

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 7 November 2018

Public Authority: Information Commissioner

Address: Wycliffe House
Water Lane
Wilmslow
SK9 5AF

Note: This decision notice concerns a complaint made against the Information Commissioner ('the Commissioner'). The Commissioner is both the regulator of the FOIA and a public authority subject to the FOIA. She is therefore under a duty as regulator to make a formal determination of a complaint made against her as a public authority. It should be noted, however, that the complainant has a right of appeal against the Commissioner's decision, details of which are given at the end of this notice. In this notice the term 'ICO' is used to denote the ICO dealing with the request, and the term 'Commissioner' denotes the ICO dealing with the complaint.

Decision (including any steps ordered)

1. The complainant has requested from the Information Commissioner's Office ('the ICO') copies of correspondence associated with a previous decision by the Information Commissioner. The ICO has refused to comply with the request which it has categorised as vexatious under section 14(1) of the FOIA.
2. The Commissioner's decision is as follows:

- The request is vexatious and the ICO is not obliged to comply with it.
3. The Commissioner does not require the ICO to take any steps to ensure compliance with the legislation.

Request and response

4. On 1 December 2017 the complainant wrote to the ICO and requested information in the following terms:

"Please can you provide a copy of the email sent from the MHRA to the Information Commissioner on 20th November 2013 concerning a letter dated 23rd October 2009 for a tribunal appeal ref:EA/2010/0055 Any internal ICO correspondence and correspondence to the MHRA/Government Legal Department regarding the disclosure of patient numbers contained in this letter dated 23rd October 2009 for the same appeal."

5. The ICO responded on 2 January 2018. It withheld the requested information under FOIA sections 32, 32(1) (court records) and 42(1) (legal professional privilege). The ICO said the balance of the public interest favoured maintaining the section 42(1) exemption.
6. The ICO provided a review on 31 March 2018 and upheld its position.
7. During the Commissioner's investigation the ICO reconsidered the request, withdrew its reliance on sections 32 and 42 and told the Commissioner that it had categorised the request as vexatious under section 14(1). On 31 October 2018 the Commissioner advised the ICO to communicate its new position to the complainant.

Scope of the case

8. The complainant contacted the Commissioner on 1 May 2018 to complain about the way her request for information had been handled.
9. The Commissioner's investigation has now focussed on whether the complainant's request can be categorised as vexatious under section 14(1) of the FOIA.

Reasons for decision

Section 14 – vexatious or repeated requests

10. Under section 14(1) of the FOIA a public authority is not obliged to comply with a request if the request is vexatious.
11. The term 'vexatious' is not defined in the FOIA but the Commissioner has identified a number of 'indicators' which may be useful in identifying vexatious requests. These are set out in her published guidance and, in short, they include:
 - Abusive or aggressive language
 - Burden on the authority – the guidance allows for public authorities to claim redaction as part of the burden
 - Personal grudges
 - Unreasonable persistence
 - Unfounded accusations
 - Intransigence
 - Frequent or overlapping requests
 - Deliberate intention to cause annoyance
12. The fact that a request contains one or more of these indicators will not necessarily mean that it must be vexatious. All the circumstances of a case will need to be considered in reaching a judgement as to whether a request is vexatious.
13. The Commissioner's guidance goes on to suggest that, if a request is not patently vexatious, the key question the public authority must ask itself is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress. In doing this the Commissioner considers that a public authority should weigh the impact of the request on it and balance this against the purpose and value of the request.
14. Where relevant, public authorities also need to take into account wider factors such as the background and history of the request.
15. In its submission to the Commissioner, the ICO has noted that the Commissioner's guidance advises that a public authority can take account of its previous dealings with a requester. The ICO has confirmed that it has taken into account the context and history of the complainant's contact and dealings with it, in ascertaining her latest request to be vexatious.
16. The ICO says it holds records of 18 freedom of information requests that it has received from the complainant (while noting that there may well have been more as its casework over two years old is usually deleted in

line with its retention schedule). The requests predominately relate to an appeal to the First Tier Tribunal (Information Tribunal) ('the FTT') dating back to 2010 (EA/2010/0055), the decision notice to which this appeal relates, and the ICO's retention and deletion policies. The ICO has told the Commissioner that it has also received copious and protracted correspondence from the complainant in connection with these matters. It has confirmed that the current request relates to information held in connection with the above appeal reference.

17. In the ICO's view there is a common theme to the complainant's requests and it considers that they demonstrate a level of unreasonable persistence on the part of the complainant.
18. As mentioned above, it says the request relates to information held in connection with the complainant's long running appeal to the FTT against a decision notice made by the Commissioner. Following a long running saga, the FTT dismissed the complainant's appeal and promulgated its decision in May 2016.
19. The complainant's subsequent application to the Upper Tribunal was also dismissed and it appears to the ICO that current request is an attempt to revisit matters it considers to be fully resolved.
20. The ICO considers that this is given further credence by the fact that the complainant argues in her internal review request that:

"The requested information may provide a more complete picture of the Commissioners approach to his investigation of the complaint and may confirm whether or not the Commissioner provided an accurate account of his investigation of the complaint to the Tribunals and the Court."

21. The ICO says that these arguments demonstrate unreasonable persistence on the part of the complainant. It argues that it also displays another hallmark of vexatious requests in that it appears to be making unfounded allegations regarding the Commissioner's conduct of this investigation and the subsequent appeal. The ICO has explained that any such issues will have undoubtedly been considered by the FTT and in any event, the complainant has now exhausted the appeals process. As such it makes this request ultimately futile and negates any serious purpose the request may have had. The ICO goes on to say that further coverage of the same ground is unlikely to resolve matters to the satisfaction of all those involved and will inevitably lead to further protracted correspondence and lead to a burden on its limited resources.

22. The ICO has noted in its submission that the complainant has made multiple requests for the same or similar information previously, in particular, the information requested in the first part of her request:

"Please can you provide a copy of the email sent from the MHRA to the Information Commissioner on 20th November 2013 concerning a letter dated 23rd October 2009 for a tribunal appeal ref:EA/2010/0055"

23. The ICO says it has dealt with this request, or variations of it, in previous information requests spanning a number of years, and it has detailed four requests that are similar to each other and the current request, which it has received since 2014. In 2014 the ICO says it wrote to the complainant in relation to another request. It advised that:

"We have now reached the point where we consider that we have provided you with all of the recorded information we hold around these matters and copies of relevant policies and procedures that you have asked for. We do not think there is any further useful recorded information or explanations we can add. Any outstanding issues should be addressed within the appeal process; this is the proper forum for consideration of whether or not requested information that has been withheld by a public authority should or should not be disclosed – which is the fundamental question here."

24. In spite of this, and the conclusion of the appeal in 2016, the ICO says that the complainant has continued making requests on this and related matters.

25. The ICO finds that the complainant's unwillingness to accept the independent determination of the FTT (in an appeal that took six years to come to a conclusion), and repeated requests on the same topic, or for the same information, indicate a level of unreasonable persistence and obsessiveness with these matters. It therefore finds that in light of this background and context, this request is vexatious. The ICO says it also considers that the request has no serious purpose in terms of the wider public interest and is simply an attempt to re-open matters that have been comprehensively concluded.

26. The Commissioner has considered the ICO's submission and she has been persuaded by its arguments that the complainant's request can be categorised as vexatious. The complainant's request is another in a line of requests that all broadly concern a FTT decision and a decision of the Commissioner's that generated that appeal (FS50237119). Those particular matters go back to 2010. The FTT considered the appeal and dismissed it in 2016. The Upper Tribunal has dismissed the complainant's subsequent appeal to it. The associated matters surrounding the Commissioner's original decision have therefore been

comprehensively considered and the Commissioner agrees that the complainant is using the FOIA as a means to re-open matters that are closed.

27. In its long history with the complainant, the ICO has addressed her original complaint to her in 2010 through a decision notice and, up to now, has complied with her series of associated requests for information, a number of which have been for the same or similar information. At this point the ICO says there is nothing more it can usefully provide to the complainant. The Commissioner has taken account of this and the history and circumstances of this current request, which includes the relatively high volume of earlier requests and associated general correspondence. She is satisfied that responding to the complainant's current request would be a burden to the ICO that is disproportionate to the request's value and purpose. The Commissioner is therefore satisfied that the request meets the criteria for vexatiousness under section 14(1) of the FOIA.

Right of appeal

28. 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: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

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

29. 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.
30. 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

Pamela Clements
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