

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 27 September 2022

Public Authority: Parliamentary and Health Service Ombudsman

Address: Millbank Tower
30 Millbank
London
SW1P 4QP

Decision (including any steps ordered)

1. The complainant requested information from the Parliamentary and Health Service Ombudsman (PHSO) relating to the legal status of non-CCT reviews and the re-opening of final decisions. The PHSO refused the request under section 14(1) of FOIA (vexatious request).
2. The Commissioner's decision is that the request was vexatious and therefore the PHSO was entitled to rely upon section 14(1) of FOIA to refuse it.
3. The Commissioner does not require any steps to be taken as a result of this decision notice.

Request and response

4. On 12 August 2021, the complainant made the following request for information:

“Please provide all relevant documents (discussions, legal briefing notes, unabridged board meeting minutes, guidance etc.) that the PHSO possess with regard to the legal status of non-CCT reviews and the re-opening of final decisions.”

5. On 10 September 2021, the complainant chased up the PHSO for a response which was acknowledged as due by 9 September 2021.
6. On 6 October 2021, the PHSO responded and apologised for the delay in its response, they added that the request was being refused because it was vexatious under section 14(1) of FOIA.
7. The complainant requested an internal review on 6 October 2021. Despite the Commissioners intervention on 7 December 2021, to date, the PHSO has not provided a response to the complainant’s internal review request.

Scope of the case

8. The complainant contacted the Commissioner on 28 November 2021 to complain about the way their request for information had been handled.
9. The Commissioner advised the complainant that they needed to exhaust the PHSO’s internal complaints procedure before the case could be taken forward for investigation.
10. The complainant contacted the Commissioner again on 26 December 2021, as they had not received a response to their internal review request, despite the Commissioners intervention.
11. This notice covers whether the PHSO correctly determined that the request was vexatious.

Reasons for decision

Section 14(1) – vexatious requests

12. Section 14(1) of FOIA states that a public authority is not obliged to comply with a request for information if the request is vexatious.
13. The word “vexatious” is not defined in FOIA. However, as the Commissioner’s updated guidance on section 14(1)¹ states, it is established that section 14(1) is designed to protect public authorities by allowing them to refuse any requests which have the potential to cause a disproportionate or unjustified level of disruption, irritation, or distress.
14. FOIA gives individuals a greater right of access to official information in order to make bodies more transparent and accountable. As such, it is an important constitutional right. Therefore, engaging section 14(1) is a high hurdle.
15. However, the ICO recognises that dealing with unreasonable requests can strain resources and get in the way of delivering mainstream services or answering legitimate requests. These requests can also damage the reputation of the legislation itself.
16. The emphasis on protecting public authorities’ resources from unreasonable requests was acknowledged by the Upper Tribunal (UT) in the leading case on section 14(1), *Information Commissioner vs Devon County Council & Dransfield* [2012] UKUT 440 (AAC), (28 January 2013) (“Dransfield”)². Although the case was subsequently appealed to the Court of Appeal, the UT’s general guidance was supported, and established the Commissioner’s approach.
17. Dransfield established that the key question for a public authority to ask itself is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation, or distress.

¹ <https://ico.org.uk/for-organisations/dealing-with-vexatious-requests-section-14/>

² <https://administrativeappeals.decisions.tribunals.gov.uk/Aspx/view.aspx?id=3680>

18. The four broad themes considered by the Upper Tribunal in Dransfield were:

- the burden (on the public authority and its staff);
- the motive (of the requester);
- the value or serious purpose (of the request); and
- any harassment or distress (of and to staff).

19. However, the UT emphasised that these four broad themes are not a checklist and are not exhaustive. They stated:

“all the circumstances need to be considered in reaching what is ultimately a value judgement as to whether the request in issue is vexatious in the sense of being a disproportionate, manifestly unjustified, inappropriate or improper use of FOIA” (paragraph 82).

The PHSO's view

20. The PHSO has said: “The context for this appeal comes from two previous requests. The first request was for all documents concerning the legal status of reviews of PHSO's decisions. This was refused under Section 42(1) of the Freedom of Information Act 2000, which was upheld by the ICO.” And “The second request was for various information about the number of reviews carried out by PHSO and the outcomes of those reviews. PHSO refused this request under Section 14(1), which was upheld by the ICO, and by the FTT.”

21. They added: “PSHO notes the complainant's views that this is a different request from the first request:

“My original request asked for all information about the review process. This meant the entire review process - old and new. Significantly the PHSO sent the Tribunal the legal advice on the entire review process. The ICO and the FTT stated, wrongly, that I only asked for the legal advice about the most recent CCT review process.”

However, the complainant has been informed previously that the review process is an internal administrative process. The “CCT review process” refers to the now-defunct Customer Care Team, which carried out reviews of decisions. This was renamed the Review and Feedback Team (RAFT) and was in place when the complainant made their

request. The function of the team remained the same despite its change of name.”

The complainant's view

22. The complainant has said:

“I do not consider this request to be vexatious because it is not vexatious.

I had previously made an FOI request to the PHSO concerning the PHSO 'review process'. I did not specify that my request was only about the Customer Care Team (CCT) review process. I simply asked for all information about the review process. The ICO and the FTT saw fit to exclude all information about the earlier non-CCT review process as 'out of scope'. I disagree. Nonetheless, this is what the FTT has decided, so now I am explicitly asking for all information regarding the earlier non-CCT review process.

My earlier request was not categorised as vexatious, so why is this request? I have stated on record that I would not ask any more FOI requests on the subject of the PHSO review process, but this was before the ICO and the FTT saw fit to limit my earlier request to fit THEIR interpretation. If my wording in my original request was not perfectly clear, then I apologise for that, but I did ask for ALL information about the PHSO review process. It is simply not fair that a request that was originally not regarded as vexatious should, on a revision, now be regarded as vexatious.”

The Commissioner's decision

23. In cases where a public authority is relying on section 14(1), it is for the public authority to demonstrate why it considers that a request is a disproportionate, manifestly unjustified, inappropriate, or improper use of FOIA.

The value of the request

24. The Commissioner acknowledges that the subject matter may be of public interest.

25. He accepts that, by seeking transparency and accountability, a request will have value or serious purpose.

The negative impacts of the request - burden, motive, and harassment

26. The Commissioner acknowledges that the PHSO considers that the motive of the requester is to cause undue disruption.
27. The Commissioner has accessed the WhatDoTheyKnow (WDTK) website and feed referenced by both the PHSO and the complainant. The Commissioner considers that the complainant's views and frustration are evident in the tone of their correspondence.
28. The Commissioner is mindful of the annotations left by the complainant when considering requesting an internal review of the PHSO's refusal to comply with their request.
29. He notes that the complainant considered they would need to raise the case with the FTT:

"I now intend to ask for an internal review, briefly explaining why it is not vexatious. I expect the PHSO to ignore or dismiss this and then I will take my case to the ICO and the FTT again. I expect this case will also drag on for many many years as the previous case has and is still doing." And "I will be appealing this request to the First-tier Tribunal in the next few days."
30. He considers that, in the circumstances of this case, this lessens the value of the request and supports the argument that the request is vexatious.

Balancing the value of the request against the negative impacts

31. In reaching a decision in this case, the Commissioner has balanced the purpose and value of the request against the detrimental effect on the public authority.
32. He has also considered, in light of the nature, and degree, of the dealings between the complainant and the PHSO, whether, at the time, the request crossed the threshold of what was reasonable.
33. To the extent that some of the requests referenced by the PHSO in support of its view that the request is vexatious post-date the request under consideration in this case, the Commissioner has not taken them into account. However, he considers that they are still relevant to the extent that they explain the nature of the dealings between the parties and a developing pattern of behaviour.

34. The purpose of section 14 of FOIA is to protect public authorities and their employees in their everyday business. In his guidance, the Commissioner recognises that dealing with unreasonable requests can strain resources and get in the way of delivering mainstream services or answering legitimate requests. These requests can also damage the reputation of the legislation itself.
35. Having balanced the purpose and value of the request against the detrimental effect on the PHSO, the Commissioner is satisfied that the request was not an appropriate use of FOIA procedure.
36. The Commissioner considers that the request was vexatious and therefore the PHSO was entitled to rely on section 14(1) of FOIA to refuse the request.

Right of appeal

37. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

38. 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.
39. 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

Philip Angell
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