

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 4 December 2023

Public Authority: Information Commissioner's Office
Address: Wycliffe House
Water Lane
Wilmslow
SK9 5AF

Decision (including any steps ordered)

1. The complainant requested information from the Information Commissioner's Office (ICO) relating to training undertaken by its staff. The ICO refused the request under section 14(1) of FOIA (vexatious requests).
2. The Commissioner's decision is that the request was vexatious and therefore the ICO was entitled to rely upon section 14(1) of FOIA to refuse it. However, the ICO breached section 17(1) of FOIA by issuing its refusal notice beyond the statutory timeframe.
3. The Commissioner does not require any steps.

Jurisdiction and terminology

4. This decision notice concerns a complaint made against the Information Commissioner. The Information Commissioner is both the regulator of FOIA and a public authority subject to FOIA. He is therefore under a duty, as regulator, to make a formal determination of a complaint made against him in his capacity as a public authority. The complainant has the same right of appeal against the Commissioner's decision as they

would any other public authority, details of which are at the end of this notice.

5. This notice uses the term "the ICO" to refer to the Information Commissioner dealing with the request and dealing with previous complaints brought under FOIA. It uses the term "the Commissioner" when referring to the Information Commissioner dealing with this complaint.

Request and response

6. On 3 August 2023 the complainant made the following request for information to the ICO:

"Please provide a copy of training you receive in order to spot PA Corruption Please provide a copy of the procedures to follow in order to notify the relevant governmental departments when lives are known to be at risk due to an environmental hazard."

7. On the same day the complainant clarified that they meant all the ICO staff and the executive team, not just the case officer concerned.
8. On 4 September 2023 the ICO issued a refusal notice to the complainant citing section 14(1) of FOIA.
9. The complainant asked for an internal review on the same day.
10. Following an internal review, the ICO wrote to the complainant on 14 September 2023 upholding its position. The ICO also stated that it would rely on section 17(6) of FOIA, "in response to any similarly themed requests in the future". This means that a public authority does not need to issue another refusal notice if a similar request is received.

Scope of the case

11. The complainant contacted the Commissioner on 15 September 2023 to complain about the way their request for information had been handled.
12. This notice covers whether the ICO correctly determined that the request was 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 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.
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 an important constitutional right. Therefore, engaging section 14(1) is a high hurdle.
16. 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.
17. 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.
18. 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.
19. The four broad themes considered by the Upper Tribunal in Dransfield were:

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

² [Social Security & Child Support Commissioners \(tribunals.gov.uk\)](https://www.tribunals.gov.uk/social-security-child-support-commissioners)

- 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).
20. 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).

The ICO’s view

21. The ICO refers to a number of indicators in its internal review that “point to a request being vexatious”. These are set out above in paragraph 19. The ICO (reflecting the Commissioner’s guidance) argues that the indicators don’t all need to be present for a request to be vexatious. However, they -

“help with the assessment of whether a request is a manifestly unjustified, inappropriate, or improper use of the formal FOIA procedure. In this particular case, the decision to refuse this request has been primarily a result of assessing the motive and value or serious purpose of this request”.

22. The ICO had previously warned the complainant that they had “persistently made allegations of corruption to the ICO.” They had also persistently refused to accept ICO outcomes. The ICO had refused a previous request as vexatious. It was refusing this request “on the same basis” as the earlier request as it was “in relation to the same theme”. It went on to make the contention that “this further request [is] an attempt to reopen matters which the ICO has provided an outcome for and now considers closed”.
23. In its internal review the ICO explained that the complainant had sent “an additional email” stating, “just to clarify with regards to the information requests the term you (sic) has been used loosely. It refers to all ICO staff including the executive office”.
24. The complainant’s review request asked that the reviewer “read the full email trail...when conducting the review”. The ICO points out in its review that the email trail dates back to February 2022. The emails concerned the complainant’s “ongoing concerns with Plymouth City

Council". The ICO stated that, as "FOIA is applicant blind" it failed to see the relevance, "The previous history regarding your complaints are therefore not relevant". It acknowledged though the slightly contradictory fact that previous history can have a relevance to the citing of section 14 of FOIA and referred to the Commissioner's published guidance -

"that '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. In practice this means taking into account factors such as:

- Other requests made by the requester to that public authority (whether complied with or refused).
- The number and subject matter of those requests.
- Any other previous dealings between the authority and the requester'."

25. Pointing to the last vexatious indicator above, the ICO states that it is "able to take into account its previous dealings with a requester". Having said this, the ICO places the request into the context of "wider concerns that have been ongoing for a number of years". It then goes on to explain that it had created 14 cases "this year alone" in the complainant's name. The reviewer suggests that the number of cases "supports" the refusal notice's view that -

"I consider this further request an attempt to reopen matters which the ICO has provided an outcome for and now considers closed. This adds to the argument that this request is vexatious and is not a genuine request for information."

26. The ICO also refers to the refusal notice's reference to a previous case that had been received prior to the request that is the subject of this notice where allegations of dishonesty and deception had been made. The ICO also made reference to another previous request which had "included a warning that S.14 may be relevant to further requests of a similar nature". Based on this evidence, the ICO had taken the decision that "any further response to your requests will not be of benefit to you, or to the ICO".

The complainant's view

27. The complainant's view is that their email trail is relevant and supports their contention that the request is not vexatious. They underpinned their view by referring to "recent reprimands...issued by the IC to the council [Plymouth City Council]". The complainant points out that it also contains "evidence that the new information request operating system that is being used for the council is not fit for public purpose". The complainant argues that their -

"full previous history of complaints relating to this PA contains evidence to prove that this public authority is corrupt. They have continuously lied and provided falsified data which has been accepted Under the balance of probabilities by the IC."

28. The complainant also contends that the context within which they had made their request to the ICO was a "genuine request for information".

The Commissioner's view

29. The Commissioner's guidance says the following:

"Generally when handling requests under FOIA, the motive of the requester has no bearing on how you handle their request. However, it is relevant when you consider whether the request is vexatious under section 14(1)...some requests are clearly vexatious. For example, if a single request is made using offensive language. The motive is to attack the public authority rather than being a genuine attempt to obtain information. There is a clear link here between motive and the harassment of staff."³

30. The Commissioner does not intend to go through the quantity of correspondence provided to the ICO by the complainant as it dates back over 18 months. Although it relates to complaints subsequently made to the ICO, it is largely correspondence (mostly information requests) between the complainant and Plymouth City Council in which the latter was accused of "deception" and "corruption". However, it does have some relevance to this request to the ICO and whether that request is vexatious. The Commissioner's guidance quotes from a decision notice that has some points of similarity -

³ [About this detailed guidance | ICO](#)

"The requester had a clear belief that fraud had been committed and DfID [Department for International Development] accepted the request had a serious purpose. However, it also considered the request was a continuation of a campaign on an issue that had already been thoroughly investigated and on which nothing more could be done."⁴

31. The complainant's view is that their request is not vexatious because it emerged from their discontent with a previous ICO case that did not conclude in a way that was satisfactory to the complainant.

32. The complainant stated in their correspondence on 31 May 2023 -

"As you are aware I have been communicating with the ICO for quite some time regarding the actions of this public authority concerning its interpretations of the FOIA's and how it continues to break the law with ref to its duty of care to Plymouth City Residents. To date the ICO has portrayed clear bias to favour this PA and has bent over backwards to assist this City Council."

33. On 10 June 2023 the complainant wrote to the ICO, describing their dissatisfaction with the outcome of a complaint that led to the request that is the subject of this decision -

"They [the council] provided a response that this info was supplied to me during a site meeting [in 2019] This was a totally untrue statement which the ICO accepted. Almost 4 years later the relevant full audit info has once again not been supplied And another invalid internal review has been conducted by this PA. I hope that as you have been assigned to this case ref that you have had the relevant Environmental System management training required to the ISO listed standards And are fully aware of how a accredited quality management system should operate. Please confirm that you have had this training..."

34. Two days before, the complainant had provided a link to an article that reported that the ICO had taken action regarding the council in question over poor compliance with the legislative timeframe for subject access requests:

⁴ [Freedom of Information Act 2000 \(Section 50\) \(ico.org.uk\)](https://ico.org.uk)

[ICO takes action against three councils | Local Government Chronicle \(LGC\) \(lgcplus.com\)](#)

In other correspondence to the ICO (including the Commissioner) the complainant said:

“Please for once take the relevant action against PCC.”

35. The context from which the request on 3 August 2023 emerged was within correspondence to the case officer containing the following:

“Have you had the ISO Environmental training to inspect these audits to each standard ?

Who within the ICO with the required training is willing to inspect this information and state it’s authenticity [...]?

As this company could supply you with any information and the IC would accept it On the balance of probabilities.

And wrongly state that PCC have discharged their responsibility

As the IC has wrongly stated this on many occasions

The company are afraid that this information will become public if it is displayed on the ICO website,as the action the IC is compelled to take will damage their reputation because within the information I have provided the ICO have proof that this company has committed site accreditation fraud from 2015 to the present day. It would appear that the ICO now want to be implicated in that site accreditation fraud. Do not trust this PA or the company involved regarding these very serious matters. The ICO has a record of my previous requests for this information,the IC accepted the PA’s word above mine.”

36. The Commissioner accepts that the complainant has serious concerns which they clearly believe are in the public interest. These have led to the requests to the council and the subsequent requests to the ICO. The FOIA is often used to further the public interest and a requester is entitled to use it for those means. However, the Commissioner has concluded that the accent has shifted from serious concerns to a persistent attempt to keep raking over the same ground. The complainant is discontented and is using the legislation in order to question both matters that are outside the ICO’s remit and to reopen matters that have already been concluded.

37. The Commissioner has concluded that the request is vexatious and therefore the ICO was entitled to rely on section 14(1) of FOIA to refuse the request.

Procedural matters

38. Section 17(1) obliges a public authority to issue a refusal notice in regard to any exempt information within 20 working days. A breach of section 17 arises when the authority fails to issue a notice explaining to the applicant its reasons for refusing a request for information.
39. The complainant submitted their request on 3 August 2023. The ICO sent its refusal notice on 4 September 2023. This was just outside the 20-working day timeframe and therefore breached section 17(1) of FOIA.

Right of appeal

40. 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

41. 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.
42. 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

Janine Gregory
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