

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 22 October 2014

Public Authority: Foreign and Commonwealth Office
Address: King Charles Street
London
SW1A 2AH

Decision (including any steps ordered)

1. The complainant requested metadata relating to all emails sent and received by the then Foreign Secretary's official account during a specified seven day period. The Foreign and Commonwealth Office (FCO) refused the request on the basis that it was not valid for the purposes of section 8 of the FOIA. It also stated that had the request been valid, it would have refused it as vexatious under section 14(1) of the FOIA.
2. The Commissioner's decision is that the request was valid for the purposes of section 8 of the FOIA. However, he has also found that the request was vexatious and so under section 14(1) the FCO was not obliged to comply with it.

Request and response

3. On 10 January 2014 the complainant wrote to the FCO and requested information in the following terms:

"I am requesting the email 'metadata' for messages sent and received by William Hague, covering the seven days previous to this request being processed. Specifically, this request should relate to Mr Hague's primary, personal departmental email account.

I would like this request to be formatted as a register of information with each item of correspondence marked with the:

- I. Time*
- II. Date*
- III. Sender*
- IV. Recipient(s)*
- V. Subject header*
- VI. Name of any attachment".*

4. The FCO responded on 7 February 2014. It refused the request on the ground that it was not valid for the purposes of section 8 of the FOIA. The FCO also referred to section 14 of the FOIA at this stage and stated that even if the request was considered valid for the purposes of section 8, it would be refused as vexatious under section 14 of the FOIA.
5. The complainant responded on 3 March 2014 and requested an internal review. The FCO responded with the outcome of the internal review on 9 May 2014, which was that the refusal under section 8 and section 14 in the alternative was upheld.

Scope of the case

6. The complainant contacted the Commissioner on 16 June 2014 to complain about the refusal of his information request. The complainant indicated that he did not agree either that his request was not valid under section 8, or that it was vexatious.

Reasons for decision

Section 8

7. This section states that for a request to be valid for the purposes of section 1 of the FOIA it must:
 - Be in writing.
 - Include the name and address (an email address is sufficient) of the requester.
 - Describe the information requested.
8. The case made by the FCO is that the third of these conditions is not met. It argues that asking for information only by reference to an electronic location with no subject matter specified does not constitute a

description of the information requested. The FCO argued that for a request to be valid "*the subject must be described*".

9. The Commissioner notes, however, that section 8 does not require a requester to specify the subject matter of the information they seek. Whilst it provides that the request must describe the information sought, it places no restriction on the form of that description. The Commissioner does not, therefore, agree with the FCO that a description of the subject matter of the requested information is a requirement for a request to be valid.
10. The question here is whether the wording of the complainant's request was sufficiently descriptive to allow the FCO to identify the information sought. The Commissioner has considered a similar scenario previously in a case where an information request was made to the Cabinet Office for emails to or from a non-GSI email account belonging to the Prime Minister¹. The Cabinet Office argued in that case that as the request did not specify a subject matter, it did not describe the information sought.
11. In that case the Commissioner found that a description of the origin, date and type of document sought could be a sufficient description for the purposes of section 8; a description of the subject matter of the information is not necessarily also required. The Commissioner also found in that case that, whilst no subject matter had been specified, by requesting non-GSI emails belonging to the Prime Minister the request identified a "*sphere of interest*".
12. Taking the same approach as in that earlier case, the Commissioner notes that, by referring to the then Foreign Secretary's official email account, the complainant's information request includes a description of the origin, date and type of document sought. It also identifies a sphere of interest. His conclusion is, therefore, that the complainant has clearly described what he is requesting and so the request was valid for the purposes of section 8 of the FOIA.

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http://www.ico.org.uk/~media/documents/decisionnotices/2013/fs_50465008.ashx

Section 14

13. Having found that the request was valid, it is necessary to go on to consider section 14, which was also cited by the FCO. This section provides that a public authority is not obliged to comply with a request that is vexatious. The approach of the Commissioner, as set out in his guidance on this provision², is that the key question to ask when considering whether a request can be accurately characterised as vexatious is whether it is likely to cause a disproportionate or unjustified level of disruption, irritation or distress.
14. The central argument of the FCO in this case is that the request is a "fishing expedition". This is a term used for requests where the requester casts their net widely in the hope that they will catch information of interest, but without having prior awareness of what information may be held within the scope of their request. The position of the FCO is that the effort that it would be necessary for it to expend on this request would be disproportionate when the requester does not know what information may be held and given that the request may reveal nothing that it is of any interest to him.
15. The Commissioner's view is that fishing expedition requests may be vexatious, but only where the impact of them would be disproportionate or unjustified. In line with this, he has considered two main issues here; first, whether the complainant's request can be accurately characterised as a fishing expedition, and secondly, if that is the case, whether its impact would be disproportionate or unjustified.
16. On the issue of whether it is fair to characterise the request as a fishing expedition, when requesting an internal review the complainant stated:

"If this request discloses specific items of correspondence that we, or others browsing the information in the Departmental disclosure log, find important a more targeted request can be sent."
17. On the basis that this wording is effectively a statement by the complainant that the purpose of his request was to "fish" for information of interest, the characterisation of fishing expedition is fair.

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http://www.ico.org.uk/for_organisations/guidance_index/~/media/documents/library/Freedom_of_Information/Detailed_specialist_guides/dealing-with-vexatious-requests.ashx

18. The next step is to consider what the impact of the request may be. The Commissioner's guidance gives the following examples of where a fishing expedition request may be vexatious:
 - Imposes a burden by obliging the authority to sift through a substantial volume of information to isolate and extract the relevant details;
 - Encompasses information which is only of limited value because of the wide scope of the request;
 - Creates a burden by requiring the authority to spend a considerable amount of time considering any exemptions and redactions.
19. The Commissioner's view is that all three of these examples apply here. The complainant has asked for metadata for all emails relating to the then Foreign Secretary's official email account for a seven day period, which is likely to encompass a significant volume of messages. Supplying this metadata would involve sifting through this likely substantial volume of messages to isolate and extract the relevant details.
20. By its nature, a fishing expedition request will very likely encompass information which is only of limited value. The Commissioner's view is that this is a certainty in relation to seven days' worth of email traffic to any account. The quote above from the complainant's internal review request suggests that he also recognises that much of what may be disclosed would be of limited value.
21. Given the seniority and nature of the Foreign Secretary's role, it is likely that it would be necessary to spend at least some time, and possibly a significant amount of time, considering exemptions which might be applicable to the information caught by the request. This may include time spent on redactions from emails that are of limited value, but nonetheless contain information that it would be inappropriate to disclose.
22. For these reasons, the Commissioner's view is that the request would impose a burden on the FCO. As to whether that burden would be disproportionate or unjustified, the Commissioner notes that the complainant was advised in the internal review response that his request would be reconsidered if it was refined by asking for emails on a specific subject. The complainant does not appear to have submitted a refined request.
23. He also notes that the complainant set out that his intent was to discover whether there may be information that would be worth making the subject of a much more focussed request. This allows for the

possibility that the request may not reveal anything that the complainant would consider sufficiently interesting. The outcome of the email trawl will be entirely random. It may or may not lead to the identification of an issue worthy of pursuit.

24. On the basis that the request may result only in the disclosure of information of little value and that the complainant has been advised that a more focussed request may have a different outcome, the Commissioner is of the view that the burden imposed by the request would be disproportionate and unjustified.
25. Overall, the Commissioner's view is that the possibility of revealing the existence of information that may be considered worthy of a subsequent focussed request is unlikely ever to be adequate justification for a fishing expedition request that would impose a significant burden on a public authority. His conclusion is, therefore, that the request was vexatious under section 14(1) of the FOIA. This means that, whilst the request was valid for the purposes of section 8, the FCO was not obliged to comply with it.

Right of appeal

26. 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

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

27. 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.
28. 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
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