

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 12 April 2023

**Public Authority:** Ministry of Justice  
**Address:** 102 Petty France  
London  
SW1H 9AJ

### **Decision (including any steps ordered)**

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1. The complainant submitted an information request to the Legal Aid Agency ("LAA") for copies of all reports on Payments on Account in Civil Legal Aid cases. The LAA is an executive agency of the Ministry of Justice ("MoJ") therefore the MoJ is the appropriate public authority for the purposes of FOIA.
2. The Commissioner's decision is that the request was vexatious and therefore the MoJ was entitled to rely upon section 14(1) of FOIA to refuse it. However, the MoJ breached section 17(5) as it failed to provide its refusal notice within the statutory 20 working days.
3. The Commissioner does not require the MoJ to take any further steps as a result of this decision notice.

## **Request and response**

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4. On 20 August 2022, the complainant wrote to the MoJ and requested information in the following terms:  
  
"Please provide me with copies of all Reports on the subject of Payments on Account in Civil Legal Aid cases which have been considered by the Executive Team of the Legal Aid Agency in the last two years."
5. A response was provided on 16 September 2022 in which the MoJ confirmed that it held the requested information but that it was exempt from disclosure under section 43(2) of FOIA.
6. Upon receiving this response, the complainant contacted the MoJ regarding an internal review on 18 September, 11 October, 14 October and 15 October 2022. The MoJ provided its internal review response on 18 October 2022 in which it rescinded its reliance on section 43(2) and deemed the request vexatious under section 14(1) of FOIA.

## **Scope of the case**

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7. The complainant contacted the Commissioner on 26 October 2022 to complain about the way their request for information had been handled.
8. The Commissioner has considered the MoJ's handling of the request, in particular whether it was entitled to refuse the request on the grounds that it was vexatious.

## **Reasons for decision**

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### **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. There is no public interest test.

10. The term 'vexatious' is not defined in FOIA. The Commissioner's guidance<sup>1</sup> suggests 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.
11. FOIA gives individuals the 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. The Upper Tribunal considered in some detail the issue of vexatious requests in the case of the Information Commissioner v Devon CC & Dransfield<sup>2</sup>. The Tribunal commented that vexatious could be defined as the "manifestly unjustified, inappropriate or improper use of a formal procedure."
13. In the Dransfield case, the Upper Tribunal also found it instructive to assess the question of whether a request is truly vexatious by considering four broad issues: (1) the burden imposed by the request (on the public authority and its staff); (2) the motive of the requester; (3) the value or serious purpose of the request and (4) harassment or distress of and to staff.

### **The Complainant's view**

14. The complainant states that there is "no basis for alleging vexatiousness" and that their use of "direct and critical language has been misunderstood/deliberately misunderstood."
15. The Commissioner appreciates that the complainant has a history with the MoJ and is dissatisfied with the labelling of their request as vexatious.

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<sup>1</sup> [Dealing with vexatious requests \(section 14\) | ICO](#)

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

## **The MoJ's view**

16. In submissions, to the Commissioner, the MoJ states that the above request was one of three that was made on 19 and 20 August 2022 and that following the complainant's request for an internal review, they "sent a stream of correspondence" including three emails sent on 18 September 2022 and three more on 11, 14 and 15 October 2022.
17. The MoJ also explained that on 25 September 2022, before its internal review response was provided, the complainant made another FOIA request seeking, amongst other things, 'payments on accounts' which it believes overlaps with the request of this notice.
18. In further highlighting administrative burden, the MoJ explained that since 2018, the complainant has submitted 43 FOIA requests, 11 of which have been made since August 2022.
19. In considering the value and purpose of the request, the MoJ acknowledge that it is in the public interest to understand how public money is spent, including financial stewardship. However, it believes that the complainant is seeking the information for the purposes of their ongoing employment dispute. To support this view, the MoJ provided correspondence, dated 3 December 2022, in which the complainant states "the report would only become public in the event that it was secured under FOIA. However, I don't think there's any necessity for the report to become public".
20. The Commissioner notes that the above correspondence post-dates the internal review response. However, here the MoJ has relied on the Upper Tribunal's ruling in the *Stürmer V ICO & North East Derbyshire District Council* decision<sup>3</sup> which determined that a request, which may not have been vexatious when first made, had in effect become so by reason of subsequent developments.

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<https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fadministrativeappeals.decisions.tribunals.gov.uk%2Fjudgmentfiles%2Fj4700%2FGIA%25200134%25202014-00.doc&wdOrigin=BROWSELINK>

21. In highlighting the issue of harassment and distress, the MoJ explains that the complainant's repeated allegations surrounding the misuse of money and the use of language such as "deadly serious" and "you must be worried sick" are intended to intimidate staff and there are reports of MoJ staff feeling "harassed by the deluge of correspondence from the complainant".

### **The Commissioner's decision**

22. The Commissioner is keen to stress that in every case, it is the request itself that is vexatious and not the person making it.

23. 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.

24. Whilst the Commissioner does not necessarily consider that complying with the request itself would place a significant burden on the MoJ, he does recognise that the request was vexatious when viewed in context, and that the aggregated burden of dealing with the complainant's overall correspondence would place an additional burden on the MoJ and its resources.

25. The Commissioner also recognises that it is common for a potentially vexatious request to be the latest in a series of requests submitted by an individual. The greater the number of requests received, the more likely it is that the latest request is vexatious. This is because the collective burden of dealing with the previous requests, combined with the burden imposed by the latest request, may mean a tipping point has been reached, rendering the latest request vexatious.

26. The Commissioner acknowledges that the subject matter may be of public interest and that public authorities must keep in mind its underlying commitment to transparency and openness. However, the Commissioner is in agreement with the MoJ's position on motive, in that it appears the complainant is seeking the requested information for their own private gain rather than in the public interest.

27. In the circumstances of the case, and on the basis of evidence provided, the Commissioner is satisfied that the MoJ was entitled to consider that the request was vexatious and therefore rely on section 14(1) of FOIA to refuse it.

**Procedural matters**

28. Section 17(5) of FOIA requires a public authority, relying on section 14(1), to issue a response refusing the request within 20 working days.
29. The Commissioner therefore finds that the MoJ breached section 17(5) in responding to the request.

## Right of appeal

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

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

31. 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.
32. 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

**Alice Gradwell**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**