

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 13 December 2022

Public Authority: Department for Environment, Food and Rural Affairs

Address: Nobel House
17 Smith Square
London
SW1P 3JR

Decision (including any steps ordered)

1. The complainant requested information from the Department for Environment, Food and Rural Affairs (DEFRA), about emails exchanged within the department during specified periods of UK lockdown. The request contained specific references to search terms to be used, including named email accounts and specific word terms, that the complainant considered might indicate a social gathering. DEFRA refused the request under section 14(1) of FOIA (vexatious requests).
2. The Commissioner's decision is that the request was vexatious and therefore DEFRA was entitled to rely upon section 14(1) of FOIA to refuse it.
3. The Commissioner does not require any steps.

Request and response

4. Having had their two earlier, related requests, refused under section 12 due to cost, on 9 February 2022, the complainant made a further refined request for the following information to DEFRA:

"Christmas Party Emails.

Dear Department for Environment, Food and Rural Affairs,

Thank you for your response. By way of further clarification based on your answer to my previous, I'd like to search for the same information but limited to the following associated Email addresses only:

[redacted], [redacted], [redacted], [redacted], [redacted], [redacted], [redacted], [redacted], [redacted], [redacted], [redacted], [redacted], and [redacted]."

The "same information" referred to in the above request had been detailed in their earlier request, as being for the following:

"I'm writing to you under the Freedom of Information Act (2000) to ask that you disclose emails sent between 3 or more people copied in between the 15th - 24th December, and 15th-31st November 2020 containing the following words: "party/ies", "santa", "christmas", "wine", "drink/s", "gathering", or "quiz"."

5. On 21 February 2022, DEFRA responded and said the request was being refused because it was vexatious under section 14(1) of FOIA.
6. Following an internal review, DEFRA wrote to the complainant on 15 March 2022, upholding its position.

Scope of the case

7. The complainant contacted the Commissioner on 6 April 2022, to complain about the way their request for information had been handled. They dispute the application of section 14 of FOIA.
8. This notice covers whether DEFRA correctly determined that the request was vexatious.

Reasons for decision

Section 14(1) – vexatious requests

9. 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.

10. 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.
11. 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.
12. 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.
13. 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.
14. *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.
15. 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).

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>

16. 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 public authority's view

17. DEFRA considers the request is vexatious due to the burden it places on it because "the effort required to meet the request will be so grossly oppressive in terms of the strain on time and resources ...".

18. In its initial response, DEFRA referred to the request containing "9 key words with 13 individuals, which would involve 117 separate searches" and explained that such searches would cause "a disproportionate and unjustified level of disruption on the Department". It further explained, by way of example, that searching for the word "Christmas", may bring up "correspondence that was sent through the festive period wishing individuals a Merry Christmas" and that searching for the word "drink" "may bring up correspondence in relation to policy work Defra conducts and again may result in many hits" and that "We have concluded that the request appears to be part of a completely random approach and therefore lacks any clear focus" and advised that, given the history of the requests, it decided this request was vexatious.

19. The internal review response explained that the request:

"... has been interpreted in its literal form. Other than the subject matter in the title of the email, within the request there is no reference to Christmas parties, and no reference to social gatherings at all. This means that any correspondence held by Defra with any of these key words in them fall within the scope of your request, even if it does not relate to the topic you are interested in, and yet to confirm with Defra".

20. The internal review response gave a further example of the problems DEFRA considered would arise using the search words stated as, it advised, the request suggested the term "party/ies" be searched rather than "party" and "parties". DEFRA advised that even if the latter were used, it would capture information involving policy work, for example where DEFRA was a "party to these proceedings".
21. DEFRA explained that the initial searches may appear simple but "it is the remaining actions that are needed to be completed which will impose the burden on Defra" and explained that this included manual searches then having to be conducted to sift information within/out of

scope of the request, reviewing each piece of correspondence to consider whether exempt and making appropriate redactions.

22. DEFRA explained that it had:

“conducted a sampling exercise of one Outlook mailbox of a junior member of my team which resulted in 4129 hits with emails containing your key words and approximately 150 of those within the time period This does not include any searches of shared depositories where correspondence may be saved away from Outlook. If you then multiply that figure by 11 people this will result in approximately 1650 pieces of correspondence that would need to be manually reviewed for any exemptions, redacted and prepared for release. Even if you took an underestimated time value of 5 minutes per piece of correspondence that would equate to 137.5 hours of time to fulfil these searches alone. Further time would also be needed to conduct wider searches of any shared or personal work storage depositories.”

23. DEFRA also referred to their response to one of the two earlier related requests, providing assistance under section 16, whereby it asked the complainant to:

“re-structure your request so that it would be more focussed rather than asking for correspondence with key words in it. We asked you to explain more specifically what you want the correspondence to address. In addition, we advised you to limit your request to correspondence sent to and/or from the Private Secretary email addresses of [redacted], [redacted], and [redacted]”.

24. However, DEFRA did not consider the refined request of 9 February 2022, to clearly convey the context and topic of the information being requested. In considering the context and history of the request, DEFRA advised that it had taken into account the explanations given to the complainant in previous responses.

The Commissioner's decision

25. Although the cost of finding and extracting information can engage section 12 of FOIA, a public authority cannot claim section 12 for the cost and effort associated with considering exemptions or redacting exempt information. However, it can apply section 14(1), where it can make a convincing case that the amount of time required to review and prepare the information for disclosure would impose a grossly oppressive burden on the organisation.

26. 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.

27. The Commissioner is of the opinion that DEFRA has adequately explained the burden that dealing with the request, in its present form, would place on its resources and notes that DEFRA has offered guidance and assistance to the complainant in how to refine the request to more clearly define the information being sought.
28. It is the Commissioner's view that the complainant has not heeded the advice and guidance provided by DEFRA and has continued to include search 'words' within the refined request. It is further noted that the complainant did not take heed and limit the individuals whose emails were to be searched but rather increased the volume of names to be searched.
29. It appears that the complainant's motive in making the requests was to "fish" for information about whether lockdown rules were broken and although it is accepted that such matters are of public interest, it is considered that the way that the request was worded, did not adequately convey the information being sought and therefore placed a disproportionate burden on DEFRA. The request, as it stands, is so broad that substantial amounts of information would need to be checked to determine what is and is not within scope. Inevitably, significant time would be required to determine whether or not any exemption/s need to be applied to any information within scope. Were DEFRA to discount the time needed to consider any exemption/s, the Commissioner considers that section 12 of FOIA would apply in place of section 14.
30. The Commissioner believes that the request was vexatious and therefore DEFRA was entitled to rely on section 14(1) of FOIA to refuse the request.

Right of appeal

31. 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

32. 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.
33. 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

Michael Lea
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