

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 31 July 2017

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

Decision (including any steps ordered)

1. In a multi-part request, the complainant requested information relating to the provision of food for Jewish prisoners. The MoJ refused the request, relying on section 14(1) of the FOIA (vexatious request).
2. The Commissioner's decision is that the MoJ was entitled to refuse the request as vexatious under section 14(1) of the FOIA. She does not require any steps to be taken as a result of this decision.

Background

3. The request in this case is the same request for information from the same individual which the Commissioner considered in case reference FS50627851. The decision notice in that case was issued on 16 January 2017¹.
4. The complaint in that case was upheld and the MoJ was ordered to issue a fresh response to the complainant that did not rely on section 14(2) of the FOIA (repeated request).

¹ <https://ico.org.uk/media/action-weve-taken/decision-notice/2017/1625817/fs50627851.pdf>

Request and response

5. On 18 March 2016, having received the MoJ's internal review response to an earlier request (request dated 3 January 2016), the complainant wrote to the MoJ and made the following multi-part request for information under the FOIA:

"1) If the Internal Review response is correct and all the Jewish faith adviser did was to confirm that the named individual was an observant Haredi Jew, please provide me with copies of the relevant data which details who and on what authority was responsible for providing the Governors of HMP Wakefield, HMP Manchester, HMP Leeds and elsewhere with the relevant instructions, guidance, and advice that allowed the named individual in question to receive a refrigerator for his personal use and a regular supply of kosher food?

2) Please provide me with the relevant data which details the relevant instructions, guidance, and advice, given to prison governors, with particular reference to the Governor of HMP Wakefield, a high security prison, which in 2015/2015 [sic] authorised a Haredi Jewish prisoner to be provided with a refrigerator for his personal use and a regular supply of kosher food.

3) Please provide me with details of the items of additional food that the individual authorised to receive and did in fact receive".

6. The MoJ responded on 16 February 2017 – thus complying with the step ordered in the decision notice in case reference FS50627851.
7. That response relied on section 14(1) of the FOIA (vexatious request).
8. The complainant requested an internal review on 18 February 2017. The MoJ sent him the outcome of its internal review on 15 March 2017 upholding its position that section 14(1) applied.

Scope of the case

9. The complainant contacted the Commissioner on 21 March 2017 to complain about the way his request for information had been handled.
10. The complainant disputed that the request was vexatious. In particular, he disputed that his request met any of the vexatious indicators relied on by the MoJ.

11. The analysis below considers the MoJ's application of section 14(1) of the FOIA to the request for information.

Reasons for decision

Section 14 vexatious request

12. Section 14(1) of the FOIA states that section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious. There is no public interest test.
13. The term 'vexatious' is not defined in the FOIA. The Upper Tribunal considered the issue of vexatious requests in the case of the *Information Commissioner v Devon CC & Dransfield*. 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.
14. 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.
15. 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 dealings, the lack of proportionality that typically characterise vexatious requests" (paragraph 45).*
16. The Commissioner has published guidance on dealing with vexatious requests². That guidance includes a number of indicators that may apply in the case of a vexatious request. The fact that a request contains one or more of these indicators will not necessarily mean that it must be

² <https://ico.org.uk/media/for-organisations/documents/1198/dealing-with-vexatious-requests.pdf>

vexatious. All the circumstances of the case will need to be considered in reaching a judgement as to whether a request is vexatious.

17. As discussed in the Commissioner's guidance, the relevant consideration is whether the request itself is vexatious, rather than the individual submitting it. A public authority can also consider the context of the request and the history of its relationship with the requester when this is relevant. The Commissioner's guidance states:

"The context and history in which a request is made will often be a major factor in determining whether the request is vexatious, and the public authority will need to consider the wider circumstances surrounding the request before making a decision as to whether section 14(1) applies".

18. Sometimes it will be obvious when a request is vexatious, but sometimes it may not. In that respect, the Commissioner's guidance states:

"In cases where the issue is not clear-cut, the key question to ask is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress".

The complainant's view

19. The complainant disputed that the request was vexatious. He provided the Commissioner with a comprehensive submission explaining his position.

20. He told the Commissioner:

"The mere fact that the request vexes the MoJ or embarrasses it is not enough to make the request vexatious".

21. He reminded the Commissioner of the history of the request and stated:

"The reality is that the Ministry were content to rely on section 14(2) - until the Commissioner rejected its arguments....

This calls into question how much credibility, if any, can be given to the Ministry's newly adopted change of position. Until they lost, the Ministry completely rejected section 14(1) as a response to the original request".

22. In his correspondence with the Commissioner, the complainant set out his objections to the vexatious indicators which the MoJ is relying on in this case. For example, he told her:

"The Ministry provides no information as to why – or against whom – I should have a personal grudge"

23. Regarding unreasonable persistence and intransigence, and with reference to a case heard by the Tribunal in relation to another of his requests, he told the Commissioner:

"... it cannot be unreasonable or intransigence to seek the disclosure of information which a Tribunal has found must exist...".

24. Regarding 'burdensome', he reminded the Commissioner of the need for the public authority to provide evidence that the request is grossly oppressive.

The MoJ's view

25. Refusing to provide the requested information on the basis that section 14(1) of the FOIA applied, the MoJ told the complainant that it considered his request to be vexatious for the following reasons:

- Personal grudges
- Unreasonable persistence
- Burdensome
- Intransigence

26. Referring to a number of other requests for information from the same complainant, it told him:

"We consider the constant rephrasing of your requests and overlapping correspondence falls within the above vexatious indicators in an attempt to seek the MoJ to confirm a position on something you believe has taken place..."

The FOIA ... is not designed to be a vehicle for on-going and protracted correspondence with the department relating to long outstanding grievances".

27. The MoJ further told him that it has responded "to a number of similar or related requests" from the complainant in respect of kosher food, HMP Wakefield's Jewish faith advisor and its management of prisoners who observe the Jewish faith. It told the complainant that it considered that this request was representative of other similar requests that the MoJ had responded to over a significant period of time. It told him that for the MoJ to respond further:

"... would be to allow you to use the FOIA as a vehicle to continue with your personal grievance in respect of these matters...."

28. With regard to the burden on the authority, the MoJ told him that his insistent approach had put a burden on the department in terms of

resources and time. While acknowledging that he may have grievances with the MoJ in respect of other matters, the MoJ advised the complainant that the FOIA is not the route to exercise those issues.

29. The MoJ argued that access to information under the FOIA is a publicly funded resource and that:

".. it is not in the public interest that the MoJ allows such resources to be exploited by a small number of individuals so that a disproportionate amount of time is spent on their cases, at the expense of other members of the public's right of access to information".

30. Arguing in support of its position, in its submission to the Commissioner, the MoJ set out the wider context in which the complainant's request was received. It told her that the complainant:

"...has submitted a number of requests relating to the provision of food for Jewish prisoners and these must be looked at together to support the refusal of this request as vexatious".

31. Also in its submission to the Commissioner, and with reference to her guidance, the MoJ confirmed the indicators of a vexatious request that it considers apply in this case. Those were the same indicators that it had referenced in its correspondence with the complainant.

32. In support of its position that the request is vexatious, the MoJ presented the Commissioner with details of other requests for information from the complainant, and their outcomes, that it considered relevant to its application of section 14(1) in this case.

33. In doing so, the MoJ referred to requests for information made prior to the request under consideration in this case - those requests being made on 20 July 2015, 30 November 2015, 3 January 2016 and 22 January 2016. The MoJ described those requests as relating to instructions and provision of food to Jewish prisoners.

34. The MoJ confirmed that its handling of some of those requests had been addressed separately by the Commissioner and the First-tier Tribunal (Information Rights) and that in one case a revised response was provided following the Tribunal's decision.

35. The MoJ also provided details of several requests for information made since 18 March 2016 – requests made during the period in which the request in this case was under consideration and review. For example, it referred to requests dated 18 August 2016, 29 August 2016 and two dated 19 September 2016. It explained that those requests had been aggregated *"due to the same/similar theme"*.

36. The Commissioner considers that those four requests, rather than seeking information relating to instructions and provision of food to Jewish prisoners, were about funding provided by the MoJ to Jewish Visiting, the funding of religious organisations by the MoJ and its remuneration rates for sessional prison chaplains of all religious denominations, their duties and responsibilities.

37. The MoJ concluded its submission by telling the Commissioner:

"His [the complainant's] approach is insistent and has created a significant burden on the business unit handling the responses.

The behaviour of [the complainant] in pursuing these matters under the FOIA, demonstrates that he is unwilling to change his behaviour in respect of his abuse of the act and has taken an entrenched position and continued to burden the department with his overlapping and repetitive requests.It is unreasonable to continue to respond on the same subject when it has been addressed previously".

The Commissioner's view

38. The Commissioner acknowledges that there are many different reasons why a request may be vexatious, as reflected in her guidance. There are no prescriptive 'rules', although there are generally typical characteristics and circumstances that assist in making a judgement about whether a request is vexatious. A request does not necessarily have to be about the same issue as previous correspondence to be classed as vexatious, but equally, the request may be connected to others by a broad or narrow theme that relates them. A commonly identified feature of vexatious requests is that they can emanate from some sense of grievance or alleged wrong-doing on the part of the authority.

39. As the Upper Tribunal in *Information Commissioner vs Devon County Council & Dransfield* [2012] UKUT 440 (AAC), (28 January 2013) observed:

"There is...no magic formula – 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".

40. In her guidance on dealing with vexatious requests, the Commissioner recognises that the FOIA was designed to give individuals a greater right of access to official information with the intention of making public bodies more transparent and accountable.

41. While most people exercise this right responsibly, she acknowledges that a few may misuse or abuse the FOIA by submitting requests which are intended to be annoying or disruptive or which have a disproportionate impact on a public authority.
42. The Commissioner recognises that public authorities must keep in mind that meeting their underlying commitment to transparency and openness may involve absorbing a certain level of disruption and annoyance.

Was the request vexatious?

43. The Commissioner considered both the MoJ's arguments and the complainant's position regarding the information request in this case.
44. As in many cases which give rise to the question of whether a request is vexatious, the evidence in the present case showed a history of previous and subsequent information requests. Clearly in this case, the MoJ considers that the context and history strengthens its argument that the request is vexatious.
45. In its submission to the Commissioner, the MoJ did not provide evidence specifically as to the burden that would be caused by this particular request. The burden on the MoJ in this matter arises principally from the resources and staff time that it has spent on addressing the complainant's information requests. In that respect, the Commissioner notes the MoJ's references to the complainant's '*constant rephrasing*' of his requests and his '*overlapping correspondence*'.
46. To the extent that some of the requests referenced by the MoJ in support of its view that the request is vexatious post-date the request in this case, the Commissioner considered that they are still relevant to explain the nature of the dealings between the parties.
47. The Commissioner recognises that the complainant had his reasons for pursuing information from the MoJ: the complainant is clearly not satisfied with how the MoJ conducts itself.
48. The Commissioner recognises that an authority should be mindful to take into account the extent to which oversights on its own part might have contributed to a request being generated.
49. If the problems which an authority faces in dealing with a request have, to some degree, resulted from deficiencies in its handling of previous enquiries by the same requester, then this will weaken the argument that the request, or its impact upon the public authority, is disproportionate or unjustified.

50. In this case, however, the context and history of the request suggested to the Commissioner that a response to this request was likely to lead to further communications and more requests for other information on related matters from the complainant with a further consequential burden on MoJ staff.
51. The purpose of section 14 of the FOIA is to protect public authorities and their employees in their everyday business. In her guidance, the Commissioner recognises that dealing with unreasonable requests can place a strain on public authorities' resources and get in the way of delivering mainstream services or answering legitimate requests. Furthermore, these requests can also damage the reputation of the legislation itself.
52. On the basis of the evidence provided, and taking into account the findings of the Upper Tribunal in Dransfield that an holistic and broad approach should be taken in respect of section 14(1), the Commissioner was satisfied that the request was a manifestly unjustified and improper use of the FOIA such as to be vexatious for the purpose of section 14(1).
53. Accordingly, she was satisfied that the MoJ was entitled to apply section 14(1) of the FOIA.

Right of appeal

54. 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 1234504
Fax: 0870 739 5836
Email: GRC@hmcts.gsi.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

55. 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.
56. 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

**Jon Manners
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**