

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 6 February 2023

Public Authority: Cabinet Office

Address: 70 Whitehall
London
SW1A 2AS

Decision (including any steps ordered)

1. The complainant requested information from the Cabinet Office about two specified adjudications. The Cabinet Office refused the request under section 14(1) of FOIA (vexatious requests).
2. The Commissioner's decision is that the request was vexatious and therefore the Cabinet Office 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 10 November 2022, the complainant made the following request for information to the Cabinet Office:

"As you are aware, I have referred your finding of vexatiousness, upheld on internal review, to the ICO. That related to my request for information about the [name redacted] adjudication regarding my request for an investigation of putative lying by [name redacted], [name redacted] and/or other current or former Defra staff.

For completeness I am requesting all the information relating to the [name redacted] and [name redacted] adjudications, including internal and external emails, meeting notes, telephone attendance notes, manuscript notes, manuscript and/or electronic document annotations and any and all other material produced in connection with those adjudications.

I fully accept that you will almost inevitably designate this request as vexatious too, not because I agree that it is vexatious, but rather because I understand how you operate. However I gather that the ICO is currently taking nine months to allocate complaints and presumably even longer to produce adjudications. Therefore, once I have your response the whole matter can be rolled up into one ICO complaint. (I shall be happy, if you reapply the vexatiousness designation, to take the outcome of an internal review as read, but equally I'm happy to jump through the necessary hoops if you insist).

For your information, it remains the case that Defra is ignoring my request for an investigation. You will recall that it was an important part of the [name redacted] adjudication to suggest this course of action, bearing in mind the absence of jurisdiction on the part of the Civil Service Commissioners. I asked the Cabinet Office to make its own complaint to the CSC but this suggestion has likewise been ignored."

5. On 9 December 2022, the Cabinet Office responded and said the request was being refused because it was vexatious under section 14(1) of FOIA.
6. Following an internal review, the Cabinet Office wrote to the complainant on 6 January 2023, upholding its position.

Scope of the case

7. The complainant contacted the Commissioner on 9 January 2023, to complain about the Cabinet Office's handling of their information request.
8. This notice covers whether the Cabinet Office correctly determined that the information request of 10 November 2022, was vexatious under FOIA.

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 Cabinet Office's view

17. In its initial response to the complainant of 9 December 2022, the Cabinet Office clarified that the two "adjudications" requested, related to a stage 1 complaint response and a stage 2 complaint response, about the Cabinet Office's prior refusal to conduct an investigation into what it considered to be an historic matter suggested by the complainant.

18. The Cabinet Office recited wording from the above complaint responses, which demonstrated that the complaints had reviewed and considered the issues raised and agreed with the original decision, which had been explained previously to the complainant.

19. The initial response to the information request, explained that the Cabinet Office considered that:

"The request illustrates further unreasonable persistence by seeking to obtain information under FOI on a decision that [name redacted], [name redacted] and [name redacted] have all fully explained and concluded. Requesting any information informing the decision not to investigate is futile because the factual reasons for the decision have already been given."

20. The response further explained that the Cabinet Office had taken into account the 'context and history' of the complainant's previous seven information requests, made since September 2020, and had concluded that "... the request is so similar in scope and motive" and explained that it considered:

"... the current request is the latest in a series demonstrating what could be described as an ongoing campaign, and dealing with it will cause unnecessary disruption and irritation to Cabinet Office staff."

The complainant's view

21. The complainant is of the view that the information request was not vexatious and believes that their original request for an investigation (into what the Cabinet Office considered to be an historical matter) is of wider public interest and refutes that it is of historical interest only.

The Commissioner's decision

22. 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.
23. The Cabinet Office had already previously set out in writing to the complainant its reasons for declining to set up an investigation into the matters the complainant had asked it to.
24. Following the Cabinet Office's refusal to conduct the requested investigation, the complainant then raised a stage 1 complaint, followed by a stage 2 complaint, which were both considered and responded to by the Cabinet Office, explaining the reasons for its decision.
25. The information request of 10 November 2022, appears to have been a further attempt to reopen those matters already considered three times by the Cabinet Office and explained to the complainant.
26. Within the internal review request of 12 December 2022, the complainant makes reference to the matter they had requested an investigation into and appears to be targeting named individuals with unsubstantiated allegations of misconduct.
27. The complainant had made a number of apparently related requests to the Cabinet Office and appears to be pursuing a personal grievance.
28. The Commissioner has taken into consideration the related decision notice issued under reference IC-193778-H3P4.
29. The Commissioner believes that the request was vexatious and therefore the Cabinet Office was entitled to rely on section 14(1) of FOIA to refuse the request.

Right of appeal

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

Website: 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

Michael Lea
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