.' This is clearly the case and the Commissioner commented on the timeliness of the DHSC's original response in IC-52724-Z6Z8 – he doesn't need to do so again.
49. But the Commissioner does not agree that the complainant is trying to 'find out' the information he requested originally. Indeed, the complainant seems to have accepted that the original request cannot be complied with in accordance with section 12(1).
50. There is no doubt that the complainant has submitted a significant number of requests to the DHSC. However, they all appear to have serious value or purpose; to scrutinise decisions made by the government in relation to testing during the pandemic. The Commissioner can also see that several duplicate requests have been withdrawn by the complainant. It also doesn't appear that the complainant regularly makes meta-requests.
51. Ultimately, the Commissioner considers that the DHSC is incorrect when it says 'We deemed the request futile and that there was unreasonable persistence as we interpreted this further meta request an attempt to re-open an issue that had already been dealt with in an internal review and an ICO complaint.'
52. The complainant is not reopening the section 12(1) matter via this meta-request, they are seeking more information as to the referral to the clearing house and the DHSC's administrative processes of request handling.
53. However, the Commissioner doesn't believe that compliance with the second meta-request would add much in relation to this clearing house referral. The Cabinet Office has confirmed that the DHSC referred the original request to its clearing house – disclosing the administrative

process of that referral does not add anything of value, in the Commissioner's view, to justify the burden that compliance with the request would cause.

54. The Commissioner notes that the DHSC complied with the complainant's first meta-request and the complainant would just receive more of the same chasers from within the DHSC or its rationale relating to section 12(1), which the Commissioner has now considered.
55. The complainant has clearly made a request to the Cabinet Office about the original request, which is how the Cabinet Office came to confirm it held relevant information. It's unclear to the Commissioner why the complainant is pursuing this matter with the DHSC, who referred the matter, rather than the Cabinet Office who oversee the clearing house.

Right of appeal

56. 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

57. 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.
58. 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

Alice Gradwell
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