

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 17 August 2020

Public Authority: Information Commissioner's Office (ICO)

Address: Wycliffe House
Water Lane
Wilmslow
Sk9 5AF

Note: This decision notice concerns a complaint made against the Information Commissioner ('the Commissioner'). The Commissioner is both the regulator of the FOIA and a public authority subject to the FOIA. She is therefore under a duty as regulator to make a formal determination of a complaint made against her as a public authority. It should be noted, however, that the complainant has a right of appeal against the Commissioner's decision, details of which are given at the end of this notice. In this notice the term 'ICO' is used to denote the ICO dealing with the request, and the term 'Commissioner' denotes the ICO dealing with the complaint.

Decision (including any steps ordered)

1. As part of a wider request, the complainant has requested information on protection against radon gas that the ICO may have installed in its building to protect staff. The ICO relied on section 14(1) of the FOIA (vexatious request) to refuse to comply with this part of the request.
2. The Commissioner's decision is as follows:
 - Part 6 of the complainant's request can be categorised as a vexatious request under section 14(1) of the FOIA and the ICO is not obliged to comply with it.
3. The Commissioner does not require the ICO to take any remedial steps.

Request and response

4. On 5 November 2019, the complainant submitted the following request for information to the ICO under the FOIA:

“Under the FOIA provide me with

- 1. The 16 May and 4 June 2007 letters in RFA0836103 that are under the FOIA and give advice and assistance as to personal data within them.*
- 2. What training you have had regarding what is Data and what is information*
- 3. How much money the ICO allocate to training.*
- 4. How many times the ICO have set aside Upper Tier Tribunal decisions*
- 5. What section deals with personal data under the FOIA and give advice and assistance*
- 6. What protection was built into floor of the ICO building to protect employees from the effects of harmful radon radio activity (and therefore protect their cognitive mental impairment)”*

5. On 14 November 2019, the ICO responded to the request. It addressed five of the above questions; relying on section 21 (information already accessible to applicant) and section 22 (information intended for future publication) with regard to part 3 and advising that it does not hold information within the scope of part 4. The ICO refused to comply with part 6, categorising this part as a vexatious request under section 14(1) of the FOIA.
6. On 23 November 2019, the complainant requested an internal review of the ICO’s response to part 6.
7. The ICO provided an internal review on 20 December 2019. It maintained its position that part 6 is a vexatious request under section 14(1) of the FOIA.

Scope of the case

8. The complainant contacted the Commissioner on 29 January 2020 to complain about the way his request for information had been handled. He subsequently confirmed that his complaint is centred on the ICO’s application of section 14(1) to part 6 of his request
9. The Commissioner’s investigation has therefore focussed on the ICO’s reliance on section 14(1) of the FOIA.

Reasons for decision

Section 14– vexatious and repeat requests

10. Under section 14(1) of the FOIA a public authority is not obliged to comply with a request for information if the request is vexatious.
11. The term 'vexatious' is not defined in the FOIA but the Commissioner has identified a number of 'indicators' which may be useful in identifying vexatious requests. These are set out in her published guidance and, in short, they include:
 - Abusive or aggressive language
 - Burden on the authority – the guidance allows for public authorities to claim redaction as part of the burden
 - Personal grudges
 - Unreasonable persistence
 - Unfounded accusations
 - Intransigence
 - Frequent or overlapping requests
 - Deliberate intention to cause annoyance
12. 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.
13. The Commissioner's guidance goes on to suggest that, if a request is not patently vexatious, the key question the public authority must ask itself is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress. In doing this the Commissioner considers that a public authority should weigh the impact of the request on it and balance this against the purpose and value of the request.
14. Where relevant, public authorities also need to take into account wider factors such as the background and history of the request.
15. In its submission to the Commissioner the ICO has confirmed that, based on the complainant's previous dealings with the ICO, it took the view that there was no serious purpose behind the request at part 6 of the complainant's current request. The ICO concluded that that request was vexatious, and it refused to respond to the request in reliance on section 14(1) of the FOIA.
16. The ICO has explained that the complainant's dealings with it relate to a campaign that he has undertaken over many years. This in turn relates to compensation paid by his previous employer for an accident he had

whilst at work in 1991. The history of the complainant's longstanding campaign has been comprehensively described in the Commissioner's decisions in FS50463281 from 2013, and FS50645026 from 2017.

17. The ICO says it has continued to receive a disproportionate volume of correspondence from the complainant relating to information about this compensation payment. This correspondence seeks to reopen issues which have been comprehensively dealt with and which he has been advised the ICO will not return to.
18. In January 2019 the ICO received a complaint from the complainant regarding a response to his subject access request from the Department for Business, Energy Innovation and Skills (DBEIS) in 2007.
19. It says that this was not the first time that the complainant had raised this concern. Nevertheless, the ICO says it again advised him that his complaint was well out of time, and that it would not be investigating it further.
20. The complainant was evidently not satisfied with this decision and continued to correspond with the ICO in relation to it. This despite the ICO's clear explanations that it considered the matter closed. The complainant's correspondence included a series of information requests and queries masquerading as FOIA requests, all relating to the 2007 response from DBEIS, including:

"FOIA request: To sharpen the ICO minds and in regards to (4) & (5) under the FOIA section 16 advice and assistance; Please give as you feel appropriate in relation to (4)& (5).

- a. No correct personal data can be given under the FOIA due to section 40(1)*
- b. All material facts do not belong to [name redacted]*
- c. The material belongs to a solicitor and as it is fraudulent it must be given.*
- d. No correct figures can be given under the FOIA*
- e. The DBEIS have disgustingly used the FOIA and the ICO to peddle fraud.*
- f. The letter is deliberately fraudulent.*
- g. Anything else you wish to add."*

(29 March 2019)

"FOIA request: under what Act FOIA/DPA (section principle paragraph) was the Legal Professional Privileged LPP advice of [name redacted] solicitor compelled to be given and was. Please provide the correct legislation you hold giving advice and assistance."

(26 April 2019)

And on 16 October, a request for what appeared to be assistance in interpreting part of DBEIS' 2007 disclosure:

"I therefore make a FOIA request asking the ICO to give advice and assistance under 16 of the FOIA regarding the 16 May 2007 letter."

21. The ICO says it sought clarification regarding this request on 21 October 2019. The complainant replied a day later but provided only a further description of his complaint regarding the 2007 DBEIS response to his subject access request.
22. The ICO responded, explaining that section 16 of the FOIA did not oblige it to offer advice and assistance regarding disclosures made by another authority. In response, on 23 October 2019, the complainant made a further request:

"Please provide under section 42 Principle 23 the FOIA all the material supplied to the ICO by the DBEIS in case RFA0836103."
23. The ICO said it responded on 28 October advising that no such material was supplied, and so no information was held. This reiterated advice it had provided to the complainant on 23 July 2019.
24. The ICO says that the complainant replied on "3 November 2019" expressing dissatisfaction with the ICO's response and made the information requests that are the subject of this decision. (Having reviewed its response to the request, it appears to the Commissioner that the current request was submitted on 5 November 2019.) In that context, the ICO says it feels it is clear that the complainant's request regarding the protection of ICO staff against "cognitive mental impairment" is vexatious.
25. The ICO considers that the unfounded nature of the request is further evidenced by the complainant's response of 23 November 2019, a copy of which the ICO provided to the Commissioner. In this response the complainant requested an internal review of the ICO's application of section 14 to the current request. At no point in his email does the complainant refer to any interest in radon activity or measures the ICO has taken to guard against it, saying that:

"The ICO are allegedly the experts for DPA/FOIA highly trained and highly paid yet they cannot seem to read a simple passage in (6) "The Department have considered ALL correspondence under the FOIA" I have every right to explore environment factors in the ICO building or any other factor as I simply cannot believe no one can read (6) correctly and then apply the correct legislation to it."

26. In the ICO's view this in effect confirms that the request was an expression of frustration at its not engaging with the complainant's ongoing enquiries regarding his seemingly unending campaign, rather than out of any desire to acquire recorded information through the formal procedure that the FOIA provides.

Conclusion

27. The complaint has provided the Commissioner with a letter outlining his complaint and other material, presumably to support of his own position. However, the letter and the majority of the other material broadly concern the complainant's substantive complaint, associated with compensation payment in 1991 and the DBEIS response of 2007 and matters associated with the FOIA exemptions under section 40 (personal data) and section 42 (legal professional privilege).
28. In a short email to the Commissioner on 4 July 2020, the complainant wrote: *"Something is wrong with the ICO building and the ICO staff within it cannot function correctly."* This appears to be the only correspondence the Commissioner has received from the complainant that might be categorised as an argument supporting a position that part 6 of the request is not a vexatious request. The Commissioner does not find that argument compelling.
29. The ICO has told the Commissioner that the issues that concern the complainant have been comprehensively dealt with. The Commissioner has noted the complainant's long correspondence with the ICO; a campaign going back to at least 2013. Having considered the circumstances of the request, she agrees with the ICO that part 6 is not a genuine request for information but is an oblique expression of dissatisfaction with the ICO's refusal to engage with the complainant's long series of requests and queries. In the Commissioner's view, the complainant is suggesting that it is because ICO staff may have a *"cognitive mental impairment"* that they will not continue to engage with him. As such, she is satisfied that the ICO can rely on section 14(1) of the FOIA to refuse to comply with part 6 of the request, as it can be categorised as a vexatious request.

Right of appeal

30. 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

31. 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.
32. 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

Pamela Clements
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