

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 19 April 2024

**Public Authority:** HM Treasury  
**Address:** 1 Horse Guards Road  
London  
SW1A 2HQ

#### Decision (including any steps ordered)

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1. The complainant has requested information about the UK Universities and Spinouts Review. HM Treasury ("HMT") refused to comply with the request, citing section 14(1) (vexatious requests) of FOIA as it's basis for doing so.
2. The Commissioner's decision is that HMT was entitled to rely on section 14(1) of FOIA to refuse to comply with the request.
3. The Commissioner does not require HMT to take any further steps.

#### Request and response

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4. On 8 August 2023, the complainant wrote to HMT and requested information in the following terms:

"In reference to the UK Universities and Spinouts Review (<https://www.gov.uk/government/news/university-and-investor-experts-to-head-up-review-of-uk-spin-out-landscape>) I am issuing a FOI request for the following:

1. Please forward me all the relevant documentation (minutes, e-mail exchanges, memorandums, etc.) that would underpin the decision to invite Andrew Williamson and Irene Tracey to chair this exercise.

2. Please forward me:
  - 2.1. All the communications between HM Ministers and/or Senior Management of the Treasury and Andrew Williamson that are related to the aforementioned review
  - 2.2. All the communications between HM Ministers and/or Senior Management of the Treasury and Irene Tracey that are related to the aforementioned review
3. Please forward me all the existing minutes and ancillary documents up to this point in time which fall within the scope of the review.
4. Please confirm whether the chairs of the review will receive any payment for their work. If so, please indicate the amount.”
5. HMT responded on 6 September 2023. It cited section 14(1) of FOIA, on the basis of the disproportionate burden required to consider the large amount of information within the scope of the request. However, it provided a response to part 4 of the request as this was straightforward and did not incur any burden.
6. Following an internal review HMT wrote to the complainant on 4 December 2023. It maintained reliance on section 14(1) of FOIA to refuse to comply with the request.

## Reasons for decision

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### Section 14(1) – vexatious requests

7. Section 14(1) of FOIA provides that a public authority is not obliged to comply with a request for information if the request is vexatious.
8. The term “vexatious” is not defined in FOIA. However, as the Commissioner’s updated guidance on section 14(1)<sup>1</sup> 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 public authorities more transparent and accountable. As

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<sup>1</sup> <https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/section-14-dealing-with-vexatious-requests/>

such, it is an important constitutional right. Therefore, engaging section 14(1) is a high hurdle.

10. However, the Commissioner 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 & Devon County Council vs Dransfield* [2012] UKUT 440 (AAC), (28 January 2013) ("Dransfield")<sup>2</sup>. 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).

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

## **HMT's position**

15. For context, HMT explained that the 2023 Review of University Spinouts was an independent review of the University spinouts ecosystem. The review considered aspects like the equity stakes universities retain in these businesses and the role of technology transfer offices and venture capital in this activity. The review made recommendations for universities, spinout companies, and the government. At the Autumn Statement 2023, the government accepted all recommendations and implementation of relevant recommendations is underway.
16. In demonstrating that section 14(1) of FOIA is engaged in this case, HMT considered the balance between the value and serious purpose of the request, against factors indicating vexatiousness. HMT set out that it does not question the serious purpose of the request. It stated that it is evident that there is an inherent public interest in the transparency of the work of Government departments and, in particular, reviews which scrutinise the university spinouts sector which are intended to provide recommendations for government policy and relevant institutions.
17. However, HMT explained that it considered the value of the request was somewhat diminished as the review was due to be concluded in November 2023, meaning that the findings of the review as well as a significant amount of information relating to it would be publicly available in due course, allowing for scrutiny and increased transparency in the process. Whilst the published information clearly wouldn't carry the same level of detail as the information within the scope of the request, HMT considered that it would still satisfy much of the general public interest in the review, in that it would give the public an understanding of the broad work undertaken by the review and the broad arguments put forward by some of the third parties involved.
18. HMT also clarified that it does not consider that the request contained language or any other indications that would be likely to cause harassment or distress, and that the key factor in this case that engages section 14(1) of FOIA is the burden that would be placed upon HMT by compliance with the request. It stated that complying with the request would be disruptive and have a disproportionate impact on the ability of officers to carry out core duties.
19. HMT confirmed that, at the time of the request, the review had been ongoing for 5 months, and searches of its records had located over 1,000 documents, of varying description and length, within the scope of the request. The items within scope vary from email chains, attachments, formal submissions, meeting readouts and Word documents.

20. HMT explained that the scope of the request is extremely broad and essentially captures most information relating to the review and its administration. The review has engaged with numerous stakeholders from across the spinouts ecosystem, including universities, technology transfer offices, investors, founders, accelerators/incubators, informed parties from other jurisdictions. This engagement often included roundtable discussions with multiple parties present.
21. HMT set out that the fact it did not cite section 12 of FOIA before relying on section 14(1) does not reduce the weight of its assertion that section 14(1) is engaged. It stated that it was possible to collate all information within the scope of a broad request in less time than is allowed for by the appropriate limit at section 12, particularly when the largest selection of records within the scope of the request relate to email correspondence, which can be searched for and located quickly.
22. However, HMT explained that the disproportionate burden in this case would occur due to the substantial amount of time and effort required to review each of the 1000+ documents for information that engages any exemptions from disclosure and to appropriately redact that information, particularly where those documents include attachments, or where multiple internal or external stakeholders hold an interest in the information.
23. During its internal review HMT set out a sampling exercise in order to gauge the level of burden likely to be imposed by compliance with the request. A sample of 31 emails within the scope of the request took HMT approximately 2 hours to identify potentially exempt material, as well as the different external stakeholders who would need to be consulted regarding potential disclosure. Based on this exercise, HMT estimated that it would take over 60 hours merely to review all 1,000+ documents within scope to identify exempt material and to identify relevant stakeholders to consult on disclosure.
24. HMT highlighted that the estimate of over 60 hours is before consideration of any time spent on the public interest test, consulting stakeholders regarding things such as commercial interests or information provided in confidence, and completing redactions of material found to be exempt from disclosure.
25. Furthermore, HMT explained that from the sample of 31 emails alone they had identified 56 different stakeholders. This number would be expected to increase significantly if all 1000+ records were reviewed, given that the Spinouts Review engaged widely with stakeholders across the entire UK Spinouts ecosystem, as well as in other leading regimes such as the US, Sweden, Canada, Switzerland, France and New Zealand. HMT asserted that this would add substantially to the burden of

compliance, as consulting multiple stakeholders on disclosure of information is likely to be a very time-consuming process.

26. Finally, HMT argued that the nature of the Spinouts Review means that large amounts of information was provided by numerous third parties, for the purpose of conducting a robust and productive review. Such information is likely to at least engage the exemptions at section 40(2) (personal information), section 41(1) (information provided in confidence) and section 43(2) (commercial interests). As the review will feed into policy recommendations and development, it is also clear that some information within the scope of the request will engage section 35 (formulation of government policy). Further, the potentially exempt information cannot be easily isolated from the non-exempt information as it is scattered throughout the documents within the scope of the request.
27. During the Commissioner's investigation HMT conducted a further alternative sampling exercise to demonstrate the oppressive burden that compliance with the request would impose and, as such, justify its application of section 14(1) of FOIA. This exercise focused on 67 items falling within the scope of part 3 of the request. These 67 items totalled approximately 405 pages and involved 40 third parties.
28. HMT broke down the tasks which it considers it would need to conduct in order to comply with the request, as follows:
  - Locate information within scope involving third parties and identify contact details for those concerned;
  - Create and maintain a spreadsheet to facilitate consultation with relevant third parties and track progress and any decisions resulting from those consultations;
  - Consult with stakeholders who provided the information within scope to identify any information that would be harmful/engage an exemption;
  - Review each item within scope to identify and redact any information that would be harmful to release;
  - Quality check all information within scope to ensure that all exempt information has been redacted as necessary.
29. HMT set out a detailed description of the work involved at each of the above stages, and estimated that it would require 29 hours and 5 minutes of work to complete all of the tasks for the sample of 67 items. It reached this estimate by applying informed, yet conservative, timeframes to each task. For example, whilst HMT would contact all

third parties to consult on the disclosure of information which they are concerned with, HMT only included time in its estimate for further ongoing direct discussions with 25% of those third parties regarding the request and the information they provided to the review, rather than assuming that direct discussions would need to take place with all stakeholders and, subsequently, overestimating the burden of complying with the request.

30. To conclude, HMT summarised that it considers the amount of time required to review and prepare the information for disclosure would impose a grossly oppressive burden as the complainant has asked for a substantial volume of information, and HMT has real concerns regarding potentially exempt information which it cannot easily isolate because it is scattered through out the requested material.

### **The complainant's position**

31. The complainant stated that the fact HMT did not rely on section 12 of FOIA reduces a lot of its claim that section 14 can be engaged, and pointed out that this is an isolated request so HMT cannot claim any past or presumed future burdens based on demonstrable patterns.
32. The complainant also argued that the requested information is in the public interest, rather than just being "interesting for the public". This is due, in particular, to the highly publicised nature of the Spinouts Review, as well as the potential consequences for UK Academia, Universities, Technology Transfer, Investment, etc. Therefore transparency and accountability should be at the heart of HMT's work on the review.
33. The complainant further stated that HMT's assertion that the request is vexatious is nonsensical, and that no reasonable person can conclude that the request lacks purpose or value, nor can they deduce that it would cause any harassment or distress to HMT or its staff.
34. The complainant also set out that a public authority is not forced to consult with every single stakeholder or mentioned individual when handling a request for information, and that if such an approach is not practical HMT should contact representatives or act according to their own understanding and good faith.
35. The complainant concludes that their request is not vexatious within the meanings and precedents of FOIA, and therefore considers that disclosure of the requested information is warranted.

## **The Commissioner's conclusion**

36. 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.
37. The Commissioner's guidance on section 14(1) of FOIA<sup>3</sup> advises that a single request taken in isolation, for example the first and only request received from an individual, may be vexatious solely on the grounds of the burden it imposes. The guidance further sets out that a public authority cannot rely on section 12 for the cost and effort associated with considering exemptions or redacting exempt information. Nonetheless, a public authority may apply section 14(1) where it can make a case that the amount of time required to review and prepare the information for disclosure would impose a grossly oppressive burden.
38. In this case the Commissioner has considered the arguments put forward by both parties'. He is satisfied that the terms of the request, along with the subject of the Spinouts Review, mean that the scope is extremely broad and therefore covers a very large amount of information. However, HMT was very transparent in confirming that it did not meet the threshold for the cost of compliance for it to identify and locate all of the information within the scope of the request, therefore it was correct not to cite section 12(1) of FOIA in this instance.
39. Whilst there is no set time or cost limits associated with engaging section 14(1), the Commissioner accepts that sampling exercises can provide a good indication of the level of burden that compliance with a request may impose. The estimate of 29 hours may not at first sight seem like a burden large enough to be considered grossly oppressive to an organisation the size of HMT, however it is important to remember that the estimate considered less than 10% of the documents within the scope of the request. Whilst the estimate is based somewhat on educated presumptions rather than exact science, and there will clearly be variances on time required across the documents due to differing lengths, details, attachments, etc, the Commissioner is satisfied that the total time required for HMT to review and prepare all of the information will undoubtedly be much greater.

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<sup>3</sup> <https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/section-14-dealing-with-vexatious-requests/how-do-we-deal-with-a-single-burdensome-request/>



40. The Commissioner accepts the complainant's argument that HMT would not need to consult with every single third party identified within, or holding an interest in, the requested information. However, the very nature of the review does mean that there will be at least some need for HMT to consult with some of the third parties regarding matters such as commercial interests. The Commissioner's guidance on section 43 (commercial interests) explains that a public authority does not have to disclose information that a third party provides to it if the disclosure would, or would be likely to, prejudice their commercial interests. It is not sufficient for the public authority to simply speculate about any prejudice which might be caused to the third party's commercial interests. It must consult them for their exact views in all but the most exceptional circumstances. The Commissioner is satisfied that HMT has taken a reasonable approach in its consideration of the consultations it may be required to carry out in order to comply with the request, and this has been reflected fairly in its sampling exercise which allowed time for ongoing consultation with 25% of the stakeholders identified from the sample documents, rather than all of them.
41. Whilst it is clear that the subject of the Spinouts Review is of great interest to those affected by the outcome of the review, the Commissioner is not persuaded that the level of detail contained across the very many documents within the scope of the request is of notable value to the general public. Further, the review has now been completed and published. Therefore there is a lot of information about it readily available in the public domain, which will satisfy much of the general public interest.
42. The Commissioner is satisfied that HMT has sufficiently demonstrated that to review and prepare all of the information within the scope of the request would impose a grossly oppressive burden on its resources, and the level of that burden is such that it outweighs the value of the request. He therefore finds that HMT was entitled to rely on section 14(1) of FOIA to refuse the request.

## **Other matters**

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43. The Commissioner wishes to note that HMT did offer advice and assistance to the complainant with each of its responses about narrowing the scope of the request. HMT reiterated this in its correspondence to the Commissioner during his investigation, stating that it may be able to assist the complainant further if they amended their request to cover much more specific areas of interest, such as specific stakeholder/contributors, or a particular timeframe. HMT also indicated that the published information about the review may assist the complainant in determining more specific information which they are interested in.

## Right of appeal

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44. 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)

45. 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.
46. 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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