

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 27 February 2024

Public Authority: Department for Work and Pensions
Address: Caxton House
Tothill Street
London
SW1H 9NA

Decision (including any steps ordered)

1. The complainant has requested information on the interactions between Ministers of the Department for Work and Pensions (DWP) and the Daily Telegraph.
2. DWP relied on section 14(1) to refuse to comply with the request as it considered the request was vexatious.
3. The Commissioner's decision is that the request is not vexatious and DWP is not therefore entitled to rely on section 14(1).
4. The Commissioner requires DWP to take the following steps:
 - Issue a fresh response to the request which does not rely on section 14(1).
5. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of FOIA and may be dealt with as a contempt of court.

Request and response

6. On 13 July 2023, the complainant wrote to DWP and requested information in the following terms:

"Please treat this as a request for information under the Freedom of Information Act. Please provide details of all meetings, correspondence and phone and other calls between DWP ministers/special advisers and staff of the Daily Telegraph in the last three months."

7. DWP provided its response on 11 August 2023 and refused to comply with the request as it considered the request was vexatious. DWP stated to the complainant that:

"Having considered your request we believe the wording of your request is deliberately broad to include all communications methods between DWP Ministers and everyone who works for the Daily Telegraph. It is not immediately clear to us that you are looking for particular recorded information between a DWP Minister or Special Adviser and the Daily Telegraph. For example, we would expect an FOI request to provide more detail on a particular exchange or article, e.g. Being able to quote the theme or policy under discussion."

8. DWP provided an explanation of when a request may be considered vexatious and stated that it considered that the complainant was simply requesting information without knowing exactly what they may find. DWP explained that when considering section 14(1), it could consider the motive and purpose behind the request. DWP stated that it was not clear to it that the complainant was seeking any particular recorded information and it appeared that their motive may be to try and uncover information without knowing exactly what they are after rather than seeking to obtain exact information or hold DWP or the Government to account.
9. DWP further explained that locating any information that may be held would require detailed searches of a number of different Ministers and Special Advisers communications devices and any information that is located would then need to be examined to see if any exemptions may apply. DWP stated that these actions would further increase the burden being placed on DWP to comply with the request.
10. The complainant requested an internal review of the handling of their request and disputed that complying with the request would be burdensome. They considered that there is a small number of special advisers and ministers within DWP and it would be a simple matter to search for their meetings with Telegraph staff within that period.
11. DWP provided the outcome of the internal review on 11 September 2023 and maintained its position that section 14(1) was engaged. DWP considered that the request was intentionally broad and lacking specific detail so as to try to cast a wide net over a whole area to see what

information may be held. DWP considered that this was being done without the purpose of locating a specific piece of information.

12. DWP addressed the complainant's assertion that the request would not be burdensome. DWP explained that the request had wider parameters than just meetings as the request was for "all meetings, correspondence and phone and other calls". DWP stated that it is not a simple matter to check all the relevant areas and it did not have the ability to search all the relevant email accounts in one go, each would have to be done separately. DWP stated:

"Whilst these elements may or may not be able to be completed within the cost limit we feel that the overall aspect is not about the release of specific information but to try and uncover something without knowing exactly what you are after. Thereby also placing an increased burden [sic] on the Department. Overall we feel that this is request [sic] is still vexatious under section 14(1) of the FOI Act".

Scope of the case

13. The complainant contacted the Commissioner on 11 September 2023 to complain about DWP's handling of their request for information.
14. Having reviewed the handling of the request, the Commissioner wrote to DWP to set out his position that a speculative request was not sufficient to engage section 14(1). He also confirmed that the complainant had explained the purpose behind the request and it was not therefore speculative. The Commissioner invited DWP to reconsider its position and set out what evidence he would require if DWP were to maintain its position.
15. DWP maintained its position and therefore the Commissioner considers that the scope of this case is to determine whether DWP is entitled to rely on section 14(1) to refuse to comply with the request.

Reasons for decision

Section 14(1): Vexatious requests

16. Section 14(1) of FOIA states that section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious.
17. The term "vexatious" is not defined in FOIA. The Upper Tribunal considered the issue of vexatious requests in the case of Information

Commissioner v Devon CC & Dransfield¹. The Tribunal commented that vexatious could be defined as the “manifestly unjustified, inappropriate or improper use of a formal procedure”. The Tribunal’s definition clearly established that the concepts of proportionality and justification are relevant to any consideration of whether a request is vexatious.

18. The Upper Tribunal also found it instructive to assess the question of whether a request is truly vexatious by considering four broad issues:
 - The burden imposed by the request (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. The Upper Tribunal did, however, also caution that these considerations were not meant to be exhaustive. Rather it stressed the “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 dealing, the lack of proportionality that typically characterise vexatious requests” (paragraph 45).
20. In the Commissioner’s view, the key question for public authorities to consider when determining if a request is vexatious is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress.

The complainant’s position

21. The complainant explained to the Commissioner that they had concerns that stories published by the Daily Telegraph appeared to be aimed at “stirring up hostility towards disabled people claiming benefits”. They confirmed that they had previously requested details of briefings provided to the Daily Telegraph but this only produced emails sent by DWP’s Press Officers. They explained that they therefore submitted the request for details of any interactions between DWP Ministers and Special Advisers, and the Daily Telegraph.

¹ <https://administrativeappeals.decisions.tribunals.gov.uk//Aspx/view.aspx?id=3680>

22. The complainant considered that this was a reasonable request as there are only six Ministers and a similar number, or fewer, of special advisers.
23. The complainant has concerns that DWP is engaged in a campaign to stir up hostility towards disabled claimants of benefits to "act as a cover" for its planned cuts and reforms which had recently been announced, and this could have fatal consequences. The complainant considered that these cuts and reforms could have an incredibly serious impact on disabled people and could lead to further deaths similar to those seen following a similar campaign of hostility stirred up by DWP in the 2010s. The complainant stated that academics later linked some of these reforms to 590 suicides between 2010 and 2013.

DWP's position

24. DWP explained that the first step in dealing with any valid FOI request is to ascertain if it fully understands what is being requested. It explained that it works on the principle that if it is ever unsure about what is being requested, it should not guess or interpret what the requester is seeking and therefore must seek clarification instead.
25. DWP confirmed that it always judges every FOI request purpose blind and on its own merit and it is not required to search or work out why someone might want the information. DWP set out that the Commissioner's guidance is very clear that it should not interpret or guess what it thinks someone would like to receive.
26. DWP explained that the request was deemed to be clear and not in need of clarification. DWP stated that its justification for this was that the requester gave a clear request framed by the amount of information (all), between named parties (Special Advisers/Ministers and the Telegraph) over a defined period (three months). DWP confirmed that it therefore did not seek clarification.
27. DWP acknowledged that the Commissioner had provided it with the complainant's purpose in making the request, however, it set out that at no point in the request or request for internal review was this stated by the complainant. DWP considered that if the complainant knew these details from the outset, then they could have provided them. DWP considered that this would have helped it in dealing with the initial request or the internal review.
28. DWP raised concerns that it was therefore being held accountable for something it was not aware of and not legally required to enquire about.

29. DWP explained that as the request was clear and not in need of clarification, it was of the view that it met the merits to be considered vexatious.
30. DWP explained that it looked at the circumstances of the request and considered these against the four broad themes set out above.

Burden

31. DWP stated that the burden placed on the Department was deemed to be two-fold; the first would be the time taken to locate, retrieve and extract any information that may be in scope. DWP explained that there are five Ministers and three Special Advisers and it would need to examine their various communication methods and devices.
32. DWP set out that if any relevant information were to be located then it would need to work out if any exemptions should be applied. DWP explained that there is also the added complexity that Ministers and Special Advisers may have been engaging with people at the Telegraph regarding non-departmental and/or personal business, which it would have no right to see or even be aware of. DWP considered that this adds a layer of complexity as the Ministers and Special Advisers may themselves have to search their own communication devices so as to protect information that does not need to be reviewed, as it is not covered by FOIA.
33. DWP explained that the second level of burden would be around the time to co-ordinate all this work and then to review any information found, as to whether any exemptions may apply.

Motive

34. DWP considered that the motive was to try and expose the information without the complainant knowing what was being searched for. DWP stated that the complainant was not trying to hold the Government to account, nor were they trying to get information on the source of the alleged hostile articles. DWP considered that if they were trying to secure information on the latter then this point could have been made clear in either the request or internal review request.

Value/purpose

35. DWP considered that the request was intentionally broad and lacking specific detail so as to try and cast a wide net over a whole area to see what information may be held. DWP stated that, as with its belief on the motive, the value and purpose did not appear to be to try and hold the Government to account or to locate a specific piece of information but to

simply cast a net to try and find something. DWP considered that the request was open in its approach to facilitate this as much as possible.

Harassment/distress

36. DWP confirmed that it did not consider that there was any intended harassment or distress caused by the request.

The Commissioner's position

37. As set out above, section 14(1) is designed to protect public authorities by allowing them to refuse to comply with any requests which have the potential to cause a disproportionate or unjustified level of disruption, irritation or distress.

38. 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.

39. Applying section 14(1) essentially removes the right of access by the requester to the requested information. The Commissioner therefore considers that the threshold to meet this is a necessarily high one. He expects public authorities to provide detailed explanations and justification regarding why it considers the request is vexatious.

40. The Commissioner has issued guidance regarding "speculative" requests² which explains that public authorities sometimes express concern about the apparent tendency of some requesters, most notably journalists, to make random requests on the off chance they may capture some interesting information. These are sometimes called "fishing expeditions".

41. Such requests are quite different to those where a requester is trying to access specific information, or information on a particular subject. In those cases, they might make the request in very broad terms because they are either unaware of how and where the information they seek is held, or they want to make sure their request captures all the relevant information.

² <https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/section-14-dealing-with-vexatious-requests/are-random-and-speculative-requests-vexatious/>

42. Whilst these requests may appear unfocused, they cannot be categorised as speculative requests or “fishing expeditions” if the requester is genuinely trying to obtain information about a particular issue.
43. Even where a request is speculative, fishing for information is not, in itself, enough to make a request vexatious. However, some requests might;
- impose a burden by obliging the public authority to sift through a substantial volume of information to isolate and extract the relevant details;
 - encompass information which is only of limited value because of the wide scope of the request;
 - create a burden by requiring the public authority to spend a considerable amount of time considering any exemptions and redactions; or
 - be part of a pattern of persistent fishing expeditions by the same requester.
44. The Commissioner confirmed to DWP during his investigation that the complainant had confirmed that the request was made following stories published by the Daily Telegraph that appeared to be aimed at “stirring up” hostility towards disabled people claiming benefits and that the purpose of the request was to ascertain the source of these stories. The Commissioner therefore set out to DWP that it appeared that the complainant was pursuing a line of enquiry rather than simply requesting information in a random fashion.
45. Even without the benefit of the insight into why the request was made, the Commissioner disagrees with DWP’s assessment that the request is vexatious because it was a broad request designed to uncover information of interest. As DWP itself stated, the request is clear as to the information sought and the Commissioner considers that there is a legitimate public interest in understanding the relationship between government ministers and the media.
46. The Commissioner is concerned that DWP’s position appears to be that a request must be aimed at holding the Government accountable or its

purpose must be obvious to the public authority in order for it not to be vexatious. The Commissioner's guidance³ states:

"If the value or purpose of the request is not immediately obvious you may take account of any comments the requester might have made about the purpose behind their request or any evidence they are willing to volunteer. This will help you decide whether there is a public interest in disclosing the information. However FOIA does not require a requester to give their reasons for making a request **and you cannot insist they do**" [emphasis added].

47. It appears that DWP has made an assumption regarding the purpose of the request and has proceeded to use this as the main reason for refusing to comply with the request. The Commissioner is further concerned that when the purpose of the request was confirmed, DWP took the position that this was inaccurate and that its original assumption was correct.
48. With regards to the burden that would be associated with complying with the request, DWP has simply explained the process associated with request handling. DWP has failed to demonstrate that the burden would be grossly oppressive or disproportionate. The Commissioner is not persuaded that eight people checking their records for specified communications within a three month period is particularly onerous.
49. For the reasons set out above, the Commissioner is satisfied that the request is not vexatious and DWP cannot rely on section 14(1) to refuse to comply with the request.
50. The Commissioner requires DWP to issue a fresh response to the complainant which does not rely on section 14(1).

³ <https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/section-14-dealing-with-vexatious-requests/how-do-we-assess-value-or-serious-purpose/>

Right of appeal

51. 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

52. 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.
53. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Victoria Parkinson
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF