

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

### **Decision notice**

**Date:** 14 September 2022

**Public Authority:** Information Commissioner  
**Address:** Wycliffe House  
Water Lane  
Wilmslow  
SK9 5AF

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

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1. The complainant has requested information from the Information Commissioner's Office (ICO) about its staff intranet. The ICO relied on section 14(1) of FOIA to refuse the request as vexatious.
2. The Commissioner's decision is as follows:
  - The complainant's request can be categorised as a vexatious request under section 14(1) of FOIA and the ICO is not obliged to comply with it.
3. The Commissioner does not require the ICO to take any corrective steps.

#### **Jurisdiction and nomenclature**

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4. This decision notice concerns a complaint made against the Information Commissioner. The Information Commissioner is both the regulator of FOIA and a public authority subject to FOIA. He is therefore under a duty, as regulator, to make a formal determination of a complaint made against him in his capacity as a public authority – a duty confirmed by the First Tier Tribunal. It should be noted however that the complainant has a right of appeal against the decision, details of which are given at the end of this notice.

5. This notice uses the term "the ICO" to refer to the Information Commissioner dealing with the request, and the term "the Commissioner" when referring to the Information Commissioner dealing with the complaint.

## **Request and response**

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6. On 1 October 2021 the complainant wrote to the ICO and requested information in the following terms:

"Please provide all indexes to the information held on the staff intranet including those underv [sic] policies and procedures."

7. On 27 October 2021 the ICO asked the complainant to clarify their request.

8. On 29 October 2021 the complainant clarified their request as follows:

"To assist in the evaluation and clarification of the ICO's conduct in these matter the Requestor hereby requests the ICO to provide the following information which should be readily accessible in electronic format:-

a) The 'User's Guide' (or equivalent whatever it may be called) to the ICO Intranet.

b) The Summarise General Description [sic] of the ICO Intranet.

c) It is expected that the above a) or b) will identify how data (documents: policies, procedures, etc. files are indexed, found and accessed). If not then please include the Intranet designer's explanation (extract) which provides this information."

9. On 29 November 2021 the ICO responded. It refused the request as a vexatious request under section 14(1) of FOIA. The ICO provided details about its internal review process and invited the complainant to request a review if they were dissatisfied with the response.
10. The complainant requested an internal review on 6 December 2021 and subsequently advised the Commissioner that they did not receive a review response.
11. The Commissioner has considered the complainant's request for a review. This correspondence appears to have been sent to an email address associated with the Commissioner as regulator, rather than the ICO as public authority that handled the original request. The correspondence also does not appear to include the ICO's case reference

number; it notes a reference number associated with a different complaint the complainant had submitted to the Commissioner.

12. In its submission to the Commissioner, the ICO has told him that it did not receive a request for review from the complainant. Given the situation described above, the Commissioner is prepared to accept that that was the case. The matter of the internal review will be discussed further in the section 14(1) analysis.

### Scope of the case

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13. The complainant contacted the Commissioner on 6 December 2021 to complain about the way their request for information had been handled. This was the same day on which they had sent their request for an internal review to the separate complaint case.
14. The Commissioner's investigation has focussed on the ICO's application of section 14(1) of FOIA to the complainant's request.

### Reasons for decision

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15. Under section 14(1) of the FOIA a public authority is not obliged to comply with a request if the request is vexatious.
16. Considering what makes a request a vexatious request in **Information Commissioner vs Devon County Council & Dransfield [2012]**, the Upper Tribunal discussed four broad themes:
  - the burden (on the public authority and its staff)
  - the motive (of the requester)
  - the value or serious purpose (of the request); and
  - any harassment or distress (of and to staff).
17. However, the Upper Tribunal emphasised that:

"All the circumstances need to be considered in reaching what is ultimately a value judgement as to whether the request in issue is vexatious in the sense of being a disproportionate, manifestly unjustified, inappropriate or improper use of FOIA."

18. In his published guidance on section 14(1)<sup>1</sup> the Commissioner notes that these themes provide a useful structure to start analysing whether a request is vexatious. However, he advises that a public authority should keep in mind that it needs to adopt a holistic approach. The authority may identify other factors which are relevant to its circumstances, and it should make sure it considers those as well.
19. In its submission to him, the ICO has told the Commissioner that the complainant's request for information about its intranet sprang from a series of complaint cases and information requests they had previously lodged with the ICO. In the ICO's view it is clear from the case history and the wider picture of the complainant's interactions with the ICO and their various complaints and appeals that they are dissatisfied with the ICO.
20. The ICO went on to explain that, citing concerns about ICO staff's ability to handle their cases fairly – evidence in the ICO's view of their intransigence around perceived ICO failings – the complainant made an FOI request for ICO policies regarding conflict of interest, which it handled under its reference IC-124917-L0S8.
21. The ICO says it told the complainant that information was already publicly available, in published policies. The complainant complained about this and then made the further, current FOI request for an index of the ICO intranet. The ICO considers this to have been an attempt to circumvent its earlier response and "uncover" ICO policies and procedures about conflict of interest which the complainant considers must exist and which the ICO must have withheld from them when it directed the complainant to policies published on its public-facing website.
22. The ICO considers that the request is intended to further extend and complicate the complainant's various complaints against/about the ICO. It considers that the request was made without consideration of the obvious fact that an organisation the size of the ICO would have an extensive intranet. Disclosing the intranet's index would, the ICO said, require an extensive amount of work, not only to generate the index, but also to then consider exemptions and make redactions to that index.

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<sup>1</sup> 1. <https://ico.org.uk/for-organisations/guidance-index/freedom-of-information-and-environmental-information-regulations/dealing-with-vexatious-requests-section-14/>

23. The ICO argues that it would not be a reasonable investment of its time and resource to handle a request of this nature where the request is clearly designed only to pursue a personal dissatisfaction with the ICO.
24. Acknowledging that there is a general public interest in transparency, the ICO said that the request was made at the point where a project to move from its old intranet to its new intranet had already begun. The ICO understands from conversations with the team working on the technical side of that project, that pages were being decommissioned from one system (ICON) as they were moved to another (IRIS). As pages were not just being simply migrated over like-for-like, it is possible that intranet content was taken off ICON and then was stored separately somewhere before it was then made available again at a later date through IRIS. This means that the work and time the ICO would need to invest in recovering an accurate index of the ICO intranet would only have served to disclose to the public an immediately out-of-date snapshot of the intranet as it existed on the day the index was generated. Any public interest in this partial, timebound snapshot would not, in the ICO's view, outweigh its responsibility to protect its limited resources from a vexatious request.
25. Discussing the matter of the internal review, the ICO also said that the request for one was possibly sent in to one of the complainant's several other case references (which appears to have been the case). The ICO considers that this is indicative of the amount of correspondence it receives from the complainant, the frequently confusing and unclear nature of that correspondence, and the amount of the ICO's resources already taken up handling that correspondence. The ICO told the Commissioner that it was still prepared to carry out an internal review but that, from the complainant's perspective, it may be a moot point at this stage. The Commissioner agrees with this view and does not consider there is much to be gained from carrying out an internal review at this point.

### **The Commissioner's conclusion**

26. The Commissioner asked the ICO for more detail on the work involved in generating the requested index. The ICO explained that it had liaised with its Digital, IT and Business Services team. That team confirmed that it has just purchased and installed software which helps the ICO to manage, index and report on SharePoint.
27. The team has estimated that using the new tool it should be able to produce a full indexing, in spreadsheet form. This will take up to three working days. Therefore, at the time of the original request, locating, retrieving and extracting information within scope of the request would have taken a considerably longer period of time. Consequently, even with the new software, complying with a request for this information is

likely to take over the appropriate limit of 18 hours or £450, therefore section 12 of FOIA would apply to this information and the ICO would not be obliged to comply with such a request even if it were not vexatious.

28. The ICO went on to say that once the index spreadsheet had been generated, it would be necessary to review the document in order to ascertain what information the ICO would need to withhold and what exemptions should be applied. The ICO says that as it has previously stated, it would not be a reasonable investment of its time and resource to handle a request of this nature which is clearly designed only to pursue a personal dissatisfaction with the ICO. Any public interest in this partial, timebound snapshot does not, in the ICO's view, outweigh its responsibility to protect its limited resources from a vexatious request.
29. Finally the ICO advised that since this request was made, the complainant has made a further ten requests for information through both the data protection and FOIA legislation, all centred on their concerns about ICO staff's ability to handle their cases fairly. All of the cases have led to further communications and complaints expressing their dissatisfaction with various aspects of the responses and officers' conduct. The ICO has now advised the complainant to take their concerns to the Parliamentary and Health Service Ombudsman.
30. While he has noted later requests that the complainant has submitted, the Commissioner must consider the circumstances as they were at the time of the request, and not take into account subsequent events. It is clear, however, that the complainant had been corresponding with the ICO for some time before the current request.
31. The Commissioner has considered all the circumstances and he is satisfied that, at the point of the current request, if not before, the complaint was pursuing a personal grievance against the ICO. He agrees with the ICO that, given their dissatisfaction with the ICO, it is likely that the complainant did not accept that all the information relevant to a previous request had been published and, through this request for the ICO's intranet index - was attempting to find evidence of 'hidden' policies, that were not in the public domain. The complainant has already received a decision from the Commissioner stating that the ICO has provided them with the information that it holds in respect of that request for policies. The proper route to challenge that decision is via the First Tier Tribunal. It was not to request that the ICO carry out a time-consuming process of generating a snapshot of an index, on one particular day, of an intranet which, in any case, was soon to be replaced. The Commissioner considers that this information has minimal wider public interest and certainly not sufficient to warrant the ICO investing its resources on such a task.

32. The Commissioner is persuaded that complying with the request would cause an undue burden to the ICO; that the request has a value only to the complainant and only in as much as it forms part of their ongoing campaign against the ICO; and that the motive behind the request is to continue to cause a nuisance to the ICO. As such, the Commissioner is satisfied that the complainant's request is vexatious under section 14(1) of FOIA and the ICO is not obliged to comply with it.

## **Right of appeal**

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

34. 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.
35. 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**

**Cressida Woodall**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**