

Freedom of Information Act 2000 (the Act)

Decision notice

Date: 14 November 2023

Public Authority: Department for Work and Pensions

Address: Caxton House
Tothill Street
London
SW1H 9NA

Decision (including any steps ordered)

1. The complainant submitted a request to the Department for Work and Pensions (DWP) seeking a specific piece of information relating to its handling of an ongoing FOIA request. DWP applied section 14(1) (vexatious) and section 14(2) (repeated request) of FOIA.
2. The Commissioner has concluded that the request is neither vexatious nor repeated and therefore DWP is not entitled to rely on section 14(1) or section 14(2) in response to the request.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation:
 - Issue a fresh response to the complainant's request dated 6 August 2023 which does not rely on section 14(1) or 14(2).
4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of FOIA and may be dealt with as a contempt of court.

Request and response

5. On 16 May 2023 the complainant made a request for information. That request is the subject of ICO Decision Notice IC-248186-K2J6.
6. On 6 August 2023, the complainant wrote to DWP and requested information in the following terms:

“Please provide a copy of the record of the qualified person's opinion in relation to FOI2023/37321 (the request mentioned in paragraph 5 above).
7. On 23 August 2023, DWP provided its response. It stated that it was applying section 14 of FOIA to the request as it was made in relation to the above previous request, which had been responded to by DWP on 30 June 2023. DWP stated that in its opinion both sections 14(1) and 14(2) applied to the request as it was both vexatious and repeated.
8. The complainant requested an internal review on 24 August 2023 and confirmed that DWP had not, in its response to the previous request, provided the specific information requested in the current request. They also confirmed that this was not a repeated request as they had never requested that specific information before. On 21 September 2023, DWP provided the outcome of its internal review. It confirmed that it was satisfied that the original response was correct and that it was relying on section 14 of FOIA as the request was vexatious and the complainant was not allowing time for ICO processes to take place.

Scope of the case

9. The complainant contacted the Commissioner on 10 October 2023 to complain about DWP's handling of their request for information.
10. The Commissioner considers that the scope of this case is to determine whether DWP is entitled to rely on sections 14(1) and 14(2) in response to the request dated 6 August 2023.

Reasons for decision

Section 14(1): Vexatious requests

11. Section 14(1) of the Act states that section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious.
12. The term "vexatious" is not defined in the Act. The Upper Tribunal considered the issue of vexatious requests in the case of *Information Commissioner v Devon CC & Dransfield*¹. The Tribunal commented that vexatious could be defined as the "manifestly unjustified, inappropriate or improper use of a formal procedure". The Tribunal's definition clearly establishes that the concepts of proportionality and justification are relevant to any consideration of whether a request is vexatious.
13. The Upper Tribunal also found it instructive to assess the question of whether a request is truly vexatious by considering four broad issues;
 - the burden imposed by the request (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.
14. The Upper Tribunal did, however, also caution that these considerations were not meant to be exhaustive. Rather it stressed the "importance of adopting a holistic and broad approach to the determination of whether a request is vexatious or not, emphasising the attributes of manifest unreasonableness, irresponsibility and, especially where there is a previous course of dealing, the lack of proportionality that typically characterise vexatious requests" (paragraph 45).
15. In the Commissioner's view, the key question for public authorities to consider when determining if a request is vexatious is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress.

¹ <https://administrativeappeals.decisions.tribunals.gov.uk/Aspx/view.aspx?id=3680>

The complainant's position

16. The complainant stated to the Commissioner that they had made two requests – the first one was the request referenced in paragraph 5 above. The second request was the request that is the subject of this notice. The complainant stated that DWP has made reference to a third request in order to claim that this current request is a repeated request. The complainant also stated that they had queries regarding the timeline of responses to their previous request, which they had asked DWP to clarify a number of times. As such clarification was not forthcoming, the complainant requested a copy of the record of the qualified person's opinion, which they considered would answer their queries regarding the timeline.
17. The complainant considers that DWP has no grounds for treating their request as vexatious as they have not submitted new requests before receiving responses to previous ones, rather they have submitted queries regarding DWP's responses to correspondence regarding their original request.
18. The complainant also considers that DWP has no grounds for stating that their request is repeated, as they have only made two requests. The 'third' request referred to by DWP does not exist.

DWP's position

19. DWP's reasons for applying section 14 were as follows:-

DWP stated that the complainant had made a number of requests subsequent to and related to the original request on 16 May 2023 for the current version of its Unacceptable Behaviour policy.

It listed these as follows:

- 14 June 2023 the complainant submitted a request to DWP for clarification of the time taken to consider the public interest test.
 - 3 July 2023 the complainant submitted a further request regarding the public interest test considered for the application of section 36(2)(c).
 - 28 July 2023 the complainant submitted a further request for clarification regarding the public interest test.
20. DWP stated that it had responded to the first two requests (on 3 July and 28 July 2023 respectively) and that for the request dated 28 July 2023 DWP was still within the statutory timeframe to respond when the complainant submitted their complaint to the Commissioner.

21. DWP stated that the responses received so far by the complainant were clear, full and accurate and that their continued requests on the same themes were not warranted in order to exercise their legal right to obtain information that it had not provided to them in its previous responses.
22. It further stated that, based on the complainant's previous conduct, particularly that they disregarded its previous notification in its response to correspondence referenced FOI2023/51079, it considers that their requests are burdensome and intended primarily to harass or cause distress to DWP staff. It stated that it did not believe that the complainant would be satisfied with any response given to their requests and that they would continue to submit requests of the same or similar nature.

The Commissioner's position

23. As set out above, 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.
24. This will usually involve weighing the evidence about the impact on the authority and balancing this against the purpose and value of the request. This should be judged as objectively as possible; in other words, would a reasonable person think that the purpose and value are enough to justify the impact on the public authority. Where relevant, this will involve the need to take into account wider factors such as the background and history of the request.
25. The Commissioner acknowledges that the complainant has submitted several pieces of correspondence regarding their original request for information to DWP. However, the Commissioner considers that this is due to the complainant attempting to gain clarification of DWP's timeline for handling the request, i.e. the date of the qualified person's opinion and when section 36(2)(c) was considered to be engaged in order to activate the extension of time under section 17(3) to consider the public interest.
26. The Commissioner acknowledges that DWP considers that it has comprehensively addressed the complainant's request. However, having reviewed the correspondence he is not persuaded that this is the case.
27. The complainant, having received a response to his original request stating that DWP considered section 36 to be engaged, and was extending time to consider the public interest test, wrote to DWP for clarification of this.

28. The complainant complained to the Commissioner on 3 July 2023 about DWP's handling of their request. Their grounds for complaint were that:
 - DWP had stated that section 36(2)(c) was engaged without having obtained the opinion of the qualified person.
 - DWP had stated it was applying the extension of time to consider the public interest test.
 - In DWP's internal review it stated that the time had been extended to obtain the opinion of the qualified person.
29. The complainant informed DWP on 3 July 2023 that they had made the above complaint to the Commissioner.
30. DWP provided a response to the above correspondence on 28 July 2023 and upheld its position that it had handled the complainant's request correctly under FOIA. The complainant responded on the same date to inform DWP that they did not accept its response and that the matter was now with the Commissioner.
31. The Commissioner is not persuaded that the request had already been comprehensively addressed prior to the complainant making it. It appears that DWP considers the request to be vexatious because the complainant corresponded with it several times regarding its response to their original request.
32. The Commissioner understands why the complainant would make the request in these circumstances, not having received clarification from DWP of the issues they raised, and does not consider this to be a pattern of reopening issues that have been addressed previously.
33. Section 1 of the Act provides a right of access to recorded information held by a public authority at the time of the request. Whilst explanations can be helpful, they cannot substitute for providing the recorded information falling within the scope of a request or confirming that this information is not held.
34. Having reviewed the correspondence between the complainant and DWP, and DWP's submissions, the Commissioner considers that the request is not vexatious.
35. DWP has failed to demonstrate that responding to the request would cause a disproportionate burden, nor does the Commissioner accept DWP's assertion that the complainant's correspondence is intended to harass or cause distress to DWP's staff.

36. The Commissioner's decision is that DWP is not entitled to rely on section 14(1) to refuse to comply with this request.

Section 14(2): Repeated requests

37. Under section 14(2) of the Act, public authorities do not have to comply with a request which is identical, or substantially similar to a previous request submitted by the same individual, unless a reasonable period has elapsed between those requests. There is no public interest test.

38. A public authority may only apply section 14(2) if it has:

- previously provided the same requester with the information in response to an earlier FOIA request; **or**
- previously confirmed that it does not hold the information, in response to an earlier FOIA request from the same requester.

39. If neither of these conditions applies, then the request is not repeated and the public authority cannot rely on this provision.

40. A request is identical if both its scope and its wording precisely matches that of a previous request. It is substantially similar if:

- the wording is different but the scope of the request is the same; or
- the scope does not differ significantly from that of the previous request.

41. The reasonable interval is largely dependent on how likely it is that any of the information caught within the scope of the request differs or has changed since it was previously disclosed to the requester.

42. If the information is unlikely to be different, then the public authority will need to consider the amount of time between requests and decide whether this is enough to make it reasonable to provide the same information again.

43. The Commissioner is not persuaded that DWP has previously complied with this request. DWP's grounds for applying section 14(2) appear to be that the complainant made the same request on 3 July 2023. However, having reviewed the correspondence sent to DWP by the complainant on 3 July 2023, it did not constitute a request and was neither identical nor substantially similar to the current request.

44. The Commissioner does not therefore consider that section 14(2) is engaged as there has been no repeated request.

Right of appeal

45. 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: 0300 123 4504

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

46. 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.
47. 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

Deirdre Collins
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

