

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 22 May 2024

Public Authority: Information Commissioner
Address: Wycliffe House
Water Lane
Wilmslow
SK9 5AF

Decision (including any steps ordered)

1. The complainant has requested information relating to complaints closed under section 50 FOIA. The Information Commissioner's Office (ICO) refused the request under section 14(1) – vexatious requests.
2. The Commissioner's decision is that the ICO has incorrectly applied section 14(1) to categorise the request as vexatious.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation:
 - Disclose the requested information or issue a fresh response to the complainant's request that does not rely on section 14(1).
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.

Naming

This decision notice concerns a complaint made against the Information Commissioner ('the Commissioner'). The Commissioner is both the

regulator of FOIA and a public authority subject to FOIA. He's therefore under a duty as regulator to make a formal determination of a complaint made against him as a public authority. It should be noted, however, that the complainant has a right of appeal against the Commissioner's decision, details of which are given at the end of this notice. In this notice the term 'ICO' is used to denote the ICO dealing with the request, and the term 'Commissioner' denotes the ICO dealing with the complaint.

Background

5. The complainant initially made an information request on 17 September 2023 for the following information:

"I would like to submit an FOI request to you for the number of valid FOI Section 50 complaints received by the ICO in the last year that did not receive a response that fell under either Section 50(3a) or Section 50 (3b)."

6. The ICO refused the request under section 12 FOIA and advised:

"Whilst it would be possible to refine your search to, for example, one quarter of data, in order to bring it within the cost limit, such information would not be representative of the information we hold and therefore of questionable value.

As you were informed in our initial response, the ICO publishes the automatically extractable information in relation to FOI casework closures and this offers a sufficient picture of our case closure statuses to the public. Were you to attempt to refine your search to bring it within the cost limit, it is likely that we would consider such a request to be frivolous and a grossly oppressive burden on the resources of the ICO relative to the value of the information produced."

7. The complainant submitted a refined request and it is this refined request that is the subject of this decision notice.

Request and response

8. On 26 October 2023, the complainant wrote to the ICO and requested information in the following terms:

"... I would like to refine my request – per your suggestion – to be for Q1 of 2023/24 only.

... I just want to know how many valid s.50 complaints did not receive a response either under Section 50(3a) or Section 50(3b).

... So in the period in question, Q1 of 23/24. I would like you to please check cases that are 'Informally Resolved/Unassigned', as it is not clear these were concluded lawfully under Section 50(3a), 'No action/Unassigned', 'Unassigned/Unassigned'. I believe this is 173 cases, listed below. This should allow you to answer my request for this period, assuming the other records are accurate in that spreadsheet.

I believe that would allow over 6 mins per search, which should be ample based on your previous calculations."

9. The ICO requested clarification of the scope of the request asking the complainant to confirm it was the 172 completed FOI complaints of Q1 2023/24 with a decision category of No further action/Information action taken, Decision detail 1 of Informally resolved/No action/Unassigned and Decision detail 2 of Unassigned.
10. The complainant confirmed this was the scope of this request and added:

"Just to be clear, though, my request covers all complaints in that period. It is for the Commissioner to decide what cases may need to be further examined to provide the relevant answer accurately."
11. The ICO responded on 21 November 2023 refusing the request under section 14(1) FOIA and upheld this position following an internal review on 14 December 2023.

Scope of the case

12. The complainant contacted the Commissioner on 28 January 2024 to complain about the way their request for information had been handled.
13. The Commissioner considers that the scope of his investigation is to be to determine if the ICO has correctly refused to respond to the request by virtue of section 14(1) FOIA.

Reasons for decision

14. This reasoning covers whether the ICO is entitled to rely on section 14(1) of FOIA to refuse the complainants request.

15. Under section 14(1) of FOIA a public authority is not obliged to comply with a request for information if the request is vexatious.
16. Broadly, vexatiousness involves consideration of whether a request is likely to cause a disproportionate or unjustified level of disruption, irritation, or distress.
17. To analyse vexatiousness, the Commissioner considers four broad themes that the Upper Tribunal (UT) developed in *Information Commissioner vs Devon County Council & Dransfield* [2012] UKUT 440 (ACC):
 - Value or serious purpose
 - Motive
 - Burden; and
 - Harassment to staff
18. The Commissioner will first look at the value of the request as this is the main point in favour of the request not being vexatious. He will then look at the negative impacts of the requests ie the three remaining themes of burden, motive, and harassment, before balancing the value of the requests against those negative impacts.

The public authority's position

19. The ICO stated when considering the application of section 14 it first looked at motive and the value or serious purpose of the request. It summarised that the complainant was concerned the ICO was acting unlawfully in how it handles FOIA complaints, specifically that some valid complaints under section 50 FOIA are closed without a decision notice being issued. The complainant had suggested that some of these complaints were being closed in circumstances where the complainant does not agree with the position and by not issuing a decision notice appeal rights are being waived.
20. The ICO had explained that its casework management system uses various closure categories and it provides details about this on its website¹. The ICO had advised that refining the original request for 12 months worth of information to a shorter period of time would not provide a proper representation of the information and would be of

¹ [case-outcome-descriptions-foia-complaints.pdf \(ico.org.uk\)](https://ico.org.uk/case-outcome-descriptions-foia-complaints.pdf)

questionable value and it maintained this view when the refined request was made, adding that responding to the request would be a grossly oppressive burden on its resources relative to the value of the information.

21. The ICO accepted that private interests and public interest will often overlap but the FOI service guide² makes it clear that complaints can be informally resolved without a decision notice and in those cases complainants will have the outcome explained to them. If they do not challenge this then the complaint is closed informally. The ICO felt there was sufficient information already available in the public domain about how it handles FOIA complaints and case closure statuses.
22. The ICO also considered the burden complying with the request would have on its resources relative to the value of the request. The ICO argued that the datasets it already published are extracted directly from its casework management system and are therefore dependent on the information entered into the system. This sometimes results in a category showing as 'unassigned'. The ICO recognised that where some closure categories have not been completed this does not always provide the specific information the complainant was requesting but the published information offers a sufficient picture of case closure statuses.
23. The ICO had explained the manual checking of each of the 172 cases would take a minimum of three minutes per case as relevant information may be held in multiple correspondences across the case. The complainant had argued the refined request would allow for six minutes per case but the ICO's view was that a public authority was not obliged to search up to the cost limit at section 12 of FOIA (18 hours).
24. In any event, the ICO maintained the information in the refined request was of limited value as it would not be a representative sample of the handling of its casework as it only covers one quarter of a year. As such the ICO concluded that it was not possible to produce information that has statistical value that would not be burdensome on its resources due to the manual searches required.
25. The Commissioner asked the ICO to provide further detail on the detrimental impact complying with the request would have and why this would be unjustified or disproportionate in relation to the value of the request.

² [FOIA EIR Casework Service Guide \(ico.org.uk\)](https://ico.org.uk/foia-eir-casework-service-guide)

26. The ICO explained that its sampling exercise, conducted as part of the internal review, had estimated approximately three minutes would be needed to check each of the 172 identified cases in scope of the request. The ICO conducted a further exercise sampling five more cases and found four minutes was a more realistic estimate. The ICO stressed some cases would likely to take more than four minutes to check but even on this basis it would take 8-12 hours to check the 172 cases in scope of the request.
27. The ICO acknowledges that it may be able to respond to the request within the cost limit set out by section 12 FOIA but it maintains this would be a detrimental use of its resources and time given the relative value of the information requested.
28. The ICO considers the information has limited value as it focuses on a small volume of complaints in a limited time period which is not an accurate representation of the information held. The ICO believes its published datasets provide a more complete picture of the case closure statuses.
29. The complainant's initial lines of enquiry with the ICO were around the legal basis for 'informal resolutions' and as such the ICO doesn't believe responding to this request would satisfy the complainant's initial line of enquiry so it would be disproportionate to spend 8-12 hours responding to the request.
30. The ICO stated it had focused on the 172 cases in scope of the request but it could be argued from this wording that the complainant wanted the ICO to check all the complaints contained within the Q1 2023/24 dataset rather than those with the decision category of 'No further action/Informal action taken', decision detail 1 of 'Informally resolved/No action/Unassigned' and decision detail 2 of 'Unassigned'.
31. Turning to the motive and context of the request; the ICO believes the request stems from a misunderstanding of the ICO's obligations under section 50 FOIA and that 'informally resolved' resolutions to FOIA complaints are not in keeping with its section 50 obligations.
32. As well as this there is also a desire to uncover whether complainants are having their cases closed as 'informally resolved' without their agreement and therefore not being afforded a right to appeal as they have no decision notice to contest with the First Tier Tribunal.
33. In the case of complaints closed as 'No Further Action' and 'No Action: Unassigned' the ICO accepts the closure state of case is not explicitly clear and can fall under one of several descriptions.

34. However, the ICO fails to see how checking 172 cases for whether they are closed as 'No Action', 'Vexatious', 'Frivolous', 'Undue Delay' or 'Abandoned' would allow for anyone to ascertain if the cases were closed "unlawfully". 'Unassigned' does not mean the cases have not been resolved in compliance with the legislation and as such this demonstrates the lack of serious purpose or value to the request and supports the decision to classify the request as vexatious under section 14(1) FOIA.
35. In summary, the ICO strongly argues that the level of scrutiny suggested by the complainant would not prove that the ICO is closing cases unlawfully via informal resolution but would provide them with a limited list of cases with new closure reasons. The information will be of limited value and would not demonstrate the failings the complainant believes are there and the relative value of the request does not justify the burden on the ICO's resources that responding would create.

The complainant's position

36. The complainant argues that holding a public authority to account for their performance requires an analysis of actions against relevant policies and/or guidelines. If a public authority has not followed policy or guidelines it should be held to account in the public interest.
37. The complainant does not consider it is reasonable to dismiss their complaint as being of no value or serious purpose simply because the ICO has a 'FOI/EIR casework service guide', the ICO needs to show it is following these guidelines and complaints are being closed and recorded in line with the outcomes categorisation guidance.
38. The complainant pointed to the public interest recognised by the Tribunal in disclosing the workings of public bodies, particularly ones in receipt of public fund, and disclosing information that reveals mismanagement on the part of public officials.
39. The complainant doesn't consider that one quarters worth of data is meaningless or not representative of the ICO's overall performance or reporting. The ICO has itself acknowledged that some of the outcomes are not explicitly clear so there is a clear and justifiable reason to examine the ICO's performance.
40. In terms of burden, the complainant points to the Commissioner's own guidance on section 14³, particularly the section on dealing with a single

³ [How do we deal with a single burdensome request? | ICO](#)

burdensome request which states that section 14 can be applied if complying with the request would place a “grossly oppressive burden” on resources which outweighs any serious purpose or value. The complainant argues that given the request would not even breach the cost limit under section 12, the justification for refusing the request under section 14 would need to be substantial to meet the threshold of it being “grossly oppressive”.

The Commissioner’s position

41. Referring back to the background section of this notice, it is noted that this request stems from an earlier information request the complainant made. This asked for a full years worth of information and, understandably given the volume of complaints this covered, the ICO applied section 12 FOIA.
42. This led to the refined request for just three months worth of information (Q1 2023/2024). The Commissioner doesn’t dispute that the complainant considers this smaller dataset would provide the insight they are looking for and help them gain a deeper understanding into the case closures used in section 50 complaints at the ICO.
43. The Commissioner is aware that the ICO publishes datasets showing case outcomes and that for the majority of the public this provides a sufficient overview of section 50 complaints closed at the ICO. That being said, where complaints are recorded as ‘No further action’ or ‘No action: unassigned’ if there is additional detail that can be added there is some wider public interest in this. Whether or not this additional level of detail is likely to uncover the “unlawful” behaviour the complainant believes is occurring is not for the Commissioner to comment on. He does acknowledge that any regulators statistical complaints data will be of some public interest and it isn’t reasonable to dismiss the complainant’s request as having no serious purpose or value.
44. Complying with the request would not exceed the cost limit under section 12 so is not so burdensome in terms of time that it would engage this exemption. The Commissioner therefore considers the application of section 14 in this case hinges on whether there is serious purpose or value to the request. It would not be “grossly oppressive” to comply with the request unless it was of so little purpose or value as to warrant that any significant amount of time spent on responding would be unreasonable.
45. For these reasons, the Commissioner has decided that section 14 FOIA doesn’t apply to this request. There is a serious purpose or value to this request, it may not reveal the wrongdoing the complainant is suggesting but it will provide a greater insight into case closure status that will

allow for scrutiny of a regulator's activities and specifically will allow the complainant to analyse the data and obtain a better understanding of how case closures are recorded. The fact the data only covers Q1 is not a factor the Commissioner gives significant weight to. Of course there are factors that may affect statistics from one quarter to the next but it is still going to provide a good representation of cases closed in that time period that is likely to be replicated across other quarters. The Commissioner does not consider the accuracy of information is a factor that can be taken into account.

46. Balanced against this the burden has not been shown to be oppressive and it would be difficult to argue there would be a detrimental impact on the ICO's resources that is disproportionate given it cannot be said there is no value in the request.
47. The Commissioner therefore finds that section 14 is not engaged in relation to this request.

Right of appeal

48. 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

49. 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.
50. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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