

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

### **Decision notice**

**Date:** 2 July 2024

**Public Authority:** Attorney General's Office  
**Address:** 102 Petty France  
London  
SW1H 9EA

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

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1. The complainant requested specified emails and documents relating to internal FOI handling correspondence. The Attorney General's Office (AGO) refused to comply with the request, citing section 14(1) (vexatious request) of FOIA.
2. The Commissioner's decision is that the AGO was not entitled to rely on section 14(1).
3. The Commissioner requires the AGO to take the following step to ensure compliance with the legislation:
  - provide the requested information or issue an appropriate refusal notice which does not rely on section 14(1).
4. The AGO must take this step within 30 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**

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5. On 2 January 2024, the complainant wrote to the AGO and requested information in the following terms:

"Please provide a copy of the email and documents as listed in the below Annex, referenced in your DPA [Data Protection Act] response to me of 28 December 2023".

6. The AGO responded on 30 January 2024, citing section 14(1) (vexatious request) of FOIA.
7. Following an internal review, the AGO wrote to the complainant on 5 March 2024 maintaining its view that section 14(1) applies.

### **Scope of the case**

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8. The complainant contacted the Commissioner to complain about the way their request for information had been handled. They dispute that section 14 applies and believe that there is a public interest in transparency in this case.
9. During the course of the Commissioner's investigation, the AGO confirmed that it did not wish to make further representations beyond what is contained in the correspondence with the complainant.
10. The analysis below considers the AGO's application of section 14(1) of FOIA to the requested information.

### **Reasons for decision**

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#### **Section 14 vexatious request**

11. Section 14(1) of FOIA states:

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

12. Section 14(1) of FOIA 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.
13. 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.
14. Most people exercise their right of access responsibly. However, a few may misuse or abuse FOIA by submitting requests which are intended to

be annoying, disruptive or have a disproportionate impact on a public authority.

15. In his published guidance on dealing with vexatious requests<sup>1</sup>, the Commissioner considers the key test is to determine whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress.

16. In that respect, his guidance advises public authorities that:

“A useful starting point is to assess the value or purpose of the request before you look at the impact handling the request would have on you”.

17. The emphasis on protecting public authorities' resources from unreasonable requests was acknowledged by the Upper Tribunal in the leading case on section 14(1), *Information Commissioner vs Devon County Council & Dransfield* [2012] UKUT 440 (ACC), (28 January 2013). 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) any harassment or distress of and to staff.

18. The Upper Tribunal did, however, also caution that these considerations were not meant to be exhaustive. The Upper Tribunal emphasised that:

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

### **The AGO's view**

19. The AGO considers that the request is vexatious for several reasons. For example:
  - an attempt to obtain information refused under a previous FOIA request;
  - previous course of dealings and burden to the AGO; and
  - information requested is not in the public interest.
20. In support of its view that the request represents an attempt to obtain information previously refused, the AGO referenced the dates of previous, recent, interactions between the complainant and the AGO.
21. It told the complainant that it views the request in this case as a 'fundamentally improper use of FOIA'.
22. Similarly, it told the complainant:

"...the previous course of dealings you have had with the AGO in the last 18 months, alongside the significant previous and future burdens, also serve to render this request vexatious".
23. In that respect the AGO told the complainant that their two FOI requests are sufficiently similar "that there is a possibility of an overlap".
24. With regard to the nature of the requested information, the AGO acknowledged that it comprises emails that "relate to internal and cross-government administration" when handling the complainant's previous FOIA request.
25. It argued that the information of is little, or no, inherent public interest due to its administrative nature.
26. The AGO told the complainant that it is amongst the smallest government departments and that the burden of complying with the request is disproportionate.
27. It also argued that the complainant's requests have diverted officials "from the important task of providing legal advice....".

### **The complainant's view**

28. The complainant disputes that the request in this case is an attempt to obtain information denied under a previous request. They explained, to both the AGO and the Commissioner, that the purpose of this request is to understand how that previous FOI request was processed. They

consider that disclosure of the requested information would serve the public interest in transparency in relation to public access to public records via FOIA.

29. They consider that the wording of the request demonstrates a serious attempt to obtain specific information. They also consider that the request in this case is 'very clearly not an attempt to obtain the same information through a circuitous route'.
30. Nor do they accept that this is a pattern of requests asking for exactly the same thing, for example, when good reasons not to disclose have been provided.
31. In correspondence with the Commissioner, the complainant argued that there is a public interest in transparency around process, where that process raises concerns. They therefore consider that there is a public interest in disclosing the content of the requested emails.
32. Although not required to do so, when requesting an internal review, the complainant explained why they believe that they are genuinely trying to obtain information about a particular issue.
33. They asserted strongly that they have no interest in, or reason to, abuse the FOIA process. Nor do they accept that the request meets the burden test.

### **The Commissioner's view**

34. In his guidance on dealing with vexatious requests, the Commissioner recognises that 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.
35. Applying section 14(1) essentially removes the right of access by the requester to the requested information. The Commissioner therefore considers that the threshold to meet this is a necessarily high one.
36. Most people exercise their right of access responsibly. However, a few may misuse or abuse FOIA by submitting requests which are intended to be annoying, disruptive or have a disproportionate impact on a public authority.
37. 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.

38. 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. The Commissioner expects public authorities to provide detailed explanations and justification regarding why it considers the request is vexatious.
39. In accordance with his guidance on request handling<sup>2</sup>, the Commissioner recognises that a public authority will need to consider all of the circumstances of the case before making its decision about whether or not a request is vexatious. He recognises that this can include taking the wider context of a request into account when considering whether it is vexatious. For example, previous dealings with a requester, including any previous requests they submitted.
40. The Commissioner has considered the AGO's arguments about its previous dealings with the complainant and their view that the current request is linked to those earlier ones. He considers that the AGO has failed to substantiate its argument that responding to the current request would generate further correspondence, either from the complainant or other requesters.
41. With respect to the burden that would be associated with complying with the request, the Commissioner acknowledges that the AGO comprises one of the smaller government departments. He recognises that the threshold at which the burden becomes grossly oppressive is lower for a small organisation than for a larger public authority.
42. However, he considers that the AGO's arguments about burden fail to explain the effort involved in complying with the request under consideration in this case.
43. The Commissioner recognises that the AGO initially considered that there was limited, if any, public interest in the request and argued, for example, that it appears an overlap may have been intended between the complainant's two requests.
44. He acknowledges that, in contrast, the complainant considers that their request "clearly meets the serious purpose test".

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<sup>2</sup> <https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/request-handling-freedom-of-information/>

45. In his guidance, the Commissioner notes that a requester may be pursuing a particular line of enquiry. He also states:

“If the value or purpose of the request is not immediately obvious you may take account of any comments the requester might have made about the purpose behind their request or any evidence they are willing to volunteer. This will help you decide whether there is a public interest in disclosing the information. However FOIA does not require a requester to give their reasons for making a request and you cannot insist they do”.

46. He is therefore concerned to note that, even with the benefit of the insight provided by the complainant as to the purpose of the request, the AGO appears to dismiss the complainant's arguments without giving them due consideration. He considers that the AGO failed to consider whether there was any public interest in the information despite it being of an administrative nature.
47. The issue for the Commissioner to determine is whether the request was vexatious. Having adopted an holistic approach, the Commissioner finds, for the reasons set out above, the AGO has failed to demonstrate how complying with this request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress.
48. It follows that that the request was not vexatious and the AGO was not entitled to refuse it under section 14(1) of FOIA.

## Right of appeal

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49. 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)

50. 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.
51. 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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