

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 6 June 2018

Public Authority: Ministry of Justice
Address: 102 Petty France
London
SW1H 9AJ

Decision (including any steps ordered)

1. The complainant requested information relating to female prisoners under the supervision of a specified member of staff at HMP Bronzefield. The Ministry of Justice (MoJ) refused the request on the basis that it was vexatious and cited section 14(1) of the FOIA.
2. The Commissioner's decision is that the MoJ correctly applied section 14(1) of the FOIA.
3. The Commissioner does not require the MoJ to take any steps.

Request and response

4. On 23 September 2017, the complainant wrote to the MoJ and requested information in the following terms:

"Please disclose under the FOIA the following:

1. *Rate of reoffending of women under [specified staff member's] supervision 1 year, 2 years, 5 years.*
2. *Rate of success in finding housing for women under her supervision.*
3. *Rate of success for women who complete their licence periods under her supervision.*
4. *Health and fitness records confirming that she has passed fitness tests required to work in a prison.*

5. *Rate of success for women under her supervision who have completed drug rehabilitation courses and are no longer dependent.*
 6. *Number and nature of all complaints whether upheld or not, who investigated and the outcome of the complaints including actions taken”.*
5. The MoJ responded on 23 November 2017. It stated that it considered the complainant's request to be vexatious and, in accordance with section 14(1) of the FOIA, would not be taking it any further.
 6. It argued that in her correspondence to the MoJ, the complainant went beyond the level of criticism that a public authority or its employees should reasonably expect to receive.
 7. The MoJ stated that the request references a member of staff in detail in an unpleasant manner and questions their ability to carry out their duties because of their physical appearance. The MoJ stated they were not prepared to tolerate the personal abuse that the complainant had directed at this member of staff.
 8. Following an internal review the MoJ wrote to the complainant on 10 January 2018. It upheld its application of section 14(1) of the FOIA.

Scope of the case

9. The complainant contacted the Commissioner on 8 February 2018 to complain about the way her request for information had been handled.
10. The following analysis covers whether the MoJ dealt with this request correctly in accordance with section 14(1) of the FOIA.

Background

11. The Commissioner understands that the complainant's request is a result of her belief that the MoJ proposes to extend the Offender Manager Role.
 12. The complainant reiterated in her submissions to the Commissioner that she believes that her Offender Manager, and other employees of the MoJ, are not properly qualified or trained.
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Reasons for decision

Section 14(1)

13. Section 14(1) of the FOIA states that:

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

14. The term "vexatious" is not defined in the FOIA. In the case of *Information Commissioner vs Dransfield*, the Upper Tribunal took the view that the ordinary definition of the word vexatious is only of limited use, because the question of whether a request is vexatious ultimately depends upon the circumstances surrounding that request. The Tribunal concluded that "vexatious" could be defined as the "...manifestly unjustified, inappropriate or improper use of formal procedure".

15. The decision clearly establishes that the concepts of "proportionality" and "justification" are central to any consideration of whether a request is vexatious.

16. The Commissioner has published specific guidance on vexatious requests¹, which illustrates various indicators of vexatious requests. 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 the case will need to be considered in reaching a judgment as to whether a request is vexatious.

17. As discussed in the Commissioner's guidance, the relevant consideration is whether the request itself is vexatious, rather than the complainant who submitted it. A public authority can also consider the context of the request and the history of its relationship with the requester when this is relevant. The Commissioner's guidance states that:

"The context and history in which a request is made will often be a major factor in determining whether the request is vexatious and the public authority will need to consider the wider circumstances surrounding the request before making a decision as to whether section 14(1) applies."

¹ <https://ico.org.uk/media/for-organisations/documents/1198/dealing-with-vexatious-requests.pdf>

18. Sometimes, it will be obvious when requests are vexatious, but sometimes it may not. In that situation, the Commissioner's guidance states:

"...where the issue is not clear-cut, the key question to ask is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress".

19. The MoJ have deemed the complainant's request to be vexatious on two grounds.
20. The MoJ's first argument specified that the complainant had used abusive and aggressive language. In its response to the complainant, the MoJ stated *"the tone and language of your original letter went beyond the level of criticism that a public authority or its employees should reasonably expect to receive. Your request made references to a member of HMPPS in an unpleasant manner and questioned their ability based on a physical description"*.
21. In further information sent to the Commissioner, the MoJ provides evidence in the form of letters by the complainant suggesting that other members of staff at the MoJ should not be considered fit for service and makes several accusations of misconduct against members of staff.
22. The MoJ state that this amounts to the complainant making malicious, unfounded and unsubstantiated allegations about named individuals and using threatening and abusive language about and towards the MoJ. It also referred to the complainant making threats of legal action against individuals or the MoJ, and having copied her correspondence to various officials, Parliamentary and public figures, and journalists.
23. The MoJ's second argument was that the volume of the complainant's correspondence with it is excessive. The complainant has been in correspondence with the MoJ both in the form of FOI requests and other more general correspondence for over a decade. The correspondence has often been heavily critical of the MoJ and its Executive Agency, HM Prison and Probation Service.

The Commissioner's position

24. The Commissioner accepts that the language used by the complainant in her correspondence with the MoJ has been insulting and abusive. The MoJ correctly outline that the tone and language of both the original request and the request for an internal review go beyond the level of criticism that any public authority or its employees should reasonably expect to receive. The request references a member of staff in detail in an unpleasant manner and questions their ability based on physical and personal description.

25. The Commissioner agrees that the complainant's abusive language aimed at a specific individual suggests that the complainant has a personal issue with the individual named in her request. Using the FOIA in order to pursue a personal grievance may be a factor that contributes to a request being vexatious.
26. The Commissioner notes that previous allegations made by the complainant were addressed and repeatedly found to be without foundation. Despite this, the complainant continues to make new allegations of misconduct or criminal behaviour by the MoJ.
27. In light of this, the Commissioner also accepts the reasoning from the MoJ about the period of time that the complainant has been corresponding with it and that it is unlikely that compliance with this request would be unlikely to result in a cessation of this behaviour. On the contrary, it appears likely that compliance with this request would be likely to perpetuate this behaviour, leading to further correspondence including more information requests.
28. For these reasons, the Commissioner's view is that the complainant's information request was vexatious. Therefore, section 14(1) of the FOIA applied and the MoJ was not obliged to comply with the request.

Right of appeal

29. 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

30. 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.
31. 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

Ben Tomes
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