

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 16 May 2024

Public Authority: Cabinet Office
Address: 70 Whitehall
London
SW1A 2AS

Decision (including any steps ordered)

1. The complainant made three requests for information relating to the ALPHA Civil Service Pension Scheme and protocols/Rules of Conduct talking to the Press. The Cabinet Office refused to comply with all three requests on the basis that they were vexatious under section 14(1) of FOIA.
2. The Commissioner's decision is that the three requests are not vexatious and the Cabinet Office is not therefore entitled to rely on section 14(1).
3. The Commissioner requires the Cabinet Office to take the following steps:
 - Provide the requested information to all three of the complainant's requests, or issue an appropriate refusal notices for the requests which does not rely on section 14(1).
4. The Cabinet Office must take these steps within 30 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 the Act and may be dealt with as a contempt of court.

Request and response

5. On 21 August 2023, the complainant wrote to the Cabinet Office and requested the following information:

"In terms of a Civil Servant(CS) suffering from CS Civ HR Pensions maladministration of the mandated ALPHA pension scheme:

Question:

What are CS Protocols / Rules of Conduct in terms of talking to the Press and "Which"?"

6. On 29 August the complainant wrote to the Cabinet Office and requested the following information:

"How much does the system pay to Civil Service Pensions for the provision/administration of the mandated ALPHA pension scheme.

As of 31 Aug 23 how many CS are mandated members of the ALPHA pension scheme."

7. On the 30 August 2023, the complainant wrote to the Cabinet Office and requested the following information:

"Which Government department is responsible for administering the contract for the mandated CS ALPHA pension scheme with MYCSP?

Who is responsible for administering the contract with MYCSP?

When is this contract due for renewal?

Since the start of the contract (was this 01 Apr 15 ?) how much has Government paid to MYCSP to administer the mandated CS ALPHA pension scheme? If possible could it be detailed as whatever the periodic payments are, not just as a total?"

8. The Cabinet Office responded on 19 September 2023 refusing to respond to all three requests under section 14(1) of the FOIA.
9. The Cabinet Office did not provide an internal review.

Scope of the case

10. The complainant contacted the Commissioner on 17 November 2023 to complain about the way his request for information had been handled.

11. The Commissioner considers the scope of this case to be to determine whether the Cabinet Office is able to rely on section 14(1) of the FOIA to refuse all three requests.

Reasons for decision

Section 14(1) – vexatious request

12. Section 14(1) of FOIA provides that a public authority is not obliged to comply with a request for information if the request is vexatious.
13. The term “vexatious” is not defined in FOIA. However, as the Commissioner’s updated guidance¹ 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 public authorities more transparent and accountable. As such, it is an important constitutional right. Therefore, engaging section 14(1) is a high hurdle.
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 & Devon County Council vs Dransfield*² [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.

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

² [Social Security & Child Support Commissioners \(tribunals.gov.uk\)](#)

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. It 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 Cabinet Office's position

20. As a background the Cabinet Office explained that the complainant made a complaint with the Cabinet Office regarding errors with his pension. The Cabinet Office explained that the complainant made a complaint through its appeal process and as a result he was awarded compensation and apologised for the distress and inconvenience this caused.

21. The Cabinet Office explained that as of 31 August 2023 it has received 21 pieces of correspondence from the complainant all relating to his pension and provided the Commissioner with a summary of this. Out of the correspondence received the Cabinet Office confirmed that five were requests made under the FOIA, one internal review and three subject access requests.

22. The Cabinet Office stated that it had suggested to the complainant that the next step to resolve the matter would be to contact the Parliamentary and Health Service Ombudsman (PHSO) as he has exhausted the Cabinet Office's complaints process, the Internal Dispute Resolution (IDR) and the Pensions Ombudsman.

Burden

23. In its submission to the Commissioner, the Cabinet Office explained that it had taken the view that all three requests are burdensome on two fronts. It explained that the first is that identifying any relevant guidance is likely to be complex as there are a number of considerations that will be relevant regarding contact between members of the Civil

Service and the members of the press, but identifying whether or not there is specific documentation that meets the criteria described by the complainant is likely to be lengthy and involve searches across both human resources and communications teams.

24. The Cabinet Office also noted that section 14(1) is considered to be engaged with respect to this request in the context of the already voluminous correspondence outlined to the Commissioner, including requests and a Subject Access Request, between the Cabinet Office and the complainant on a specific area.
25. It argued that given the significant volume of correspondence that has already taken place, responding to this request alongside the two additional requests made by the complainant which it received on 29 August 2023 and on 30 August 2023, it would represent a disproportionate burden in terms of the additional time and resources the Cabinet Office dedicates to matters relating to the complainant's pension concerns.
26. The Cabinet Office explained that as the complaints have been comprehensively dealt with, including via an external complaints process (the Pensions Ombudsman), alongside the payment of compensation, the Cabinet Office does not consider that it is the appropriate use of resources to spend further time on matters that have already been considered and concluded.

Motive

27. The Cabinet Office stated that it is clear from the three requests made under the FOIA, that the requester is motivated by a desire to continue to re-open the issues relating to his concerns about his pension, despite the fact (as set out above) that these issues have been now been dealt with and the requester has exhausted the appropriate complaints process available, including escalation/appeal routes and had compensation offered to him, it noted the Pensions Ombudsman upheld the conclusions of the Cabinet Office's complaints process.
28. The Cabinet Office stated that this is particularly clear from this request which is seeking information about whether there is guidance in order to discuss pensions issues with external media organisations, presumably as an attempt to re-open these issues in a public forum.

Value

29. The Cabinet Office contends that there are no serious purpose to these requests and that the complainant is now seeking to re-open issues and complaints that have already been thoroughly considered, both via formal internal and external complaints procedures (including via the

Pensions Ombudsman) and through extensive correspondence, including FOI requests and a Subject Access Request.

30. The Cabinet Office wanted to note that it took seriously the complaints raised by the complainant regarding his pension, including moving his complaint to the second stage of the IDR complaints process to ensure it received proper attention from the Scheme Manager.
31. It also explained that where the Cabinet Office was able to offer discretion to the complainant regarding errors he made during the course of applying for added pension it did so.
32. The Cabinet Office argued that the requests have no serious purpose or value and it considers that they are an attempt to re-open issues already comprehensively dealt with and for which the complainant has been compensated for.

Harassment or distress to staff

33. The Cabinet Office noted that in the course of his complaint, the complainant has repeatedly made the following claims about members of staff in the pensions team:
 - Deliberate maladministration
 - Lying to the Pension Ombudsman
 - Misleading his Member of Parliament
 - Not operating in line with the Civil Service Code
 - Supporting age discrimination
 - Failing in the legal requirement to ensure his health, safety & wellbeing

The Complainant's position

34. In his complaint to the Commissioner the complainant stated that for the eight years the ALPHA CS Pension scheme has been running, he has been subject to error after error. The complainant stated that he has followed the Cabinet Office's complaint's procedure and also made a complaint to the Pension Ombudsman which found in favour of the Cabinet Office. He claimed that even at the point of exhausting all the complaint processes available to him, errors were still being made in relation to his Pension Input Amount (PIA).

The Commissioner's decision

35. As set out above, section 14(1) of FOIA 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.
36. 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. Where relevant, this will involve the need to take into account wider factors such as the background and history of the request.
37. When using section 14(1) in this context, the authority needs to demonstrate that they made a holistic assessment which takes into account all the relevant circumstances specific to the case and considered them objectively in the relevant context.
38. The Commissioner is not satisfied from the evidence received that it is able to determine how the searches the Cabinet Office described would be lengthy and therefore burdensome.
39. The Cabinet Office has explained that it would need to make contact between members of the Civil Service, members of the press but has given no indication of how long this process would take, how many people would need to be contacted or a rough estimate of how long this task would take to carry out.
40. The Commissioner is also mindful that the Cabinet Office is a large, well-resourced public authority and to refuse a request as burdensome is an extremely high bar to meet. The public authority must demonstrate complying with the request would place a grossly oppressive burden on it which outweighs any value or serious purpose the request may have.
41. The Commissioner notes that the FOIA should not be used to re-open issues with a public authority that it believes to be resolved. However, in this case, it appears that the complainant may be seeking more general information on the ALPHA scheme, which might not be necessarily to re-open the issue, but perhaps to aid his further understanding.
42. The Commissioner accepts, from the submission provided by the Cabinet Office, that correspondence issued by the complainant may have been uncivil, he does not however consider that the requests themselves contain language that would be likely to cause harassment or distress to Cabinet Office staff.

43. The Commissioner refers to the Upper Tribunal in Dransfield which advised that when assessing burden the following factors are relevant considerations
- number;
 - pattern;
 - duration; and
 - breadth.
44. Whilst the Commissioner notes the complainant has made a number of requests within a small period of time, the Commissioner does not consider that two requests in July, which were responded to, and three requests in August, which have all been refused under section 14(1), to be a significant amount. The complainant has in essence only received two successful responses under the FOIA.
45. The Commissioner considers that there is some value to the requests as they would allow for greater public understanding about the Civil Servant ALPHA pension scheme and Civil Service protocols.
46. On the basis of the submissions provided for this case, the Commissioner is not persuaded that the high threshold for vexatious outweighs the value and insight for the general public in regards to the complainant's requests.
47. The Commissioner also considers there to be very little evidence to support any claim that the requests indicate an unreasonable persistence on a matter, or that to deal with the requests would create an unreasonable burden.
48. The Commissioner therefore finds that the complainant's three request were not vexatious and section 14(1) of FOIA is not engaged in this case.
49. The Commissioner would however comment that, although these requests seem reasonable, if the complainant continues to make a high number of requests within a short time frame and the requests appear to drift in focus, the Commissioner may find that section 14(1) applies in the future.

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.

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