

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

### **Decision notice**

**Date:** 15 December 2014

**Public Authority:** Charity Commission for Northern Ireland

**Address:** 257 Lough Road

Lurgan

Craigavon

Northern Ireland

BT66 6NQ

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

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1. The complainant made two sets of requests to the Charity Commission for Northern Ireland (the Charity Commission) on consecutive days. In the first set, the complainant asked the Charity Commission to provide details of the way it processed and safeguarded personal data. In the second set, the complainant asked the Charity Commission for a breakdown of the costs and expenses that were incurred with regard to the undertaking of a particular statutory inquiry. The Charity Commission refused both sets of requests on the basis they were vexatious for the purposes of section 14(1) of FOIA. The Commissioner considers that the Charity Commission properly applied section 14(1) of FOIA and does not therefore require any steps to be taken as a result of this notice.

### **Request and response**

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2. This notice refers to two sets of requests submitted by the complainant to the Charity Commission on 3 May 2014 and 4 May 2014 respectively. The terms of the requests are reproduced below.

- 3 May 2014

*Please supply information to explain the safeguards that are in place to help ensure CCNI [Charity Commission for Northern Ireland] handles personal data properly.*

*Detail the processes and safeguards to handle information requests, the dates when they were implemented and any records of meetings were [sic] they were discussed and agreed.*

*Please detail the training provided to staff and please supply your process manual, the date it was brought into use, any updates and their dates of implementation.*

- 4 May 2014

*Please send me a full breakdown of costs and expenses relating to the statutory enquiry [sic] by CCNI into [a specified issue].*

*This should include legal expenses incurred throughout the duration of the charity tribunal process in its entirety including direction meetings and any preparatory time spent with their barrister. Also any expenses claimed for travel, eating out etc whilst at tribunal or any other meeting relating to this case by CCNI staff.*

3. The Charity Commission responded to both sets of requests on 29 May 2014 and explained that it considered they were subject to section 14(1) of FOIA. This permits a public authority to refuse to comply with a request where that request is vexatious. The complainant contacted the Charity Commission later the same day and asked it to reconsider the decision to refuse the requests.
4. The Charity Commission carried out an internal review in light of the complainant's dissatisfaction, the outcome of which was provided on 7 July 2014. This upheld the original decision to apply section 14(1) of FOIA.

## **Scope of the case**

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5. The complainant contacted the Commissioner on 22 July 2014 to complain about the application of section 14(1) of FOIA to the requests of 3 and 4 May 2014. The Commissioner has therefore had to decide whether the Charity Commission was correct to claim in the circumstances that the requests were vexatious.

## **Reasons for decision**

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### **Section 14(1) – vexatious requests**

6. Section 14(1) of FOIA provides that a public authority is not obliged to comply with a request if that request is vexatious. Its inclusion within

the legislation is designed to protect public authorities from those who abuse, whether wittingly or not, the right to seek information. A critical point for the purposes of FOIA is that it is the request, and not the requester, that must be vexatious. However, a public authority may take into account the history and context of a request when deciding whether the exclusion applies.

7. FOIA itself does not set out what is meant by a 'vexatious' request. However, how the term should be interpreted has helpfully been considered by the Upper Tribunal in *Information Commissioner vs Devon County Dransfield [2012] UKUT (AAC), (28 January 2013)*<sup>1</sup>. The Upper Tribunal's decision, which is binding on the Commissioner, found that the term vexatious "in section 14 carries its ordinary, natural meaning within the particular statutory context of FOIA" (paragraph 24). The Upper Tribunal also agreed at paragraph 27 with an earlier First-tier Tribunal which observed, in the case of *Lee vs Information Commission and King's College Cambridge (EA/2012/0015, 0049 and 0085)*, that the term implies a "manifestly unjustified, inappropriate or improper use of a formal procedure" (paragraph 69).
8. In the *Dransfield* case, the Upper Tribunal 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 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). The Upper Tribunal did, however, also caution that these considerations were not meant to represent an exhaustive list. Rather, the Upper Tribunal stressed the "importance of adopting a holistic and broad approach to the determination of whether a request is vexatious or not, emphasising the attributes of manifest unreasonableness, irresponsibility and especially where there is a previous course of dealings, the lack of proportionality that typically characterise vexatious requests" (paragraph 45).
9. In recognition of the approach advocated by the Upper Tribunal and the reference to situations in which section 14(1) of FOIA may apply, the Commissioner says in his guidance on vexatious requests<sup>2</sup> that the provision should not be seen by public authorities as something which is only to be applied in the most extreme circumstances, or as a last

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<sup>1</sup> <http://www.ossccsc.gov.uk/judgmentfiles/j3680/GIA%203037%202011-01.doc>

<sup>2</sup> [https://ico.org.uk/for\\_organisations/guidance\\_index/~media/documents/library/Freedom\\_of\\_Information/Detailed\\_specialist\\_guides/dealing-with-vexatious-requests.pdf](https://ico.org.uk/for_organisations/guidance_index/~/media/documents/library/Freedom_of_Information/Detailed_specialist_guides/dealing-with-vexatious-requests.pdf)

resort. The test instead is whether complying with a request would be both 'proportionate' and 'justified' in the circumstances. Where these conditions are not met, a public authority may have legitimate grounds for refusing a request as vexatious.

10. The Charity Commission accepts that on the face of it there is nothing in the requests themselves, for example abusive or aggressive language, which would immediately characterise them as being vexatious. However, it considers the vexatiousness of the requests emerges when placed against the backdrop of a serious and, what would appear to be on occasion bitter, dispute between the parties. This relates to the undertaking of a statutory inquiry by the Charity Commission into the actions of a charity and its members, the outcome of which was appealed to the Charity Tribunal for Northern Ireland. The Commissioner does not feel it necessary to refer in detail to the development of the dispute here, save to say that both parties have deeply contrasting views on the issues in question.
11. As stated, a public authority may refer to the background and history of a request when determining whether or not a request is vexatious. In this case effectively the same vexatious arguments have been applied to the two sets of requests, with the Charity Commission finding that the requests each represent an extension of the complaint and should be analysed accordingly. The Commissioner has first looked to establish whether the Charity Commission was correct to view the requests as relating to the same underlying issue. If not, it is less likely that a particular request could be considered vexatious for the exact reasons argued by the Charity Commission.
12. The complainant has not specifically argued that the requests should be seen other than in the light of the dispute and it is clear that the requests of 4 May 2014 have a direct link; asking specifically for the costs arising from the Charity's Commission's statutory inquiry. However, this is less clearly the case for the requests of 3 May 2014, which in focusing on the Charity Commission's control and management of personal data does not have any obvious connection with the dispute. Particularly, apart from being made by the same requester within a short space of time, there is nothing in the request or the information sought that would seem to link the first set of requests to the second set and, or the dispute. This therefore raises the question of whether the Charity Commission's arguments could apply equally to both sets of requests.
13. However, upon a more detailed analysis, the Commissioner agrees with the Charity Commissioner that the requests do share a common reference. With regard to the request for information relating to the processing and safeguarding of personal data, it is plain that the

application for information arises directly from a separate complaint made to the Commissioner against the Charity Commission. Taking into account the background of this separate complaint, the Commissioner is satisfied that the data protection concern ultimately had its origin in a matter connected to the dispute.

14. In light of this finding, the Commissioner has considered the overall cogency of the Charity Commission's arguments with regard to both sets of requests. In doing so, the Commissioner has had regard to the value, purpose and motive of the requests. In *Dransfield* the Upper Tribunal accepted that the previous course of dealings between an applicant and a public authority will be a relevant consideration, with the "number, breadth, pattern and duration of previous requests" (paragraph 29) potentially being telling factors.
15. The Charity Commission has informed the Commissioner that the complainant has been in frequent correspondence, normally on a weekly, but at times daily, basis about matters relating to the running of the charity that was the subject of the statutory inquiry. The Charity Commission considers that the task of dealing with the correspondence has been oppressive, and has necessitated the diversion of limited resources away from its core statutory functions. Not only this, the Charity Commission considers that the pattern of the requests is indicative of obsessive behaviour and an attempt to reopen issues that had been considered.
16. To support this position, the Charity Commission has stated that between 23 April 2013 and 1 September 2013 there were in the region of 60 contacts with the complainant. The nature of the contacts varied, ranging from requests for updates to the making of complaints against the Charity Commission. The Charity Commission also considers that the combined effect of the communications are indicative of an unreasonable persistence on behalf of the complainant, with the sometimes hostile and tendentious tone and language of the complainant serving increasingly to harass the authority and cause distress to staff. In the Charity Commission's view the wider pattern of behaviour, of which the making of the requests in question form part, may reasonably be construed as promoting a particular agenda with the aim of gaining an advantage in the dispute and, or disrupting the work of the Charity Commission.
17. The complainant, for his part, rejects the conclusions reached by the Charity Commission. Although he has not denied that there has been a high volume of correspondence, he does consider that the Charity Commission would fail to evidence any claim that his correspondence marked a concerted campaign against the Charity Commission and, or other parties. Furthermore, he considers that the inherent importance of

the requested information is such that the Charity Commission would have no reasonable grounds for refusing the requests.

18. The Commissioner considers that on occasion there will be a thin line between justified and unjustified persistence. However, a signal that a request may have moved into vexatious territory will be where a complainant continues attempting to engage with a public authority even though the relevant issues have already been reviewed internally and, or there is a separate process by which an aggrieved person can take his or her concerns to an independent adjudicative body. A high frequency and volume of correspondence may further weaken the justification for the continued making of requests.
19. The Commissioner considers that the amount of correspondence reported by the Charity Commission is significant. However, potentially offsetting the weight of this factor is the seriousness and complexity of the dispute itself and the importance of the requested information. In other words, it may properly be argued that sustained correspondence in certain circumstances is not indicative of vexatious behaviour but is rather a reflection of the gravity of the subject matter from which the requests have arisen.
20. From his analysis of the arguments presented, the Commissioner considers that making a determination on whether complying with the requests would be proportionate and justified or not is finely balanced. On the one hand, the Commissioner has had no reason to doubt that there has been extensive correspondence between the complainant and the Charity Commission, which will inevitably result in a considerable investment in terms of resources by the Charity Commission. It is also certain that the relationship between the complainant and the Charity Commission became increasingly fractious during the statutory inquiry itself and following the Charity's Commission's findings that led to an appeal to the Charity Tribunal. Although care should be taken not to quote correspondence in the wrong context, the Commissioner considers that evidence of the breakdown is adequately indicated by comments made by the complainant in an email sent shortly after the conclusion of the statutory inquiry, which referred to an intention to "deconstruct your web of lies and cover ups" and finished by stating that "I wouldn't ask the NICC to lick a stamp never mind conduct a decision review."
21. On the other hand, the Commissioner considers that the running of the charity being investigated by the Charity Commission was clearly an emotive subject, having a profound effect on its members. To a degree therefore, the forceful and perhaps in some cases injudicious use of language by the complainant could be excused. It is also noteworthy that the burden referred to by the Charity Commission focuses predominantly on correspondence received between April 2013 and

September 2013, which covered the greater part of the life of the statutory inquiry. The Charity Commission might therefore anticipate receiving a number of direct enquiries and concerns during this period, with no evidence being provided to the Commissioner that the same frequency of correspondence continued after September 2013.

22. Another contributory factor in the Commissioner's assessment of the case is that he is bound to consider the circumstances of the case as they stood at the time a request was made. The Commissioner notes that some of the supporting evidence provided by the Charity Commission post-dates the requests and must therefore be immediately disregarded. This does have the effect of weakening the Charity Commission's position with respect to its application of the exclusion.
23. Weighing up these arguments, the Commissioner considers that the burden on the Charity Commission is a factor but not a conclusive one in the exercise of deciding whether the requests are vexatious. He has therefore gone on to consider the value and serious purpose of the requests and the motives behind making them. With regard to the value or serious purpose, the Upper Tribunal in *Dransfield* considered that this was "*usually bound up to some degree with the question of the requester's motive*" (paragraph 38). Although section 14(1) is not subject to the public interest test, the Upper Tribunal in *Dransfield* considered that in order to get a balanced picture of the request it was appropriate to ask: "*Does the request have a value or serious purpose in terms of the objective public interest test in the information sought?*" This returns to the issue of whether a request is proportionate and justified in the circumstances.
24. There is no doubt that the requested information is important. A public authority has a duty to the public it represents to ensure it acts in their best interests. This means having processes in place to ensure that personal data is properly managed, with failure to do so potentially undermining public trust in the wider effectiveness of the authority. Equally, a public authority in receipt of public funds will have a responsibility that its decision-making reflects value for money. Requests that refer to these areas of a public authority's performance will therefore have significant weight in terms of the objective public interest.
25. With regard to the motive behind making the request, it is clear that the complainant has serious concerns about the performance of the Charity Commission and its staff. Leading on from this, it would appear from the direction of the requests that the complainant considers that there are a number of critical issues that have not been attended to by the Charity Commission. The Commissioner has no authority to comment on the statutory inquiry carried out by the Charity Commission but it would be

fair to say that the complainant considers that he and others have been treated unfairly.

26. Taking together the inherent importance of the information with the evident concerns of the complainant, there are in the Commissioner's view real grounds for finding that section 14(1) had been misapplied. The Commissioner must therefore decide whether these factors are substantial enough to outweigh the arguments presented in favour of the exclusion. In the Commissioner's judgement, they are not.
27. In coming to this view, the Commissioner has considered the function of the Charity Commission. In the 'About us'<sup>3</sup> section of the Charity Commission's website it states:

*"Whatever their size or purpose, an essential requirement of all charities is that they operate for the public benefit and independently of government or commercial interests.*

*As the independent regulator of charities in Northern Ireland, the Commission registers and regulates charities operating in Northern Ireland. This means it is our job to make sure charities are meeting their legal requirements and to work with charity trustees to out things right if they go wrong [...]."*

28. Whatever the eventual outcome of the statutory inquiry, the Commissioner considers that there is no evidence to indicate that the Charity Commission was doing anything other than attempting to discharge its functions as an independent regulator, namely to make sure a charity was meeting its legal requirements. Importantly, however, the Charity Tribunal exists to ensure that a person has a right of appeal where he or she considers that a decision made by the Charity Commission is not compliant with the relevant legislation from which its powers derive. The Commissioner understands that the exercise of an appeal had already been made prior to the making of the requests in question.
29. The effect of this is that the issues forming the basis of the dispute were already the subject of formal proceedings. In this regard the Commissioner disagrees with the complainant's statement that the information would assist him and others affected by the statutory inquiry to challenge "further poor decisions" of the Charity Commission. This is because there is nothing in the requested information itself that

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<sup>3</sup> <http://www.charitycommissionni.org.uk/about-us/>



goes to the heart of the Charity Commission's decision-making. Instead, the Commissioner accepts the Charity Commission's argument that the direction of the requests suggests they were designed to keep alive the complainant's grievances against the Charity Commission.

30. While the requests have an objective value, the Commissioner has also found that this is not sufficient to defend the requests against the claim of vexatiousness when the timing of the requests and the number, breadth, pattern and duration of the correspondence to the Charity Commission is taken into account. Put simply, the Commissioner considers that the line between justified and unjustified persistence has been crossed.
31. Returning to the judgment of the Upper Tribunal in *Dransfield* and specifically paragraph 45 of that decision, which referred to the importance of adopting a holistic and broad approach to section 14(1), the Commissioner has decided that the Charity Commission was correct to refuse the requests on the basis they were vexatious.

## Right of appeal

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32. 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](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

33. 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.
34. 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 .....**

**Rachael Cragg**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**