

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 5 January 2023

Public Authority: Department for Digital, Culture, Media & Sport
Address: 100 Parliament Street
London
SW1A 2BQ

Decision (including any steps ordered)

1. The complainant submitted a request to the Department for Digital, Culture, Media and Sport (DCMS) seeking a copy of the Secretary of State's ministerial diary for the period February 2020 to April 2021. DCMS refused the request on the basis of section 14(1) (vexatious) of FOIA given the burden in complying with it.
2. The Commissioner's decision is that DCMS is entitled to rely on section 14(1) of FOIA to refuse to comply with the request.
3. No steps are required.

Request and response

4. The complainant submitted the following request to DCMS on 13 April 2021:

'From 13th February 2020 to the day this request is processed, please provide a copy of Secretary of State for Digital, Culture, Media and Sport Oliver Dowden's ministerial diaries.

Please note, I am making this request out of the public interest. It is absolutely essential for the public to know - in full detail - the calls, events and meetings that took place across the year when the pandemic gripped the UK and beyond.'

5. DCMS responded on 5 May 2021. It refused the request on the basis of section 14(1) of FOIA because it believed that processing the request would cause a disproportionate and unjustified level of disruption to the department and impose an oppressive burden on resources.
6. The complainant contacted DCMS on 14 May 2021 and asked it to conduct an internal review of its response. She set out why in her view section 14(1) did not apply to her request, focusing on what she considered to be the public interest in the disclosure of the requested information.
7. DCMS informed her of the outcome of the internal review on 10 June 2021. The review upheld the application of section 14(1).

Scope of the case

8. The complainant contacted the Commissioner on 7 September 2021 to complain about DCMS' reliance on section 14(1) to refuse her request.

Reasons for decision

Section 14(1) - vexatious

9. Section 14(1) of FOIA allows a public authority to refuse to comply with a request if it is considered to be vexatious.
10. In the Commissioner's view, 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. This will usually involve weighing the evidence about the impact on the authority and balancing this against the purpose and value of the request. This should be judged as objectively as possible; in other words, would a reasonable person think that the purpose and value are enough to justify the impact on the public authority.
11. In particular, the Commissioner accepts that there may be cases where a request could be considered to be vexatious because the amount of time required to review and prepare the information for disclosure would place a grossly oppressive burden on the public authority. This is the position adopted by DCMS in this case.
12. In reaching a decision in this case the Commissioner has considered the detailed submissions provided to him by DCMS and the arguments presented by the complainant. He has also referred to recent decision

notices he has issued in relation to similarly constructed requests submitted by the same complainant.¹

13. The Commissioner appreciates that the complainant has made a detailed case for why, in her view, there is a compelling interest in the disclosure of the requested information. The Commissioner is also sympathetic to the complainant's argument given that this request covers an unprecedented time, ie the Covid 19 pandemic. For these reasons, the Commissioner accepts that the complainant's request does have a clear purpose and value.
14. However, because of the volume of information in the scope of the request, the Commissioner accepts that the burden placed on DCMS in complying with it will be a grossly oppressive one. In the Commissioner's opinion despite the clear value in the disclosure of this requested information, he does not accept that this is sufficient to justify placing such a burden on DCMS.
15. Having considered the relevant facts the Commissioner is satisfied that the request, DCMS' position, the complainant's arguments, the scope of information captured and the burden that compliance would impose are sufficiently similar to the scenarios addressed in the recent decision notices cited in paragraph 12. He, therefore, transposes the arguments and conclusions reached in these decision notices to this decision notice.
16. In light of the above, the Commissioner's decision is that the request is vexatious. Therefore, DCMS is entitled to rely on section 14(1) of FOIA to refuse to comply with the request. The Commissioner requires no further action to be taken by DCMS in relation to the request.

¹ See, for example, the following: <https://ico.org.uk/media/action-weve-taken/decision-notices/2022/4022384/ic-129067-f2l3.pdf>, <https://ico.org.uk/media/action-weve-taken/decision-notices/2022/4022827/ic-148740-m6d1.pdf>, <https://ico.org.uk/media/action-weve-taken/decision-notices/2022/4022381/ic-128331-r7h1.pdf>, <https://ico.org.uk/media/action-weve-taken/decision-notices/2022/4022383/ic-129066-d1g1.pdf>

Right of appeal

17. 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

18. 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.
19. 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
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF