

18 September 2023

## **ICO Case Reference IC-255369-Y7X2**

### **Request for information**

Request received 2 September 2023:

- "1. How many vexatious request appeals has the Information Commissioner's Office received from the public in the last two years?*
- 2. How many were upheld as being vexatious? And how many were non-vexatious referred back to organisations for a response?*
- 3. How do the number of vexations compare with the previous two years to the above - ie are they increasing?*
- 4. Is there any evidence to show that organisations now vex requests to prevent requesters getting answers, or delay responding to requests? So making more work for the Information Commissioner's Office. Has this point been discussed internally?*
- 5. How long does it take the Information Commissioner's Office to make a Decision on vexed requests? What is the average time taken to make one?"*

Your request has been handled under the Freedom of Information Act 2000 (the FOIA). As you are aware, this legislation provides public access to recorded information held by a public authority unless an appropriate exemption applies.

We have interpreted your request to be about complaints made to the ICO by individuals who have had FOI requests to other public authorities refused under section 14(1) of the FOIA.

Your request included other questions, numbered 6 to 11. These have been addressed separately as they are enquiries, not requests for recorded information that can be addressed under the FOIA. Please see the section below titled 'Other enquiries'.

## **Our response**

We do hold some information in scope of your request. However, searching for the information requested in questions 1, 2, 3, and 5, and conducting the searches necessary to confirm if we hold the information you have asked for in question 4, would exceed the cost limit set out by section 12 of the FOIA.

## **Section 12 FOIA**

Section 12(1) of the FOIA is a provision which allows a public authority to refuse to comply with a request for information where the cost of compliance is estimated to exceed a set limit known as the appropriate limit.

[The Freedom of Information and Data Protection \(Appropriate Limit and Fees\) Regulations 2004 \(legislation.gov.uk\)](#) states that the appropriate limit for the ICO is £450. We have determined that £450 would equate to 18 hours work.

### *Questions 1, 2, 3 and 5*

When we record the reason for an FOI complaint in our casework management system as relating to section 14 of the FOIA, we do not always specify if it relates to section 14(1) (vexatious requests) or section 14(2) (repeated requests). This information is contained in the case file but not always in a way that enables a quick, automated search. So for FOI complaint cases recorded in our systems as 'section 14' only, to say if they relate to complaints about a refusal due to vexatiousness, or if they relate to a refusal due to a repeat request, this would require a manual search of each case file.

Our casework management system currently holds 356 FOI complaint cases where we have recorded that an individual has complained they had an FOI request to a public authority refused on the grounds of section 14(1). However, we also hold 202 FOI complaint cases where we have recorded a complaint about a section 14 refusal, but where it is not specified if the complaint relates to section 14(1) or section 14(2). To be certain if the complaint was about a section 14 refusal that had been issued because it was deemed a vexatious request, or if it was deemed a repeated request, we would need to manually check each case file.

Neither do we have a field in our casework management system to record if an FOI request has been referred back to a public authority for a response. This may be stated in a Decision Notice, but some complaints are resolved informally. Again, to know if complaints regarding section 14(1) refusals had been referred back to the public authority for a response would require a manual search of our casework records.

Public authorities may also change their stance during an FOI complaint investigation. A complaint case may initially be about an FOI request to a public authority that has been refused due to section 14(1), but the public authority may change their stance and come to rely on a new exemption. The primary reason for such complaint cases may not be recorded as 'section 14', even though that was the initial reason for the complaint.

The reverse is also true. An individual may complain about a public authority applying an exemption, and during our investigation the public authority may change their stance to rely on section 14(1). This may then be recorded in our casework management system as 'section 14' or 'section 14(1)', even though the initial complaint was not about a section 14(1) refusal.

We receive thousands of FOI complaints each year (e.g. 5,479 FOI complaints were received in 2022/2023 - [ICO Annual report 2022-23](#)), and to provide the information in response to your request would require a manual search of each one. Assuming each search would take around one minute to complete – and it is certain that some searches would take longer – this would clearly exceed the appropriate limit set out in the legislation, triggering the provisions of section 12 of the FOIA.

#### *Question 4*

The information requested in question 4 is not information we normally need to record for our purposes. We do not have a field in our casework management system to record whether we regard a public authority to have used sections of the FOIA erroneously to block or delay the disclosure of information. Our case management system is unable to run a quick, automated report on this type of information.

Therefore, to confirm if we hold the information you have requested in question 4, it would require a manual search of thousands of cases. We would need to read each case file to ascertain if there was any evidence to suggest that the public authority was incorrectly applying section 14 refusals, and if we had found they were doing so to block or delay the disclosure of information. This would involve reading the correspondence between ICO and the public authority, which might comprise multiple emails, attachments and letters on each case.

Assuming each search would take around three minutes to complete – and it is certain that some searches would take longer – this would clearly exceed the appropriate limit set out in the legislation, triggering the provisions of section 12 of the FOIA.

### **Advice and assistance**

You could narrow your request to a specific public authority or much narrower timeframe to bring it under the 18 hour search limit. However, we would need to consider if it is in the public interest for us to dedicate the resources necessary to carry out this kind of manual search, or whether it represents an unreasonable burden on us as a public authority.

We would also have to consider the value and accuracy of the information we would be able to provide in response to your request in question 4, even if the scope was narrowed. Responding to this part of your request would require a degree of interpretation. The potential is that two separate individuals may come to different conclusions about whether we held evidence that a public authority had used sections of the FOIA erroneously to block or delay the disclosure of information if that evidence was not explicit e.g. an admission by a public authority that this was their approach. Therefore, you could consider excluding question 4 from any new request with a narrower scope.

You could also restrict your request to cases where we have recorded 'section 14' and/or 'section 14(1)' as the main legislative reason for the complaint. As previously explained, this may capture some cases where the initial complaint was not about a section 14 refusal, but where the public authority later came to rely on section 14. However, in that instance your request may well attract

the exemptions at section 21 (information which is reasonably accessible to the applicant) and section 22 (information intended for future publication) of the FOIA. See below for guidance on where to access this information.

## **Further information**

Much information that can be extracted from our casework management system using automated means is already published by the ICO. Details regarding FOI complaints reported to us are published in our [Complaints and concerns data sets](#), specifically in our datasets of [Complaints under s50 of the Freedom of Information Act 2000](#). The published datasets currently provide information from quarter 4 of 2020/2021, up to and including quarter 4 of 2022/2023. Datasets of casework from April 2023 onwards will be published in future.

You can search or filter the information in these datasets as required. For example, the column headed 'Decision Primary Reason' can be filtered to show only section 14-related complaints; and the 'Decision Detail' columns show whether the complaint was upheld. The datasets also show both the date the complaint was received and the date it was completed.

We also publish our [Decision Notices](#) (DNs) on the ICO website, and you can use the search function to search the DN's for cases where section 14 was a factor. The DN's show the date they were issued, and our findings regarding the complaint.

We publish our [FOIA EIR Casework Service Guide](#) on the ICO website, and this publication may go some way to explain how we investigate FOI complaints, the procedures we follow throughout this process, and how we record information relating to such complaints.

Please note that we do not retain casework records indefinitely. Therefore, information held regarding casework closed more than two years ago is likely to be incomplete. You can view our [Retention and Disposal Policy](#) on the ICO website.

## Other enquiries

Your request also includes the following questions:

- "6. What remedy does the public have when no Decision is forthcoming - particularly when caseworkers have been changed and case numbers changed and seemingly mixed up?*
- 7. Who does a member of the public refer the vex case to if the Information Commissioner's Office caseworker does not reply to requests for a decision?*
- 8. Can a vexation case be referred to an Information Tribunal without a decision from the Information Commissioner's Office.*
- 9. Would the vexation of a request be timed out in any way if there is no Decision?*
- 10. If the original request remains vexed and the time element means that the requested data might be out of date.. say by a year..can a requester reframe a request to update it, without being vexed again? So that the same lengthy performance is not repeated?*
- 11.Or could the Information Commissioner's Office allow the requester to update it in its Decision , or does it have to stick to the terms original request only?"*

These questions numbered 6 to 11 are not requests for recorded information; they are enquiries about processes and the legislation we oversee. Whilst we do provide a range of advice services for the public, we do not provide these through the WDTK website.

Please visit our website at [www.ico.org.uk](http://www.ico.org.uk) where you will find a great deal of advice and guidance. In particular, you may wish to view our [Policies and procedures](#) section, where you will find our [FOIA EIR Casework Service Guide](#). We also have a section of the website on [What to expect from the ICO when making an FOI or EIR complaint](#) which may help to answer your queries.

You can also call our helpline on 0303 123 1113 to speak to a member of our team. Or if you prefer to submit your questions in writing you can use our live chat service, accessible via [Advice services for members of the public](#), or by emailing [icocasework@ico.org.uk](mailto:icocasework@ico.org.uk). We will respond as quickly as we can.

## **FOI review procedure**

If you are dissatisfied and wish to request a review of our decision or make a complaint about how your request has been handled you should write to the Information Access Team at [accessicoinformation@ico.org.uk](mailto:accessicoinformation@ico.org.uk), or the postal address below.

Your request for internal review should be submitted to us within 40 working days of your receipt of this response. Any such request received after this time will be considered only at the discretion of the Commissioner.

If having exhausted the review process you are not content that your request or review has been dealt with correctly you have a further right of appeal to this office in our capacity as the statutory complaint handler under the legislation.

To make such an application, please write to our FOI Complaints and Compliance team at the address given, or visit our website at [Official information concern | ICO](#).

## **Your information**

Our [Privacy Notice](#) explains what we do with the personal data you provide to us and what your rights are. This notice includes entries regarding the specific purpose and legal basis for the ICO processing information that people such as [information requesters](#) have provided to us.

The length of time we keep information is laid out in our [retention and disposal policy](#).

Yours sincerely

Information Access Team

Strategic Planning and Transformation

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