

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 11 April 2024

Public Authority: Information Commissioner
Address: Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Decision (including any steps ordered)

1. The complainant requested information relating to the application of section 14 from the Information Commissioner's Office ('ICO'). The ICO relied on section 14(1) of FOIA (vexatious request) to refuse the request.
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.
3. The Commissioner does not require any steps.
4. This decision notice concerns a complaint made against the Information Commissioner ('the Commissioner'). The 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 as a public authority. It should be noted, however, that the complainant has a right of appeal against the Commissioner's decision, details of which are given at the end of this notice. In this notice the term 'ICO' is used to denote the ICO dealing with the request, and the term 'Commissioner' denotes the ICO dealing with the complaint.

Request and response

5. On 14 October 2023, the complainant wrote to the ICO and requested information in the following terms:

“Please provide all recorded information/discussions to date (excluding legal advice, which you say you do not possess) with regard to the stark difference between your published guidance and your actual practice on the application of section 14 FOIA and post-request events. Your published guidance says that post-request events CANNOT be taken into account, and yet your own head of FOI says they CAN be taken into account. Some of your published decisions say that post-request cannot be taken into account and many others say that they can be taken into account.

There must be recorded information on this subject, because if there is not, it necessarily shows that the Information Commissioner, the guardian of the Freedom of Information Act, couldn't care less about its trashing of its own published guidance. It also sends out a very powerful message to ALL authorities: don't bother following our guidance - because we don't.”

6. The ICO responded on 24 October 2023. It refused the request as vexatious – a position it upheld following an internal review.

Reasons for decision

Section 14(1) – vexatious requests

7. The following analysis considers whether the request was vexatious.
8. 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.
9. 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

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

cause a disproportionate or unjustified level of disruption, irritation or distress.

10. 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.
11. 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.
12. 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.
13. 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.
14. 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).
15. 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

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

vexatious in the sense of being a disproportionate, manifestly unjustified, inappropriate or improper use of FOIA” (paragraph 82).

The ICO’s view

16. The ICO explained to the complainant that the motive behind this request appeared to stem from dissatisfaction with the ICO and the way previous complaints had been handled.
17. The ICO informed the complainant that it has already received a number of requests from them regarding the use of section 14, this request appeared to be the latest which repeated the substance of other matters. The ICO confirmed it has responded to the other requests and confirmed that no information is held.
18. The ICO advised that despite this, the complainant has continued to submit further requests for information, internal review requests, lodge section 50 complaints and send multiple correspondences on the matter.
19. The ICO referred to a First Teir Tribunal judgement, where it was recognised that:

“there is a pattern of behaviour by the appellant towards the ICO which indicates a motive to cause deliberate disruption...Based on the course of dealings between the parties, we also believe this would not be the end of the matter, and the appellant would continue to send related new requests to the ICO. The appellant says in his appeal that he will not make any further requests on the same subject matter, but there is a clear pattern of repeated requests which indicates that he is likely to send further requests on related topics or on new topics which would be similarly disruptive and lack value or purpose.”³
20. The ICO explained that to enter into another cycle of futile correspondence with the complainant would be tantamount to a flagrant misuse and abuse of FOIA, causing an entirely disproportionate and unjustified level of disruption, irritation or distress.
21. The ICO also stated that it must consider any harassment, or distress that responding to such requests causes its staff. The ICO acknowledged that, for the most part, the complainant did not appear to have targeted any individual staff members. But the tone of correspondence is

³ [EA-2021-0064 Mr M Boyce v ICO - Decision.pdf \(tribunals.gov.uk\)](#)

frequently derogatory and accusatory, to the extent of implying, on a number of occasions, that the ICO is acting unlawfully.

22. The ICO added that the tone of the correspondence in this request also demonstrates this type of language as it contains phrasing such as: "The ICO regularly trashing its own published guidance on vexatious requests" and "it necessarily shows that the Information Commissioner, the guardian of the Freedom of Information Act, couldn't care less about its trashing of its own published guidance. It also sends out a very powerful message to ALL authorities: don't bother following our guidance - because we don't."
23. The ICO stated that these attacks on the integrity and competence of ICO staff continue in the annotations left on the public forum of the 'What Do They Know' website. It provided an example from correspondence dated 16 August 2023, in which the complainant alleged the ICO may have committed a criminal offence under section 77 of the FOIA by deliberately concealing records to prevent disclosure in response to one of their requests.

"If the ICO couldn't care less about other authorities deleting requested information (which may be a criminal offence), then are we to believe that they might not also delete requested information themselves (intentionally or otherwise)? I have no evidence that they have done so, but given that they say one thing with regard to section 14 and 42 of the FOIA and then they do the exact opposite in practice, and now they are not warning against the deletion of requested information when that information is subject to an ongoing tribunal case, even though their guidance does warn against this, should we not be at least suspicious? I am."

24. The ICO highlighted a number of additional correspondences from the complainant which demonstrated such behaviour. Some examples are:

2 August 2023: "The ICO are adamant that they do not possess any legal advice with regard to section 14 FOIA (vexatious) and post-request events. I don't believe them...It is not credible that the ICO do not possess legal advice on this issue.

If they do not possess legal advice on this issue then they are clearly content to continue to behave as total hypocrites: say in their Guidance that post-request events cannot be taken into account and then do the exact opposite as and when it suits them.

We are supposed to be able to trust the ICO. They cannot be trusted."

7 August: "Let's just say that the ICO may be disingenuous (if it's good enough for our parliamentary friends, it's good enough for me). Then

there is the issue of trust. Can we trust an organisation that says one thing in its published guidance (the guidance may or may not be correct), but then blatantly, admittingly and repeatedly often does the complete opposite in practice?

Some people might think this is highly trustworthy behaviour. I don't.

I have shown and proved quite clearly that the ICO cannot be trusted, in that their practice is frequently contrary to their published guidance. You cannot accept this obvious fact.

If the ICO cannot be trusted, then they cannot be trusted. It's as simple as that. That's not a smear; it's just a fact."

9 August: "If indeed it is not held, that tells us all we need to know about the ICO - they do not take any notice of the law or of fair and decent behaviour. They are acting against the law and they are hypocrites.

And just for the record, something can't be defamatory if it is true. What I say is true."

18 August 2023: "I have never stated that the ICO HAVE deleted information (intentionally or otherwise), but I have stated that they MAY have done so. If they cannot be trusted and are incompetent I am indeed suspicious. The Tribunal may agree or they may disagree with my suspicions and my belief that information is held."

25. The ICO finalised by stating that the tone and accusatory nature of the complainant's correspondence allowed it to conclude that the staff required to deal with the complainant will start to feel demotivated and harassed by the constant barrage of criticism. Being constantly accused of acting unlawfully – especially in the absence of evidence – is beyond the robust criticism that public authorities should be expected to bear and is likely to have a disproportionate effect on staff members.

The complainant's view

26. The complainant advised the ICO that they did not believe the request for information was vexatious and the request is for important information which should be disclosed by the ICO.
27. The complainant explained that the Judge in the First-tier Tribunal case (can be seen at footnote 3) ignored the complainant's request for her to explain that only the request can be vexatious and not the requester. The complainant stated that the Judge "deliberately ignoring that fact and the law... she ignored my request to do so."

28. The complainant stated that the ICO guidance on section 14 was in direct contrast to some of its actual practice.

The Commissioner's decision

29. In cases where a public authority is relying on section 14(1), it is for the public authority to demonstrate why it considers that a request is a disproportionate, manifestly unjustified, inappropriate or improper use of FOIA.
30. The Commissioner has considered both the complainant's position and the ICO's arguments and from the evidence, he is satisfied that the ICO was entitled to refuse the request under section 14(1). It is very clear that the request in this case has been made in an attempt to use FOIA in an inappropriate and improper way.
31. The Commissioner notes that the motive of the requester does not appear to be in line with the purpose of using FOIA to access information. The request appears to have been made to place a disproportionate burden on the ICO, and to harass and distress staff handling the request.
32. If the complainant has any concerns over the use of section 14 by the ICO in a decision notice issued to the complainant, then they should lodge an appeal in the appropriate period.
33. The Commissioner also considers that if there are any concerns over the practice within the ICO a complainant should either make a complaint directly to the ICO or to the Parliamentary and Health Service Ombudsman. FOIA is not an appropriate way to make a complaint and it should not be used in order to address such concerns.

Right of appeal

34. 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

35. 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.
36. 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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