

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

**Date:** 16 December 2020

**Public Authority:** Department for Digital, Culture, Media and Sport

**Address:** 4<sup>th</sup> Floor, 100 Parliament Street  
London  
SW1A 2BQ

**Decision (including any steps ordered)**

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1. The complainant has requested information in relation to allegations made against the Chief Executive of the 'Welcome to Yorkshire' organisation. The Department for Digital, Culture, Media and Sport (DCMS) refused to disclose the requested information, citing section 14(1) of the FOIA as a basis for non-disclosure.
2. The Commissioner's decision is that the DCMS has incorrectly applied section 14(1) of the FOIA to the requested information.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
  - Issue a fresh response to the complainant which is not based on section 14(1) of the FOIA.
4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

## Request and response

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5. On 26 June 2019, the complainant wrote to the DCMS and requested information in the following terms:

"I would like to request the following information under the Freedom of Information Act.

  - 1) For the period between 01/01/19 and 26/06/19 any emails sent or received internally or externally from e-mail addresses used by ministers or management at DCMS with the phrase "Welcome to Yorkshire" in the subject or body of the e-mail.
  - 2) For the period between 01/01/19 and 26/06/19 any emails sent or received internally or externally from e-mail addresses used by ministers or management at DCMS with the phrase "WTY" in the subject or body of the e-mail.
  - 3) For the period between 01/01/19 and 26/06/19 any emails sent or received internally or externally from e-mail addresses used by ministers or management at DCMS with the word "Verity" in the subject or body of the e-mail."
6. The DCMS responded on 23 July 2019. It stated that it was applying section 12 of the FOIA to the complainant's request as it would exceed the £600 cost limit for the DCMS to locate, retrieve and extract the relevant requested information from its records. It offered the complainant the opportunity to narrow or refine his request, and suggested some guidelines as to how he might do so.
7. On 15 October 2019 the complainant wrote to the DCMS stating that he wished to narrow his request in the following manner: -

"Please could I limit it in the following ways:

Replace the term "management at DCMS" with the following people – ministers and their private offices; policy officials within the tourism team; [named individuals].
8. The DCMS responded to the complainant's refined request on 15 October 2019, stating that, although it may be possible to gather the requested information under the cost limit, it still placed an oppressive burden on the DCMS and that section 14(1) of the FOIA applied to the request. It also suggested further ways in which the complainant could narrow or refine his request.
9. The complainant sought an internal review of the DCMS' decision on 15 October 2019. He received a response to this on 11 November 2019,

stating that the DCMS was upholding the application of section 14(1) of the FOIA to his request.

## Scope of the case

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10. The complainant contacted the Commissioner to complain about the way his request for information had been handled.
11. The Commissioner has considered the DCMS' handling of the complainant's request, in particular its application of section 14(1) of the FOIA.

## Reasons for decision

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### Section 14– vexatious and repeat requests

12. Under section 14(1) of the FOIA a public authority is not required to comply with a request for information if the request is vexatious.
13. 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
14. 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.
15. 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. Where relevant, public authorities also need to take into account wider factors such as the background and history of the request.

16. The Upper Tribunal (UT) considered the issue of vexatious requests in *The Information Commissioner vs Devon County Council & Dransfield [2012] UKUT 440 (AAC)*, (28 January 2013). The UT decided that the dictionary definition had limited use and that it depended on the circumstances surrounding the request. The UT defined it as a *"...manifestly unjustified, inappropriate or improper use of a formal procedure."* (paragraph 27). The approach in this case was subsequently upheld in the Court of Appeal.
17. The emphasis on protecting public authorities' resources from unreasonable requests was acknowledged by the UT when it defined the purpose of section 14 as being –  
  
*"...concerned with the nature of the request and ha[ving] the effect of disapplying the citizen's right under Section 1(1)...The purpose of Section 14...must be to protect the resources (in the broadest sense of that word) of the public authority from being squandered on disproportionate use of FOIA..."* (paragraph 10).
18. In circumstances where the concern of a public authority is about the burden of a request, it will generally cite section 12(1) FOIA. Under section 12(1) a public authority is not obliged to comply with a request where the cost of doing so would exceed the appropriate limit set by legislation. However, section 12(1) cannot be used for the cost and effort associated with considering exemptions or redacting exempt information. Where a public authority can make a case that the time taken to review and redact the requested information would impose a grossly oppressive burden, it can apply section 14(1).
19. However, the Commissioner considers there to be a high threshold for refusing a request on such grounds. This means that an authority is most likely to have a viable case where:
  - The requester has asked for a substantial volume of information **AND**
  - The authority has real concerns about potentially exempt information, which it will be able to substantiate if asked to do so by the ICO **AND**

- Any potentially exempt information cannot easily be isolated because it is scattered throughout the requested material.

### **The DCMS' view**

20. With respect to the likelihood of disruption being caused as a result of responding to the request, the DCMS provided the Commissioner with details of the background to the request and the nature and amount of information it holds within the scope of the request. It informed her that, in view of the amount of material within scope, reviewing the material, considering whether any exemptions are engaged and applying those exemptions would be likely to cause a disproportionate level of disruption.

21. Regarding weighing the impact on its time and resources against the purpose and value of the request, the DCMS considered that, although the request had a clear and serious purpose, its value in FOI terms was limited. In that respect, it told the Commissioner:

"The public interest in the information that we *do* hold is somewhat limited, and certainly this public interest in providing the information does not outweigh the public interest in protecting the department from the burden that would be placed on the department in reviewing the information, considering exemptions that may apply, and applying the public interest in each different situation. Were the department to hold different information, including information that exposed a prior knowledge of the allegations, then the public interest may have been weighted differently, and a different decision may have been reached by the department."

### **The complainant's view**

22. In support of his view that the request was not vexatious, the complainant stated the following in his internal review request: -

"In terms of proportionality, I have requested information on communications involving a selected number of people at DCMS within a defined time limited period referring to several key terms. The justification for this comes from the investigations into the governance at 'Welcome to Yorkshire', involving allegations of bullying, poor staff behaviour, allegations made against the organisation's former Chief Executive as well as allegations of poor financial practice. Both the behavioural and financial allegations were independently investigated with damaging reports being released into the public domain. Therefore, it is both proportionate and justified to examine how much was known within DCMS about these matters and what action, if any,

was taken. Given the wide nature of the matters involved the use of broader terms is necessary in order to be sure of accurately getting a full picture in the public interest about what was known at DCMS about the situation at Welcome to Yorkshire."

23. In correspondence with both the DCMS and the Commissioner, he also disputed that the request in this case was vexatious as he had only made one previous related request and stated that he had been polite and courteous throughout his communications with the DCMS. He stated that the DCMS had acknowledged that his request had a clear and serious purpose and was not a mere 'fishing expedition'. He also made the case to the Commissioner that the DCMS had failed to demonstrate that responding to the request would meet the high threshold of imposing a grossly oppressive burden, as set out in paragraph 19 above.

### **The Commissioner's view**

24. The Commissioner acknowledges that there are many different reasons why a request may be vexatious, as reflected in her guidance. There are no prescriptive 'rules', although there are generally typical characteristics and circumstances that assist in making a judgement about whether a request is vexatious. A request does not necessarily have to be about the same issue as previous correspondence to be classed as vexatious, but equally, the request may be connected to others by a broad or narrow theme that relates to them.
25. In her guidance on dealing with vexatious requests, the Commissioner recognises that the FOIA was designed to give individuals a greater right of access to official information with the intention of making public bodies more transparent and accountable. While most people exercise this right responsibly, she acknowledges that a few may misuse or abuse the FOIA by submitting requests which are intended to be annoying or disruptive or which have a disproportionate impact on a public authority.
26. The Commissioner recognises that dealing with unreasonable requests can place a strain on resources and get in the way of delivering mainstream services or answering legitimate requests. Furthermore, these requests can also damage the reputation of the legislation itself.
27. The Commissioner does, however, recognise that public authorities must keep in mind that meeting their underlying commitment to transparency and openness may involve absorbing a certain level of disruption and annoyance.

*Was the request vexatious?*

28. The Commissioner has considered both the complainant's position and the DCMS' arguments regarding the information request in this case.
29. In reaching a decision in this case, the Commissioner has balanced the purpose and value of the request against the detrimental effect on the DCMS of responding to the request.
30. The request in this case was for information on the subject of the 'Welcome to Yorkshire' organisation and allegations against its Chief Executive, which have been well-documented in the media. The Commissioner recognises that the complainant had clear reasons for requesting such information from the DCMS. Although not required to do so under the FOIA, the complainant confirmed clearly in his internal review request the type of information he has a clear interest in, which the Commissioner recognises.
31. The Commissioner acknowledges that the DCMS has not alleged that any of the indicators of a request being vexatious are present in this case, however it is relying on the fact that the request would be burdensome for it to respond to. The Commissioner has considered whether the threshold as set out in paragraph 19 of this notice which applies to cases such as this has been met.
32. Regarding whether or not the request was burdensome, she acknowledges that the DCMS argued that there was a considerable amount of information within the scope of the request and that keyword searches, as requested by the complainant, would be likely to bring up a great deal of information which does not fall within the scope of the request. It also states that it would be obliged to spend time considering each piece of information which did fall within the scope of the request, identifying whether an exemption under the FOIA applied to it, and considering any public interest arguments for and against disclosure.
33. The Commissioner has considered this argument and has concluded that the complainant himself has not requested a substantial amount of information, however a substantial amount of information is likely to be retrieved by using the required keyword search. However, this is not the concern of the complainant, who merely made a request for information in which he has an interest.
34. The Commissioner has also considered whether the DCMS has real concerns about potentially exempt information. The DCMS has not referred specifically to any such concerns, rather it has made the point

in general that it considers that the public interest in disclosing any such information it holds would be limited.

35. The Commissioner does accept that any potentially exempt information may be scattered throughout the information retrieved by the keyword searches and may therefore be difficult to isolate. However, from the evidence shown by the DCMS, the Commissioner does not consider that it has sufficiently demonstrated that the request under consideration is a grossly oppressive burden in terms of the strain on time and resources.
37. The Commissioner acknowledges that, in most cases, authorities should consider FOI requests without reference to the identity or motives of the requester. Their focus should be on whether the information is suitable for disclosure into the public domain, rather than the effects of providing the information to the individual requester. However, she also accepts that a public authority may take the requester's identity and motivation for making a request into account when determining whether a request is vexatious.
38. In that respect, the Commissioner noted that the request in this case, although not obviously vexatious in itself, is worded in such a way that the DCMS, while carrying out the keyword searches required in order to respond to the request, would be likely to retrieve a great deal of information, which staff would have to look through in order to determine what fell within the scope of the request before retrieving and extracting such information and examining it to see if exemptions under the FOIA applied.
39. The DCMS has stated that, whilst it is possible for it to respond to the request within the cost limit of £600, which means that section 12 of the FOIA is not applicable in this case, it considers that the public interest in the limited amount of information it does hold within the scope of the complainant's request is not sufficient to outweigh the oppressive burden this would cause to the DCMS' resources.
40. In reaching a decision in this case, the Commissioner has taken into account that the purpose of section 14 of the FOIA is to protect public authorities and their employees from unreasonable demands in their everyday business.
41. From the evidence shown by the DCMS, the Commissioner does not consider that it has sufficiently demonstrated that the request under consideration meets the high threshold of constituting a grossly oppressive burden in terms of the strain on time and resources. Therefore she is not satisfied that section 14(1) of the FOIA has been correctly applied in this case.



## Right of appeal

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42. 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](mailto:grc@justice.gov.uk)

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

43. 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.
44. 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 .....**

**Deirdre Collins**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
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