

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

**Decision notice**

**Date:** 18 September 2014

**Public Authority:** The Information Commissioner's Office (ICO)

**Address:** Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF

**Decision (including any steps ordered)**

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1. The complainant has requested information about the ICO's premises in Cheshire. The ICO refused to comply with the request under section 14(1) of the Freedom of Information Act 2000 (FOIA) and so far as the requested information is environmental information, under regulation 12(4)(b) of the Environmental Information Regulations 2004 (EIR), as it considered it to be vexatious.
2. The Commissioner's decision is that the ICO has correctly applied section 14(1) FOIA and regulation 12(4)(b) EIR.
3. The Commissioner requires no steps to be taken.

**Request and response**

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4. On 28 February 2014 the complainant made the following request for information under the FOIA for:

"Under the FOIA 2000 please provide me with the following information for your ICO HQ Premises in Cheshire.

1. An approved copy of your Lightning Risk Assessment for your HQ Premises.
2. Lightning Protection Test Certificates for the last 5 years for the same.

Please note this is a BRAND NEW request, straightforward and benign, hence, any fair minded person would not understand how you would be able to rely on section 14/1 of the FOIA 2000 or even section 12(4) (b) of the EIRA 2004.?! Look forward to your response."

5. On 31 March 2014 the ICO responded. It refused to comply with the request under section 14(1) FOIA and regulation 12(4)(b) EIR.
6. The complainant requested an internal review on 31 March 2014. The ICO sent the outcome of its internal review on 24 April 2014. It upheld its original position.

### **Scope of the case**

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7. The complainant contacted the Commissioner on 2 May 2014 to complain about the way his request for information had been handled.
8. The Commissioner has considered whether or not the ICO was correct to apply section 14(1) FOIA and regulation 12(4)(b) EIR in response to this request.

### **Reasons for decision**

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9. Section 14(1) FOIA provides that a public authority is not obliged to comply with a request if it is vexatious. Regulation 12(4)(b) EIR provides that a public authority is not obliged to comply with a request if it is manifestly unreasonable.

10. The Commissioner's guidance<sup>1</sup> on the application of section 14(1) FOIA and regulation 12(4)(b) EIR refers to an Upper Tribunal decision<sup>2</sup> which establishes the concepts of 'proportionality' and 'justification' as central to any consideration of whether a request is vexatious.
11. The Upper Tribunal decision has been appealed and is due to be considered by the Court of Appeal in January 2015. Until the Court of Appeal issues its decision, the Upper Tribunal decision is binding law which the Commissioner must follow.
12. 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 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.
13. The ICO stressed that it does not use the application of section 14(1) lightly. It does not employ a blanket operation of section 14(1) but will consider each request on its own merits. It referred to an earlier request from the complainant which it considered to be of a different nature to others he had submitted and to which the ICO had responded in full.
14. The ICO explained that it was relying upon the same arguments as presented and recorded in the Decision Notice for case reference FS50532725, where the Commissioner had upheld the ICO's characterisation of 15 requests as vexatious.. This Decision Notice can be accessed using the following link:  
  
[http://search.ico.gov.uk/ico/search/decisionnotice#dn\\_searchTop](http://search.ico.gov.uk/ico/search/decisionnotice#dn_searchTop)
15. The ICO explained that it considers that there are continuing and overarching themes to the requests covered in case reference FS50532725 and the request made in this case.

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<sup>1</sup>[http://www.ico.org.uk/for\\_organisations/guidance\\_index/~media/documents/library/Freedom\\_of\\_Information/Detailed\\_specialist\\_guides/dealing-with-vexatious-requests.ashx](http://www.ico.org.uk/for_organisations/guidance_index/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/dealing-with-vexatious-requests.ashx)

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

16. As this request focuses upon information about ICO premises, the Commissioner considers that there is a continuing and overarching theme which applies to this request and the requests relevant to case reference FS50532725. The ICO has previously explained that the complainant's correspondence frequently contains derogatory remarks about the ICO and specific and serious allegations and complaints about named individuals. The previous Decision Notice referred to above covered 15 requests relating to such subjects as qualifications of staff, audit information, how the Commissioner discharges his functions and the use of external lawyers. The Commissioner considers that taking into account the previous requests, this demonstrates a pattern of behaviour and that this request is symptomatic of an unreasonable and disproportionate campaign against the ICO. The Commissioner acknowledges that the Decision Notice relating to case reference FS50532725 has been appealed by the complainant to the First-tier Tribunal (Information Rights) but this is not a bar to his reaching a decision in this case.
17. The ICO provided the Commissioner with some further emails, post-dating the request, which demonstrate that the complainant continues to make various allegations against ICO staff and external individuals due to his dissatisfaction with the way in which his previous and ongoing complaints have been dealt with linked to the ICO's and Tribunal's interpretation and application of section 14(1) FOIA and regulation 12(4)(b) EIR.
18. The ICO explained that in *Sivier v ICO EA/2013/0277*, the Tribunal commented at paragraph 12, "In *Dransfield* the Upper Tribunal approved the consideration of events earlier in time when considering an information request within its context and we have concluded that it is also appropriate to consider post-request events when they are, as here, so closely connected with the Request that they can be interpreted as part of the implementation of a single strategy."
19. The Commissioner considers that this ongoing correspondence further demonstrates that the complainant's request in this case is as a result of his dissatisfaction with the way in which the ICO interprets and applies section 14(1) FOIA and regulation 12(4)(b) EIR rather than a genuine desire to receive the information.
20. The Commissioner considers that, viewed in isolation, this request and other individual requests made by the complainant may not seem to impose an unreasonable burden and they are arguably not without a serious purpose. However taking into account the pattern of behaviour and the overarching theme and volume of the requests described above, the aggregate disproportionate burden test is met and justifies the conclusion that this request is vexatious. The Commissioner considers

that the same reasoning relied upon in case reference FS50532725, can be extended to apply to the request which is the subject of this complaint and the ICO was justified in applying section 14(1) FOIA in this case.

21. As regulation 12(4)(b) EIR is subject to the public interest test, so far as the information requested is environmental, the Commissioner has gone on to consider the balance of the public interest.

### **Public interest arguments in favour of disclosing the requested information**

22. The Commissioner considers there is a public interest in a public authority operating in an open and transparent manner. However, there is no obvious intrinsic public interest in compliance with a request for this particular information. No particular issues relating to lightning or any other meteorological phenomenon at the ICO's HQ premises have been cited.

### **Public interest arguments in favour of maintaining the exemption**

23. The Commissioner considers that there is a strong public interest in not putting an unreasonable burden upon the ICO which would have significant implications in terms of diversion of resources.

### **Balance of the public interest arguments**

24. The Commissioner considers that in this case the public interest in favour of maintaining the exception outweighs the public interest in disclosure. The fact that this particular request might be regarded as "straightforward and benign" does not detract from the arguments relating to the cumulative burden and diversion of resources which would be caused by compliance with the complainants' information requests.

## Right of appeal

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25. 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@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

26. 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.
27. 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**