

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 10 January 2023

Public Authority: Office for Nuclear Regulation
Address: Building 4- Redgrave Court
Merton Road
Bootle
L20 7HS

Decision (including any steps ordered)

1. The complainant has requested information from the Office for Nuclear Regulation (ONR) regarding a list of all the INF1 reports that it has received since 1 January 2015. The ONR refused to comply with the request in accordance with section 14 of FOIA.
2. The Commissioner's decision is that the ONR is entitled to refuse to comply with the request in accordance with section 14(1) of FOIA – vexatious or repeated requests.
3. The Commissioner does not require the public authority to take any further steps as a result of this decision notice.

Request and response

4. On 8 December 2021, the complainant wrote to the ONR and requested information in the following terms:

"I would like to request a list of all the INF1 reports that the ONR has received since 1 January 2015.

For each list entry I would like to know:

- The facility that the INF1 related to (plant or area affected) - Whether radioactivity was released (yes / no)

- Whether workers were affected (yes / no)
 - Whether the public was affected (yes/no)
 - External services involved (fire / police / ambulance)
 - ONR category (nuclear / radiological / security / safeguards / transport / another)
 - The type of issue that the INF1 related to (cyber-attack / physical security issues / etc)
 - The date that the INF1 was submitted
 - I would like the data to be sent to me in Excel format
 - I would like the data to be as up to date as possible"
5. The ONR responded on 10 January 2022. It stated that due to the volume and way that the information is held, it would cost in excess of the £600 limit set by the government for dealing with FOIA requests. ONR asked the complainant to refine their request.
 6. On 8 March 2022, the complainant wrote to the ONR and advised that they did not believe that their request was too broad, or that it could cover a wide range of information and, as such, they do not consider that it should be exempt from disclosure.
 7. Following an internal review, the ONR wrote to the complainant on 9 May 2022. It stated that following a further review, it was now applying section 14 of FOIA.

Scope of the case

8. The complainant contacted the Commissioner on 9 May 2022 to complain about the way their request for information had been handled.
9. The Commissioner considers that the scope of this case is to determine whether ONR was correct to refuse to comply with the request under section 14(1) of FOIA.

Reasons for decision

Section 14 – vexatious requests

10. Section 14(1) of FOIA states that a public authority is not obliged to comply with a request for information if the request is vexatious. There is no public interest test.
11. The word "vexatious" is not defined in FOIA. However, as the Commissioner's updated guidance on section 14(1)¹ states, it is established that section 14(1) is designed to protect public authorities by allowing them to refuse any requests which have the potential to cause a disproportionate or unjustified level of disruption, irritation or distress.
12. FOIA gives individuals a greater right of access to official information in order to make bodies more transparent and accountable. As such, it is an important constitutional right. Therefore, engaging section 14(1) is a high hurdle.
13. However, the ICO recognises that dealing with unreasonable requests can strain resources and get in the way of delivering mainstream services or answering legitimate requests. These requests can also damage the reputation of the legislation itself.
14. The emphasis on protecting public authorities' resources from unreasonable requests was acknowledged by the Upper Tribunal (UT) in the leading case on section 14(1), *Information Commissioner vs Devon County Council & Dransfield* [2012] UKUT 440 (AAC), (28 January 2013) ("*Dransfield*")². Although the case was subsequently appealed to the Court of Appeal, the UT's general guidance was supported, and established the Commissioner's approach.
15. *Dransfield* established that the key question for a public authority to ask itself is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress.
16. The four broad themes considered by the Upper Tribunal in *Dransfield* were:
 - the burden (on the public authority and its staff);
 - the motive (of the requester);
 - the value or serious purpose (of the request); and

¹ <https://ico.org.uk/for-organisations/dealing-with-vexatious-requests-section-14/>

² <https://administrativeappeals.decisions.tribunals.gov.uk/Aspx/view.aspx?id=3680>

- any harassment or distress (of and to staff).
17. However, the UT emphasised that these four broad themes are not a checklist, and are not exhaustive. They stated:
- “all the circumstances need to be considered in reaching what is ultimately a value judgement as to whether the request in issue is vexatious in the sense of being a disproportionate, manifestly unjustified, inappropriate or improper use of FOIA” (paragraph 82).
18. Where relevant, public authorities need to take into account wider factors such as the background and history of the request.

The complainant's view

19. The complainant has explained to the Commissioner that there is a high bar set for section the section 14 exemption of FOIA and they do not think that their request reaches it.
20. The complainant advised that they do not think that less than 6,000 lines on an Excel spreadsheet should be viewed as being excessively burdensome, especially when there have been other data sets with hundreds of thousands of lines obtained using FOIA legislation.

The ONR's view

21. The ONR has explained in its internal review response that the request identified 5299 INF1 reports received since 1 January 2015. It advised that locating this information in its raw state and downloading into a spreadsheet is relatively easy.
22. The ONR went on to explain that, whilst the information in its raw state would be relatively easy to download onto a spreadsheet, the request becomes overly burdensome for several reasons. It advised that to prepare the information for publication, each of the 5299 lines on the spreadsheet would need to be reviewed by a member of ONR staff so that they could consider the sensitivity of the information related to the safety and security of nuclear facilities and activities.
23. The ONR explained that 2150 of the entries are listed under security and safeguards categories. This would mean that ONR's security specialists would need to undertake a review of each of these to ensure information exempt from disclosure was highlighted for redaction, where necessary.
24. The ONR advised that redacting potentially thousands of entries on the spreadsheet would place a significant burden on its staff in order to be in a position to correctly release the information.

25. The ONR also explained that, although it is ultimately their decision regarding what information can be released, the majority of information was provided by third parties, for which release of the information is likely to affect them. As such, third party consultation would be necessary with potentially all its licensees.
26. The ONR also explained to the complainant that it had received a total of seven requests from them between 14 March 2022 to 5 May 2022 and that they wanted to arrange a telephone call to discuss those requests being refined.

The Commissioner's view

27. In cases where a public authority is relying on section 14(1), it is for the public authority to demonstrate why it considers that a request is a disproportionate, manifestly unjustified, inappropriate or improper use of FOIA.
28. He also recognises that public authorities must keep in mind that meeting their underlying commitment to transparency and openness may involve absorbing a certain level of disruption and annoyance.
29. The Commissioner is satisfied that compliance would place a grossly oppressive burden on the ONR in terms of time and resources. ONR has sufficiently explained the process that would need to take place to ensure that the information was able to be released. It is evident that very time-consuming manual reviews of the information would be needed to consider various exemptions which may apply.
30. On the basis of the evidence provided, and considering the findings of the Upper Tribunal in Dransfield that a holistic and broad approach should be taken in respect of section 14(1), the Commissioner is satisfied that the request was a manifestly unjustified and improper use of FOIA such as to be vexatious. Accordingly, he is satisfied that the public authority was entitled to rely on section 14(1) of FOIA not to meet the complainant's request for information.

Right of appeal

31. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

32. 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.
33. 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

Michael Lea
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