

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 2 October 2023

Public Authority: HM Treasury
Address: 1 Horse Guards Road
Westminster
London
SW1A 2HQ

Decision (including any steps ordered)

1. The complainant requested information from HM Treasury ("HMT") relating to previous FOIA requests. HMT refused the request under section 14(1) of FOIA (vexatious requests).
2. The Commissioner's decision is that the request was vexatious and therefore HMT 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. On 21 February 2022, the complainant requested information of the following description from HMT:

"1. The total number of documents and the total number of emails for, or related to, the single meeting (6th June 2019: [named individual]) which were identified at the time of the first refusal [this relates to the request in ICO case ref IC-156772- D2G0], following (and despite) the narrowing of the original request by 70%.

2. The total number of documents and the total number of emails for, or related to, the single meeting (6th June 2019: [named individual]) which were identified at the time of the next refusal, following (and

despite) the further narrowing of this request. This might/could be the exact same answer as (1).

3. The total number of documents and the total number of emails for, or related to, the single meeting (6th June 2019: [named individual]) which belatedly 'came to light' and which prompted you to claim a hitherto unmentioned use of section 14.

4. All recorded information and documentation which provides evidence as to why and how these 'newly discovered' documents/emails were not originally located or recognised as relevant, and what specific internal process, procedure or policy caused the failure to identify these at the time of the original request, or indeed any earlier than was eventually communicated by HM Treasury.

5. All metadata relating to FOI2021/20755, FOI2021/23104, FOI2021/27539, and IR2022/00365, which must include (but is not limited to) all recorded communications of any type, in any form (including smartphone exchanges), which provides evidence of internal discussions within HM Treasury, and any decisions which were taken with regard to these three distinct Freedom of Information requests and the associated internal review. It is considered that this much-narrowed scope, now focusing on ONE single meeting (6th June 2019: [named individual]) will enable HM Treasury to supply this information without further delay."

5. On 21 March 2022 HMT responded. It confirmed it held information within the scope of the requests but argued that it was not obliged to respond to them on the grounds of section 14(1) of the FOIA. It argued that this section applied because it would require a disproportionate effort on its part to provide a response. It suggested that the complainant narrow the focus of the request and be more specific about the type of information they were seeking.
6. The complainant requested an internal review on 17 May 2022. They argued that the first, second and third parts of the request would require HMT to count documents which would not, in their view, constitute an onerous or burdensome task. As regards the fourth part, they said that they were seeking an explanation as to why those documents were not found or recorded information which would show the process, procedure or policy failures which had caused HMT to exclude the newly found documents in the first place.
7. On 8 June 2022, HMT sent the complainant the outcome of its internal review. It upheld its original position and argued that it was the fifth part of the request which was particularly burdensome.

Scope of the case

8. The complainant contacted the Commissioner on 2 September 2022 to complain about the way their request for information had been handled.
9. This notice covers whether HMT correctly determined that the request was vexatious.

Reasons for decision

Section 14(1) – vexatious requests

10. 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.
11. 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.
12. 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.
13. However, 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.
14. 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

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>

Court of Appeal, the UT's general guidance was supported, and established the Commissioner's approach.

15. 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.
16. 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).
17. 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).

HMT's view

18. HMT explained that the request in this case is the culmination of a series of requests made by the complainant related to specific meetings between Jesse Norman MP and external stakeholders between 1 June 2019 and 31 August 2019. It explained that what it called “the original FOI (FOI2021/20755)” [see part 5 of the request] was submitted on 29 August 2021. It then set out the detail of further requests including one which was considered by the Commissioner in case reference IC-156772-D2G0³.
19. It stressed that it had dealt with the request as one request in five parts. The Commissioner had initially sought to describe them as five separate requests and has concluded that, in this case, they are five parts of one request.

³ <https://ico.org.uk/media/action-weve-taken/decision-notice/2023/4024745/ic-156772-d2g0.pdf>

20. Focussing on the fifth part, HMT explained that where "a request that asks for details of meeting[s] attended by a Minister [this] involves the Information Rights Unit liaising with not just the policy team, but also the Private Office of the Minister and potentially a number of policy officials and Private Office staff who may have attended those meetings in order to establish if they hold information within scope. This generates a vast quantity of information – largely emails from the Information Rights Unit at the initial stages of the request. While the FOI case management system will capture some of that information, it will not capture all of it".

21. HMT explained how this worked in practice as an example referring to the first request mentioned in part 5 of this request. It set out the volume of information and its location across more than one source. It also explained the work that would be involved to go through this information. It said:

"Considerable time would need to be taken to extract and collate the information, as the information is largely contained in emails that form parts of chains, we would have to spend time extracting duplicates and ensuring chains were complete. Further time would then need to be spent on redactions – the bulk of the redaction being for the names of junior members of staff.

A high volume of email traffic should not be read as any sort of subterfuge trying to frustrate a request but rather due to processes when dealing with requests that need to be co-ordinated across a large department".

22. It further asserted:

"While we accept that HM Treasury is a large well resourced department, the bulk of this work would need to be done by the Information Rights Unit and the policy team responsible for the Loan Charge as they hold the bulk of the information and understand any sensitivities related to the policy or other live policy that may be within the information. This would result in two small teams being diverted from other requests and other important policy work in order to compile information that has no wider value to other Loan Charge requesters or the public as a whole. One could argue it would serve no purpose or value to [the complainant] either. It simply is a case that [the complainant's] initial request and subsequent narrowed requests were wide in nature and until narrowed the requests fell into sections 12 and 14 territory".

23. It described the requested emails as "largely administrative" and referred to the substantive and detailed disclosures that HMT had already made. It provided online links to examples of this. It also

offered the Commissioner sight of an 800 page document containing its disclosures on this subject. The Commissioner declined the offer but notes that this compilation exists. HMT concluded that "We see little benefit in diverting resource in order to prepare metadata for release when that metadata is simply about admin and processes".

24. HMT also said "We do appreciate [the complainant's] efforts to narrow [their] requests and to provide specific details of the information that [they were] seeking, and we appreciate [their] patience in trying to narrow [their] initial search. It is unfortunate that what [they were] seeking attracted a large volume of information. We hope that now we have released the details on the three meetings [their] request was narrowed to, that [they understand] why we had to cite s14 in the previous iterations of [their] request.

25. HMT denied that it had been acting in a secretive or obtuse manner. It added:

"It is in the interest of HM Treasury to release as much information as possible on the Independent Loan Charge Review. We fully recognise the seriousness of the purpose of these requests and the personal impact the Loan Charge can have on individuals. We recognise the importance of the public knowing as much as possible about decision making processes".

The complainant's view

26. The complainant stressed that the first three parts of the request required HMT to conduct a simple and non-onerous counting exercise.

27. They argued that the fourth part was "straightforward and asked for the disclosure of recorded information which communicated the sudden discovery of emails (relating to a meeting of 6th June) which was apparently 'not known' at the time of the first two requests".

28. They argued that the fifth part sought "associated metadata (for all information relating to the meeting of 6th June) which delivered evidence of internal discussions within HM Treasury, and any decisions which were taken with regard to these three related Freedom of Information requests and the associated internal review".

29. They added that

"The request made in part 5 was a legitimate attempt to prompt full disclosure of this important metadata and source information, as it would evidence the conclusive reasoning and apparent justification which HM Treasury believed it could use to withhold the requested data".

30. They also commented that:

"[HMT] say[s] that it spans the metadata for three separate FOI requests and one internal review request, yet the very reason for there even being three requests is that HM Treasury insist on issuing a new reference number every time I provide a response or narrow the scope of that original request - in accordance with their own instruction and to meet their own requirements. Yet that particular fact is conveniently overlooked and then used - as tenuous evidence of their prejudiced 'view' on the volume of data concerned - to justify their own refusal to disclose. To any reasonable person, this is just shameless chicanery and an undisguised abuse of the principles underpinning the Freedom of Information legislation".

31. They described HMT's tactics as "obviously deliberate and underhand". They said "To HM Treasury, it appears to be nothing more than a deceitful, dishonourable game to protect their interests on this 'third rail' policy - whereas for others, lives depend on this information - as the families and relatives of the nine recorded suicides to date will testify".

32. This allegation that there is a potential link between the disguised remuneration scheme (the subject of the Loan Charge Review) and tragic death by suicide of people impacted by it is supported by comments made in a published letter written by the Permanent Secretary to HMT⁴:

"Lessons learned from customer loss of life cases (Q205).....HMRC recognises that dealing with a compliance investigation, and receiving a large tax bill as a result of such an investigation, can be stressful. HMRC takes loss of life or serious injury extremely seriously. Where we learn that a customer has lost their life or suffered serious injury and there is any suggestion that this might be linked to contact with HMRC, the matter is reviewed by an internal governance team within HMRC that is separate from the case team, and relevant cases are referred to the Independent Office for Police Conduct (IOPC). HMRC has made ten referrals to the IOPC where a customer has sadly taken their life and had used a disguised remuneration scheme, the first of which was made in March 2019. Eight investigations have concluded and there was no evidence of misconduct by any HMRC officer. Two investigations are currently ongoing. HMRC is taking forward organisational learning from concluded investigations and is committed to learning and making improvements so that we avoid causing undue stress and, wherever

⁴ <https://committees.parliament.uk/publications/33540/documents/182481/default/>

possible, we identify vulnerable taxpayers and give them the extra help they need”.

The Commissioner's decision

33. 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.
34. The Commissioner recognises that there is a serious purpose in finding out as much information as possible about the Loan Charge Review. The allegation that the impact of the Review has been a factor in a number of suicides is not hyperbolic. As can be seen in the letter referred to at Note 4, this is a point which has been officially considered, including at HMT.
35. The Commissioner also thinks that that so-called meta requests should not automatically be dismissed as of less significance or importance than the original request to which they relate. The Commissioner nevertheless notes that this request was submitted following the complainant's earlier complaint to him (as considered at Note 3), and prior to his consideration of it.
36. The Commissioner recognises that the complainant is seeking to obtain as much information as possible about how HMT has handled the Loan Charge Review. An All-Party Parliamentary Group (“APPG”) has conducted enquiries on this matter and continues to work.⁵ However, the Commissioner notes that it published its inquiry report on 3 April 2019 and has published several reports and submissions since then. While the complainant remains concerned that there is more to discover, the Commissioner observes that the APPG has already conducted a thorough investigation.
37. The Commissioner would not describe HMT as having been unwilling to be transparent, as evidenced by disclosures it has already made. While the time it took to provide a response to this request was longer than ideally it should have been (see also the chronology at Note 3), the

⁵ <https://www.loanchargeappg.co.uk/#:~:text=The%20All-Party%20Parliamentary%20Loan%20Charge%20and%20Taxpayer%20Fairness,tax%20legislation%20and%20HMRC%E2%80%99s%20conduct%20in%20enforcing%20it.>

Commissioner has seen no evidence to support the assertion that this was a deliberate attempt at delay.

38. In light of the above, the Commissioner has concluded that HMT is entitled to rely on section 14 as its basis for refusing this request. The Commissioner is not convinced that the considerable effort required to respond (the explanation of which, as provided by HMT, he accepts as reasonable) is commensurate with the value of this particular request in the circumstances of this case.
39. The Commissioner has also taken into account that the work of the APPG shows that the complainant's concerns have already been considered by elected representatives and that the APPG continues to operate. The important matter that the complainant is concerned about therefore already has the attention of Parliament.

Other matters

40. The Commissioner would draw the complainant's attention to his guidance on making effective requests.⁶

⁶ <https://ico.org.uk/for-the-public/official-information/how-to-write-an-effective-request-for-information/>

Right of appeal

41. 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

42. 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.
43. 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

Alexander Ganotis
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