

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 15 May 2024

Public Authority: HM Revenue and Customs
Address: 100 Parliament Street
London
SW1A 2BQ

Decision (including any steps ordered)

1. The complainant requested information relating to Disguised Remuneration Steering Group (DRSG) meeting minutes from HM Revenue and Customs (HMRC). HMRC relied on section 14(1) of FOIA (vexatious) to refuse the request.
2. The Commissioner's decision is that HMRC was entitled to rely upon section 14(1) of FOIA when refusing the request.
3. The Commissioner does not require any steps.

Request and response

4. On 26 October 2023, the complainant wrote to the public authority and requested information in the following terms:

"The DRSG was set up in January 2021 to replace the Loan Charge Steering Group. (LCSG)

Please supply the minutes of the meetings of the DRSG from 1st January 2021 to 31st January 2023.

The minutes of the meetings of the previous LCSG have been released as part of FOI2023/23075. This covered a period of approximately 26 months. This request is for a slightly shorter period."

5. HMRC responded on 16 November 2023. It refused the request as vexatious due to the cost and burden of responding to the request – a position it upheld following an 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 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.

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

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

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).

HMRC's view

15. HMRC explained to the Commissioner that the Disguised Remuneration Steering Group (DRSG) steers and co-ordinates crosscutting HMRC input into the implementation of strategy, policy, compliance and appropriate customer support with regard to the employment and self-employment-based Loan Charge and associated Disguised Remuneration (DR) activity.
16. The group also provides governance for all relevant DR and Loan Charge issues that are not decided through business as usual governance. This includes risks, issues, policy, strategy, operations, and customer support.
17. HMRC added that representation for the group is broad, this is due to the wide range of issues from policy to multi-directorate compliance and customer support. On this basis, the remit of the new DSRG extends far beyond that of the Loan Charge Steering Group (LCSG), covering more topics with more expansive and detailed minutes.
18. In regards to this request, HMRC explained that the meeting minutes in question involve the discussion of submitted papers, maintenance of action, risks, and issues logs, as well as a log of ongoing activity related to Loan Charge recommendations. Unlike the minutes of the LCSG, which had been previously requested by the complainant, copies of

these documents are embedded, and form part of the minutes themselves.

19. It added that disclosure of this information would require extensive review to identify information subject to FOIA exemptions, and in many cases consider the public interest test.
20. HMRC informed the Commissioner that, in this case, the requested information covers 22 separate meetings over a period of two years. Presented as a single document, the minutes comprise 102 pages with an additional 165 embedded attachments. It advised in total this would be 187 documents which would require reviewing.
21. HMRC added that, due to the subject matter and nature of the information, it can be considered that a large proportion will fall within the exemption of section 35(1)(a), whilst some of the information contains examples of free and frank provision of advice/exchange of views which would require consideration with reference to section 36(2)(b). It added that alongside these exemptions it was likely that sections 40(2), 44(1)(a), 31(1)(d) and 42 may also apply.
22. HMRC advised that the terms of reference for the DRSG states that membership of the group consists of 22 roles. It advised that due to the nature of the request, all members of the group would need to review and consider any potential exemptions.
23. HMRC advised that one member of staff conducted a sampling exercise on four of the minute meetings in question. It took one member of staff 134 minutes to review the documents in question and identify any exemptions which may be required. HMRC advised that the application of any exemptions would take considerably longer.
24. HMRC advised that it had previously disclosed minutes of the Loan Charge Steering Group from October 2019 to December 2020, the minutes of these meetings were not as expansive of those of the DSRG and did not include any embedded attachments. When presented as a single document, the minutes comprised of 38 pages, compared to 102 pages for this request.
25. HMRC concluded that even if each of the group were to spend just 10 minutes reviewing the primary 22 documents (excluding the embedded attachment) this would still exceed 80 hours. If including the embedded attachment, the process would likely exceed 685 hours.

The complainant's view

26. The complainant advised that HMRC had provided minutes of 2 years' worth of meetings in a previous disclosure, but are unwilling to provide

the minutes of the meetings for the most recent two years. The complainant explained that the requested information was of significant interest to the public.

The Commissioner's decision

27. In cases where a public authority is relying on section 14(1), it must demonstrate why it considers that a request is a disproportionate, manifestly unjustified, inappropriate or improper use of FOIA.
28. In this instance, it is apparent that HMRC is rejecting the request on the grounds of burden, in terms of time/staff resource. There is no suggestion that the complainant is not pursuing a serious request or is engaging in unreasonable behaviour. The Commissioner therefore needs to consider whether the request may be refused as vexatious on the grounds that it would take up an undue amount of HMRC's time and resources.
29. The Commissioner accepts that complying with such a large request may require multiple members of staff to review and consider exemptions when responding to the request.
30. The Commissioner accepts that the estimate provided by HMRC that it would take in excess of 104 hours to review all 187 documents at a rate of 134 minutes for every four documents, is a reasonable estimate.
31. The Commissioner is mindful that the estimate provided by HMRC was based on a sample of four specific minutes. The remaining information may vary in size, meaning that complying with the request could take more or less time than that estimated. He is also aware that if more than one member of staff were to work on the request, which he considers to be a reasonable assumption, the estimate may be somewhat higher than the previously estimated 104 hours. Yet even were the estimate to be halved, it is apparent that answering the request would represent an unreasonable burden on HMRC.
32. Whilst the Commissioner acknowledges that HMRC is a large organisation with many resources available to it, he does not think it would be reasonable to ask HMRC to divert resources and attention from day to day tasks in order to comply with such a large request, notwithstanding the public interest.
33. Based on the above, the Commissioner believes that HMRC was entitled to rely on section 14(1) of FOIA to refuse the request.

Right of appeal

34. 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

35. 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.
36. 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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