

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 28 February 2023

**Public Authority:** Office for National Statistics  
**Address:** Government Buildings  
Cardiff Road  
Newport  
South Wales NP10 8XG

#### **Decision (including any steps ordered)**

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1. The Commissioner's decision is that the elements of the complainant's three requests for information that are covered by FOIA are vexatious requests under section 14(1) of FOIA and the Office for National Statistics (ONS) is not obliged to comply with them. It is not necessary for the ONS to take any steps.

#### **Request and response**

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2. On 25 May 2022, 27 May 2022 and 1 June 2022 the complainant submitted requests for information to the ONS under the data protection legislation and FOIA.
3. Because reproducing the requests may make it possible to identify the complainant, the Commissioner does not intend to reproduce them in this notice.
4. The ONS' final position was to refuse the FOIA elements of the above three requests under section 14(1) of FOIA.

## Reasons for decision

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5. This reasoning covers whether ONS is entitled to rely on section 14(1) of FOIA to refuse the complainant's requests. This decision concerns FOIA only. Data protection complaints are considered separately and, if they have not already done so, the complainant has the option of submitting a separate data protection complaint through the Commissioner's website<sup>1</sup>, if they have specific data protection concerns.
6. Under section 14(1) of FOIA a public authority is not obliged to comply with a request for information if the request is vexatious.
7. Broadly, vexatiousness involves consideration of whether a request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress.
8. 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
9. The Commissioner will first look at the value of the requests 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.
10. Both the complainant and the ONS have provided the Commissioner with submissions, which he has considered.
11. In its submission the ONS has provided the Commissioner with a background and context to the requests, and copies of its relevant communications with the complainant. Because reproducing all the background detail may make it possible to identify the complainant, the Commissioner does not intend to reproduce all of it in this notice.

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<sup>1</sup> <https://ico.org.uk/make-a-complaint/data-protection-complaints/data-protection-complaints/>

12. The ONS says that the requests are part of a succession of requests that the complainant has submitted to the ONS. The requests are associated with grievances the complainant has against the ONS that they first raised in 2020.
13. The complainant submitted subject access requests (SARs) under the data protection legislation in October 2020 and December "2021", and also submitted what the Commissioner understands was their first FOIA request in December "2021", all of which the ONS responded to. The Commissioner understands that the ONS' reference to December "2021" is a typo and that the complainant had submitted those requests in December 2020.
14. The ONS responded under FOIA and data protection legislation to further requests that the complainant submitted in February 2021.
15. For the FOIA elements the ONS says it engaged the exemption found at section 14(1). This was because, the ONS says, the request was incredibly wide in scope. It spanned a period of two years and included multiple sources of information, and therefore imposed a disproportionate burden. The ONS was also very concerned that preparing a full response, even if ultimately redacted, would have a negative emotional impact on particular staff. For similar reasons, it considered the SAR aspects of the request to be manifestly excessive and suggested to the complainant that they limit the request to a more reasonable scope. The complainant was not happy with this decision. They asked to speak with the individual "personally responsible for making judgement calls here" (which the ONS declined) and made direct calls to members of the Legal Services team about their requests.
16. On 15 April 2021, the ONS received a further 21 questions from the complainant which included three further requests for information and 18 about its handling of previous requests.
17. On 20 April 2021 the complainant contacted ONS' communications team directly to request the personal data withheld from responses to previous requests, for the purposes of making further complaints. This was refused. The ONS notes that this would not have prevented, and did not prevent, the complainant making complaints. ONS says it had previously advised the complainant that they do not need this information, and that they should not be undertaking their own investigations.
18. Throughout 2022 the complainant contacted the ONS Head of Legal Services directly to ask a series of questions in relation to the 2020 FOIA request. The complainant made clear that these questions were being asked to support their appeal of the decision associated with their first grievance. While ONS initially provided answers on an informal basis,

the complainant began asking for information that had been redacted from previous FOIA requests and so ONS terminated communication.

19. The ONS says that the complainant then resubmitted four separate requests (references 000184, 000188, 000189, 000190) in close succession, between 24 May 2022 and 1 June 2022.
20. The ONS responded to request 000184 in full, with third party personal data redacted. It dealt with 000188 under FOIA and as a SAR. The emails requested had been sent in confidence. The ONS considered that, based on previous evidence and conversations, the complainant wished to obtain these emails for evidence in ongoing complaints, or for instigating new complaints.
21. The complainant submitted 000189 on 27 May 2022 and, at this point, the ONS drafted the final response to all three requests; that is, requests 000188, 000189 and the later request, 000190. That response is dated 6 July 2022.
22. The complainant responded on the same day, 6 July 2022, with what the ONS has described as a "threatening" demand for an apology from the staff member that had drafted the response. When this was not forthcoming, they made a formal complaint.
23. The ONS had refused the SAR aspects of the above three requests on the basis that they were manifestly unfounded and excessive, and the FOIA aspects of the requests as vexatious under section 14(1). The ONS upheld this position in its internal review of 7 September 2022.
24. Based on actions the complainant has previously taken when they have been provided with information, it was the ONS' view that the requests were made with the intention of obtaining information to submit complaints and grievance. In ONS' view the level of distress and disruption these requests would cause amongst staff, on balance, outweighed any lingering public interest in a matter then years old.
25. The ONS has told the Commissioner that the complainant continues to pursue new complaints as a result of information either provided or withheld via their SAR and FOIA requests. They also continued to make requests for information, including a further attempt to obtain the names of particular individuals, this time under subject access on the grounds that those names are the complainant's personal data. The complainant has also submitted a further FOIA request for information that the Commissioner does not intend to detail here. But the ONS' refusal of the latter has led to another formal complaint.
26. Regarding its reliance on section 14(1), the ONS says that, first, there is a significant level of burden associated with the request, not just in the initial response but in all of the follow up work it will generate. If the

ONS provided the information requested, it would be subject to significant redactions. In particular much of the information is personal data, which it would not consider fair or lawful to disclose due to the impact it would have on third parties. Releasing the information in such a form will not assist the complainant and based on previous experience, will almost certainly lead to further information requests, internal review, complaints and accusations of cover-up all of which will require considerable staff resource from across ONS.

27. Second, as set out above, the complainant's grievances and complaints have been ongoing for over three years now and have been an emotional and physical drain for all those involved. Disclosing the information requested, even in anonymised form, will add to an already considerable emotional burden carried by all of those involved, impacting their mental state and ultimately their ability to undertake their jobs.
28. Finally, the ONS says it does not consider there to be any public interest in releasing this information as it concerns matters that occurred three years ago. In addition, the complainant has made very clear through submissions and multiple conversations with staff across ONS that they want the information to pursue ongoing complaints and grievances against ONS staff. However, they can make such complaints even in the absence of this information (as has been made clear to the complainant).
29. The Commissioner has reviewed the submission that the complainant has provided to him. This comprises 89 pages and discusses the above sequence of events from the complainant's own perspective.
30. The Commissioner considers the detail of their submission could identify the complainant and so he won't reproduce the detail in this notice, suffice to say that the complainant is concerned about a particular set of events. They are also concerned about how ONS has handled their FOIA and subject access requests, and its application of section 14(1) to the requests in scope here. The complainant has explained that they are seeking the information they have requested in order to present it as evidence in their ongoing wider complaints with the ONS. The complainant has confirmed that the requested information is therefore of value to them.
31. The Commissioner has considered the points that the complainant had made in their submission, but he considers that the three requests under consideration here can be categorised as vexatious requests. At the time of the requests the complainant had been in dispute with the ONS about a particular matter for approximately two years. While the original requests may have had a serious value and purpose, that value and purpose had diminished two years later. The ONS has confirmed to

the complainant that they do not need the information they are seeking in order to progress a complaint with ONS.

32. By May/June 2022 therefore the complainant appears to be mis-using FOIA to pursue a grievance against ONS and to progress matters that are more appropriately dealt with through other channels. The complainant's requests – including earlier requests and the requests sent in succession in this case – and related past behaviours – such as attempting to acquire redacted information (individuals' names) from other parts of the organisation - are not those of an individual using FOIA reasonably and responsibly. The Commissioner considers that, in view of the background and circumstances, the complainant's requests would, in fact, be likely to cause ONS staff to feel distressed and harassed. The ONS' evidence suggests that, as well as generating new requests from the complainant, responding to the three requests would also cause a burden to the ONS. Since the Commissioner considers that the purpose and value of the requests is minimal, he is satisfied that that burden would be wholly disproportionate. As such, the Commissioner has decided that the ONS is entitled to refuse the complainant's requests under section 14(1) of FOIA.

## **Right of appeal**

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33. 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](mailto:grc@justice.gov.uk)  
Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

34. 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.
35. 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**

**Cressida Woodall**  
**Senior Case Officer`**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**