

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 5 June 2014

Public Authority: The Information Commissioner's Office

Address: Wycliffe House
Water Lane
Wilmslow
SK9 5AF

Decision (including any steps ordered)

1. The complainant made 15 requests to the Information Commissioner's Office (ICO) between 30 December 2013 and 21 January 2014 for information broadly about guidance, training, invoices, staff, correspondence relating to the ICO's vexatious guidance, minutes, tribunal decisions, presentations, fraud procedures, an attendance sign-in sheet for a tribunal hearing and reports relating to monitoring of Devon County Council. The ICO refused to comply with the request as it considers it is vexatious under section 14 of the Freedom of Information Act (FOIA).
2. The Commissioner's decision is that the ICO has correctly applied section 14 FOIA in this case, it was not therefore obliged to comply with the request.
3. The Commissioner requires no steps to be taken.

Request and response

4. Between 30 December 2013 and 21 January 2014 the complainant made 15 requests to the ICO, these requests were related to previous complaints he had made to the ICO and subsequent tribunal decisions, staff involved in these cases and the ICO's guidance and application of section 14. The general themes of these 15 requests are also outlined in

paragraph 14 below. The requests are set out in full in Annex A attached to this Notice.

5. On 29 January 2014 the ICO responded to these requests, it applied section 14 FOIA as it considered that the requests were vexatious.
6. The complainant requested an internal review on 29 January 2014. The ICO sent the outcome of its internal review to all 15 requests on 13 February 2014. It upheld its original position.

Scope of the case

7. The complainant contacted the Commissioner on 27 February 2014 to complain about the way his requests for information had been handled.
8. The Commissioner has considered whether the ICO correctly applied section 14 FOIA in this case.

Reasons for decision

9. Section 14(1) FOIA provides that a public authority is not obliged to comply with a request if it is vexatious.
10. The Commissioner's guidance¹ on the application of section 14(1) FOIA refers to a recent Upper Tribunal decision² which establishes the concepts of 'proportionality' and 'justification' as central to any consideration of whether a request is vexatious.
11. The guidance suggests that 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. Where this is not clear, the Commissioner considers that public authorities should weigh

¹http://www.ico.org.uk/for_organisations/guidance_index/~/_media/documents/library/Freedom_of Information/Detailed_specialist_guides/dealing-with-vexatious-requests.ashx

² *Information Commissioner vs Devon County Council & Dransfield* [2012] UKUT 440 (AAC) (28 January 2013)

the impact on the authority and balance this against the purpose and value of the request. Where relevant, public authorities will need to take into account wider factors such as the background and history of the request.

12. The ICO explained that it has recorded 17 separate emails containing requests for information, received in the 22 day period (16 working days) from 30 December to 21 January from the complainant, which includes the 15 FOIA requests referred to above. It explained that two requests were dealt with separately as subject access requests under section 7 of the Data Protection Act 1998 (DPA). The ICO explained that it considers that, collectively, receipt of this number of requests within a short period of time, is in itself highly likely to be disruptive and to create a considerable amount of work for ICO staff, in addition to their regular duties. It further considers that submission of this number of requests in quick succession is indicative of an obsessive approach to the ICO's activities, and that a reasonable person would recognise that this would be likely to cause disruption.
13. It also argued that it is clear that there is no prospect that the complainant will be satisfied with any response it could provide, and that any response provided would instead be highly likely to lead to further correspondence, requests and complaints. It said that this assessment is based on the pattern of contact the complainant has had with the ICO over the past few years.
14. The ICO explained that the recent requests focus on a small number of themes, specifically:
 - The Upper Tribunal case GIA/3037/2011 (*Information Commissioner v Devon CC and Dransfield*);
 - The Commissioner's guidance on section 14 of FOIA which follows that tribunal decision;
 - Reliance by the ICO or third parties on the ICO guidance and/or the findings of the Upper Tribunal in the above case;
 - Attendance of ICO staff at tribunal;
 - The ICO representation in tribunal cases; and
 - The training and qualifications of ICO staff, and their fitness to hold their positions.
15. It explained that all these topics are closely interlinked and all have roots in the complainant's dissatisfaction with the ICO, which arises from his complaints about a particular public authority (but also other public authorities) dating from 2009 onwards, the ICO's decision notices, and the associated tribunal cases which arose from those complaints. The ICO also explained that the complainant's correspondence frequently

contains derogatory remarks about the ICO, and specific and serious allegations and complaints about named individuals both within and outside the ICO, none of which appear to have any merit.

16. The ICO reasoned that if the complainant is dissatisfied with the ICO's actions, he has a right to complain to external bodies such as the PHSO or, as he has done, to appeal ICO decisions to the Tribunal. The ICO considers that it is an improper use of the right of access and formal procedures provided by FOIA, to pursue grievances via the submission of FOI requests.
17. The ICO argued that viewed in this context, it is clear that the requests are not intended primarily to obtain information about the ICO, but are largely intended to continue harassment of individuals, and repeat dissatisfaction with and criticism of the ICO from different angles.
18. Consequently, it said that there is no value or public interest in the ICO providing the complainant with the information he requested. For this reason, and especially in light of the recent substantial number of requests submitted, the ICO considers that the effort which the ICO would be required to expend in locating and considering information to address the requests, is unjustified in terms of the value in the information sought, and further unjustified in taking limited ICO resources away from other activities.
19. The ICO also referred to remarks made by the Upper Tribunal in GIA/3037/2011, which it said are particularly relevant to the present situation in which a substantial number of request have been submitted within a very short space or time:
 - *"A torrent of individually benign requests may well cause disruption, so one further such request may also be vexatious in the FOIA sense. [...] Thus an important aspect of the balancing exercise may involve consideration of whether or not there is an adequate or proper justification for the request"* (paragraph 26);
 - *"for the reasons above I agree with the overall conclusion that the FTT in Lee reached, namely that "vexatious" connotes "manifestly unjustified, inappropriate or improper use of a formal procedure"* (paragraph 27);
 - *"As to the number, the greater the number of previous FOIA requests that the individual has made to the public authority concerned, the more likely it may be that a further request may properly be found to be vexatious."* (paragraph 30);

- *"As regards the pattern, a requester who consistently submits multiple FOIA requests or associated correspondence within days of each other, or relentlessly bombards the public authority with e-mail traffic, is more likely to be found to have made a vexatious request."* (paragraph 32);
 - *"Likewise, as to duration, the period of time over which requests are made may be significant in at least two ways. First, a long history of requests e.g. over several years may make what would otherwise be, taken in isolation, an entirely reasonable request, wholly unreasonable in the light of the anticipated present and future burden on the public authority."* (paragraph 33);
 - *"In this context it is important to bear in mind that the right to information under FOIA is a significant but not an overriding right in a modern democratic society. As has already been noted, it is a right that is qualified or circumscribed in various ways. Those restrictions reflect other countervailing public interests, including the importance of an efficient system of public administration. Thus section 14 serves the legitimate public interest in public authorities not being exposed to irresponsible use of FOIA, especially by repeat requesters whose inquiries may represent an undue and disproportionate burden on scarce public resources"* (paragraph 35);
20. The Commissioner considers that the receipt of 15 FOIA requests within a 16 working day period is a strong indication that this is likely to cause a disproportionate or unjustified level of disruption, irritation or distress. This is particularly so as these requests are linked back to the complainant's dissatisfaction about his complaints relating to other public authorities dating from 2009 onwards, the ICO's decision notices, the associated tribunal cases and unsubstantiated allegations against named individuals. The Commissioner has however gone on to consider further factors which demonstrate that these requests should be properly categorised as vexatious.

Unreasonable persistence

21. The guidance states that to show unreasonable persistence, the public authority must demonstrate that 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.

22. The ICO has explained that the complainant has appealed the ICO's decisions in relation to his complaints externally. The Upper Tribunal did not find in the complainant's favour. The complainant has continued to make FOIA requests to the ICO as a way to continue to pursue his dissatisfaction.
23. The Commissioner considers that the ICO has demonstrated that concerns relating to the complainant's issues have been subject to independent scrutiny and the complainant is seeking to reopen the substantive issue in this and previous information requests. This is clear evidence of an unreasonable persistence.

Intransigence

24. The guidance states that to show intransigence, the public authority must demonstrate that the requester takes an unreasonably entrenched position, rejecting attempts to assist and advise out of hand and shows no willingness to engage with the authority.
25. The ICO has argued that the complainant's contention, that because application has been made for an appeal, the Upper Tribunal findings (and hence the Commissioner's guidance on section 14 FOIA) are not valid, is mistaken. It has explained to the complainant that until the Upper Tribunal's findings are overturned, they remain valid and are binding in law. Therefore the guidance and the Upper Tribunal's decision are being properly used by public authorities when considering whether requests for information are vexatious. Despite the ICO's clarification, the complainant is maintaining an entrenched position and continues to submit FOIA requests to the ICO surrounding this matter.
26. The ICO has therefore argued that it has become apparent that no response is deemed good enough by the complainant. It went on to explain that it considers that the complainant is trying to keep the issue of his dissatisfaction with the ICO's application of section 14 FOIA running, irrespective of the Upper Tribunal's decision. Furthermore, the Commissioner notes that the complainant's application for leave to appeal has so far been unsuccessful.
27. The Commissioner considers that given the length of time the complainant has been making requests for information regarding this issue, the number of requests made and the fact that the issue has been subject to independent scrutiny, it has demonstrated that the complainant has taken an unreasonably entrenched position.

Frequent or overlapping requests

28. The guidance states that in order to demonstrate that this factor applies the public authority must show that the requester submits frequent correspondence about the same issue or sends in new requests before the public authority has had an opportunity to address their earlier enquiries.
29. The ICO has clearly demonstrated that there is a link between the subject matter of the requests and that new requests are submitted before the ICO has had the opportunity to respond to previous requests. The Commissioner considers that the use of the term "bombardment" in these circumstances would not be inappropriate.
30. The Commissioner considers that due to the length of time the complainant has been making requests to the ICO regarding these issues, the number of requests made and the fact that the requester is submitting new requests before previous requests have been responded to, this demonstrates that the requests are frequent and overlapping.
31. The Commissioner recognises that the unreasonable persistence, intransigence and the frequency and overlapping nature of the requests outweighs any public interest there might be in responding to the requests due to the drain on resources this would cause and the diversion from other functions and duties.
32. In all the circumstances, particularly the volume and nature of the correspondence and the fact that the complainant's grievance in relation to how his previous complaints were handled has been subject to appropriate external scrutiny, the Commissioner is satisfied that the requests are vexatious and that section 14(1) has been applied correctly.

Right of appeal

33. 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: 0116 249 4253

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

34. 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.
35. 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

Graham Smith
Deputy Commissioner
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Annex A

Request dated 30 December 2013

- "I note the New ICO Guidelines version 1- 20130514 (37 page document) is not dated. Can you please advise me why that document was NOT signed and NOT dated. If such matters don't come under your remit, I would be most grateful if you would elevate this issue to the correct department. with thanks"

Three requests dated 3 January 2014

- "Please provide me with names and total costs of any ICO personnel attending Common Purpose Training Courses in the last 10 years."
- "I understand you are [name redacted] Line Manager and as you are aware, I have a formal complaint against him and your goodself. However, I wish to extend my complaint against the ICO for allowing Non Qualified Baristers to represent the ICO at my Upper Tribunal Test Case and other Cases.

In particular, I refer to [name redacted] and [name redacted]. Neither of these "Baristers" have gained their QASA accreditation and neither of them had gained the Practising Certificate at the time of the UT Test Case. Both [name redacted] and [name redacted] gained their Practising Certificate in April last year, some 6 months AFTER my UT Test Case Hearing.

In essence, both these Persons, (I refuse to call them Baristers because they are not) are mere Junior Lawyers learning the trade, which is all well and good but it is not value for money related to Public Funded Projects. Not for one moment would I envisage that KBW have charged anything less than the FULL GOING rate for a Barrsister on my Case.

In the event that KBW have charged full payment of Barister Equilivant, I would have no hesitation in claiming Fraud and Theft of Public Funds.

To this end, please treat this correspondence as both a complaint and a FOIA request for copies of the Invoices from KBW for both [name redacted] and [name redacted].in relation to BOTH my Cases.

I also take serious issue with the FLIPPANT use of [name redacted] on documents as opposed to [name redacted], most unprofesssional if not

illegal??. Any fairmind person would expect a recognised and qualified Lawyer /Barrister to quote his/her full name,i.e [name redacted].,

It is quite apparent to me that the ICO and KBW have a COSY little relationship and KBW appear to get a LARGE slice of the Public Funded CAKE from the ICO.

Also, as an integral part of my FOIA request, please provide me with Tender Documents and Contract Agreement between the ICO and KBW Group in respect of Providing Counsel. Neither [name redacted] are Counsel.

The deployment of Junior Lawyers could well result in a Multi Million Pound Claim against the ICO for misfeasance and Irregularities [Tribunal case reference redacted] inter alai."

- "Please provide me with all copies of Invoices from KBW to ICO for Professional Services rendered between subject dates.. I assume the Invoices will includd for the Legal Service,i.e specific case.

I also assume the invoices will include for All specific Barristers/QC's Service provided by the KBW Law Firm"

Three requests dated 4 January 2014

- "Under the FOIA 2000 please provide me with the following information
 1. Full names,Job Titles of ALL ICO Staff,i.e Caseworkers, Solicitors,Line Managers
 - 2..A copy of Legal Credentials for ALL ICO Solicitors.
 3. A copy of the Contract between the ICO & KBW Law Firm.
 - 4.A copy of all Invoices (unredacted) from KBW between Oct 2011 and Dec 12.N.B. The ICO run a Government Better PracticesCode which allows them to pay their invoices on a weekly basis,hence, please group my requests into a weekly basis.. I will also not accept any redaction of the invoices ref any commercial claims you may hold because this is Central Government Funds,hence, commercial exemptions do not apply under the FOIA 2000.
 - 5.Qualifications, credentials of Christopher Graham, Graham Smith and ALL the ICO Department Heads.
 - 6.A copy of the ISO.9000 Audits for the last 3 years.
 7. A copy of the ISO 1400 Audits for the last 3 years.

I have a preference for electronic data transfer please but in the event of any problems with File Size,I will accept CD and you have my full postal address on file."

- "Please provide me with copies of internal correspondence,emails, record of telephone conversations between Sep 2011 to April 30th in reference to the the ICO New 37 page Vexatious Guidelines. Please also provide minutes to meetings which discussed this new Guideleine Document and the approval sinatures for this said document.

By the way, this ICO Vexatious Guideline is neither signed, approved or dated, hence, it could be construed as a invalid Legal Document."

- "Please see the ICO submmition to the Parliamentary Justice commmission and in particular, I ref to this following extract. I now wish to make the following FOAI requests below.

quote

6. Vexatious Requests

6.1 The Commissioner has been concerned from the outset that some requests might place an excessive or disproportionate burden on public authorities. Section 14 of FOIA discharges the public authority from its obligation to comply with a request that is vexatious. "Vexatious" is not defined by the Act, so the Commissioner applies the normal meaning and has developed guidance which sets out a number of factors to be considered in determining whether a request is vexatious.

Unquote

- a. What is the exact guidance, is he refering to the 37 Page Vexatious Guideline published in April 2013.
- b. Para 6.5 implies "recent Upper Tribunal decsions". Please provide me with te exact UT decision the IC relied upon."

Two requests dated 5 January 2014

- "Please see the following ICO weblink for Graham Smith (Deputy Commissioner) dated 27th Nov last year which purports to be the Powerpoint Presentation Pack by the Deputy Commissioner.

On a stand alone basis this Powerpoint Bullet Header Points is worthless ,hence, please provide me under the FOIA 2000 with the minutes from this presentation on the FACTS delivered by the Deputy Commissioner on the Dransfield Case alone as purported in the following link.

I am not interested in the other contents of Smiths's Presentation. It is not obligatory for me to inform the ICO of my FOIA Request Motive but I don't mind telling you that the contents of the Deputy Commissioner Presentation will prove a wider conspiracy to breach sect 77 of the FOIA 2000.

In a nutshell, the Presentation by the Deputy Commissioner Graham Smith is at best HOGWASH exercise and at worst an attempt to pervert the course of justice and further mislead Training Recruits and the General Public. I suggest the latter."

- "Please provide me with a copy of the ICO 9th Annual Meeting Minutes dated 15&16th May last year and the full cost of the Meeting please.

How many people attended this Meeting and who paid for the Wine and Canopes

I have enclosed the Brochure for the Meeting."

Two requests dated 7 January 2014

- "Polite followup request please to my FOIA request for
 - 1 Full bio data for Graham Smith the deputy commissioner
 2. Full list of legal credentials for above"
- "Please provide me with a copy of the ICO complaints / allegations of fraud procedures. This is not to be confused with the Ico complaints form online reporting"

Request dated 16 January 2014

- "Please provide me with a copy of the Security Attendance Sign-in Sheet for the FTT Hearing in London from Tues 14th Jan 2014. This is a FOIA request."

Request dated 19 January 2014

- "I wish to make a formal complaint against this attached ICO decision, which has relied extensively

on my Upper Tribunal Case_[Tribunal case reference redacted]. Moreover, your decisions cites this case as being associated with several Council officials quitting their jobs at Walberserwick Parish Council.

[paragraph redacted]

Don't you think this case is getting a TAD out of control??!! Please add this decision to my long line of Complaints currently being investigated.

For your information, action and files"

Request dated 20 January 2014

- "The last sentence of this email is a request for information. While there is no "ICO Committee Counsel". Members of 11KBW are instructed by ICO lawyers."

Request dated 21 January 2014

- "Please provide me with copies of any ICO reports connected with the monitoring by the ICO of the the Devon County Council, i.e. Audit reports."