

Date: 16 October 2023

INTERNAL REVIEW RESPONSE
Case Reference IC-255369-Y7X2

Review of response to information request

I write further to your email of 19/09/2023, in which you requested a review of the handling of your request dealt with under the reference number IC-255369-Y7X2.

As a result, we have conducted an internal review of our response to your information request which was handled under the above reference number. I am a Group Manager in the Information Access Team, and I can confirm that I have had no prior involvement in the handling of this request.

Request and response

On 02/09/2023 we received a request from you regarding complaints to the ICO's FOI Complaints team about requests labelled as vexatious by public authorities. In the request you asked for various statistics and pieces of guidance as follows:

- 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 - i.e. 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?*
- 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 *If the original request remains vexed and the time element means that the requested data might be out of date.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?*

We responded citing S.12 as providing all the information requested would clearly exceed the appropriate limit set out in the legislation due to the amount of manual searching that would be required to facilitate this. The response concluded by advising that responding in full would therefore trigger the provisions of section 12 of the FOIA.

Advice and assistance was also provided to enable you to narrow down the request.

Review

On receipt of the response, you requested an Internal Review as follows:

I am writing to request an internal review of Information Commissioner's Office's handling of my FOI request 'Vexatious requests - Time taken for Decisions'. Thank you.

- *Could you please confirm that it is impossible to respond to my request - as there is no way to search your internet files by using S14 as the data search term, rather than investigate each file.*
- *No member of the Information Commissioner's Office management team, or other, keeps a data list of vexatious requests - in order to monitor this part of the ICO's work.*
- *There is no table, or illustration - say for presentations - available that shows how well, or not, the Information Commissioner's Office is handling S14 requests.*
- *And that there is no Data to show the time taken to service them that the public may be shown.*

You followed up the Internal Review Request on 23/09/2023 as follows:

- *May I narrow my request to Welsh councils, starting with Monmouthshire County Council, until the time runs out? It took me two years to find out what was withheld from my SAR's and FOIA's ...while trying to make a MCC complaint including the councils handling of my data.... (The missing data was given to me via the Information Commissioner's Office. thanks) I was therefore unhappy to be turned down by the ombudsman - which has a one-year time rule - so I was technically unable to complain. Apparently, the evidence of withheld u data was not enough to break this legal determination, even if data was also delayed during lockdown periods.*
- *I would therefore like to know the average time for a decision on a vexed request (MCC again.) as I have been waiting, and since March, to read the ICO's*

Decision...apparently the Information Commissioner's Office gives no updates on progress. (as per request) and I have no idea if the Decision will be made before the year is out.

- *Time will run out - again - if I have to wait more than a year.*
- *I realise the Information Commissioner's Office must be very busy but logically councils have now to do is vex a FOIA request to play the system, to stop the public complaining to the Ombudsman.*

The purpose of this review is to look again at your request and the response that was provided to you, to ensure it was correct and that any exemptions applied were appropriate.

I can confirm that I have reviewed the correspondence on the information request and will respond to the comments made point by point below.

- *Could you please confirm that it is impossible to respond to my request - as there is no way to search your internet files by using S14 as the data search term, rather than investigate each file.*

- You have referenced Section 14 in this point. Section 14 covers both vexatious (14.1) and repeated (14.2) requests. I have noted that your original request referred to vexatious requests, which is Section 14.1. The ICO's initial response looked for requests refused citing Section 14.1.

It is possible to advise how many cases were refused as per Section 14(1) FOIA – but, not within the Appropriate Limit of 18 hours. As was advised in the original response, the case management system utilised by the Information Commissioner's Office (ICO) records the FOIA section assigned to a particular response when the case is closed. However, it does not require for a subsection to be recorded. Consequently, this does not always happen.

To ascertain the correct section and subsection, officers would be required to manually review all the cases where Section 14 has been recorded as the reason for refusing requests. This cannot be done within 18 hours for the reasons given in the initial response.

- *No member of the Information Commissioner's Office management team, or other, keeps a data list of vexatious requests - in order to monitor this part of the ICO's work.*
- This statement is incorrect. Decision Notices can be reviewed by clicking on the following link to publicly available information: [Search | ICO](#) . You can view all cases recorded as Section 14(1) by filtering the search accordingly. Section 14 can be chosen to filter cases in the same way. You are then required to manually review these responses to ascertain which cases are vexatious. As was advised in the initial response, information is already in the public domain published on the ICO's website. Details regarding FOI complaints reported to us are published in our [Complaints and concerns data sets | ICO](#) , specifically in our datasets of [Complaints under s50 of the Freedom of Information Act 2000 | ICO](#) .

I will reiterate that 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.

Undertaking manual searches of the published is time consuming and would take officers over the Appropriate Limit to determine, locate, retrieve, and extract the relevant cases. However, as this information is already in the public domain, you are able to do this yourself in your own time. Section 21 applies to all the published information – therefore technically it is exempt from disclosure under FOIA as it is reasonably accessible to you.

- *There is no table, or illustration - say for presentations - available that shows how well, or not, the Information Commissioner's Office is handling S14 requests.*
- I note your comment. It is not clear what you mean by 'how well or not the ICO is handling Section 14 cases'. I would advise you to search and filter the information published on the website as per the answer to the previous point.
- *And that there is no Data to show the time taken to service them that the public may be shown.*
- It is possible to obtain some data on closed cases looking at s14, s14(1), and Reg 12(4)(b) of the Environmental Information Regulations (EIRs). In order to obtain an 'average' for these cases, you would need to supply a time period. However, for the reasons given previously, this is likely to include some cases that are not classed as Vexatious.
Though the ICO cannot calculate an exact average for purely vexatious requests, I will point you to our published [scorecard](#) . This confirms that we have reached a decision and responded to FOI concerns within 6 months in 93.3% of cases. The scorecard also shares that we had 39 cases over 12 months old and provides some explanation for this. You are able to review previous performance here to see the challenges with the FOI backlog (e.g. 73.6% in Q4 22/23).
- *May I narrow my request to Welsh councils, starting with Monmouthshire County Council, until the time runs out? It took me two years to find out what was withheld from my SAR's and FOIA's ...while trying to make a MCC complaint including the councils handling of my data.... (The missing data was given to me via the Information Commissioner's Office. thanks) I was therefore unhappy to be turned down by the ombudsman - which has a one-year time rule - so I was technically unable to complain. Apparently, the evidence of withheld u data was not enough to break this legal determination, even if data was also delayed during lockdown periods.*
- As I stated earlier in my response, I would advise you to search and filter the Decision Notices on the website to the relevant Welsh authority and then FOIA section. You can also review the complaints and concerns data sets; and also the Complaints under s50 of FOIA data sets.

- *I would therefore like to know the average time for a decision on a vexed request (MCC again.) as I have been waiting, and since March, to read the ICO's Decision...apparently the Information Commissioner's Office gives no updates on progress. (as per request) and I have no idea if the Decision will be made before the year is out.*
- In respect of average time, I refer you back to an earlier answer in this review response. If you require an update on your case, you can contact the case officer through the case. Colleagues have pointed out that it may be possible that there is no update on this case (for example, the case officer could be awaiting submissions from the relevant public authority). However, they can offer a progress update and potential next steps.
- You may also find the following links to the ICO's backlog recovery work useful: [Blog: Director's Update – celebrating success and challenging ourselves for the future | ICO](#). Before the FOI Service undertook its backlog recovery work, it was taking on average 9 months to allocate a case at the peak of the backlog. This has now returned to service levels last seen before the pandemic, with cases now being allocated in less than 3 months and 93.3% completed within 6 months (Q1 23/24).

For the reasons laid out above, your review is not upheld.

Complaint procedure

If you are dissatisfied with the outcome of this review, you can make a formal complaint with the ICO in its capacity as the regulator of the Freedom of Information Act 2000. Please follow the link below to submit your complaint:

<https://ico.org.uk/make-a-complaint/>

Information Access

Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF
ico.org.uk twitter.com/iconews