

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 31 July 2023

Public Authority: Ministry of Defence
Address: Whitehall
London
SW1A 2HB

Decision (including any steps ordered)

1. The complainant submitted an information request to the Ministry of Defence ("MOD") for a copy of JSP 441.
2. The Commissioner's decision is that the request was vexatious and therefore the MOD was entitled to rely upon section 14(1) of FOIA to refuse it.
3. The Commissioner does not require the MOD to take any further steps as a result of this decision notice.

Request and response

4. On 21 January 2023, the complainant wrote to the MOD and requested information in the following terms:

"I refer to your email dated 4 November 2022.

I am unable to access JSP 441 using the link to provided therein.

Can you provide JSP 441 as an attachment please?"

5. A response was provided on 17 February 2023 in which the MOD refused the request under section 14(1) of FOIA.
6. Upon receiving this response, the complainant submitted an internal review request on 21 February 2023. On the 23 May 2023, the MOD provided its internal review response in which it upheld its original position.

Scope of the case

7. The complainant originally contacted the Commissioner on 23 April 2023, as the MOD had not responded to their request for an internal review.
8. Following receipt of the MOD's internal review response and disclosure of the master list of the 'pages in categories', the complainant confirmed that they remained dissatisfied with the MOD's handling of their request.
9. The Commissioner has therefore considered the MOD's handling of the request, in particular whether it was entitled to refuse the request on the grounds that it 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. There is no public interest test.

11. The term 'vexatious' is not defined in FOIA. The Commissioner's guidance¹ suggests that if a request is not patently vexatious, the key question the public authority must ask itself is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation, or distress.
12. FOIA gives individuals the 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. The Upper Tribunal considered in some detail the issue of vexatious requests in the case of the Information Commissioner v Devon CC & Dransfield². The Tribunal commented that vexatious could be defined as the "manifestly unjustified, inappropriate or improper use of a formal procedure."
14. In the Dransfield case, the Upper Tribunal also found it instructive to assess the question of whether a request is truly vexatious by considering 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.

The Complainant's view

15. As the complainant has a full copy of JSP 441 from 2017, when it was provided in response to a request, he does not accept that "sensitive information is spread throughout the material". The complainant states that the 'only sensitive information' to be redacted from the 2017 version was "two names, five telephone numbers and five email addresses". Therefore they do not believe that their request would place a burden on the MOD's resources.
16. The complainant explains that the reasoning behind their FOIA request is to obtain the information which they need to challenge the public authority's refusal of their subject access request (SAR).

¹ [Dealing with vexatious requests \(section 14\) | ICO](#)

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

The MOD's view

17. In its response, the MOD informed the complainant that JSP 441 is 1,371 pages long, and that it has estimated that it would take at least 265 hours to review it "on a line-by-line basis, as sensitive information is spread throughout the material".
18. It further explains that the current version of JSP 441 requires staff to click hyperlinks, to obtain further information, which then link to other JSPs to be read in conjunction with the guidance, and that a large part of the information, contained in JSP 441 would have to be considered against "a number of exemptions".
19. In further highlighting administrative burden, the MOD states that the "construct and content of JSP 441 has significantly changed" since the 2017 version and that the preparation of a release version would "involve the input of approximately 25 content owners", as it is no longer a single document but a knowledgebase.
20. In regards to the motive of the requester, the MOD explains that the complainant originally sought access to information within JSP 441, regarding SARs, and that they were provided with an extract of this on 21 February 2023. However, the complainant maintains that the whole of JSP 441 should be provided, which the MOD states "represents both drift...and unreasonableness", from the complainant's original requirement.
21. In considering the value and purpose of the request, the MOD state that the wider public interest being pursued by the complainant is limited to "simply knowing what guidance is available to officials of the Department", and that it is unlikely that any one requester would find all the information contained within JSP 441 "of equal interest".
22. In highlighting the issue of harassment and distress, the MOD explains that this is the first of two requests submitted by the complainant, regarding the current JSP 441, and that it is frustrating to the staff, when they have offered advice and assistance and are already "hard pressed to meet priorities in the Department".

The Commissioner's decision

23. The Commissioner is keen to stress that in every case, it is the request itself that is vexatious and not the person making it.
24. In reaching a decision in this case, the Commissioner has balanced the purpose and value of the request against the detrimental effect on the public authority.

25. In this case, the Commissioner notes that the complainant states "if JSP 441 is indeed 1,371 pages long, then I accept that my request will need to be refined". However, the complainant feels that the MOD has not provided them with enough support to refine their request, and that it could provide them with the parts of its policy dealing with law enforcement processing and the handling of SARs.
26. However, the Commissioner is also aware that using the 2017 version of JSP 441 and the master list of 'pages in categories', the complainant should be able to identify a topic or element of JSP 441 which could form the subject of a refined request.
27. The Commissioner acknowledges that public authorities must keep in mind its underlying commitment to transparency and openness. However, he is of the view that the complainant is seeking the requested information for their own private gain rather than in the public interest.
28. In the circumstances of the case, and on the basis of evidence provided, the Commissioner is satisfied that the MOD was entitled to consider that the request was vexatious and therefore rely on section 14(1) of FOIA to refuse it.

Other matters

29. There is no obligation under FOIA for a public authority to provide an internal review. However, it is good practice to do so and, where an authority chooses to offer one, the section 45 Code of Practice sets out, in general terms, the procedure that should be followed. The code states that reviews should be conducted promptly and within reasonable timescales. The Commissioner has interpreted this to mean that internal reviews should take no longer than 20 working days in most cases, or 40 in exceptional circumstances.
30. In this case the MOD took more than 60 working days to respond to the internal review. The Commissioner reminds the MOD of the Code of Practice and urges it to respond in a timely manner.

Right of appeal

31. 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

32. 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.
33. 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

Joanna Marshall
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