

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 7 September 2023

Public Authority: HM Treasury
Address: 1 Horse Guards Road
London SW1A 2HQ

Decision (including any steps ordered)

1. The complainant requested information from HM Treasury ("HMT") relating to a previous request about the Loan Charge Review. HMT refused the request under section 14(1) of FOIA (vexatious requests).

The Commissioner's decision is that the request was vexatious and therefore HMT was entitled to rely upon section 14(1) of FOIA to refuse it.

2. The Commissioner does not require any steps.

Request and response

3. On 4 November 2021 the complainant requested information of the following description:

"You responded to my recent FOI request (reference FOI2021/15854) on 01 September 2021, refusing to disclose the information requested and claiming exemption under sections 36(2)(b)(i), 36(2)(b)(ii) and 36(2)(c) of the FOIA. As a consequence, please now disclose:

1) the name of the qualified person who provided that opinion, where qualified person, in relation to information held by a government department in the charge 2 of a Minister of the Crown, means any Minister of the Crown; or, in relation to information held by any other government department, means the commissioners or other person in charge of that department.

2) the full and unabridged text of that qualified person's opinion, and all recorded information, of any type or in any format, which contains submissions (or exchanges of opinion) provided to the qualified person for considering that request.

3) all metadata held in any recorded form by the department which relates to my original request (reference FOI2021/09786), the subsequent request (FOI2021/15854), the next allocated request (reference FOI2021/22729) and the recently allocated internal review (reference IR2021/25860)."

4. On 2 December 2021 HMT responded. It argued that it was not obliged to provide a response and cited section 14(1) – vexatious or repeated request.
5. The complainant narrowed their request on 31 January 2022 by seeking the information sent to the qualified person and by narrowing the timeframe of the request, as follows:

"Whilst the request for the full and unabridged text of the qualified person's opinion in the second point remains unchanged, I would be willing to narrow the scope (date range) of my original request for the remainder of this second section. Please therefore provide all recorded information, of any type or in any format, which contains submissions (or exchanges of opinion) provided to the qualified person for considering that request between 6th July 2021 and 1st September 2021. On the continued assumption that it was Kemi Badenoch who provided the opinion, then all communications covering this request should be held within a single mailbox - unless you are likely to inform me that there are other forms of recorded information on other types of media which contain this data? Please kindly confirm - thank you.

With regard to the third point, which asked for all metadata held in any recorded form by the department which relates to my original request (reference FOI2021/09786), the subsequent request (FOI2021/15854), the next allocated request (reference FOI2021/22729) and the internal review (reference IR2021/25860), please restrict your search for metadata to dates between 7th June 2021 and 1st December 2021..."

6. HMT treated this as a fresh request and responded on 28 February 2022. It argued that the complainant had made 10 previous requests and seemed to argue that any value or purpose such requests may have did not outweigh the effort involved in responding.
7. The complainant requested an internal review on 4 April 2022. They explained that they had made 6 and not 10 requests. They queried how comprehensively HMT had actually considered ICO guidance and

disagreed with the suggestion that they were acting in concert with other parties.

8. On 5 May 2022, HMT sent the complainant the outcome of its internal review. It upheld its original position.

Scope of the case

9. The complainant contacted the Commissioner on 4 August 2022 to complain about the way their request for information had been handled.
10. This notice covers whether HMT correctly determined that the request was vexatious.
11. The Commissioner notes that the third element of the request may include the complainant's personal data among the requested metadata. Information which is the requester's personal data is absolutely exempt from disclosure to that requester under FOIA. The Commissioner therefore excludes consideration of the complainant's access to their own personal data, if held, from this decision notice.

Reasons for decision

Section 14(1) – vexatious requests

12. 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.
13. The word "vexatious" is not defined in FOIA. However, as the Commissioner's updated 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.
14. 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.

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

15. However, the Commissioner 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.
16. 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.
17. 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.
18. 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).
19. 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).

HMT's arguments

20. HMT's arguments focussed on burden. It explained that where the complainant had narrowed their request, this did very little to reduce the burden particularly because the requests were closely related to

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

preceding requests they had made and "each subsequent request will reference a previous one".

21. HMT's initial searches in this case yielded 250 emails. HMT said "some of them [are] lengthy chains and many ... contained attachments". HMT then described in detail the work that would be involved in further searches using examples.
22. Noting that the request in this case related to a case where a section 36 refusal notice had been issued, HMT said that "some of the information contained within the emails would also contain the sensitive section 36 information, along with draft copies of the submission that would have been made to the qualified person." It gave further examples of the challenges that would be involved in this regard.
23. It recognised that it was a large public authority. However, it explained, "the majority of the searching and compiling of the information could only be allocated to [specified] teams because the mailboxes that would need to be searched are not open access, nor are the systems – records on corporate systems are largely locked down to specific teams. Gaining access would add further layers of admin and potentially compromise the integrity of the controls in place. Even when information was located and extracted, the [specified] mentioned are the ones with the knowledge and understanding of the information".
24. It then set out the time that would be taken to identify the staff mentioned in the requested information in order to identify their grade. In most circumstances, the Commissioner accepts that public authorities can redact the personal data of staff members below Senior Civil Service ("SCS") level. It explained that each team would need to do this for its staff.
25. It went on to describe with examples the difficulties involved in requests of a similar nature, that is, meta requests. It also described how the effort involved would result in [specified] teams being "diverted from other requests and important policy work in order to compile information that has no further public value".
26. It argued that "Valuable resource would be spent compiling a folio of mainly administrative information of limited or any value that would be largely meaningless outside of HMT. The wider public and other Loan Charge requesters would not further their understanding of the Loan Charge policy – nor would [the complainant].
27. It also commented that "If the requester is seeking information on untoward behaviour or a 'charade' in the handling of [their] requests by HMT, the meta data would not reveal [this] ... - please refer to ICO DN -

IC-157474-F0J6 which found HMT had been correct in their application of s36 in the request that triggered this current one under investigation"³.

28. In relation to the question of serious purpose, HMT argued that the complainant "has in the series of these requests attempted to avoid due process – for example, by submitting a repeated request and stating quite clearly that the request was not a request for an internal review – [they have] attempted to circumvent the process". This was a reference to other request correspondence.
29. It described the information within the scope of the request as being "largely administrative emails, some auto generated by the logging system, some generated within the [specific teams]... It is anodyne in nature, the bulk of it is likely to be chasing emails asking for progress updates and would add nothing that would further aid understanding of the appointment of Lord Morse to lead the Independent Loan Charge Review, or the implementation of the policy that resulted from the Review – which is what [the complainant] is clearly interested in.
30. It asserted that "complying with this request consume[s] valuable time for the teams involved, it would add nothing to the understanding of ILCR and the policy around it".
31. HMT also referred to negative consequences where routine administration related emails between junior officials had been published online in response to FOIA requests related to the Loan Charge review. They acknowledged that although "public servants have to accept a certain amount of criticism from the public they serve, statements such as these made by [the complainant] in [their] internal review request become difficult for staff to deal with when they work hard to ensure the department is compliant with their statutory duties and is open and transparent". It added that "The fear that their work will be held up for criticism in public forums is a fear that is real".

The complainant's argument

32. The complainant argued that rather than being vexatious, their request demonstrated determination in the face of an uncooperative public authority lacking in transparency about aspects of the Loan Charge

³ <https://ico.org.uk/media/action-weve-taken/decision-notice/2023/4025850/ic-157474-f0j6.pdf>

review. They referred to a case of the Information Tribunal to best characterise their approach.

33. They stated as follows:

"Also, in *Thackeray vs ICO*, (EA/2011/0082 18 May 2012), the Tribunal unanimously upheld the complainant's appeal and observed that:

'The dogged pursuit of an investigation should not lightly be characterised as an obsessive campaign of harassment. It is inevitable that, in some circumstances, information disclosed in response to one request will generate a further request, designed to pursue a particular aspect of the matter in which the requester is interested. We would not like to see section 14 being used to prevent a requester, who has submitted a general request, then narrowing the focus of a second request in order to pursue a particular line of enquiry suggested by the disclosure made under the first request. (paragraph 26)'.⁴

34. They also asserted "It follows that no sane, reasonable or objective person could possibly claim that there is even the slightest transparency or openness being demonstrated by the authority here - it is alarmingly evident that government and HM Treasury wish to close this debate down, to suppress access to the truth and to stifle the possibility of any further change to this policy by resisting disclosure at any cost - be that financial, or human".

35. The Commissioner asked the complainant to substantiate their assertions that there were cases of suicide directly related to the Loan Charge matter. The complainant had given the figure of 10 cases.

36. In response, the complainant supplied two links. They described the first as a letter from the First Permanent Secretary and CEO of HMRC (Jim Harra) to the Treasury Select Committee in January 2023, and the second as an open letter from the Loan Charge and Taxpayer Fairness All-Party Parliamentary Group to the Prime Minister and Chancellor, urging the government to find a resolution before more lives are needlessly lost. They drew attention to the fact that this latter letter had been signed by 154 serving MPs.

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https://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i761/20120525%20Corrected%20decision%20EA20110082%20&%200083%20_w_.pdf

37. They argued that this "will be sufficient evidence of the 'public interest' at stake here, as well as a demonstration of the unfaltering support within Parliament for the victims of this policy".

<https://committees.parliament.uk/publications/33540/documents/182481/default/>

[2023-01-18-Open-Letter-to-Rishi-Sunak-and-Jeremy-Hunt-on-the-Loan-Charge.pdf \(loanchargeappg.co.uk\)](https://loanchargeappg.co.uk/2023-01-18-Open-Letter-to-Rishi-Sunak-and-Jeremy-Hunt-on-the-Loan-Charge.pdf)

38. In the first of those two letters, the author says:

"HMRC recognises that dealing with a compliance investigation, and receiving a large tax bill as a result of such an investigation, can be stressful. HMRC takes loss of life or serious injury extremely seriously.

Where we learn that a customer has lost their life or suffered serious injury and there is any suggestion that this might be linked to contact with HMRC, the matter is reviewed by an internal governance team within HMRC that is separate from the case team, and relevant cases are referred to the Independent Office for Police Conduct (IOPC). HMRC has made ten referrals to the IOPC where a customer has sadly taken their life and had used a disguised remuneration scheme, the first of which was made in March 2019. Eight investigations have concluded and there was no evidence of misconduct by any HMRC officer. Two investigations are currently ongoing.

HMRC is taking forward organisational learning from concluded investigations and is committed to learning and making improvements so that we avoid causing undue stress and, wherever possible, we identify vulnerable taxpayers and give them the extra help they need".

39. The Commissioner understands that the "disguised remuneration scheme" referred to is the matter considered in the Loan Charge Review.⁵
40. The complainant commented that "Mr. Harra's carefully-worded content also raises the referrals of these cases of suicide to the Independent Office for Police Conduct (IOPC) - it is of note that the IOPC has since

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/789257/Disguised_remuneration_digicomms.pdf#:~:text=Disguised%20remuneration%20schemes%20are%20contrived%20arrangements%20that%20pay,of%20avoiding%20income%20tax%20and%20National%20Insurance%20contributions.

publicly confirmed all of those already concluded were simply handed back to HMRC for 'organisational learning'".

The Commissioner's decision

41. 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.
42. The Commissioner recognises that there is a serious purpose to the complainant's work in learning as much as possible about the Loan Charge Review. It is clear from the evidence presented above by the complainant that this is a matter of considerable public interest. Any public policy which is considered – in the way it has here - to be a likely factor in a suicide is a matter which deserves extremely close scrutiny.
43. However, the Commissioner is of the view that the approach taken by the complainant to obtain further information in this case does not constitute a productive approach and, instead, creates an excessive burden for HMT.
44. Where a requester is unhappy with the outcome of an FOIA request, the Commissioner recognises that they may wish to make a so-called "meta request". For example, it is usually reasonable for a requester to be told the name of the qualified person who gave an opinion regarding the application of section 36 in response to a previous request. HMT did not do that immediately here and the complainant made a further request for it. A public authority's response to a request may raise further questions and prompt additional and wholly reasonable FOIA requests about the detail of that response. However, an alternative approach is to complain to the Commissioner about the public authority's use of exemptions – section 36 in this case. The complainant already did so in respect of that request [see Note 3]. However, the most efficient way to challenge a decision notice issued by the Commissioner is to lodge an appeal with the First-tier Tribunal (Information Rights). If a requester wants to find out more about a public authority's use of exemptions in respect of a request and to test the Commissioner's analysis of it in a decision notice the Tribunal process therefore generally provides the most appropriate channel to do so.
45. The Commissioner recognises that the complainant is very concerned about HMT's transparency regarding the Loan Charge Review and the impact on individuals. The complainant is determined to gather evidence of wrongdoing and/or poor performance by HMT. However, there is a limit to how this can be achieved through FOIA meta requests.

46. The Commissioner is not persuaded, in the circumstances of this case, that the complainant only has the option of a meta request to challenge HMT's handling of these FOIA requests. HMT would have to carry out a great deal of work to respond to this meta request as set out above and as it explained in further detail to the Commissioner. While the Commissioner has considerable sympathy with the complainant's wish to find out as much as possible about the Loan Charge Review and HMT's handling of that specific request [see Note 3], he would observe that a mechanism already exists for challenging a public authority's use of exemptions if a requester disagrees with the its response.
47. Noting the Tribunal's decision in in [Cabinet Office vs Information Commissioner and Ashton \[2018\]](#) UKUT 208 (AAC)⁶, the Commissioner acknowledges that a public authority can apply section 14 where the sole ground for considering a single request vexatious is the burden it imposes. This was confirmed at paragraph 27, in which the Upper Tribunal agreed with the Commissioner that:
- "In some cases, the burden of complying with the request will be sufficient, in itself, to justify characterising that request as vexatious, and such a conclusion is not precluded if there is a clear public interest in the information requested. Rather, the public interest in the subject matter of a request is a consideration that itself needs to be balanced against the resource implications of the request, and any other relevant factors, in a holistic determination of whether a request is vexatious."
48. The Commissioner is of the view that the evidence and arguments set out by HMT as to its concerns about answering the request are reasonable in the circumstances of this particular case. Furthermore, given that the complainant has an alternative method for challenging HMT's use of exemptions, the Commissioner must, in this case, give less weight to the public interest in HMT complying with this meta request.
49. In light of the above, the Commissioner believes that the request was vexatious and therefore HMT was entitled to rely on section 14(1) of FOIA to refuse the request. He has given particular weight to the fact that the complainant had an alternative route for challenging HMT where they continued to disagree with its use of exemptions. He also accepts that the burden created by this request would distract HMT from its

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https://assets.publishing.service.gov.uk/media/5b57139a40f0b6339963e8cf/GIA_2782_2017-00.pdf

obligations to comply with FOIA in respect of other requests as well as in respect of the other activities described.

Right of appeal

50. 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

51. 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.
52. 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

Alexander Ganotis
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF