

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 7 November 2022

Public Authority: Department of Justice
Address: Knockview Buildings
Ballymiscaw
Stormont Estate
Belfast
BT4 3SU

Decision (including any steps ordered)

1. The complainant requested information from the Department of Justice ("DoJ") about correspondence exchanged between the DoJ and Police Service Northern Ireland (PSNI) about the subject of purchasing of sexual services, following the enacting of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (N.I) 2015¹. The DoJ refused the request under section 14(1) of FOIA (vexatious requests).
2. The Commissioner's decision is that the request was vexatious and therefore the DoJ was entitled to rely upon section 14(1) of FOIA to refuse it.
3. The Commissioner does not require any steps.

¹ <https://www.legislation.gov.uk/nia/2015/2/enacted>

Request and response

4. On 9 June 2022, the complainant made the following request for information to the DoJ:

"I would be appreciative if you could arrange to provide me with the following information:-

- The exchange of correspondence between the DoJ and the PSNI since the law in respect of the purchasing of sexual services was enacted on 15.01.15 (if necessary, please process as a request under the Freedom of Information Act 2000)
 - The DoJ's timetable to address the ineffectiveness of the law in respect of the purchasing of sexual services."
5. To justify their request the complainant provided submissions totalling seven pages which will not be reproduced here.
6. On 7 July 2022, the DoJ responded and said the request was being refused because it was vexatious under section 14(1) of FOIA.
7. Following an internal review, the DoJ wrote to the complainant on 10 August 2022 upholding its position.

Scope of the case

8. The complainant contacted the Commissioner on 12 September 2022 to complain about the way their request for information had been handled.
9. This notice covers whether the DoJ correctly determined that the request was vexatious.

Reasons for decision

Section 14(1) – vexatious requests

10. Section 14(1) of FOIA states that a public authority is not obliged to comply with a request for information if the request is vexatious.

11. The word “vexatious” is not defined in FOIA. However, as the Commissioner’s updated guidance on section 14(1)² states, it is established that section 14(1) is designed to protect public authorities by allowing them to refuse any requests which have the potential to cause a disproportionate or unjustified level of disruption, irritation or distress.
12. FOIA gives individuals a greater right of access to official information in order to make bodies more transparent and accountable. As such, it is an important constitutional right. Therefore, engaging section 14(1) is a high hurdle.
13. However, the ICO recognises that dealing with unreasonable requests can strain resources and get in the way of delivering mainstream services or answering legitimate requests. These requests can also damage the reputation of the legislation itself.
14. The emphasis on protecting public authorities’ resources from unreasonable requests was acknowledged by the Upper Tribunal (UT) in the leading case on section 14(1), *Information Commissioner vs Devon County Council & Dransfield* [2012] UKUT 440 (AAC), (28 January 2013) (“Dransfield”)³. Although the case was subsequently appealed to the Court of Appeal, the UT’s general guidance was supported, and established the Commissioner’s approach.
15. Dransfield established that the key question for a public authority to ask itself is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress.
16. The four broad themes considered by the Upper Tribunal in Dransfield were:
 - 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).

² <https://ico.org.uk/for-organisations/dealing-with-vexatious-requests-section-14/>

³ <https://administrativeappeals.decisions.tribunals.gov.uk/Aspx/view.aspx?id=3680>

17. However, the UT emphasised that these four broad themes are not a checklist, and are not exhaustive. They stated:

“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” (paragraph 82).

The DoJ's position

18. In its correspondence to the Commissioner and the complainant, the DoJ has provided a detailed breakdown of its rationale for refusing the request under section 14(1).

19. In a letter to the Commissioner the DoJ explained that, since September 2020, the Department had received over 30 items of correspondence from the complainant on the subject of convictions of individuals prosecuted for the offence of purchasing sexual services. The Minister of Justice had responded to the complainant on a number of occasions to address their concerns and advise them matters relating to prosecution of individuals for criminal offences were the responsibility of the Police Service of Northern Ireland (PSNI), and to refer their enquiry to them accordingly. Despite being informed by the Minister's Private Secretary on more than one occasion that the Department considered the matter closed, the complainant continued to write to the DoJ.

20. The DoJ stated:

“[Redacted] submitted his request for correspondence relating to the Human Trafficking legislation after being repeatedly advised that matters relating to the prosecution and conviction of individuals for the purchase of sexual services was a matter for the PSNI. In the Department's view, this undermines the value of [redacted] request as the provision of the requested information will not fundamentally address the concern raised regarding the number of convictions since the implementation of this legislation in 2015.”

21. The DoJ noted that the complainant had requested correspondence exchanged between the department and the PSNI over a seven year period. The DoJ conducted a review of its electronic record management system and identified 54,057 documents potentially within the scope of the request. The DoJ's position is that the time it would take to identify all of the recorded information held actually within scope of the request would exceed the appropriate limit as prescribed at section 12 of FOIA. The DoJ concluded that the request would therefore impose an unreasonable burden on the Department.

22. The DoJ also made the following point:

"In addition, it should be noted that there is an important constitutional principle that prevents the Justice Minister from interfering in police operational matters, so it is highly unlikely that these records would contain information relevant to [redacted] request"

23. The DoJ acknowledged the concerns raised by the complainant but took the view that, due to the nature of their repeated correspondence and despite being notified that the issues were not within the department's remit to investigate, the complainant's request therefore formed part of a greater campaign regarding the subject matter in hand. The DoJ's position is that responding to the request "will likely lead to receipt of further requests resulting in a continuing diversion of Departmental resources."

24. The DoJ did not consider it a valuable use of resources to offer advice and assistance to the complainant as it believed that to do so would invite further requests and correspondence, thereby increasing the burden on the Department.

25. The DoJ acknowledged that there is "always a degree of public interest in conviction statistic relating to specific offences" however maintained that the request is of limited value as it relates to issues that had already been addressed in previous correspondence to the complainant. The DoJ also stated that it did not believe that the provision of the requested information was likely to result in a solution to the issues raised by the complainant in their correspondence.

26. Finally, the DoJ drew attention to the highly explicit nature of the items of correspondence received from the complainant, which include photographs and reviews printed from websites where customers may review escort and massage services. The DoJ noted that the complainant had forwarded this material to other public authorities and had been asked to refrain from doing so due to distress of the staff handling the correspondence. The DoJ considered that there was a strong possibility that the complainant would continue to submit material of a similar nature and this could potentially cause harm or distress to its staff.

The complainant's view

27. The complainant's position is that the DoJ were incorrect to refuse their request under section 14(1) of FOIA.

28. The complainant furnished the Commissioner with a large file of documents in support of their complaint. In their grounds of complaint

the complainant outlined their justification for submitting their request to the DoJ, which primarily focuses on what they perceive to be the inefficacy of the DoJ and PSNI's enforcement of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (N.I) 2015, which the complainant states is evidenced by low conviction statistics. The complainant provided the Commissioner with information about persons charged under the act and details of their own investigations into escort and massage services in the Belfast area and further afield, which included graphic explicit content.

29. The complainant provided details of their own proposals to curtail the "criminal offence of paying for sexual services of a person" in Northern Ireland and details of lines of contact with PSNI, Northern Ireland Policing Board (NIPB) and Members of the Legislative Assembly regarding the matter.
30. The complainant stated that the correspondence received from the DoJ that preceded their request for information does not contain the level of detail on the subject as that which could be obtained from compliance with the request.
31. The complainant explained that they had made a successful request to the NIPB for 'all documents (if necessary, under the Freedom of Information Act 2000) that relate to the raising of the purchasing of sexual services in Northern Ireland since 15.01.15 at the Northern Ireland Policing Board' and therefore did not agree that complying with the request, as outlined at paragraph 4 above, would impose an unnecessary burden on the DoJ.
32. The complainant stated that they had offered to split their request over two time periods with a gap of 20 working days between the requests in order to bring them within the appropriate limit for compliance, however this had not been considered by the DoJ in its responses.

The Commissioner's decision

33. In cases where a public authority is relying on section 14(1), it is for the public authority to demonstrate why it considers that a request is a disproportionate, manifestly unjustified, inappropriate or improper use of FOIA.
34. The Commissioner considers it pertinent to address the fact that the request that forms the basis of this notice appears to be the first information request submitted by the complainant. The DoJ has not indicated that the complainant has submitted prior requests. The Commissioner must therefore be mindful of whether it is the

complainant that has been deemed vexatious rather than the request itself.

35. However, when set against the context of the complainant's previous contact with the DoJ, amounting to over 30 items of correspondence sent prior to the information request of 9 June 2022, it appears that the motivation behind the submission of the information request was to engage the DoJ via the FOI mechanism on a matter that had been considered closed by the Department.
36. Considering the voluminous submissions provided to him by the complainant the Commissioner agrees that by responding to the information request, the likelihood of the DoJ inviting further correspondence from the complainant on the same subject, whether in the form of an information request or otherwise, is high. In light of paragraph 35 above, the Commissioner's position is that this would further present an unreasonable burden on the DoJ's time and resources.
37. Furthermore, as per the searches conducted by the DoJ which identified 54,057 documents held potentially within scope of the request, the Commissioner's position is that the time required to conduct a manual review of each document for relevance, and the costs generated in doing so, would exceed the appropriate limit by a considerable margin, even if the DoJ divided the request over two time periods as suggested by the complainant. While section 14 is separate to section 12⁴, the Commissioner must be guided by the parameters outlined in the Appropriate Limits and Fees Regulations in deciding whether a request is burdensome, and it is clear from the DoJ's surface level assessment that compliance with the request would impose significantly on the Department's resources.
38. The Commissioner acknowledges that the request may hold some value and public interest, however in this instance he considers that this has been outweighed by the burden the complainant's continuing correspondence has placed on the DoJ. The Commissioner does not doubt that the matter is of personal significance to the complainant, however it is unclear how the provision of the requested information is likely to result in a satisfactory conclusion in respect of their proposals to curtail sex work in Northern Ireland, as outlined in their submissions

⁴ <https://www.legislation.gov.uk/ukpga/2000/36/section/12>

to the Commissioner and the DoJ. Therefore, the Commissioner cannot ascertain that there is serious purpose in the request; rather, it is an attempt to reopen and sustain a dialogue.

39. Finally, the complainant's submissions to the Commissioner contain explicit sexual content that was neither necessary nor appropriate to include, and the Commissioner is aware that prior correspondence with the DoJ has contained material of a similar nature. The Commissioner cannot speak to the sensitivities of individual staff at the DoJ however he is of the opinion that sustained communications containing highly graphic content may cause harm or distress, and that by complying with the request the DoJ will probably receive more correspondence along the same vein.
40. For the reasons given the Commissioner believes that the request was vexatious and therefore the DoJ was entitled to rely on section 14(1) of FOIA to refuse the request.

Right of appeal

41. 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

42. 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.
43. 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

Jonathan Slee
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