

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 8 December 2022

Public Authority: Financial Conduct Authority
Address: 12 Endeavour Square
London
E20 1JN

Decision (including any steps ordered)

1. The complainant requested information about the number of Directors and Heads of Department that had been placed on Performance Improvement Plans ("PIPs"). The Financial Conduct Authority ("FCA") refused to comply with the request under section 14(1) of FOIA (vexatious requests). The Commissioner's decision is that the request was vexatious and therefore the FCA was entitled to rely on section 14(1) of FOIA to refuse the request.
2. The Commissioner does not require the FCA to take any further steps.

Request and response

3. The complainant requested information in the following terms:

" Dear The Financial Conduct Authority, Please advise the number of Heads of Department and Directors (including Executive Directors) that were placed on Performance Improvement Plans during the following calendar years:

2020

2021

2022 (to the date of the source data provider's response to the FOI team)

For each calendar year please provide the numbers that were put on Performance Improvement Plans broken down for:

- Managers
- Heads of Department
- Directors (including Executive Directors).

Therefore, the response should show the numbers in each of the three grades, that were placed on Performance Improvement Plans, in each of the three calendar years.

It is of course the case that section 40 cannot conceivably apply, nor any other exemption. Similarly, there are absolutely no grounds for the source data provider to try to use the 'small numbers' provision as it would not make sense under the terms of this request. Additionally, the data would take minimal extraction and section 12 also cannot reasonably apply."

4. The FCA refused to comply with the request as it considered it to be vexatious. Following an internal review, the FCA wrote to the complainant and upheld its original position.

Scope of the case

5. The complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant submitted seven complaints including this complaint to the Commissioner regarding FOI requests they had made to the FCA. The FCA had refused to comply with all seven requests relying on section 14(1) of FOIA.
6. On 28 September 2022, the Commissioner provided his preliminary view to the complainant and asked them to confirm whether they agreed with this view and to provide further submissions if they disagreed. In their response to the Commissioner on 12 October 2022, the complainant withdrew six of his complaints but requested for a decision notice to be issued in respect of this particular complaint.
7. On 10 November 2022, the FCA provided further submissions to the Commissioner, the content of which cannot be reproduced in this decision notice but has been taken into account in reaching his decision in this matter. The Commissioner considers the scope of this case to be whether the FCA is entitled to rely on section 14(1) of FOIA to refuse the complainant's request.

Reasons for decision

8. The following analysis provides the Commissioner's reasons why he considers section 14(1) of FOIA to be engaged in this particular case. In reaching his decision, the Commissioner has considered the submissions by the complainant and the FCA, as well as the initial refusal notice and the internal review request and response.
9. 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." The Upper Tribunal considered the issue of vexatious requests in *Information Commissioner v Devon CC & Dransfield* [2012] UKUT 440 (AAC)¹. It commented that 'vexatious' could be defined as the 'manifestly unjustified, inappropriate or improper use of a formal procedure.' 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.
10. The Upper Tribunal did, however, caution that these considerations were not meant to be exhaustive. It 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"

The Complainant's position

11. The complainant believes that the FCA's decision at the internal review failed to demonstrate that it properly considered and applied section 14(1) of FOIA. They believe that the FCA's entire reasoning appears to be based on generalised assertions with no objective evidence to support the assertions made. They also consider that there are no legitimate reasons for invoking section 14(1), based on ICO guidance and relevant case law.

The FCA's position

12. The FCA has explained that it considers there is limited public interest in disclosure of the requested information, although section 14 is not, strictly speaking subject to a public interest test. It argues that the limited value in the request is further diminished by the burden it imposes, the apparent motive behind it and the harassment it causes.

¹ <https://administrativeappeals.decisions.tribunals.gov.uk/Aspx/view.aspx?id=3680>

13. It referred to the complainant's statement that the request: "does not place an unreasonable burden on the FCA: such information should be readily available." The FCA referred to the ICO guidance² which notes that: "it is common for a potentially vexatious request to be the latest in a series of requests submitted by the individual. The greater the number of requests received, the more likely it is that the latest request is vexatious."
14. The FCA argued that the request for information was the 12th such request that it had received from the complainant since October 2021 and at the time of writing, it had received a further six requests, two of which were submitted within an hour of each other. It considers the cost, time, and burden of fulfilling the complainant's request represents a disproportionate allocation of the FCA's resources to a sole requester. In examining the volume and frequency of the complainant's requests, the FCA came to the view that, given the relatively weak claim to public interest in the requests, an unjustified quantity of resources is being squandered on processing them. It argues that this is contributing to an unmanageable workload for its Information Disclosure Team, which in turn impacts on the team's ability to facilitate the disclosure of publicly valuable information.
15. The FCA explained that it had considered the potential motive, distress, and harassment. It stated that although the ICO guidance makes it clear that requests should generally be considered 'motive-blind', the potential motive behind the request is relevant when considering whether section 14(1) is applicable. The FCA argues that in the complainant's request for internal review, they concede that the request serves their private interests, referring to its relation to their employment and alleged prejudice they suffered, rather than any wider public good. The FCA says that when taken together with other inferences, it has concluded that it is likely that the request was motivated by private interests.
16. The FCA also noted the complainant's employment status and their requests which spans a wide range of issues often seeking information about the performance of the Information Disclosure Team and frequently targeting senior employees within the organisation. It considered that the complainant's requests appeared to have little in common beyond the potential to embarrass FCA members. The FCA emphasise that when read together, the pattern of the complainant's

² <https://ico.org.uk/for-organisations/guidance-index/freedom-of-information-and-environmental-information-regulations/dealing-with-vexatious-requests-section-14/>

requests suggests a possible attempt to embarrass and discredit FCA and its staff members in a public forum, such as What Do They Know.com, where the complainant publishes their responses. The FCA maintains that the complainant's requests have already caused a great deal of distress amongst staff which has led to the fear that they will continue into the future.

The Commissioner's position

17. In assessing the value or serious purpose, the Commissioner has taken into account the complainant's arguments that a similar request was previously responded to by the FCA and published on What Do They Know website. Whilst he is not persuaded by the FCA's argument that the disclosure of the information could easily mislead the public without any explanation of the FCA's wider performance objectives and the reasons for implementing the PIPs, he considers that the FCA could provide the necessary context. However, he acknowledges that without additional context, such as described by the FCA, (data on the number of employees operating at other levels of performance), the information requested would capture only a certain cross-section of the organisation, making reliable conclusions very difficult to draw. Taken together with the FCA's submissions and the circumstances of this particular case, the Commissioner considers that the request serves the private interest of the complainant and there is little public interest in disclosure of the information.
18. The Commissioner has considered the arguments put forward by both the complainant and the FCA in respect of the burden that the request imposes on the FCA. The Commissioner notes that seven requests were submitted by the complainant between 13 January 2022 and 3 April 2022. The Upper Tribunal in Dransfield stated:

"A requester who consistently submits multiple FOIA requests or associated correspondence within days of each other, or relentlessly bombards the public authority with e-mail traffic, is more likely to be found to have made a vexatious request" (paragraph 32).

When considered in the context of the full series of requests, it may become apparent that the requester has, gradually, strayed some distance from the purpose of their original request. The Upper Tribunal in Dransfield referred to this as "vexatiousness by drift." The scope of the complainant's requests is wide ranging from the number of senior managers on PIPs to ICT budgets and how many FCA staff private addresses have been searched. Whilst the Commissioner acknowledges that there can be legitimate reasons why the information requested may change, for instance the responses to earlier requests may alert a requestor to information which they were previously unaware about.

However, this does not appear to be the case here as many of the requests have overlapped before the FCA has had an opportunity to respond. Although the FCA could provide additional context when responding to the complainant's requests, this would also increase the burden on it.

19. The Commissioner has considered the balance of the value and purpose of the request on the impact on the FCA. In doing so, the Commissioner has taken into account the further submissions provided by the FCA, the content of which has not been reproduced in this DN. Whilst he appreciates that the complainant's individual circumstances add to the value and purpose of the request, however this does not bear significant weight against the burdensome effect on the FCA.
20. The Commissioner regards the principle of transparency to be a positive one. In this case he is not persuaded that it is sufficient to justify the level of disruption that the FCA has described.
21. The Commissioner therefore does not consider that the value or purpose in the requested information outweighs the burden compliance with the request would impose upon the public authority and is satisfied that the FCA was entitled to refuse the request on the basis of section 14 of FOI.

Right of appeal

22. 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

23. 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.
24. 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

**Esi Mensah
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
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SK9 5AF**