

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 7 June 2024

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

Decision (including any steps ordered)

1. The complainant requested information relating to an investigation report. The Ministry of Justice (the MoJ) relied on section 14(1) of FOIA (vexatious) to refuse the request.
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.
3. The Commissioner does not require any steps.

Request and response

4. On 16 November 2023, the complainant wrote to the MoJ and requested information in the following terms:

"I would like to submit a subject access/ freedom of information request for an independent investigation that is currently being investigated?"

The terms of investigation were if public protection processes were followed , if public protection processes regarding photos in possession were followed and if paperwork was appropriately stored following your statement.

To give some detail with regard to a prisoner [name redacted] that a convicted child sex offender whom had pictures in his room for 2 years

where multiple governors and custodial managers signed off [name redacted] having pictures of children and information left around in a public area for members of the public to read at their leisure.

The investigation report is due to be completed 16th November 2023. I would like the investigation report all related evidence including transcripts of investigation and any other evidence mentioned in the investigation report along with related notes? I would like copies of Mireia emails relating to the investigation?."

5. The MoJ responded on 13 December 2023. It refused the request as vexatious – a position it upheld following its internal review.

Reasons for decision

Section 14(1) – vexatious requests

6. The following analysis considers whether the request was vexatious.
7. 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.
8. The word "vexatious" is not defined in FOIA. However, as the Commissioner's 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.
9. 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.
10. 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.
11. 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

¹ <https://ico.org.uk/for-organisations/dealing-with-vexatious-requests-section-14/>

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.

12. 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.
13. 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).
14. However, the UT emphasised that these four broad themes are not a checklist, and are not exhaustive. It 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 MoJ's view

15. The MoJ explained that, whilst it acknowledges that FOIA is generally considered to be applicant-blind, the decision in Dransfield makes clear that public authorities are entitled to view the correspondence within the 'wider context of dealings' with the requester. Therefore, it believed that it was crucial to consider the broader context and motives of the request.
16. The MoJ advised that the complainant has been in contact with the it in the form of FOIA requests, Subject Access Requests (SAR) and general correspondences since 2022. Whilst the complainant's initial requests generally sought information regarding MoJ policies and documents, the later requests (including this one) have turned towards seeking

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

information about named individuals. This included members of staff at the MoJ and specific prisoners.

17. The MoJ added that the complainant had repeatedly made requests of a nature that would link back to their own personal circumstances, rather than requesting information which may be of interest to the wider public.
18. The MoJ advised that, during recent requests, it has become concerned that the complainant is seeking to use FOIA to seek personal information about named individuals, despite the MoJ advising on multiple occasions that FOIA is not a suitable vehicle to obtain this type of information.
19. The MoJ explained that even if it hadn't considered this request to be vexatious, the information sought would clearly be exempt under section 40(2) of FOIA as it relates to a named prisoner and disclosure would breach their personal data. He was already aware of this from prior requests.
20. The MoJ advised that since December 2021, the complainant had submitted 12 FOIA requests, eight internal review FOIA requests, 13 SAR request, 11 of which were identical and later aggregated into one and a further three internal review SAR requests.
21. The MoJ acknowledges that, whilst on the face of it, this number of interactions is not an overly burdensome volume, the nature of the requests and the way they are submitted to the MoJ, is what has made them burdensome.
22. Whilst there have been periods of a number of months where no requests have been submitted, the complainant frequently submits a number of overlapping requests in a short period of time, leading to the aggregation of the MoJ's responses.
23. The MoJ referred to one case specifically where it responded to no fewer than nine overlapping FOIA requests that the complainant submitted over five separate dates. Each of the FOIA requests started with an identical subject access request, despite the fact that it had already issued two SAR responses to a number of aggregated requests.
24. The two SAR responses (and a later one submitted in March 2023) were also internally reviewed, leading to further burden on the department.
25. The MoJ added that if it were to respond to this request, it would be implying to the complainant and future requesters that the MoJ is prepared to tolerate targeted requests about individuals, which risks causing harassment or distress to them.

26. The MoJ stated that it has a duty of care to its staff and must, therefore, protect them from harassment or distress of any kind. Whilst it accepts that staff in public office, particularly those in decision-making roles, will occasionally face reasonable criticism during their duties, this does not extend to individuals attempting to use FOIA as a vehicle to make unsubstantiated allegations, or to seek the release of personal information about staff.
27. The MoJ explained that given the wider background behind the nature and motive of the requests, and considering the complainant has previously received advice on the types of information which is likely to be exempt under section 40(2) of FOIA, they have continued to make requests targeted at named individuals. The MoJ stated that this was a clear indicator of section 14(1), allowing the MoJ to conclude it was entitled to refuse the request given its futile nature.
28. The MoJ concluded that it is difficult to interpret the complainant's actions, other than the fact that they are motivated by a grudge against the MoJ and the named individual targeted in this request.

The complainant's view

29. The complainant stated that the MoJ is reasonably resourced and that the requested information could be provided. They added that the request is not part of a grudge but rather to find out what they consider may be the truth.

The Commissioner's decision

30. 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.
31. The Commissioner is keen to stress that in every case, it is the request itself that is vexatious and not the person making it.
32. 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.
33. 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 is vexatious when viewed in the context of the other requests and the aggregated burden of dealing with the complainant's overall correspondence.

34. 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.
35. Whilst the Commissioner acknowledges that public authorities must keep in mind the underlying commitment to transparency and openness when responding to requests, especially in situations where the requested information may be of interest to the public, he is satisfied that due to the nature of the previous requests, this request does appear to be the latest attempt to use FOIA in an improper way. Specifically for the complainant to have access to information for their own private gain rather than accessing information which may be of public interest.
36. Having also reviewed a number of previous requests made by the complainant the Commissioner notes that the requests being submitted to the MoJ are of a similar nature, in that they request personal information about named individuals. The MoJ has provided the Commissioner with evidence showing that they have previously advised the complainant that such information cannot be released under FOIA as it would constitute personal data and would be exempt under section 40. Despite the MoJ explaining this to the complainant in a number of responses, they have proceed to continue to make requests of this nature.
37. It appears to the Commissioner that the request was made primarily to pursue a long-standing private grievance with the MOJ. It is not an appropriate use of the legislation.
38. In the circumstances of the case, the Commissioner believes that the MoJ was entitled to rely on section 14(1) of FOIA to refuse the request because it was vexatious.

Right of appeal

39. 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

40. 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.
41. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Michael Lea
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF