

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 14 April 2020

Public Authority: Architects Registration Board

Address: 8 Weymouth Street
London, W1W 5BU

Decision (including any steps ordered)

1. The applicant has requested information relating to a complaint made to the Architects Registration Board (ARB).
2. The Commissioner's decision is that ARB has correctly cited section 14(1) (vexatious requests) in response to the request.
3. The Commissioner does not require the public authority to take any steps as a result of this decision notice.

Background

4. The background to this case relates to a complaint about an architect that the applicant submitted to ARB in 2013.
5. When the applicant was served with a report in August 2013 on his complaint by the ARB's relevant body, he believed his complaint had not been properly addressed and that the investigations panel was presented with different allegations to those submitted by him.
6. The applicant wrote back to the ARB and challenged the report, presenting his arguments in relation to the panel's report. Subsequently, the applicant was served with a final report, which effectively upheld the preliminary report.
7. Remaining dissatisfied with the outcome of the final report, the applicant requested an independent third party review. This review was conducted by a QC appointed by the ARB. The third party review concluded that the procedure of handling the applicant's complaint by ARB was correctly applied and the complainant was informed that ARB has closed the case.

8. The applicant continued corresponding with ARB in 2014 and 2015, arguing for the re-opening of his case which ARB did not do.
9. At the same time, being convinced that his complaint was not addressed in an appropriate fashion, the applicant contacted the MHCLG (then Department for Communities and Local Government - DCLG), which is the responsible authority for overseeing the ARB, to express his concerns and seek the Department's intervention in his complaint.
10. By the end of 2014 the applicant submitted an information request to ARB asking for information held pertaining to his original complaint about the architect submitted a year earlier.
11. The outcome of the information request was followed by additional correspondence with ARB and the MHCLG¹.

Request and response

12. On 14 January 2020, the applicant wrote to the public authority and requested information in the following terms:
 1. *Please can you give me your understanding of the relationship between the original allegation summary points which you prepared and the content of my complaint and account as a whole?*
 2. *Please can you confirm that your understanding is that my account and evidence should have been viewed as a whole by the Panel and should not necessarily have related specifically to the literal wording of the allegations?*
 3. *Your understanding of the part that the wording of allegation summary points play in the findings of the Panel would be very useful?*
 4. *On the basis that the Panel's findings are not fettered or limited by the allegations as drafted, I would like to know why serious allegations relating to deception and fraud have been ignored?*

¹ <https://ico.org.uk/media/action-weve-taken/decision-notices/2020/2616925/fs50840432.pdf>

5. *On the basis that the Panel are not fettered by the allegations as drafted, I have a right to know why the Panel have elected not to respond to the actual allegations?*
13. The public authority responded on 7 February 2020 stating:
- "Your request asks for my interpretation of the investigation of a historic complaint you made about an architect. As it is a request that would require me to create information, it is not a request that falls under the provisions of FOIA.*
- My 'understanding' of an investigation is not a request for information held by ARB."*
14. On 8 February 2020 the applicant made a further request for information in the following terms:
- "1) In what capacities and from which dates have you been employed by the Architects Registration Board?*
- 2) From the date of first becoming manager of the Professional Standards Department (at ARB) until 23rd September 2013, how many complaint cases against architects did you handle/oversee? If greater than 100, an approximate figure will suffice."*
15. ARB responded on 27 February 2020 and refused to provide any information citing section 14(1) of the FOIA. It further stated that
- "Given that you have previously complained on the same grounds as to why your FOIA requests have been refused, and had those complaints rejected, there is little point in requiring you to go through the ARB procedure. Because of that you may apply directly to the Information Commissioner's Office with any complaint, as previously advised"*
16. Therefore no internal review was carried out.

Scope of the case

17. The applicant contacted the Commissioner on 28 February 2020 to complain about the way his request for information had been handled.
18. In his correspondence he stated:
- "The purpose of this FOI request was to establish for the benefit of the ICO investigation, whether [redacted] would have sufficient knowledge and understanding of the ARB complaints procedure to be able to answer the above requests. [redacted] has decided to find this request*

vexatious even though it has direct and clear relevance to my complaint”.

19. The Commissioner considers the scope of this case to be to determine if the public authority has correctly applied section 14(1) to the request made on 8 February 2020. She is aware that the applicant has raised further issues with regard to his request of 14 January 2020, and these are addressed under 'Other matters' at the end of this decision notice.

Reasons for decision

20. Section 14(1) of the FOIA states that a public authority is not obliged to comply with a request for information if the request is vexatious. There is no public interest test.
21. The term 'vexatious' is not defined in the FOIA. The Upper Tribunal (Information Rights) considered in some detail the issue of vexatious requests in the case of the Information Commissioner v Devon CC & Dransfield (GIA/3037/2011). 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.
22. In the Dransfield case, the Upper Tribunal also found it instructive to assess the question of whether a request is truly vexatious by considering four broad issues: (1) the burden imposed by the request (on the public authority and its staff); (2) the motive of the requester; (3) the value or serious purpose of the request and (4) harassment or distress of and to staff.
23. 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 dealings, the lack of proportionality that typically characterise vexatious requests" (paragraph 45).
24. The Commissioner has identified a number of "indicators" which may be useful in identifying vexatious requests. These are set out in her published guidance on vexatious requests². In brief these consist of, in

² <https://ico.org.uk/media/for-organisations/documents/1198/dealingwith-vexatious-requests.pdf>

no particular order: abusive or aggressive language; burden on the authority; personal grudges; unreasonable persistence; unfounded accusations; intransigence; frequent or overlapping requests; deliberate intention to cause annoyance; scattergun approach; disproportionate effort; no obvious intent to obtain information; futile requests; frivolous requests.

25. The fact that a request contains one or more of these indicators will not necessarily mean that it must be vexatious. All the circumstances of a case will need to be considered in reaching a judgement as to whether a request is vexatious.
26. The Commissioner's guidance suggests that if a request is not patently vexatious the key question the public authority must ask itself is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress. In doing this the Commissioner considers that a public authority should weigh the impact of the request on it and balance this against the purpose and value of the request.
27. Where relevant, public authorities need to take into account wider factors such as the background and history of the request.
28. In its response of 27 February 2020 ARB stated:

"Your request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress. In reaching this decision I have taken into account your history of repeated requests under FOIA, and the fact that you are unable to accept a historic decision made in relation to a complaint some years ago. I have also taken into account the following factors from guidance issued by the Information Commissioner's Office:

Personal grudges

For whatever reason, the requester is targeting their correspondence towards a particular employee or office holder against whom they have some personal enmity.

Unreasonable persistence

The requester is attempting to reopen an issue which has already been comprehensively addressed by the public authority, or otherwise subjected to some form of independent scrutiny.

Scattergun approach

The request appears to be part of a completely random approach, lacks any clear focus, or seems to have been solely designed for the purpose of 'fishing' for information without any idea of what might be revealed.

Futile requests

The issue at hand individually affects the requester and has already been conclusively resolved by the authority or subjected to some form of independent investigation.

Your requests are the re-instigation of a vexatious campaign against a decision and policy of ARB, which has been subject to independent investigation. You wilfully fail to understand, or refuse to accept, the results of that investigation. Your previous correspondence is littered with unfounded accusations of dishonesty and corruption against me and others who undertake work for ARB."

29. The Commissioner has reviewed all the information available to her and it appears to her that the applicant is being unreasonably persistent in continuing to make requests related to his historical complaint.
30. Although the Commissioner expects public authorities to expect a certain level of disruption, irritation or distress when dealing with FOI requests, in this case the applicant is directing his correspondence to a specific individual about their employment record and activities.
31. Furthermore, the request relates to the applicants own personal concern and therefore has little value in terms of the public interest. The Commissioner is also aware that ARB has had the issue independently reviewed by a senior barrister (Queen's Counsel). As such there is nothing to be gained by the applicant in pursuing this avenue and is close to becoming an abuse of the legislation.
32. Given all the above the Commissioner is satisfied that ARB were entitled to cite section 14(1) of the FOIA in response to the request.

Other matters

33. The Commissioner considers it is appropriate to respond to further issues raised by the applicant with regard to the request made on 7 February 2020.
34. The applicant is of the view that his requests have been 'blocked' and that this constitutes a criminal offence under the FOIA.

Section 77 - Offence of altering etc. records with intent to prevent disclosure.

(1) Where -

(a) a request for information has been made to a public authority, and

(b) under section 1 of this Act the applicant would have been entitled (subject to payment of any fee) to communication of any information in accordance with that section,

any person to whom this subsection applies is guilty of an offence if he alters, defaces, blocks, erases, destroys or conceals any record held by the public authority, with the intention of preventing the disclosure by that authority of all, or any part, of the information to the communication of which the applicant would have been entitled.

35. The refusal of a request is not the same as a request being blocked. To block a request a public authority must intentionally prevent the disclosure of requested information to which the applicant is entitled.
36. ARB have stated that the information requested on 7 February 2020 is not information it holds because it asks for an individual's 'understanding' of an event or issue. It further stated that it would need to create new information, which the applicant contests.
37. The FOIA provides the right of access to information held by a public authority. This does not extend to what is in somebody's mind. In this case, ARB would need to document the individual's understanding, as that is contained in his head. Therefore this would be creating new information, which it is not obliged to do under the FOIA.
38. The applicant also referred to the Commissioners own guidance with regard to valid requests. He has specifically highlighted the following:

To be valid under the Act, the request must:

*"describe the information requested. **Any genuine attempt to describe the information will be enough to trigger the Act**, even if the description is unclear, or you think it is too broad or unreasonable in some way. The Act covers information not documents, so a requester does not have to ask for a specific document (although they may do so). **They can, for example, ask about a specific topic and expect you to gather the relevant information to answer their enquiry.** Or they might describe other features of the information (eg author, date or type of document)."*

"Almost anything in writing which asks for information will count as a request under the Act."

Can a question be a valid request?

*Under the Act, **if you have information in your records that answers the question you should provide it in response to the request.** You are not required to answer a question if you do not already have the relevant information in recorded form.*

"You should also remember that even though the Act requires you to provide recorded information, this doesn't prevent you providing answers or explanations as well, as a matter of normal customer service."

39. The applicant argued that a genuine attempt has been made to describe the information in the form of a question regarding a specific topic. If ARB has recorded information which would explain why allegations of deception and fraud would not have been addressed by the panel, that information should be disclosed. Any further explanation which helps answer the question should also be provided under normal customer service.
40. He further stated that with regard to his question "what is the relationship (or connection, if any) between the allegation summary points and my complaint as a whole", any recorded information which shows a connection or relationship between the allegation summary points and the complaint as a whole should be disclosed, given that a genuine attempt has been made to describe information relating to a specific topic.
41. The applicant also explained that the use of the word "understanding" was used as part of a genuine attempt to describe the information in the form of a question regarding a specific topic. Any recorded information which shows that the Panel are responding to something other than the specific wording of the allegations, should therefore be disclosed.
42. If ARB has recorded information which shows the part allegation summary points play in the findings of the Panel, that information should be disclosed. Any further explanation which helps answer the question should also be provided under normal customer service.
43. The validity of the request is not in dispute in terms of it meeting the relevant criteria. In addition, a question can still be a valid request if a public authority holds information that would answer that question.
44. As explained above, this can only be applied to recorded information held by a public authority. It is the Commissioner's view that ARB would not be likely to hold any recorded information about "a connection or relationship between the allegation summary points and the complaint as a whole" or "which shows that the Panel are responding to something other than the specific wording of the allegations". It should also be noted that although further explanation should be provided if possible, if a public authority does not hold any relevant recorded information it would be difficult to provide such an explanation.
45. The Commissioner does not have any concerns about how ARB dealt with this request.

Right of appeal

46. 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: 0300 1234504
Fax: 0870 739 5836
Email: grc@justice.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

47. 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.
48. 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

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