

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 15 July 2019

Public Authority: UK Research and Innovation
Address: Polaris House
North Star Avenue
Swindon
SN2 1FL

Decision (including any steps ordered)

1. In a nine part request the complainant has requested from UK Research and Innovation (UKRI) information on its grant funding for mental health research and more general funding matters. UKRI has categorised the request as vexatious under section 14(1) of the FOIA.
2. The Commissioner's decision is as follows:
 - The complainant's request of 27 July 2018 is vexatious under section 14(1) and UKRI is not obliged to comply with it.
3. The Commissioner does not require UKRI to take any remedial steps.

Request and response

4. On 27 July 2018, the complainant wrote to UKRI and requested information in the following terms:

"1. Looking at the recent grants you have announced, if you were to maintain your core level of funding of mental health at c.£25m, I would estimate that you intend to spend an additional £15m on mental health research in 2018/2019 Given your track record and

capacity in the sector how will you do this and maintain the quality you desire? Or will your core funding likely reduce?

2. With respect to this grant, Child and young adult mental health – the underpinning aetiology of self-harm and eating disorders, please explain why you are targeting these two areas, including any discussion, board or research papers comparing these illnesses with your other options

3. This should answer the questions: What other illnesses did you consider? And why did you reject them? Specifically why did you not choose to target: anxiety; addiction or shizoffective disorder

4. Please list all the other grants into specific mental illnesses that you have funded in this proactive way (ie not response mode) over the last 5 years.

5. What % of the funding from 2 do you estimate the MRC will fund?

6. Why do you not allocate funding in line with the WHO burden of disease? Both at "family illness" level. ie malignant neoplasms, mental health and behavioural disorders etc and illness level: lung cancer, breast cancer, depression etc

7. List the projects the MRC has funded specifically into schizoffective disorder, with the value, title, duration, amount and abstract 2013-2018

8. I think I am right in saying you get an annual budget from The Department for Business, Energy and Industrial Strategy or maybe even direct from parliament but that you dont know your funding any further than a year in advance. Is this correct?

9. If you were a company you would have cost centres with budgets and you would monitor spending against the budget on a monthly basis. How do you manage your spending? What are your equivalent of costs centres and what are their budgets for this year?"

5. UKRI responded on 23 August 2018 – its reference UKRIFOI2018/0106. This was within the 20 working day requirement under section 10(1) of the FOIA. UKRI refused to comply with the "latest set of questions" under section 14(1) of the FOIA.

6. Following an internal review UKRI wrote to the complainant on 19 October 2018. It noted that the complainant had subsequently sent it three further requests. Its internal review dealt with all four requests. It said that clarification the complainant had provided in his request for the internal review had helped it to see where previous responses could

have been clearer and instances where published information may not have been easy to find. UKRI therefore provided some additional information and also provided a response to the three new requests. However UKRI maintained its reliance on section 14(1) with regard to request UKRIFOI2018/0106.

7. Finally, UKRI advised that since a number of his requests concern the Medical Research Council (MRC) it could arrange for the complainant to meet with the relevant MRC member of staff. UKRI has advised the Commissioner that this meeting took place in December 2018.

Scope of the case

8. The complainant contacted the Commissioner on 4 December 2018 to complain about the way his request for information had been handled.
9. In correspondence dated 25 April 2019 the Commissioner had outlined to the complainant that the focus of her investigation would be UKRI's response to the complainant's request of 27 July 2018, about which he had first contacted her.
10. In correspondence to the Commissioner received on 22 May 2019 the complainant detailed the scope of his complaint. Broadly, this correspondence includes concerns about other information requests that he submitted to UKRI – including requests for his own personal data – in addition to the request of 27 July 2018.
11. As noted above, the focus of the Commissioner's investigation is the complainant's request of 27 July 2018 and whether UKRI can rely on section 14(1) of the FOIA to refuse to comply with this request. The complainant's concerns about other requests will be dealt with separately, where appropriate.
12. The Commissioner will also consider in this notice whether UKRI was obliged to comply with section 16(1) (advice and assistance) with regard to the request of 27 July 2018, which is another concern that the complainant raised in the above correspondence.
13. Finally, in his 22 May 2019 correspondence the complainant has also expressed dissatisfaction with UKRI's handling of the internal review. This is considered under 'Other Matters'. Provision of an internal review is not a requirement of the FOIA and the Commissioner cannot make a formal decision on this aspect of the complaint.

Reasons for decision

Section 14 – vexatious and repeat requests

14. Under section 14(1) of the FOIA a public authority is not obliged to comply with a request if the request is vexatious.
15. The term 'vexatious' is not defined in the FOIA but the Commissioner has identified a number of 'indicators' which may be useful in identifying vexatious requests. These are set out in her published guidance and, in short, they include:
 - Abusive or aggressive language
 - Burden on the authority – the guidance allows for public authorities to claim redaction as part of the burden
 - Personal grudges
 - Unreasonable persistence
 - Unfounded accusations
 - Intransigence
 - Frequent or overlapping requests
 - Deliberate intention to cause annoyance
16. 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.
17. The Commissioner's guidance goes on to suggest 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.
18. Where relevant, public authorities also need to take into account wider factors such as the background and history of the request.
19. By way of providing a background, in its submission to the Commissioner UKRI has explained that it was established in April 2018 as a new Non-Departmental Public Body bringing together the UK research councils, including the MRC, Innovate UK and Research England as one organisation. Prior to this the research councils and Innovate UK were separate Non-Departmental Public Bodies, and independent legal entities subject to the FOIA. UKRI says its position on request FOI2018/0106 therefore took account of requests from the complainant that it received prior to its formation, which were mainly submitted to the MRC.

20. In the submission UKRI has provided a background and the wider circumstances of the request of 27 July 2018. It has noted that the request included a number of questions and requests for information relating to the MRC's strategy, approach and levels of funding for mental health research, with a specific interest in child and adolescent mental health. It says that the request referenced questions that had been addressed by the MRC previously and information that had provided in response to other, similar FOIA requests related to the same topic. UKRI has provided the Commissioner with a summary of all the requests it has received from the complainant and its responses to them. She notes that its correspondence with the complainant from May 2017 up to the point of this request was extensive, and that the correspondence has continued to date.
21. UKRI notes that in many cases the FOIA requests involved multiple information requests and questions about strategy, budgets and decision-making processes. The requests have sought information on mental health research for MRC and across UKRI, and information on other areas of health research, again for MRC and across UKRI for the purposes of comparison. The requests have been broad and have involved requests for recorded information (mainly budget and spend data) and, extensive and repeated questions about MRC strategy and approaches to funding mental health research. UKRI says that while the questions outlined have evolved over time, the recorded information requested and general responses to the questions posed all relate to broadly the same information regarding:
- How the MRC funds research, including the specifics of decision-making processes.
 - How the MRC funds mental health research, including the specifics of decision-making processes for mental health proposals.
 - Information relating to the distribution of the MRC's research funding across all areas of research supported.
 - Information relating to MRC and UKRI budget plans and spending for mental health research.
 - Information on the MRC's Strategy for Lifelong Mental Health, published in April 2017 and covering the period 2017-2022.
 - Specific information relating to the MRC's mental health research portfolio and asking for a substantial amount of additional analysis work to be undertaken.
 - Information relating to health and mental health research by other UKRI councils.
22. UKRI says that clarification has been required in a number of cases to help identify relevant information. Refinement and prioritisation have also been necessary to take account of the appropriate limit due to the level of detail requested in the presentation of the data, and where a

new presentation or analysis, or an additional analysis of existing data has been required.

23. It says the requests have also asked for comments on recommendations from the complainant for new approaches to funding mental health research and on analyses the complainant has undertaken.
24. The responses provided were often followed by further questions and queries, also involving multiple questions, and requests. In some cases, in the subsequent discussions UKRI says it was able to clarify the response and reiterate where previous responses and information was relevant. In other cases additional information was required and new FOIA requests were taken forward. In addition to the FOIA requests UKRI says that the complainant also contacted research council staff/teams directly on similar issues; one of these approaches also resulted in a new FOIA request.
25. UKRI has told the Commissioner that several aspects of the different requests, and related correspondence, were duplicative or overlapping. Due to the volume and range of questions, significant coordination across the organisation was required. The need to consult across councils and departments, to consider the breadth of the issues raised, was communicated to the complainant.
26. UKRI's submission has then addressed the request of 27 July 2018 specifically. It says request FOI2018/0106 related to MRC support for mental health research and comprised nine questions on MRC strategy for the area, funding plans and budgets. The requests comprised two questions relating to information that was not recorded/held (1,3), one question seeking background information on a funding call (2), four questions where the majority of the information requested was publicly available (4,5,7,8) and two questions asking for an opinion (6,9). UKRI goes on to detail the questions and its approach to the response.
27. It says that as many of the questions addressed similar issues to previous requests and correspondence with the complainant the request was assessed and found to be vexatious under section 14(1) of the FOIA. In considering the request UKRI says it took account of the Commissioner's guidance on the application of section 14(1) and concluded that the request had the potential to cause a disproportionate level of disruption. This view was based on the relationship between these questions and previous requests and correspondence and the likely burden the request would place on the organisation. UKRI has listed the three indicators for vexatiousness that it identified as relevant, and they are discussed below.

28. UKRI first advised that the complainant sought an internal review on 24 August 2018 and revised the request on 27 August 2018 to include more information on the questions and identifying priorities. UKRI says that the form and format of the internal review request followed a similar pattern to the previous correspondence in asking further questions and making new requests. It says that the pattern of overlapping and duplicate requests was also repeated, and the language used was increasingly critical, distressing, and began to be directed towards individuals. On this basis the initial decision, that the request was vexatious, was upheld.
29. **Burden:** UKRI argues that the request addressed a number of questions raised previously under the FOIA and other correspondence.
- As the request followed a similar pattern to previous requests, in comprising multiple questions and requests addressing similar issues UKRI says it took a view on the significant effort involved in responding to similar questions in the past. UKRI also considered the impact of any subsequent repeated, related and overlapping requests any response might generate.
 - UKRI says it also considered the significant staff time that had been taken-up in responding to previous requests, around 370 hours by the time of the request that is the subject of this notice. In UKRI's view the complainant was likely to be aware of the burden, in general terms, as he had been advised in previous discussions that consultation across different groups had been necessary due to the breadth of the requests. The complainant had also made a number of requests seeking information on research spend by health area, condition and age group where the analysis required to identify and extract the information would exceed the appropriate limit.
30. **Frequent or overlapping requests:** UKRI argues that a number of the questions addressed points that had been raised in previous requests and correspondence. It notes that the evolution of further questions and new FOIA requests, which formed a feature of correspondence following previous responses, was also considered relevant. UKRI says that, as shown in material it has provided to the Commissioner, there were a number of occasions where multiple requests and questions were being taken forward at the same time.
31. **Unreasonable persistence:** UKRI says that in the questions posed, the complainant appeared to be attempting to reopen questions that had already been comprehensively addressed. As an example UKRI says that question 6 asked why the MRC did not use a particular method of budget allocation but that responses to questions on how the MRC

funded research and allocated budgets had previously been provided on several occasions.

32. UKRI's submission has gone on to detail the position with regard to each of the nine parts of the complainant's request. The Commissioner does not intend to detail this here. Broadly, UKRI has explained its response and internal review response, and referred to relevant communications it received from the complainant with regard to its responses. With regard to parts (4), (5) and (7) of the request UKRI acknowledges that its original responses to these parts could have been clearer and notes that in its internal review response it provided further information/clarification about these parts.
33. The Commissioner finds UKRI's response to the complainant's request to have been somewhat muddled. In an effort to be helpful, and because the complainant had clarified aspects of his request and concerns, in its internal review UKRI responded to and addressed some parts of the complainant's request – ie it complied with these parts, to an extent. But at the same time UKRI's position is that it is not obliged to comply with the request as it considers it to be vexatious. If a public authority considers a request is vexatious it is not obliged to comply with it to any extent. However, UKRI's final position is that it is relying on section 14(1), and so the question of the request's vexatiousness is what the Commissioner has considered.
34. First, the Commissioner acknowledges the complainant's personal circumstances about which he has advised both her and UKRI. She must nonetheless consider the effect on UKRI of the complainant's request.
35. The Commissioner has reviewed the series of 14 requests the complainant submitted to UKRI up to 28 July 2018, a summary of which UKRI has provided to her. She notes that the requests are often multi-part and sometimes overlapping. They are for information on similar matters; broadly research funding allocation and financial matters, and UKRI has explained where it has already addressed parts of the request through its responses to other requests for information from the complainant. The Commissioner also notes how UKRI's response to one request often generates another request from the complainant, and further questions and requests for opinions. Indeed, the complainant submitted a further three requests in his request for an internal review in this case. On this evidence she considers that if UKRI fully complies with the current request, the complainant is likely to submit a further request on the same or similar subject. In the Commissioner's view, the complainant's correspondence with UKRI is unlikely to draw to a close and is likely to continue in the same vein.

36. Through previous requests UKRI has provided the complainant with a significant amount of the information he is seeking and has also facilitated a meeting for him with MRC. The Commissioner notes the number of hours UKRI says it has spent dealing with complainant's requests up to the date of this request; over 350 hours. The Commissioner sees no reason to doubt this figure, given the length of time it has been corresponding with the complainant, the volume and nature of his requests, which are often multi-part, of a complex, technical nature and requiring the input of various teams. And while the information the complainant has requested may be of interest to him, he has not put forward a compelling case that it has any wider public interest. As such, the Commissioner finds that complying with this request would be a continuation of what has been a significant burden to UKRI and that the burden is disproportionate this request's value.
37. Although UKRI has voluntarily addressed parts of the complainant's request, the Commissioner has decided that the complainant's nine part request of 27 July 2018 can be categorised as one vexatious request under section 14(1) of the FOIA and that UKRI is not obliged to comply with the request.
38. The Commissioner has noted that despite categorising the current request as vexatious, UKRI went on to comply with the three further requests the complainant submitted when he requested an internal review, and indeed other requests he has gone on to submit since then. A public authority should consider each request it receives on a case by case basis and take account of the circumstances of each. It may well be the case, as here, that an authority concludes that it is prepared to comply with a subsequent request. UKRI therefore took the proper approach in this case.

Section 16 – advice and assistance

39. Section 16(1) of the FOIA places a duty on a public authority to provide an applicant with advice and assistance so far as it would be reasonable to expect the authority to do so.
40. In his correspondence to the Commissioner of 22 May 2019, the complainant has said that, under section 16, he considers that UKRI should have assisted him with his request.

41. A public authority's duty to offer an applicant advice and assistance is discussed in the Freedom of Information Code of Practice (Jul 18) ¹. The Code advises, broadly, that this duty comes into play with regard to: clarifying a request; reducing the cost of complying with a request or transferring requests to another authority. These factors are not relevant to this case, where UKRI is relying on section 14(1). The Code also advises that a public authority is not expected to provide assistance to applicants whose requests are vexatious within the meaning of section 14. The Commissioner therefore cannot find that UKRI breached section 16(1) as there was no requirement on it to offer advice and assistance.

Other matters

42. In his correspondence to the Commissioner of 22 May 2019 the complainant has expressed concern about UKRI's handling of the internal review, referencing the Code of Practice. Provision of an internal review is not a requirement of the FOIA and the Code of Practice indicates that provision of an internal review is a matter of good practice.

43. The Commissioner and the Code of Practice consider it is good practice to provide a review within 20 working days of a request for one and the Commissioner considers that in no case should it take longer than 40 working days. Ideally the review should be carried out by a senior member of staff and not the person who handled the authority's original response.

44. The Commissioner has reviewed how UKRI handled the internal review in this case. The Commissioner notes that UKRI's original response is not signed and so it is not clear whether the review was carried out by a different member of staff. Nor did UKRI update the complainant on when it was likely to be in a position to provide the review, when the 20 working day target passed. But as above, provision of a review is not compulsory, nor is it compulsory that a different member of staff should carry out the review – it is not always possible or practical. In addition, as the Code of Practice notes, the timescale for an internal review is a target ie it is not a requirement under the FOIA. UKRI's review was

1

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/744071/CoP_FOI_Code_of_Practice_-_Minor_Amendments_20180926_.pdf

provided within the 40 working days that the Commissioner recommends and UKRI had clearly considered the complainant's request further and provided more information and advice where it could. On balance therefore, the Commissioner considers that UKRI's internal review was satisfactory.

Right of appeal

45. 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

46. 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.
47. 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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