

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 9 December 2020

Public Authority: Cabinet Office
Address: 70 Whitehall
London SW1A 2AS

Decision (including any steps ordered)

1. The complainant requested information from the Cabinet Office about its handling of freedom of information requests. The Cabinet Office refused the request under section 14(1) of the FOIA – vexatious requests.
2. The Commissioner's decision is that the Cabinet Office has failed to demonstrate that the request was vexatious and, therefore, it was not entitled to refuse it under section 14(1).
3. The Commissioner requires the Cabinet Office to take the following step to ensure compliance with the legislation.
 - Either disclose the requested information, or issue a fresh refusal notice to the complainant which does not rely on section 14(1) of the FOIA.
4. The Cabinet Office authority must take this step within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. By way of background, the complainant, who is a senior Politics lecturer, explained that he conducts research into public authorities' compliance with the FOIA. He had made a previous request to the Cabinet Office in 2018. He explained that, in response to that request: *"the Cabinet Office provided me with the field names from the database that the FOI Team uses to record and monitor requests it receives"*.

6. On 7 February 2020, the complainant made the following request for information to the Cabinet Office, under the FOIA:

"On 8 June 2018... you provided me with the field names that the Cabinet Office FOI Team use to record and monitor the FOI requests it processes. Please now provide me with an extract from this tracking database, for all requests received in 2019, and the values in the following fields:

- *Case FOI Identifier*
- *Subject*
- *Date Received Status*
- *Clearance Status*
- *Clearance Date*
- *Overdue?*
- *Overall Duration of Case*
- *Comments*
- *Response Type*
- *Exemptions Used*

I have tried to exclude fields which clearly would include information falling within the definition of personal data (s40), but if some of this remains please redact. I am not interested in the information contained in the other fields, and I only want the information logged in this tracking system (not other software platforms or locations)".

7. On 6 March 2020, the CO responded and refused to provide the information in the *Subject* field, saying that it was exempt under section 40(2) of the FOIA – third party personal data. It refused the remainder of the request under section 14(1) of the FOIA – vexatious requests, on the grounds that it *"clearly lacks a serious purpose or value"*. It suggested that this was because, once the *Subject* field was excluded, little information of any interest remained.
8. The complainant requested an internal review on 6 March 2020. The Cabinet Office sent him the outcome of its internal review on 1 April 2020. It upheld its original position.

Scope of the case

9. The complainant contacted the Commissioner on 3 April 2020 to complain about the way his request for information had been handled.
10. During the course of the investigation, the Cabinet Office withdrew its reliance on section 40(2) in relation to the information in the *Subject* field, explaining that this followed *"previous discussion with the ICO on*

other cases on the extent to which the text of a requester's request (and in particular a shortened version of it) is considered personal information for the purposes of the Act".

11. However, the Cabinet Office asserted that the whole of the request was vexatious under section 14(1) of the FOIA. The complainant subsequently confirmed that he wished the Commissioner to investigate this refusal.
12. This notice considers whether the Cabinet Office correctly refused the request under section 14(1) of the FOIA.

Reasons for decision

Section 14(1) – vexatious requests

13. Section 1(1) of the FOIA states that an individual who asks for information is entitled to be informed whether the information is held and, if it is held, to have that information communicated to them.
14. However, 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.
15. The term vexatious is not defined in the FOIA. The Upper Tribunal considered the issue of vexatious requests in the case of the *Information Commissioner v Devon CC & Dransfield*¹ ("Dransfield"). The Tribunal commented that "vexatious" could be defined as being the "*manifestly unjustified, inappropriate or improper use of a formal procedure.*"
16. The Tribunal's definition therefore established that the concepts of proportionality and justification are relevant to any consideration of whether a request is vexatious. *Dransfield* also considered four broad issues:
 - (1) the burden imposed by the request (on the public authority and its staff);
 - (2) the motive of the requester;

¹ <https://www.judiciary.uk/judgments/info-commissioner-devon-county-council-tribunaldecision-07022013/>

- (3) the value or serious purpose of the request; and
- (4) harassment or distress of and to staff.

17. It explained that these considerations were not meant to be exhaustive and also explained 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).

18. The Commissioner has published guidance on dealing with vexatious requests², which includes a number of indicators that may apply in the case of a vexatious request. However, even if a request contains one or more of these indicators, it will not necessarily mean that it must be vexatious.

19. The Commissioner would stress that, in every case, it must be the request itself that is shown to be vexatious and not the person making it. The guidance also explains:

"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".

The Cabinet Office's position

20. The Cabinet Office set out its reasons for considering the request to be vexatious in a letter to the Commissioner.

21. The Cabinet Office explained that it interpreted the complainant's request to relate to the contents of specific columns on a spreadsheet which, at the date of the request, it was using to monitor its caseload of freedom of information (FOI) requests. It was aware that the complainant had been provided with the column headings (which he referred to as *"field names"*) in response to his earlier request, and so it was able to tie his request, which referred to a *"tracking database"*, specifically to the spreadsheet.

² <https://ico.org.uk/media/for-organisations/documents/1198/dealing-with-vexatious-requests.pdf>

22. The Cabinet Office's position is that the requested information is of very little value. It explained that the spreadsheet was used internally *"to serve as an aide to FOI officers in the tracking of cases"* and acted as a reference point to more detailed information about individual cases held elsewhere.
23. In its letter to the Commissioner, it stated that the requested information is *"entirely functional but trivial"*, includes entries which are *"mundane and nondescript"*, and comprises *"trivial minutiae"*. It additionally used other, similar phrases.
24. The Cabinet Office acknowledged that the subject matter of some of the requests it had received in 2019 may be of interest. However, it commented: *"we are not convinced that the disclosure of these entries would add to the sum of public knowledge"*.
25. The Cabinet Office added that the requested information does not provide detail about the complexities of case handling, and would enable only generic conclusions to be drawn about its handling of FOI requests. It is concerned that disclosure of the information could lead to conjecture about its handling of requests, which would not be based on a full picture.
26. The Cabinet Office has explained that the government already publishes bulletins which provide information about different departments' handling of FOI requests.
27. In summary, the Cabinet Office has argued that it is the overall issue of proportionality, highlighted in *Dransfield*, that caused it to refuse the request under section 14(1). In its view, the information is of so little value that the impact and/or burden of complying with the request would be unjustified.

The Commissioner's decision

28. The Commissioner has examined the Cabinet Office's evidence for this view. She notes that it has not argued that disclosing the information would be onerous in itself. However, it anticipates having to respond to further, similar questions in future, and has referred to the likely need to *"answer, contextualise and address... incorrect conclusions"*. It has concluded that the level of distraction to its day-to-day business which would be caused by this is not justifiable.
29. She notes the Cabinet Office doubts that there is much value in the information being requested. However this is not, in itself, an indicator of vexatiousness. While *Dransfield* established that one indicator may be a lack of value or purpose in the request, this is not the same as saying

that a request is vexatious if there is (in the opinion of the public authority) little value in the information.

30. The requester may, or may not, find the information he has requested useful for his research; however, it is clearly not, under FOI principles, appropriate for a public authority to decide it can refuse a request because in its own view, the recorded information it holds falling within the scope of a request, is of little value.
31. The Commissioner is satisfied that there is both purpose and value in the request in this case. The way in which government departments have managed the FOI requests they receive is a matter of general interest, and is frequently reported on.
32. Chiefly, the Cabinet Office has suggested a lack of proportionality: that complying with the request would place a disproportionate burden on it in view of the "*trivial*" nature of the information and its lack of value to the public. The Commissioner has considered its evidence as to the impact that would be caused by complying with the request.
33. As previously stated, the Cabinet Office has not argued that considering the information for disclosure is burdensome in itself. Rather, it anticipates receiving further questions and requests, following on from the disclosure of the information, and having to divert its resources to dealing with these.
34. However, the Commissioner is not persuaded that disclosing the information would necessarily lead to the type of disruption envisaged by the Cabinet Office. She considers this argument to be largely speculative.
35. With regard to the information itself, the Cabinet Office has been at pains to describe it as being of very little value; if this is the case, then the Commissioner considers that it is unlikely to create widespread interest.
36. With regard to the effects of disclosure, the Cabinet Office has argued that conclusions might be drawn from the information, which, it explained, presents only a partial picture of its request-handling procedures at the time. It considers that this may lead to further requests and questions, which would be burdensome to deal with. However, it appears to be speculating and has not provided evidence for its views.
37. In any event, with regard to this, the Commissioner considers that, if necessary, requested information can be contextualised at the point of disclosure. Indeed, she has a well-established view that, in general,

arguments about information being misleading or inaccurate should not be used to prevent access to recorded information.

38. Following the approach established in *Dransfield*, in the Commissioner's view, the request in this case is not characterised by indicators of vexatiousness. Neither is she persuaded, taking an overall, holistic approach to the question of proportionality, that a disproportionate burden would be placed on the Cabinet Office in complying with the request.
39. The Commissioner does not consider that the Cabinet Office has demonstrated that the request is vexatious in line with the established case law. She has therefore determined that the Cabinet Office was not entitled to refuse the request under section 14(1) of the FOIA.
40. She therefore orders the Cabinet Office to consider the requested information for disclosure, and either to disclose it, or issue a fresh refusal notice which does not rely on section 14(1).

Right of appeal

41. 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@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

42. 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.
43. 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

Phillip Angell
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