

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 30 June 2020

Public Authority: Northern Ireland Screen

Address: richard@northernirelandscreen.co.uk

Decision (including any steps ordered)

1. The complainant has requested information from Northern Ireland Screen regarding funding granted to minority groups. Northern Ireland Screen treated the request as vexatious and effectively applied section 14(1) of the FOIA.
2. The Commissioner's decision is that section 14(1) of the FOIA has been incorrectly applied in this case.
3. The Commissioner requires Northern Ireland Screen to take the following steps to ensure compliance with the legislation.
 - To issue a fresh response to the complainant in accordance with its obligations under the FOIA which 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 the Act and may be dealt with as a contempt of court.

Request and response

5. The complainant made several requests for information on 25 April 2019 in the following terms:-
 1. "Please take this letter as a formal request for information on how many disabled male writer/directors were funding by Northern Ireland Screen between 2015-2017. And what was the total budget granted to projects lead by disabled male writer/directors from 2010 through to 2017?"
 2. Please take this letter as a formal request for information on how many bisexual male writer/directors were funding by Northern Ireland Screen between 2015-2017. And what was the total budget granted to projects lead by bisexual male writer/directors from 2010 through to 2017?
 3. Please take this letter as a formal request for information on how many bisexual female writer/directors were funding by Northern Ireland Screen between 2015-2017. And what was the total budget granted to projects lead by bisexual female writer/directors from 2010 through to 2017?
 4. Please take this letter as a formal request for information on how many gay female writer/directors were funding by Northern Ireland Screen between 2015-2017. And what was the total budget granted to projects lead by gay female writer/directors from 2010 through to 2017?
 5. Please take this letter as a formal request for information on how many gay male writer/directors were funding by Northern Ireland Screen between 2015-2017. And what was the total budget granted to projects lead by gay male writer/directors from 2010 through to 2017?
 6. Please take this letter as a formal request for information on how many disabled female writer/directors were funding by Northern Ireland Screen between 2015-2017. And what was the total budget granted to projects lead by disabled female writer/directors from 2010 through to 2017?
 7. Please take this letter as a formal request for information on how many heterosexual female writer/directors were funding by Northern Ireland Screen between 2015-2017. And what was the

total budget granted to projects lead by heterosexual female writer/directors from 2010 through to 2017?

8. Please take this letter as a formal request for information on how many heterosexual male writer/directors were funding by Northern Ireland Screen between 2015-2017. And what was the total budget granted to projects lead by heterosexual male writer/directors from 2010 through to 2017?
6. Northern Ireland Screen responded to the complainant on 13 June 2019, stating that she had already been provided with all of the information held by Northern Ireland Screen within the scope of her request and that she was now using Freedom of Information processes in a 'vexatious' manner. Northern Ireland Screen did not specifically cite section 14 of the FOIA in its correspondence, however its use of the term 'vexatious' indicates that it wishes to apply that section.

Scope of the case

7. The complainant contacted the Commissioner on 21 November 2019 to complain about the way in which Northern Ireland Screen had handled her request for information.
8. The Commissioner has considered Northern Ireland Screen's handling of the complainant's request and in particular its application of section 14 of the FOIA to the requested information.

Reasons for decision

Section 14 – vexatious requests

9. Section 14 of FOIA states that:

"Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious."

10. The term "vexatious" is not defined within the FOIA. The Upper Tribunal considered the issue of vexatious requests in *Information Commissioner v Devon CC & Dransfield* [2012] UKUT 440 (AAC). It commented that "vexatious" could be defined as the "*manifestly unjustified, inappropriate or improper use of a formal procedure*". The Upper Tribunal's approach in this case was subsequently upheld in the Court of Appeal.

11. The *Dransfield* definition establishes that the concepts of proportionality and justification are relevant to any consideration of whether a request is vexatious.
12. *Dransfield* also considered 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. It explained that these considerations were not meant to be exhaustive and also explained 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).
13. The Commissioner has published guidance on dealing with vexatious requests, which includes a number of indicators that may apply in the case of a vexatious request. However, even if a request contains one or more of these indicators it will not necessarily mean that it must be vexatious. Her guidance can be accessed here:

<https://ico.org.uk/media/fororganisations/documents/1198/dealingwith-vexatious-requests.pdf>
14. When considering the application of section 14(1), a public authority can consider the context of the request and the history of its relationship with the requester, as the guidance explains: "*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*".
15. However, the Commissioner is also keen to stress that in every case, it is the request itself that is vexatious and not the person making it.
16. In some cases it will be obvious when a request is vexatious but in others it may not. 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.*"

17. The background to these requests is that the complainant originally made a request to Northern Ireland Screen on 24 May 2017 regarding Northern Ireland Screen's script funding processes. Northern Ireland Screen provided the complainant with partial information in response to that request and stated that it did not hold any further information in response to a particular part of her request which related to a breakdown of funding regarding minority groups.
18. The Commissioner in the course of her investigation determined that Northern Ireland Screen did hold further information within the scope of the complainant's request. Northern Ireland Screen then provided further information regarding the breakdown of applications for funding for minority groups during the years 2015-16, 2016-17 and 2017-18.
19. The complainant still considers that Northern Ireland Screen must hold further information within the scope of her original request, hence her requests of 25 April 2019.
20. The complainant's reasoning is that she would be concerned if Northern Ireland Screen did not keep records of funding for the minority groups mentioned in her request. She also states that the Annual Progress Reports Northern Ireland Screen provides to the Equality Commission each year would necessitate Northern Ireland Screen having a clear understanding of figures for these groups in order to answer how it has improved your practices.
21. These are legitimate interests and concerns to have and the request does have serious purpose and value. There is value and purpose in obtaining information from a public authority relating to how it manages its resources and funds. Generally speaking, the public has a right to know how public money is being spent and assess whether value for money is being obtained. It also has a right to know whether a public authority is adhering to its equality and diversity obligations.
22. The Commissioner considers the requests to have serious purpose and value and does not consider that the complainant has placed a significant burden on Northern Ireland Screen by making them. Northern Ireland Screen previously stated to the complainant that it did not hold any further information in relation to its funding regarding minority groups, however it emerged that it did hold further such information. The complainant has only made the requests of 25 April 2019 since the issue of the last decision by the Commissioner, so the Commissioner does not consider a handful of requests in three years to be a voluminous number.

23. For the above reasons, the Commissioner has determined that section 14(1) of the FOIA is not engaged in relation to the complainant's requests.

Right of appeal

- 24. 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: 0116 249 4253

Email: GRC@justice.gov.uk

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

- 25. 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.
- 26. 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