

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 16 February 2023

Public Authority: Department for Business and Trade
Address: Old Admiralty Building
London
SW1A 2DY

Decision (including any steps ordered)

1. The complainant made four requests to the Department for International Trade ("DIT") for information regarding Saudi Arabia and the provision of further education.
2. The DIT refused the requests under section 14(1) of FOIA (vexatious requests).
3. On 7 February 2023, a machinery of government of change was announced whereby the DIT was merged into a new government department, the Department for Business and Trade ("DBT").
4. This Decision Notice has therefore been issued to the DBT in respect of information originally requested from the DIT.
5. The Commissioner's decision is that the requests were vexatious and therefore the DBT was entitled to rely upon section 14(1) of FOIA to refuse them.
6. DBT breached section 10 of FOIA by failing to respond to the requests within 20 working days of receipt.
7. The Commissioner does not require any steps to be taken.

Request and response

8. On 8 and 16 December 2021, the complainant made the four requests which are set out in Annex A.
9. The DBT responded on 14 March 2022, refusing the requests as vexatious, on the basis of section 14(1) of FOIA and stated that section 12 of FOIA (cost limit) would also apply.
10. On 12 April 2022, the DBT provided an aggregated internal review response to requests in which it upheld its position as regards section 14 of FOIA.

Scope of the case

11. The complainant contacted the Commissioner on 18 April 2022 to complain about the way their requests for information had been handled.
12. This notice covers whether the DBT correctly determined that the requests were vexatious.

Reasons for decision

Section 14(1) – vexatious requests

13. 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.
14. The word “vexatious” is not defined in FOIA. However, as the Commissioner’s guidance on section 14(1)¹ 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.
15. FOIA gives individuals a greater right of access to official information in order to make bodies more transparent and accountable. As such, it is

¹ <https://ico.org.uk/for-organisations/dealing-with-vexatious-requests-section-14/>

an important constitutional right. Therefore, engaging section 14(1) is a high hurdle.

16. 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.
17. Most people exercise their right of access responsibly. However, a few may misuse or abuse FOIA by submitting requests which are intended to be annoying, disruptive or which have a disproportionate impact on a public authority. The Commissioner's guidance on what may typify a vexatious request stresses, however, that it is always the request itself, and not the requestor, which is vexatious. However, a public authority may also consider the context of the request and the history of its relationship with the requester when this is relevant.
18. 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*")². Although the case was subsequently appealed to the Court of Appeal, the UT's general guidance was supported, and established the Commissioner's approach.
19. *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.
20. 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).
21. However, the UT emphasised that these four broad themes are not a checklist and are not exhaustive. Rather, it stressed the:

² <https://administrativeappeals.decisions.tribunals.gov.uk/Aspx/view.aspx?id=3680>

"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).

22. Sometimes it will be obvious that a request is vexatious and other times it will not. In considering such borderline cases, the key is to weigh up any purpose and value that the request represents against any disruption, irritation, or distress that compliance with the request may cause the public authority. In doing this the Commissioner considers that a public authority should weigh the impact of the request on it and balance this against the purpose and value of the request. The UT stated in Dransfield 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" (paragraph 82).

The DBT's arguments

23. In its internal review response dated 12 April 2022, the DBT explained that over the course of two years the complainant had made around 15 information requests to the DBT on the same or similar terms in relation to further education training companies and Saudi Arabia.
24. In response to some of the previous requests, the DBT has released information to the complainant (subject to exemptions) and has also dealt with the numerous internal reviews requested by the complainant when all the information requested was not released.
25. The DBT acknowledged that there is a general public interest in transparency relating to UK companies operating abroad and that to date the DBT has released in excess of 300 pages of documentation to the complainant on this subject.
26. The DBT explained in detail the context and history of the requests. The DBT explained that the complainant has made allegations of potential human trafficking, labour exploitation and visa fraud committed by a UK training company and has referred to an employment tribunal against the named UK training company in which the complainant is a claimant. The complainant has also accused the DBT of communicating with the UK training company via secretive channels.
27. The DBT's view is that, although the complainant's initial requests were focused on a particular subject, subsequent requests (including the requests considered here) have become repeated, overlapping, and

broader in the subject of the requests. This pattern of requests occurred following confirmation by the DBT that no further information was held in relation to the subject of the initial requests. It is the DBT's view that the complainant is reluctant to accept that their allegations are unsubstantiated by information held by the DBT, resulting in the widening of search terms to seek to uncover alleged wrongdoing which the complainant believes is being deliberately concealed.

28. Accordingly, the DBT considers that the complainant is unreasonably and persistently pursuing information that the DBT does not hold and will continue to do so.
29. The DBT explained that the requests were causing unjustified disruption and harassment to the DBT and placing a significant burden on public resources for which the DBT could not see any justification. The DBT explained that the time spent by staff considering the complainant's requests and internal reviews was a distraction from other vital work.
30. Furthermore, the DBT explained that the complainant had a pattern of behaviour where, very shortly after the issuing of a response, follow up requests would be made of an equally broad nature, despite advice from the DBT to narrow the scope of the requests. The DBT referred to the ICO guidance which states:

"Where requests have been submitted over a long period, possibly years, this may indicate that requests will continue to be made in the future. Therefore, even if the latest request appears entirely reasonable, when viewed in isolation, you may take into account the anticipated burden of those future requests when assessing burden."

31. The DBT anticipated that following any issuing of responses to the complainant on the subject of education and/or training in Saudi Arabia, follow up requests would be received as well as requests for internal reviews.

The complainant's view

32. The complainant argued that the DBT initially ignored their requests and did not respond within the 20-day statutory timeframe.
33. The complainant is of the view that they have been "blacklisted" by the FOI team at the DBT and that the DBT are deliberately withholding information because they are being pressurised to do so.
34. The Commissioner notes that in their concern form to the ICO, the complainant indicated that the motive behind their requests was transparency, because so little is known about the DBT's work in relation

to Saudi colleges/education and it is in the public interest to release the information.

35. The complainant did not accept that their requests caused harassment or distress to staff or undue burden on the DBT's resources, stating that the DBT should employ more staff to ease the workload.
36. The complainant argued that the DBT was incorrect to state that the request in relation to Sir Steve Smith was too broad, as Sir Steve Smith was appointed as the UK's International Education Champion in September 2020 and that, therefore, the request only covered the period from September 2020 to the date of the request on 8 December 2021.
37. The complainant countered the DBT's argument that their other requests already encompass the information requested by stating that none of the information requested in the four requests which are the subject of this Decision Notice has been released, and so the requested information should be released.

The Commissioner's decision

38. 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. As previously discussed, there is a high bar for engaging section 14(1).

Value or serious purpose

39. In cases where the issue of whether a request is vexatious is not clear cut, the key test is to determine whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation, or distress.
40. When considering this issue, the Upper Tribunal in Dransfield asked itself, "Does the request have a value or serious purpose in terms of there being an objective public interest in the information sought?" (paragraph 38). The public interest can encompass a wide range of values and principles relating to what is in the best interests of society, including, but not limited to:
 - holding public authorities to account for their performance;
 - understanding their decisions;
 - transparency; and
 - ensuring justice.

41. In this instance the requests appear to focus on an issue of concern about the lack of transparency around the DBT's dealings with further education businesses and their activities in Saudi Arabia. The complainant has a clear belief that wrongdoing may have been committed and believes the requests to be a legitimate pursuit to uncover this and that it is in the public interest to do so.
42. However, even if the request does have a value or serious purpose, there may be factors that reduce that value. One such factor is the burden the request places on the public authority.

Burden

43. The DBT argued that the amount of work that would be involved in dealing with the requests would impose an unreasonable burden on the DBT. The DBT also stated that it had answered previous requests from the complainant on the same subject(s) as the requests dated 16 December 2021 and that information had been released to the complainant as a result of those previous, similar requests.
44. The DBT explained to the complainant that each of the requests dated 16 December 2021 would require multiple DBT officials to search in excess of five years' worth of records, extract the information within scope and then review for sensitivities which would require the consideration of multiple exemptions. The DBT noted that if section 14 (1) of FOIA did not apply to the requests, then section 12 (cost limit) of FOIA would highly likely apply.
45. As the requests made on 16 December 2021 are very similar to requests that the DBT has already dealt with previously, the Commissioner is satisfied that the DBT will have a clear understanding of the amount of work which would be required and also, given the complainant's pattern of behaviour, that it would be highly likely that the complainant would request an internal review of any response given, thereby creating more work for the DBT's FOI team.
46. As regards the request dated 8 December 2021, whilst the complainant argues that the time period of the request is short (around 14 months), the request is very wide and unfocussed requesting "all recorded information". In its response to the complainant dated 14 March 2022, the DBT explained that the request was overly broad, in the manner of previous requests, and that the complainant had been advised several times to make more specific requests. The DBT also advised that if section 14 (1) did not apply, then it was highly likely that section 12 (cost limit) would apply to the request dated 8 December 2021.

47. However, the Commissioner considers that there is a high threshold for refusing a request on such grounds and a public authority is most likely to have a viable argument when:
- The requestor has asked for a substantial volume of information and
 - The authority has real concerns about potentially exempt information, which it will be able to substantiate if asked to do so by the ICO and
 - Any potentially exempt information cannot easily be isolated because it is scattered through the exempt material.
48. The volume of information indicated by the DBT that could fall within the requests could potentially be within the threshold for refusing the request. Requests considered by the Commissioner previously in which this argument has been supported have involved exceptional circumstances; large volumes of information and a task of redacting such volumes that would not be straightforward but rather complex and very time consuming.
49. When a request appears to be part of a completely random approach, lacks clear focus, or seems to have been solely designed for 'fishing' for information without any idea of what might be revealed, the Commissioner may agree that a scattergun approach has been taken. The Commissioner considers that this is the case here. The requests are very wide and unfocussed, and the complainant appears to be attempting to uncover information on unsubstantiated allegations.
50. In terms of size and work involved, therefore, the DBT has convinced the Commissioner that preparing this information for disclosure would impose a grossly oppressive burden.

Context & history

51. The context and history of the request is often a major factor in determining whether the request is vexatious and may support the view that section 14(1) applies.
52. The Commissioner acknowledges that, in this case, the DBT has dealt with many previous and similar requests from the complainant over the past two years and has provided the complainant with over 300 pages of documentation to date relating to UK education/training companies operating in Saudi Arabia. The Commissioner accepts that those previous requests relate to the subject matter of the requests in this case.

53. The Commissioner does accept there was a serious value to the requests in this case, i.e., the transparency around the activities of UK companies in Saudi Arabia. But when considered in the context of the DBT's previous dealings with the complainant, the Commissioner accepts that the requests can be considered vexatious.
54. The Commissioner also notes that this approach is supported by case law in *Betts vs ICO*.³ This case suggests that even if a request were not vexatious in isolation, it could be considered vexatious when viewed in context.
55. In this case, it seems that a personal issue between the complainant and certain UK training companies operating in Saudi Arabia has resulted in ongoing and repeated FOIA requests over two years. This has continued despite the DBT's disclosures and advice as regards the broad nature of the complainant's requests. In the Commissioner's view, this demonstrates a continuation of a pattern of behaviour and part of an ongoing campaign to uncover evidence to support the complainant's belief that wrongdoing has taken place.
56. The Commissioner notes that he has received several complaints from the complainant in respect of particular UK training companies and the DBT in relation to similar requests regarding activities in Saudi Arabia.
57. The Commissioner considers that the requests in this case can be considered to be a burden when seen in context of the history of the complainant's previous requests.

Motive & harassment

58. The motive of the requester is relevant when considering whether the request is vexatious under section 14(1).
59. Whilst the complainant has asserted that their motive is to ensure transparency in the dealings of UK companies in Saudi Arabia, there appears to be an underlying motivation of the complainant to seek evidence of wrongdoing.
60. The complainant's requests are not abusive or aggressive. Nevertheless, the tenacity with which they have pursued their arguments will be felt as harassing by DBT officers. The Commissioner also notes that DBT

³ <https://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i61/betts.pdf>

officers may feel irritated and harassed by dealing with the same complainant and the same issues when it has responded to the complainant's requests previously.

61. Further, this demonstrates that the complainant is taking an unreasonably entrenched position, rejecting advice by the DBT to refine their requests, and refusing to accept when the DBT states that information is not held.
62. The Commissioner's guidance states that such behaviour also undermines a requester's arguments that their request is a serious attempt to access information which will be of use to them (page 16).
63. In summary, the Commissioner has taken into account all of the above, and considered whether, on a holistic basis, he considers that the requests are those that typically characterise vexatious requests - and he finds that they do. While the requests do have a value or serious purpose, there are several factors that reduce that value, namely, the complainant's unreasonable persistence by making repeat and overlapping requests and the context and history of the requests showing an underlying motive to uncover alleged but unsubstantiated wrongdoing.
64. In the Commissioner's opinion, this indicates that the complainant's intention was to cause a disproportionate or unjustified level of disruption to the DBT and therefore the DBT was entitled to rely on section 14(1) of FOIA to refuse the request.

Procedural Matters

65. The DBT breached section 10 of FOIA by failing to respond to the complainant's requests within 20 working days of receipt.

Right of appeal

66. 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

67. 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.
68. 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

Michael Lea
Team Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Annex A – requests for information

1. 8 December 2021

“Professor Sir Steve Smith is the UK’s first International Education Champion and is also The Prime Minister Special Representative for Education to Saudi Arabia. I would like you to provide me with all recorded information. Recorded information includes printed documents, computer files, letters, emails, photographs, and recordings in connection with Sir Steve Smith in relation to Saudi Arabia.”

2. 16 December 2021

“I would like you to provide me with all information held by DIT that shows a relationship between Interserve and PNE (Project North East), such as working together on a project, attending meetings, conferences, invites etc; all information held until the present day. Please feel free to apply necessary exemptions e.g. to redact personal information.”

“I would like you to provide me with all information held by DIT that shows any activity between PNE (Project North East) and Saudi Arabia/KSA i.e. interest in bidding/projects/opportunities, attending meetings etc. Please feel free to apply necessary exemptions e.g. to redact personal information.”

“I would like you to provide me with all emails sent by DIT to Lincoln College in the UK (directly or copied in), or received by DIT from Lincoln College UK in relation to its further education businesses in Saudi Arabia/KSA. The purpose is to determine how Lincoln College operates: Lincoln College has established LLC’s in Saudi and claims to have no control over the running of the colleges. Please feel free to apply necessary exemptions e.g. to redact personal information.”