

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

### **Decision notice**

**Date:** 10 February 2022

**Public Authority:** Department for Levelling Up, Housing and Communities

**Address:** 2 Marsham Street  
London  
SW1P 4DF

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

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1. The complainant requested from the Department for Levelling Up, Housing and Communities ("the DLUHC") information about a Stage 3 complaint outcome it had provided. The DLUHC initially responded to the request by denying that the information was held, but at a later stage refused to comply with the request under section 14(1) of the FOIA because it considered that the request was vexatious.
2. The Commissioner's decision is that the DLUHC was entitled to rely on section 14(1) to refuse to comply with the request.
3. The Commissioner does not require the DLUHC to take any steps.

#### **Background information**

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4. The request in this case relates to what the Commissioner understands to be a grievance held by the complainant against the Architects Registration Board ("the ARB"), and its overseeing authority, the DLUHC.

5. The Commissioner has previously outlined their understanding of the substantive matter in Decision Notice FS50840434<sup>1</sup> (issued 10 January 2020), which considered four requests relating to the substantive matter.

## Request and response

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6. On 14 June 2021, the complainant wrote to the DLUHC and requested information in the following terms:

*"With reference to a Stage 3 complaint (your ref: 3899364) I quote from the opening paragraph of your response which was sent to me by [redacted name] in an email dated 29th October 2018:*

*Case 3899364 - Stage 3 I am writing to give you our response to your complaint at Stage 3 of the Ministry of Housing, Communities and Local Government (MHCLG) Complaints' Procedure. I can only address the matter of maladministration under the Complaints Procedure and not any underlying issue. The Department's Complaints Process does not cover actions by other sponsored bodies, such as the Architects Registration Board (ARB)*

*Please note the two sentences highlighted in red above. With reference to these sentences and under the Freedom of Information Act, I would like answers to the following questions:*

- 1) *What is/are the specific "underlying issue(s)" specific to my complaint that the above statement refers to?*
- 2) *What is/are the specific "action(s)" specific to my complaint that the above statement refers to?"*

7. The DLUHC responded on 13 July 2021. It stated that no relevant information was held.
8. Following an internal review, the DLUHC wrote to the complainant on 10 September 2021. It maintained its original response that no relevant information was held.

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<sup>1</sup> <https://ico.org.uk/media/action-weve-taken/decision-notices/2020/2616925/fs50840432.pdf>

## Scope of the case

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9. The complainant contacted the Commissioner on 15 September 2021 to complain about the way their request for information had been handled.
10. During the course of the investigation, the DLUHC revised its position. It informed the complainant that it refused to comply with the request on the basis that it was vexatious under section 14(1) of the FOIA and would refuse any further requests on the same subject under the provision of section 17(6) (refusal of request).
11. The Commissioner notes that the request was originally submitted to the Ministry of Housing, Communities, and Local Government. During the course of the investigation, the authority's name changed to DLUHC.
12. The Commissioner has considered in this decision notice whether the DLUHC was entitled to apply section 14(1) to refuse the request.

## Reasons for decision

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### Section 14(1) – vexatious requests

13. Section 1(1) of the FOIA states that an individual who asks for information is entitled to be informed whether the information is held and, if the information is held, to have that information communicated to them.
14. Section 14(1) of the FOIA states:

*"Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious."*
15. 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.
16. The Dransfield definition establishes that the concepts of proportionality and justification are relevant to any consideration of whether a request is vexatious.
17. Dransfield also considered 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 or distress of and to staff. It explained that these considerations were not meant to be exhaustive and also explained 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"* (paragraph 45).

18. The Commissioner has published guidance on dealing with vexatious requests<sup>2</sup>, which includes a number of indicators that may apply in the case of a vexatious request. However, even if a request contains one or more of these indicators it will not necessarily mean that it must be vexatious. All the circumstances of the case will need to be considered in reaching a judgement as to whether or not a request is vexatious.
19. When considering the application of section 14(1), a public authority can consider the context of the request and the history of its relationship with the requester, 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 before making a decision as to whether section 14(1) applies"*.

20. However, the Commissioner would also stress that the relevant consideration for public authorities is whether the request itself is vexatious, rather than the individual submitting it.
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"*.

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<sup>2</sup> <https://ico.org.uk/media/for-organisations/documents/1198/dealing-with-vexatious-requests.pdf>

### ***The complainant's position***

22. The complainant considers that the DLUHC has incorrectly identified their information request as vexatious.
23. The complainant argues that the information requested relates to a Stage 3 complaint raised with the DLUHC's complaints department, to which an outcome has been issued. The complainant contests that the outcome does not address the main substance of the complaint, and otherwise fails to provide sufficient detail to justify its position. The complainant therefore asserts that the request has been made to pursue aspects of the Stage 3 complaint that they do not consider to have been fully addressed, and which require clarification.

### ***The DLUHC's position***

24. The DLUHC argues that the request relates to long standing matters that have previously been addressed - including through the provision of the Stage 3 complaint outcome on 29 October 2018.
25. The DLUHC argues that the complainant's concerns about the substantive matter have been considered, investigated and addressed comprehensively by both the ARB and the DLUHC, and that there is no objective public interest in complying with the request.
26. The DLUHC argues that the previous findings by the Commissioner and Tribunal are applicable to the request in this case, as it considers the request to be inherently connected to the substantive matter considered in those findings.

### ***The Commissioner's view***

#### *The previous case*

27. In Decision Notice FS50840432, the Commissioner considered four requests made by the complainant, which the DLUHC - in a refusal notice issued on 23 October 2018 - had refused as vexatious under section 14(1).
28. The Commissioner's analysis in that decision notice gave particular consideration to the long-running nature of the substantive matter, the burden imposed on the DLUHC, and the limited public value of the requests.
29. The Commissioner's resultant decision was that the complainant's requests were vexatious under section 14(1).

30. The complainant appealed the decision notice to the First-tier Tribunal (Information Rights) ("the Tribunal"). In the decision on that appeal (EA/2020/0068/V), the Tribunal likewise considered the context of the requests, and in particular noted the ongoing burden of the substantive matter:

*"I conclude that the Request is part of the Appellant's relentless pursuit of the ARB and MHCLG over many years which has imposed a significant burden on them, and will continue to do so, even if they respond to the Request"* (Tribunal at paragraph 46).

31. The Tribunal also referenced its view that the substantive matter had been addressed through successive complaints to the ARB and DLUHC, and that *"there is now no objective public interest in the issue"* (Tribunal at paragraph 48).
32. The Tribunal's resultant decision was that the complainant's requests were vexatious under section 14(1), and that the Commissioner's decision notice was therefore in accordance with the law.

*The present case*

33. In the circumstances of this case, the Commissioner has considered it appropriate to refer to both Decision Notice FS50840432, and the Tribunal's decision.
34. Having reviewed the request in this case, the Commissioner perceives that that it clearly relates to the substantive matter previously considered in those decisions – namely the complainant's grievance relating to the ARB and the DLUHC.
35. The request in this case has taken place at a later date – and in a different context – than the earlier requests. The Commissioner therefore considers it appropriate to consider whether, in the circumstances, there are now relevant factors which mean the Commissioner's – and the Tribunal's – previous findings are no longer relevant.
36. The Commissioner understands that the request relates to a Stage 3 complaint outcome provided by the DLUHC. The Commissioner has reviewed a copy of that complaint outcome, and notes that it has upheld the DLUHC's prior handling of the Stage 1 and Stage 2 complaints, and additionally, has found no basis for the complainant's allegations relating to maladministration by the DLUHC. The Commissioner also notes that the complaint outcome clearly refers the complainant to their right of appeal to the Parliamentary and Health Service Ombudsman ("the PHSO") should they remain dissatisfied with the DLUHC's actions.

37. Having considered the Stage 3 complaint outcome, the Commissioner does not perceive that it substantially changes the relevant factors previously considered by the Commissioner – and the Tribunal. This is because the DLUHC has not identified any deficiencies in its previous handling of the substantive matter, and further, the complainant now has access to an appropriate route of appeal through the PHSO. As such, it is reasonable for the Commissioner to consider that the request under consideration here will only add further burden upon the DLUHC, whilst serving no public value.
38. The Commissioner has also had regard to the apparent purpose of the request. The Commissioner perceives that, rather than seeking clearly recorded information, the intent of the request appears to be the seeking of further engagement by the DLUHC in respect of two specific questions. The complainant has stated to the Commissioner that the purpose of the request is to seek “...clarification of the reasons given for failing to address my complaint...”; however, this remedy is beyond the scope of the FOIA, which only provides a right of access to already recorded information. The FOIA does not require a public authority to create new recorded information (such as a statement) in order to respond to a question, regardless of whether it is phrased as an information request under the FOIA.
39. The Commissioner also notes that the wording of the information request above does not fit well with the complainant’s stated reason for submitting it. Instead of seeking clarification relating to his complaint, the request appears to be an attempt to draw the DLUHC into discussion about minor points of its 29 October 2018 response. This further illustrates that this request is of no public value.
40. Whilst the Commissioner recognises that the complainant continues to remain dissatisfied about the substantive matter, the Commissioner is not convinced that there has been any significant change that would mean the Commissioner’s – and the Tribunal’s – previous decisions are no longer relevant to the Commissioner’s determination in this case.
41. The Commissioner is therefore satisfied that the request is vexatious, and that the DLUHC was entitled to rely on section 14(1).

## Right of appeal

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42. 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)

43. 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.
44. 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 .....**

**Daniel Perry**  
**Senior Case Officer**  
**Information Commissioner's Office**  
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