

**Freedom of Information Act 2000 (FOIA)
Environmental Information Regulations 2004 (EIR)
Decision notice**

Date: 3 September 2021

Public Authority: Financial Ombudsman Service
Address: Exchange Tower
London
E14 9SR

Decision (including any steps ordered)

1. The complainant has requested information from the Financial Ombudsman Service (FOS) concerning a memorandum of understanding between the FOS and the Information Commissioner's Office which has now been withdrawn. The FOS refused the request, considering it to be a vexatious request under section 14(1).
2. The Commissioner's decision is that the FOS has appropriately cited section 14(1) and that the FOS did not breach section 10(1) of the FOIA, responding within the statutory timeframe.
3. The Commissioner does not require the public authority to take any further steps.

Request and response

4. The complainant wrote a request for information under the FOIA on 4 August 2020 but it appears that the FOS did not receive it until 12 October 2020. The request is as follows -

'Please explain why it was not considered necessary to review and update the "Memorandum of Understanding between the Information Commissioner's Office and the Financial Ombudsman Service Limited" which was finally withdrawn in early 2019?'

5. The FOS responded on 9 November 2020 and refused to provide any information, applying section 14(1) – vexatious request. The refusal notice stated that the FOS would not be entering into any further correspondence and cited section 17(6) FOIA.
6. Consequently, there was no internal review.

Scope of the case

7. The complainant contacted the Commissioner on 12 October 2020 to complain that his request had not been responded to. He later confirmed that he was unhappy with the FOS's response.
8. The Commissioner considers the scope of this case to be the FOS's citing of section 14(1) - vexatious request and any procedural matters that may have occurred.

Reasons for decision

9. Section 1(1) of the FOIA provides a general right of access to recorded information that is held by public authorities. Section 14(1) of the FOIA states that section 1 does not oblige a public authority to comply with a request for information if that request is vexatious.
10. The analysis that follows looks at vexatiousness and considers whether this particular request can be considered vexatious.
11. The Upper Tribunal considered the issue of vexatious requests in *Information Commissioner v Devon CC & Dransfield [2012] UKUT 440 (AAC)*. It commented that "vexatious" could be defined as the "manifestly unjustified, inappropriate or improper use of a formal procedure". The Upper Tribunal's approach in this case was subsequently upheld in the Court of Appeal.
12. The Dransfield definition establishes that the concepts of proportionality and justification are relevant to any consideration of whether a request is vexatious.

13. Dransfield also considered 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. It explained that these considerations were not meant to be exhaustive and also explained 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)

14. The term 'vexatious' is not defined in the FOIA. The Commissioner has identified a number of 'indicators' which may be useful in identifying vexatious requests. These are set out in her published guidance¹ on vexatious requests. In short they include:

- Abusive or aggressive language
- Burden on the authority
- Personal grudges
- Unreasonable persistence
- Unfounded accusations
- Intransigence
- Frequent or overlapping requests
- Deliberate intention to cause annoyance

15. 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.

16. The Commissioner's guidance suggests that if a request is not patently vexatious the key question the public authority must ask

¹ [dealing-with-vexatious-requests.pdf \(ico.org.uk\)](https://ico.org.uk/for-organisations/our-approach-to-handling-requests/our-guidance-on-handling-requests/dealing-with-vexatious-requests.pdf)

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.

17. Where relevant, public authorities may also need to take into account wider factors such as the background and history of the request.

The FOS's view

18. Firstly, the FOS has looked again at its citing of section 14(1) and maintained the view that it was appropriately applied. The FOS accepts that in answering any request it is inevitable that there will be a certain level of disruption but that the level of disruption should not be too great. It describes the complainant's requests as long, frequent and interlinked and they place an enormous strain on the FOS's resources. For this reason it needs to think carefully about his requests.
19. The FOS weighed the purpose and value of the request against the impact and disruption it would have on it. The FOS explained to the Commissioner that it took into account the complainant's non-FOIA communications and it suggested that his request is a result of his general dissatisfaction with its service and a personal vendetta or grudge against specific staff members.
20. The FOS said that it had also taken into account the Commissioner's guidance and previous decision notices that had agreed with its application of section 14(1). Having followed the guidance, it suggested that the numerous requests from the complainant meet multiple indicators that the request is vexatious.
21. The FOS then provided some background and context to the request. The FOS maintains that the complainant is unhappy with how it had looked into his individual complaint in 2017 and that this is one of the multiple and persistent FOIA requests that he has sent to the FOS, many questioning the Ombudsman's decision and complaining that it was wrong.
22. Staff members have told the complainant that he has reached the end of the process. Responding to these requests takes a great deal of time and he has been told that the FOS will not correspond about his case any further. The FOS expressed the view that FOI requests should not be able to be used to express grievances or prolong a complaint. His request places a disproportionate burden on the FOS

when it needs to comply with other FOI requests. The complainant's behaviour, both with its general casework departments and with the FOI team, has caused significant disruption and would continue to do so if the FOS complied with all his requests.

23. The FOS's view is that its staff deserve to be treated with respect and that it doesn't consider it fair for them to have to read and respond to emails which are constantly and unnecessarily critical of them and their colleagues. It maintains that the complainant was unhappy with the senior manager regarding his 2017 complaint and sent numerous pieces of correspondence containing derogatory language. The FOS outlines how in November 2017 the complainant made two FOI requests which included "*derogatory statements and false accusations*" about his case handler and the individual Ombudsman who considered his complaint. A great deal of correspondence was sent to multiple members of staff including members of the executive team and Board members. The Chairman wrote to the complainant in August 2018 to explain that he had exhausted all avenues and letting him know that his behaviour and derogatory comments about staff members were unacceptable. He reiterated that the FOS would no longer correspond with him. The complainant responded by saying that he would pursue the matter and correspond through any other channel available to him. This has included complaining to his MP and the Bar Standards Board about a senior manager outside of his role at the FOS. The FOS states that the complaint was not upheld.
24. The complainant's emails question staff qualifications and professionalism. This has an impact on employee wellbeing and mental health. The FOS says that it does not tolerate any form of unreasonable behaviour and argues that individuals should not be able to make FOI requests to get around their unhappiness with its Service. From October 2019 there have also been a number of requests via an internet website where (the FOS explains) he has used a pseudonym and made allegations about the FOS. These requests were refused as invalid but thirty more emails were sent with a pseudonym. There were many information requests contained in these emails.
25. The FOS has also submitted to the Commissioner a previous response it had made citing section 14(1) regarding this complainant and asked that it be considered as part of its evidence in this case. In doing so, it broke down the factors that it argued make this request vexatious and these are set out in the following paragraphs.

26. Abusive or aggressive language

The FOS has provided several examples, one is given below from an email, dated 13 November 2019:

"...the FOS claim to have discovered the equivalent of the alchemist's dream of discovering the formula of turning base metal into gold because they claim they can train people to deal with any dispute concerning any financial product based on their subjective assessment supported by the FOS information systems. I confirm the FOS publish some excellent material which I have found very helpful. It is a pity the majority of the FOS personnel do not appear to understand the specialist elements I am concerned about. What is a greater problem is they do not practice what they preach".

27. Personal grudges

Again, several examples were provided from which the following, dated 8 February 2020, is an example:

"I consider the receipt of the Chairman's letter to be the unequivocal acknowledgement that the FOS had adopted a hostile stance towards me".

28. Unfounded accusations

Several examples were provided, the following being sent to the FOI team:

"...these questions should take a few minutes to answer by somebody with the appropriate level of skill and access rights"

and in a website annotation, dated 4 July 2020:

"...this is another example of where I have made constructive suggestions and where the FOS expects one rule for them and one rule for the public concerning section 40 FOIA".

29. Unreasonable persistence

The FOS states that in the majority of requests the complainant reverts back to the handling of his complaint which was closed in 2017. He points out that it was unsatisfactory but has explored all

avenues concerning his complaints. The FOS's communications with him outside of the FOIA and data protection legislation have been exhausted. The FOS provided several examples. The following was received on 15 October 2019:

"What qualifications does the Independent Assessor hold? She is not listed as an Ombudsman and her role is not defined by law so please explain what qualifications she has to perform the important role she does. I would assume that she holds some form of quality systems assessor or project management qualification".

The FOS stated that he made this request, despite making similar requests two years earlier for the qualifications of staff which were withheld under section 40(2) and (3).

30. Futile requests

The FOS provided the following example, dated 22 January 2020:

"Please can you identify who sent my letter addressed to [named individual] of the Financial Ombudsman Service dated 1 August 2018 to an unspecified third party? Which organisation was my letter addressed to [named individual] of the Financial Ombudsman Service dated 1 August 2018 sent to? What was the justification of sending my letter addressed to [named individual] of the Financial Ombudsman Service dated 1 August 2018 to the third party identified in question 2"

31. Frequent or overlapping requests

In October 2019 the complainant sent 30 overlapping requests via a website under a pseudonym, indicating his unhappiness without waiting for replies. The FOS describes the further 25 annotated comments on other individuals' requests on the internet website, as clearly demonstrating that the complainant's request stems from his unhappiness with its service.

32. Deliberate intention to cause annoyance

The FOS has quoted an email from 1 October 2019 to support its view:

"It is not up to the FOS to decide what is the 'spirit' of the FOIA , that is for the judiciary and as I have noticed the abuse of need for proof of identification is widespread, I have sufficient grounds to

make a complaint to the ICO now but I want to give the FOS time to consider all of the defects I have identified."

The FOS also points to the complainant's annotating of other FOI requests on a website, such as this from 21 December 2019:

"If you want me to follow the progress of any subsequent FOIA requests you may wish to make, please put a link to your new FOIA request in this one."

33. Frivolous requests

The FOS gave an example from 29 October 2019 targeting the individual handling the request:

"Please confirm that a 'real person' is writing these replies and I am not receiving an automated reply. If it is a real person, please identify yourself."

34. The FOS recognises that it must be the request, rather than the requester that is vexatious. However the Commissioner's guidance makes it clear that a public authority can take into account the context and history of the request, where relevant.
35. By 7 September 2020 the FOS had received 37 requests from the complainant and 50 annotated comments regarding the FOS on other individuals' requests on an internet site. The FOS says that the complainant has continued in the same vein since the request and has provided a table but as this postdates the request the Commissioner has not included them here. The FOS believes that responding to this request is unlikely to resolve matters to the complainant's satisfaction and is likely to generate a disproportionate amount of further correspondence and requests from him in an attempt to reopen matters.
36. The FOS acknowledges that the complainant is clearly unhappy with the final decision of the Ombudsman that was issued in October 2017. It points out that the final decision marked the end of the FOS's statutory function in relation to the complaint that he brought to their service. The FOS's service complaint process has now been exhausted. Since then, the complainant has sent a disproportionate amount of correspondence to its service about the merits and outcome of his complaint as well as resurrecting issues that were already considered as part of the service complaint process. He has made a significant number of FOI requests which, the FOS contends, is borne out of his unhappiness with its service.

37. The FOS characterises this request as a continuing example of unreasonable persistence in attempting to reopen an issue which has already been comprehensively addressed by the FOS or has been subject to independent scrutiny. It suggests that the complainant is abusing his rights of access to information by using the FOIA legislation as a means to vent his anger at the decision in an attempt to reopen issues that the FOS does not have the power to reopen.
38. The FOS believes that complying with the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress. The FOS states that it has limited resources – one person responsible for responding to FOI requests and one person helping with internal reviews on a part-time basis. In 2019 it received 455 requests (11 per cent from October 2019 from the pseudonymous individual the FOS states is the complainant). By September 2020 this percentage had risen to 16 per cent.
39. It concludes that these matters are not in the public interest. It believes that this request is a continuation of behaviour which is intended to cause unjustified disruption to its service and that the request itself is of limited purpose and value. Finally, the FOS has concluded that the purpose and value of the complainant's request does not justify the impact and level of disruption to its service.

The complainant's view

40. The complainant has provided the Commissioner with many pages of argument. Much of it cannot be addressed in this decision notice because, although clearly of great importance to the complainant, it concerns matters that are beyond the Commissioner's remit to consider such as reflections on the FOS's service, financial issues, legal arguments relating to the FOS's decision or the complainant's views about revising the memorandum of understanding. There have also been past issues regarding the validity of the complainant's identity for FOI request purposes which is not being considered here as there is no question of the validity of the identity of the requester in this case. The Commissioner is also unable to consider data protection matters in this notice.
41. Firstly, the complainant stated in his original complaint to the Commissioner that the FOS was out of time in its refusal notice. Secondly, the complainant is unhappy that the FOS has refused to reply to his FOI requests.
42. The complainant has addressed the issue of vexatiousness in his arguments and supporting information, however, much of it concerns

other complaints. This has made it difficult to present his arguments because there are so many interrelated complaint references, a quantity of correspondence and asides within that correspondence to multiple issues and past cases. Therefore the arguments below have been drawn from the complainant's correspondence on this case as it relates to the general question of vexatiousness, they may not directly relate to this specific request.

43. The complainant refers to the criteria established in *Information Commissioner v Devon CC & Dransfield [2012] UKUT 440 (AAC)*. He does so by using some of the criteria for what constitutes a vexatious request as set out in paragraph 14 of this decision notice. The complainant suggests that there should be a fifth test – "*The potential impact on any party involved in the transaction of not providing information?*" He argues that there should also be a level of unreasonableness that must be demonstrated to reject a request for information and he quotes the Commissioner's guidance – "*...a disproportionate and unjustified level of disruption, irritation or distress*"².
44. The complainant elsewhere puts forward judgments regarding tests of reasonableness and the matter of awarding costs but the jurisdiction is not information rights. He also refers to *CP v The Information Commissioner: [2016] UKUT 427 (AAC), GIA/252/2015* where the judge had referred to the Dransfield decision that an objective approach is required to determine if a request for information is vexatious but that there is no "*trump card*" that may be used by either party to justify the request or the refusal of the request (paragraph 45). The complainant suggests that "*distress*" caused by "*repeated requests*" is not the "*trump card*". He believes that the FOS needs to demonstrate that it can claim exemption on all the grounds cited. The complainant contends that there is "*...a justification for approximately one third of the requests for information that the FOS refused...*"
45. The complainant's view is that he is interested in solutions and not in causing distress, though he expresses this view in relation to previous information requests where there were concerns about using a pseudonym. He does not accept that this request is vexatious and supports his view with the assertion that where he has made requests

² [dealing-with-vexatious-requests.pdf \(ico.org.uk\)](https://ico.org.uk/dealing-with-vexatious-requests.pdf)

and posted on the website referred to by the FOS, those comments have not been taken down.

The Commissioner's view

46. The Commissioner notes that many of the complainant's requests are questions which contain an opinion that he is seeking to validate or where he is seeking an opinion. Although questions can be requests, asking for opinions is unlikely to fall within the FOIA as it is very unlikely to be 'held' information and likely to mean that the public authority would have to create information which it is not obliged to do under the legislation.
47. Although there is nothing in the request itself to indicate that it is vexatious, the Commissioner considers it to be vexatious when viewed in context. The FOS has provided sufficient detail to suggest that the complainant has tried every avenue to undermine or overturn an outcome that he does not agree with. The complainant's history with the FOS is characterised by discontent with the outcome of his complaint. The Commissioner agrees that the complainant should not be able to extend the FOS's complaint process by making multiple requests under the FOIA over several years as this is not what the legislation was intended for.

Section 10 – time for compliance

48. Section 10(1) of the FOIA provides that a public authority must comply with its obligations under section 1(1) within twenty working days of the request being received.
49. The complainant originally stated that he made his request on 4 August 2020. It appears that the FOS did not receive this request until 12 October 2020. The FOS sent a refusal notice on 9 November 2020.
50. The complainant appears to have acknowledged to the FOS that the request was responded to within the statutory timeframe but as this matter has been raised, the Commissioner has considered it. On 24 August 2021 the Commissioner asked the complainant for the original email sent with the attachments. The complainant sent the Commissioner 39 attachments but she has been unable to locate the requested email.
51. Therefore, the Commissioner has concluded that the FOS did not breach section 10(1) of the FOIA.

Right of appeal

52. 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

53. 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.
54. 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

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