

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 12 December 2018

**Public Authority:** Royal Museums Greenwich  
**Address:** Park Row  
Greenwich  
London  
SE10 9NF

#### Decision (including any steps ordered)

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1. The complainant has requested information from Royal Museums Greenwich ("the Museum"), an organisation which comprises the National Maritime Museum, the *Cutty Sark*, the Royal Observatory and The Queen's House, about individuals who have been banned from the Museum's membership scheme and banned from its grounds and premises.
2. The Commissioner's decision is that the Museum correctly refused to respond to the request under section 14(1) of the FOIA (vexatious requests).
3. The Commissioner does not require the Museum to take any steps.

#### Request and response

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4. On 2 February 2018, the complainant wrote to the Museum to request information of the following description:

*"My request for information relates to internal and external printed documents, computer files, letters, drafts, notes and emails. Please may I ask you to provide search results from July 2012 to the present date 2018, in respect of the following:*

- *Reference to the number of individuals excluded from your Membership Scheme, together with associated reasons for*

*exclusion of those individuals and the dates/duration of exclusion as determined by the institution*

- *Reference to the number of individuals banned from your grounds & premises, together with associated reasons for those bans and the dates/duration of restriction as determined by the institution*

*This information is of genuine interest to me and I am happy to receive a response by email in electronic document format."*

5. The complainant explained that his request was linked to research he was carrying out into the Draft Public Services Ombudsman Bill 2016.
6. On 15 February 2018, the Museum responded. It referred to a letter which the complainant had been sent on 20 December 2016 and explained that it was refusing to respond to the request because "*your approach remains vexatious*". It also stated that the Museum may be prepared to reconsider its position if the complainant would "*give an undertaking to behave reasonably towards our staff and volunteers*".
7. The complainant requested an internal review on 19 April 2018. The Museum sent him the outcome of its internal review on 17 May 2018. It upheld its original position.

## **Scope of the case**

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8. The complainant contacted the Commissioner on 5 June 2018 to complain about the way his request for information had been handled.
9. During the course of the investigation, the Commissioner corresponded with the Museum to clarify its response to the request. The Museum confirmed that it considered the request of 2 February 2018 to be vexatious and provided arguments in support of this.
10. The analysis which follows considers whether the Museum correctly refused the request as vexatious under section 14(1) of the FOIA.

## **Reasons for decision**

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

11. Section 14(1) of the FOIA states that a public authority is not obliged to comply with a request for information if the request is vexatious.

12. The term 'vexatious' is not defined in the FOIA. The Upper Tribunal (Information Rights) considered in some detail the issue of vexatious requests in the case of *Information Commissioner vs Devon County & Dransfield* (GIA/3037/2011) ("*Dransfield*") and concluded that the term could be defined as the "*manifestly unjustified, inappropriate or improper use of a formal procedure*". The Tribunal's decision establishes that the concepts of proportionality and justification are relevant to any consideration of whether a request is vexatious.
13. In *Dransfield*, the Upper Tribunal also found it instructive to assess the question of whether a request is vexatious by considering four broad issues: (1) the burden imposed by the request (on the public authority and its staff); (2) the motive of the requester; (3) the value or serious purpose of the request and (4) harassment of, or distress 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).
14. The task for the Commissioner, therefore, is to decide whether the complainant's request was vexatious in line with the approach set out by the Upper Tribunal, and she has therefore taken into account the representations of the Museum and the complainant, as well as the evidence that is available to her.

In this notice, the Commissioner will also refer to her published guidance<sup>1</sup> on defining and dealing with vexatious requests.

### **The Museum's arguments**

15. The Museum has explained that it took the decision to consider the request as vexatious based primarily on a previous pattern of dealings with the complainant.
16. By way of background, the Museum has explained that the complainant previously worked as a volunteer at the Museum from May 2011 onwards. However, during 2012, he was asked to leave this role

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

following concerns over comments he had allegedly made about the Museum on social media. Subsequent events also led to the Museum deciding to deny the complainant the opportunity to renew his membership.

17. Following this, and continuing into 2016, a number of events occurred which the Museum considered to be inappropriate behaviour on the part of the complainant towards its staff and towards the organisation as a whole. It has provided details of these incidents, the nature of which are set out below.
18. The Museum has provided evidence that the complainant made "*less than positive*" comments about it on social media or in industry-related publications on a number of occasions during this time. It explained that this created considerable correspondence for the Museum, both internally as it was considering whether to respond, and also with external parties where the Museum was required to comment on the complainant's publicly-expressed views.
19. In addition, throughout this period, the Museum has explained that the complainant submitted to it "*several*" requests for information under the FOIA as well as "*a great number*" of general enquiries to its different departments. His requests and enquiries were normally responded to. He made a subject access request ("SAR") in October 2016 under the Data Protection Act 1998 ("DPA"), which was in force at the time; this was responded to.
20. At various times throughout this period, following specific incidents which had caused concern to museum staff, the Museum has explained that it asked the complainant if he would provide "*assurances*" about his future behaviour, following which it would review its position. The Museum has provided evidence that, rather than resolving the issue, this generated further debate and correspondence with the complainant, who was evidently dissatisfied that this condition had been placed on him, and no such assurance was provided.
21. During this time, the Museum has explained that it also became aware that the complainant approached a number of organisations to raise the issue of his treatment by the Museum, including the Department for Digital, Culture, Media and Sport ("DCMS"); the Parliamentary Ombudsman and his local MP.
22. In December 2016, senior members of staff at the Museum discussed the matter of the complainant's frequent contact and his dissatisfaction with the organisation and its staff. The Museum has explained that it wished "*to review his case to ensure equitable treatment*".

23. During the discussions, in view of the nature of the correspondence it was receiving from the complainant around this time, the Museum considered the Commissioner's guidance, referenced previously, on the handling of potentially vexatious requests.
24. The guidance refers to a number of 'indicators' which may be useful in identifying vexatious requests. The Museum explained that it considered that, while no single request which had been received by that date could be regarded as placing a grossly oppressive burden on it, a number of other indicators of vexatiousness were present.
25. The Museum considered the complainant's behaviour to be:
  - *unreasonably persistent*, as in its view he was seeking to re-open issues which had been either comprehensively addressed by the Museum or otherwise subjected to some form of independent scrutiny;
  - *intransigent*, as he was refusing to address the 'core issue' (the Museum's request that he offer assurances as to his future conduct);
  - *frequent*, since he made other requests or sent correspondence about the same or related issues; and
  - *futile*, since, in the wording of the Commissioner's guidance, "*the issue individually affects the requester and has already been conclusively resolved by the authority or subjected to some form of independent investigation*".
26. Following the discussions, the Museum wrote to the complainant on 20 December 2016 to explain that his approach was considered "*vexatious*" and "*without any prospect of resolution*". The letter repeated that, if an assurance as to his future behaviour could be provided, then the Museum would "*in due course*" reconsider its position.
27. In February 2017, the Museum has explained, the complainant submitted a further SAR under the DPA, which was again responded to.
28. Regarding the request under consideration in this notice, which is dated 2 February 2018, the Museum considers that it primarily relates to his private dispute and is of little wider interest. In addition, since the 'core issue' remained unresolved, to have responded would only have been likely to generate further questions and possibly public comment from the complainant, and would not have helped to resolve that matter.

29. In summary, the Museum's position is that, in view of this previous pattern of dealings, it was correct to consider the request of 2 February 2018 as vexatious.
30. It has further argued that it considers its position is reasonable, since it has indicated to the complainant that it will engage with him in the future if he delivers the assurances that it has requested, and it has continued to respond to matters on other topics and to comply with the DPA when asked to.

### **The complainant's arguments**

31. The complainant has explained that, while he is aware of the letter dated 20 December 2016, he considers that the information he is seeking is unrelated to its contents, and points out that the letter is dated over a year prior to his request.
32. He considers that the information requested in his request of 2 February 2018 is of genuine interest within the context of his research into the probable future adoption of the draft Public Services Ombudsman Bill (2016).
33. It is his hope that the Bill will lead to an independent party being empowered to intervene and assist in cases where an individual is in dispute with a cultural institution, since this area appears to be relatively unregulated.

### **The Commissioner's decision**

34. In the Commissioner's view, the key question for public authorities to consider, when determining if a request is vexatious, is whether the request is likely to cause an unjustified level of disruption, irritation or distress which is disproportionate to the purpose and public value of the request.
35. As explained previously, the Commissioner's guidance also identifies a number of 'indicators' which may be useful in identifying vexatious requests. However, 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.
36. As the guidance makes clear, when determining whether a request is vexatious, a public authority "*may take into account any evidence it has about the events and correspondence which preceded or led up to the request being made*".

37. In considering the refusal of the request of 2 February 2018, therefore, the Commissioner is able to take into account the previous pattern of dealings with the complainant which has been detailed by the Museum.
38. In this case, the Commissioner notes that the Museum has not argued that the complainant made frequent requests for information during the period immediately leading up to the request of 2 February 2018. Rather, the Museum's position regarding this request is a result of the complainant's conduct between 2012 and late 2016, while the dispute relating to his no longer working as a volunteer, his subsequent ban from the Museum, and his queries about being refused membership, led to frequent correspondence between the parties.
39. However, the Commissioner is aware that the Museum considers that the request of 2 February 2018 sought to re-open issues relating to the same dispute.
40. The Commissioner has therefore considered the events which led to the letter of 20 December 2016 being issued, and their relevance to the Museum's handling of the request of 2 February 2018.
41. The Museum has provided the Commissioner with a large amount of correspondence that was generated by its dealings with the complainant during 2013 - 2016. The Commissioner notes that a position of 'stalemate' was reached fairly quickly with regard to the ban from the premises and grounds, and the denial of membership, since the complainant did not agree that any of his conduct had been inappropriate, and, rather, pressed for further details as to which terms and conditions he had fallen foul of, and what were the Museum's exact requirements in terms of his future conduct. The Museum responded to these queries on a number of occasions but were evidently unable to resolve the matter to his satisfaction.
42. The Commissioner notes that, notwithstanding the above situation, the Museum continued to respond to the complainant on a large number of other matters, including its art collections, and various operational matters. She also notes that, as explained above, the Museum complied with its obligations under the DPA when the complainant submitted a further SAR in 2017 and provided him with all of the information which he was entitled to on both occasions.
43. The Commissioner accepts that dealing with the complainant's issues and correspondence during this time, which related largely to the ban and denial of membership, placed a considerable burden on the Museum, which it was prepared to shoulder. While it is evident that the complainant was increasingly frustrated by the situation, in her view he

failed to show any willingness to resolve the 'core issue' in a pragmatic way.

44. The Commissioner has also viewed evidence that the complainant continued to make regular comments on social media about the Museum during this time, and that the Museum was drawn into considerable correspondence, both internally and with arts-related publications, in order to respond to certain of these public comments. She accepts that this also placed a burden on certain members of the Museum's staff.
45. Having formed the view that the complainant's pattern of behaviour during 2013 – 2016 placed a considerable burden on the Museum, the Commissioner has considered whether the Museum was correct to take this into account in responding to the request of 2 February 2018, further on in this notice.
46. The Commissioner has also considered whether the indicators of vexatiousness which have been mooted by the Museum were present in this earlier pattern of dealings between the parties, and will then consider whether this is relevant to the Museum's consideration of the request of 2 February 2018.
47. The Commissioner accepts that the indicators highlighted by the Museum were present during the earlier pattern of dealings. She notes that, while the independent bodies whom he approached for assistance in his dispute with the Museum (the Parliamentary Ombudsman, his MP and the DCMS) have apparently been content to regard the dispute as a private matter between him and the Museum, he did not accept this and continued to raise requests and queries about it directly with the Museum. This indicates to the Commissioner that he became unreasonably persistent and intransigent in the manner of his communications with the Museum during the period from 2013 - 2016. Having viewed the evidence provided by the Museum, she also agrees that his correspondence was frequent, and that correspondence relating to this specific issue became essentially futile.
48. The Commissioner does not consider that the request of 2 February 2018 was unduly burdensome in itself, since it was reasonably specific and applied to a particular timeframe.
49. However, whether this placed a *disproportionate* burden on the Museum requires the Commissioner to return to the decision of the Upper Tribunal in *Dransfield*, and to consider the burden in light of the motive of the requester, the value or serious purpose of the request, and any harassment of, or distress to, staff.

50. The Commissioner has considered the purpose and value of the request, which sought information relating to *"the number of individuals excluded from [the Museum's] Membership Scheme, together with associated reasons... and... dates/duration, and... the number of individuals banned from [the Museum's] grounds & premises, together with associated reasons... and dates/duration... ."*
51. The complainant has explained that he is concerned that there is no independent body which is able, currently, to intervene in cases such as his which have apparently reached a 'stalemate'. He believes that this matter will be addressed by the draft Public Services Ombudsman Bill (2016), and considers that this is a matter of wider public interest since it may provide the public with a means to resolve complaints.
52. The Commissioner is aware that the events of 2013 – 2016 stemmed at least in part from these concerns and from the complainant's frustration that, having been prevented from volunteering at the Museum or entering its grounds and premises, and having been denied membership, the Museum acted unilaterally to impose a condition on him - the requirement for him to issue an assurance, or undertaking, regarding his future conduct - before it would consider resuming contact. He was also frustrated at the unspecific nature of the condition.
53. In the Commissioner's view, the request of 2 February 2018 is linked very clearly to the complainant's private dispute. Despite his argument that there is a wider public interest in shedding light on any right to redress which individuals may have against cultural institutions, or other public bodies, it is evident from the nature of, and time-frame for, the requested information. It is also evident from the complainant's very recent, and apparently ongoing, activity on social media that he is still trying to address the issue of his ban from the Museum with various third parties.
54. Even considering the request completely in isolation, the Commissioner considers that there is very little public interest in the specific information requested. She does not consider that the information would have much, if any, bearing on any new legislation which ultimately comes into force. In addition, there is no evidence that the Museum has been heavy-handed or oppressive in its approach to denying members of the public membership of its schemes or banning them from its grounds and premises, or is otherwise behaving in an unreasonable manner.
55. The Commissioner has considered whether the Museum is correct to link the request under consideration to the previous pattern of dealings it has had with the complainant.

56. She notes that, following the SAR which the complainant submitted in October 2016, the Museum provided the complainant with a bundle of information. The complainant queried why he had not received earlier documents and was informed that, in line with the Museum's normal retention policy, it did not retain documents of the type requested for more than three years, nor did it retain CCTV footage for more than 30 days except in criminal cases. The following morning, the complainant raised a new query relating to this, asking for a link evidencing these policies because he wished to share them "*for the benefit of the wider public*".
57. The Commissioner accepts that this example, which is one of several examples she has been able to pick out from the correspondence she has seen, is evidence that corresponding with the complainant, including responding to his requests, has tended to lead only to further, wider requests being made, and she considers it extremely likely that providing the information requested on 2 February 2018 would have led, similarly, to further queries and persistence on the part of the complainant which would ultimately have related to the issue of his having been banned from the grounds and premises, and denied membership.
58. The Commissioner notes that the complainant's approach has previously caused harassment and distress to the Museum staff, and she agrees that the likely outcome of providing the information requested on this occasion would have been further comments and queries, either on social media or directly to the Museum, with the same effect on staff.
59. Returning to *Dransfield*, the Commissioner has concluded that the request in this case amounted to a "*manifestly unjustified, inappropriate or improper use of a formal procedure*" since, taking all relevant factors into account, the value and purpose of the request does not outweigh the burden imposed on the Museum in responding to it.
60. Taking into account all factors in this case, the Commissioner has determined that the Museum correctly refused the request under section 14(1) of the FOIA.

## Right of appeal

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61. 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)

62. 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.
63. 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**  
**Team Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**