

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 1 February 2024

Public Authority: Medicines & Healthcare products Regulatory Agency

Address: 10 South Colonnade
Canary Wharf
E14 4PU

Decision (including any steps ordered)

1. The complainant has requested information about an email he received from the Medicines & Healthcare products Regulatory Agency ('the MHRA'). The MHRA cited section 14(1) of FOIA to refuse the request, on the grounds that it was vexatious.
2. The Commissioner's decision is that the MHRA was entitled to rely on section 14(1) of FOIA to refuse the request.
3. The Commissioner does not require further steps as a result of this decision.

Background to request

4. The complainant had received a letter from the MHRA's Enforcement Unit. The letter was addressed to the complainant and also to a limited company (referred to in this decision notice as 'Company X'). The letter threatened Company X and the complainant with regulatory enforcement action.

5. The complainant said that he had no connection with Company X and he asked the MHRA to explain why the letter was addressed to him. He received a response from the MHRA, dated 23 May 2023, which referred him to Company X's website. However, the weblink which was provided for the website, did not work.

Request and response

6. On 5 July 2023, the complainant wrote to the MHRA and requested information in the following terms:

"Information request:

1. Please provide the full name of the person who provided the above-mentioned email response (dated 23 May 2023 under ref. number [redacted]). Please also indicate the position held by this person within the MHRA.
 2. Please indicate the reason(s) why this person, per question 1 above, has made a false statement and provided false information to a member of the public.
 - 2.a. If the false statement and false information was provided by accident/mistake, does the MHRA acknowledge that they are fallible and that decisions taken by the MHRA, for example in relation to the classification of food supplements as medicinal products, may be erroneous?
 - 2.b. If the false statement and false information was provided intentionally, what action has the MHRA taken after I reported, on multiple occasions, that the information was false?
 3. When sending correspondence of such great importance (such as a letter threatening criminal enforcement action), does the MHRA obtain their information about the recipient(s) of the letter from unreliable sources (i.e. 'open source' research) which are unconnected to the governmental organisations that hold accurate records and information?"
7. The MHRA responded on 27 July 2023. It refused the first point of the request, citing section 40(2) (Personal information) of FOIA.
 8. For points (2)-(3) of the request, it said that it had made a mistake transcribing Company X's website address in the email. It apologised and provided the correct website address. It also said that the MHRA

uses a number of public and non-public facing systems to support its work to enforce the Human Medicine Regulations 2012.

9. The complainant requested an internal review on 3 August 2023. He disagreed with the MHRA's decision to apply section 40(2), particularly to withhold the position of the person who wrote to him. He also said that it had failed to respond properly to the other questions.
10. The MHRA provided the internal review on 4 September 2023. It revised its position, applying section 14(1) (Vexatious requests) of FOIA to the request as a whole. It explained that its decision took account of the complainant's previous correspondence on the matter, and its belief that responding to this request would encourage further follow up requests and correspondence.
11. It also applied section 17(6) of FOIA to refuse to respond to any further, related requests.

Scope of the case

12. The complainant contacted the Commissioner on 20 September 2023, to complain about the way his request for information had been handled. He disagreed that the request was vexatious, arguing that it was reasonable. He said that the request related to a wider dispute he had with the MHRA, about which it was now refusing to correspond.
13. The analysis below considers whether the MHRA was entitled to rely in section 14(1) of FOIA to refuse the request.

Reasons for decision

Section 14 – Vexatious requests

14. Section 1(1) of FOIA requires a public authority to confirm whether or not it holds information that has been requested. If held, it must disclose a copy of that information to the requestor.
15. However, section 1(1) is subject to exemptions. Section 14(1) of FOIA states that a public authority does not have to comply with section 1(1) where a request for information is 'vexatious'.
16. The term vexatious is not defined in FOIA. The Upper Tribunal considered the issue of vexatious requests in the case of the Information Commissioner vs Devon County Council & Dransfield [2012] UKUT 440

(AAC), (28 January 2013) ("Dransfield")¹. 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 establishes that the concepts of proportionality and justification are relevant to any consideration of whether a request is vexatious.

17. In the Commissioner's view, the key question for public authorities to consider when determining if a request is vexatious is whether the value and purpose of the request justifies the distress, disruption or irritation that would be incurred by complying with it.

The complainant's position

18. In the preamble to his request, the complainant maintained that, although his home address was previously the registered office for Company X, he personally had no connection with Company X.
19. He made the following comments in support of his complaint to the Commissioner:

"The FOI request has been submitted to the public body because the public body has been refusing to respond to my correspondence since February 2023, and all of their responses are wholly inadequate. There is a protracted dispute between myself and the public body, as they have been subjecting me to harassment, false accusations/claims, invasion of property, surveillance, discrimination and unfair treatment for over a year now and are refusing to communicate with me about the matters. Thus my only option was to raise a FOI request which they refused to respond to.

An internal request was put forward but the outcome was that my FOI request was VEXATIOUS. I am appalled and I am struggling to understand why they won't respond to my very reasonable information request.

As an additional note: They have done the same to my other FOI requests. They provide false/misleading information that makes no sense, which they then retract but without actually responding to the FOI request.

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

The MHRA is a public body and is acting for ulterior purposes that are wholly different from their statutory functions.”

20. The complainant did not supply any supporting evidence for the allegations he made about the MHRA’s wider behaviour towards him, and so the Commissioner cannot accord them any weight when considering his complaint.

The MHRA’s position

21. The MHRA regulates medicines, medical devices and blood components for transfusion in the UK².
22. The MHRA has explained to the Commissioner that it has taken regulatory action against Company X. The MHRA said it has applied section 14(1) to the complainant’s request because it believes the complainant is connected with Company X and that he has been acting in concert with it, and with other interested parties, to try to disrupt and undermine its work, as a direct result of the MHRA’s regulatory interest in Company X.
23. The MHRA provided the Commissioner with detailed submissions, explaining why it believes there is a clear connection between the complainant and Company X. This included a public record showing that the complainant is the co-owner of trade marks pertaining to Company X. It also said the Charity Commission website shows him to be the chair of the trustees of a charity registered in 2023, whose “objectives and mission align remarkably with the issue at the heart of the MHRA’s action against [Company X]”.
24. The MHRA said the charity has made requests for information to the MHRA, regarding Company X.
25. Furthermore, the MHRA noted that at a time when Company X had been pursuing a judicial review of the MHRA, the MHRA received an email from the complainant, saying that he had withdrawn his judicial review application and would not be proceeding further. It said:

“Neither the MHRA nor our Government Legal representatives were aware of a judicial review initiated by [the complainant]. It was subsequently confirmed to us that [Company X] had withdrawn their

² <https://www.gov.uk/government/organisations/medicines-and-healthcare-products-regulatory-agency/about>

judicial review, and that this was what was referred to in [the complainant's] email."

26. Having explained why it believed that the complainant had clear links with Company X, the MHRA went on to explain why it believed the complainant was acting in concert with Company X, and the charity, to make co-ordinated complaints, enquiries and FOIA requests to try to disrupt the MHRA's regulatory action.
27. While the complainant had only submitted six FOIA requests, the MHRA provided information showing that, between them, the complainant, the charity and Company X were responsible for 76 requests and enquiries between February and October 2023. The Commissioner has been provided with a spreadsheet of these requests and enquiries.
28. The MHRA said the requests, and wider correspondence, were coordinated and characterised by the following:
 - "Multiple requests, complaints and correspondence from the three parties being submitted in short periods of time, on certain occasions with all parties contacting the MHRA a number of times on the same day, overwhelming colleagues working to handle these.
 - Cross-over in the content between requests and complaints submitted by the three parties, including similarity of subject matter and in some cases, re-use of request wording previously used by the different parties.
 - Requests driven by previous engagements with the MHRA and in respect of communications between [Company X] and the MHRA, with the result that each new stage of the MHRA's action against [Company X] generates new requests.
 - Complaints by [Company X] and [the complainant] against those individual MHRA staff who have engaged with the parties. Two initial complaints from [Company X] were investigated, and the outcomes communicated to [Company X]; this then led to further allegations and complaints about those who had conducted the investigations and further FOI requests about these colleagues. This has the effect of harassing staff and causing distress.
 - Multiple additional allegations of corruption, criminal activity and conflict of interest made against the MHRA throughout the correspondence and requests from [Company X] and [the complainant]. Requests are introduced by or linked with frequent claims and allegations (from the time of [the

complainant's] first contacts with the MHRA in December 2021, and the first requests submitted by both [the company secretary] and [the complainant] in March 2022)."

29. As regards the burden of responding to this level of engagement, the MHRA said:

"We note that due the quantity of correspondence sent to the MHRA in the form of requests, enquiries and correspondence related to the MHRA's regulatory action, it has become increasingly difficult for MHRA Customer Services colleagues...to formulate responses to the enquiries without extensive research of previous and related correspondence, and enquiries to other teams and the correspondence they may have received since 2022. Any response or statement provided generates further enquiries and allegations."

30. As regards the value and purpose of the request, it said:

"In respect of this request, the key factors are that any serious purpose in the request is undermined by the accompanying allegations, the harassing impact of the request on members of staff, and the wider distraction, distress and harassment caused by the volume of wider correspondence and related requests. We note that the request again sought details about a member of MHRA staff with whom [the complainant] has taken issue. This follows a pattern of requests for details of staff with whom he has engaged and against whom complaints have been made..."

31. The MHRA also said that Company X had told it that it had set up a website documenting its concerns regarding the MHRA. The website also cited concerns expressed by the complainant and the charity. The MHRA referred the Commissioner to a particular web page which focussed on the identity of the individual referred to in point (1) of the request. It said:

"...we believe these communications and the nature of the...website demonstrates further harassment of the MHRA and individual MHRA employees. The website includes reference to the FOI requests made by [the complainant], [Company X] and [the charity] and their engagement with the MHRA. The website also includes pages dedicated to other organisations and authorities with whom the website authors appear to be in dispute..."

32. It also said that the website had been updated with details of this complaint to the Commissioner and that:

"We consider that the content of the website indicates that any response issued to these FOI requests will form part of the narrative

presented publicly on this website, with a view to the continued harassment of the organisation and individual employees concerned.”

The Commissioner's decision

33. In the Commissioner's view, section 14(1) of the FOIA is designed to protect public authorities by allowing them to refuse requests which have the potential to impose a disproportionate or unjustified level of burden, disruption, irritation or distress. Balancing the impact of a request against its purpose and value can help to determine whether the effect on the public authority would be disproportionate.
34. It is for public authorities to demonstrate to the Commissioner why the exemption at section 14 applies and the Commissioner considers there to be a high threshold for refusing a request under section 14(1).
35. The MHRA has essentially argued that the request is vexatious when viewed in the wider context of the other requests and enquiries submitted to it by the complainant, Company X and the charity. It says the disruption caused by dealing with their coordinated correspondence, of which the request in this case is one element, goes beyond what it should be expected to absorb. It further argues that the underlying purpose of the requests is to undermine its regulatory action, that the tone of some of the correspondence is antagonistic and that it has the effect of making some staff feel personally harassed. The MHRA argues that in light of this, the request in this case has little value and the cumulative burden of dealing with it cannot be justified by any value that would flow from disclosing the information falling within its scope.
36. Firstly, the Commissioner is persuaded by the MHRA's submissions that the complainant is acting in concert with Company X and the charity. Therefore, in accordance with his guidance³, he has taken a holistic and broad approach in this case, and taken into account the history of the three parties' dealings with the MHRA.
37. He considers that the tone of some of the correspondence (and particularly the unfounded allegations made about the MHRA and its staff) will have caused some members of staff unjustified distress. He also accepts that the cumulative effect of dealing with multiple items of

³ <https://ico.org.uk/for-organisations/foi-eir-and-access-to-information/freedom-of-information-and-environmental-information-regulations/section-14-dealing-with-vexatious-requests/are-requests-made-as-part-of-a-campaign-vexatious/>

correspondence, often submitted in quick succession, has been disruptive, burdensome and difficult for it to manage.

38. Turning specifically to the request in this case, for point (2), the MHRA has admitted that the original web page link it cited for Company X was incorrect and the correct one has been provided, with an apology for the error. There is little more that the MHRA could meaningfully add to its response on that point.
39. Point (2)(a) is a request for an opinion, rather than for recorded information. It is therefore not a valid request for information within the meaning at section 8(1) of FOIA⁴ and the Commissioner has no power to require the MHRA to respond to it.
40. Furthermore, the Commissioner has some sympathy with the MHRA's view that point (2)(a) seeks:

"...to extrapolate from the error in providing the wrong website link, to this being equivalent to a possible error in the classification of food supplements as medicines".
41. The Commissioner considers that the complainant's attempt to present the two matters as somehow 'equal' in weight undermines any serious value or purpose the request may serve.
42. Point (2)(b) of the request falls away from consideration, by virtue of the MHRA's acknowledgement in response to point (2), that it had made a mistake.
43. Point (3) appears to be a rhetorical question, phrased in such a way as to imply that the MHRA relies on improper sources of information. Furthermore, the MHRA has answered it, saying that it uses a combination of public and non-public sources.
44. Therefore, the only substantive part of the request to be considered under section 14(1) of FOIA, is the MHRA's refusal to disclose the name and position of the staff member referred to in point (1). As noted above, the complainant has not submitted any arguments which demonstrate any value or legitimate purpose served by this request, beyond asserting that it is not vexatious.

⁴ Section 84 of FOIA defining any reference to 'information' as meaning, specifically, 'recorded' information

45. The Commissioner can see little wider public benefit in the full name and job title of someone who is, in all likelihood, a junior member of staff, being disclosed under FOIA, particularly if in doing so, the information will find its way onto a website which is likely to expose him to unjustified public scrutiny and criticism. The Commissioner has no difficulty accepting that this would be likely to cause significant anxiety and distress for the individual in question.
46. He also accepts the MHRA's representations that complying with the request would be unlikely to result in an end to the requests made by the complainant, or the other parties; rather, experience suggests that it would be likely to generate further, follow-up requests.
47. Having considered the context and history of the request, the nature of the information falling within its scope, the lack of any discernible benefit that would flow from disclosing it and the likely distress and disruption that complying would cause, the Commissioner is satisfied that the request was vexatious. Therefore, the MHRA was entitled to rely on section 14(1) of FOIA to refuse the request.

Right of appeal

48. 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

49. 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.
50. 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
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