

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 8 September 2023

**Public Authority:** Department for Levelling Up, Housing and Communities

**Address:** 2 Marsham Street  
London  
SW1P 4DF

#### **Decision (including any steps ordered)**

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1. The complainant requested all response received by the Department for Levelling Up (DLUHC), Housing and Communities relating to a Call for Evidence. The DLUHC refused the request under section 14(1) of FOIA (vexatious requests).
1. The Commissioner's decision is that the request was vexatious and therefore DLUHC was entitled to rely upon section 14(1) of FOIA to refuse it.
2. The Commissioner does not require any steps.

#### **Request and response**

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3. On 8 February 2023, the complainant made the following request for information to DLUHC:

"All information received within the responses to the Local Authority Remote Meetings: Call for Evidence (as referenced above) including a breakdown of the responses received, the number received and the content of the responses together with any documentation the government holds in respect of the analysis of those responses."
4. On 8 March 2023, the DLUHC responded and said the request was refused under section 14(1) of FOIA.

5. Following an internal review, DLUHC wrote to the complainant on 15 April 2023, upholding its position.

## **Scope of the case**

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6. The complainant contacted the Commissioner on 18 June 2023 to complain about the way their request for information had been handled.
7. This notice covers whether DLUHC correctly determined that the request was vexatious.

## **Reasons for decision**

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

8. 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.
9. The word “vexatious” is not defined in FOIA. However, as the Commissioner’s updated guidance on section 14(1)<sup>1</sup> 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.
10. 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.
11. 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.
12. 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)

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

("Dransfield")<sup>2</sup>. Although the case was subsequently appealed to the Court of Appeal, the UT's general guidance was supported, and established the Commissioner's approach.

13. 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.

14. 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
- any harassment or distress (of and to staff).

15. 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).

### **DLUHC position**

16. DLUHC has explained that there are 4,370 responses which would need to be reviewed and potentially redacted (to remove any personal data). DLUHC explained that each response is made up of 13 free text fields, meaning it would need to review 56,810 text fields for any personal identifying information and redact IP addresses which would be present in all responses.

17. DLUHC advised that it estimated it would take 10 seconds to review each text field, which would equate to 157.8 hours for all of the requested responses. DLUHC concluded that this amount of time on one request would divert valuable resources away from other important work.

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

18. DLUHC explained that as well as section 40, some of the requested information may be exempt under section 41 of FOIA. Especially responses which may include views on how specific Councils implemented remote meetings and any benefits or problems they encountered, which they may wish to keep confidential.
19. DLUHC further explained that some information may also be exempt under section 35 of FOIA. The core policy relevant to this request (Councils working remotely) was the subject of an amendment to the Levelling Up and Regeneration Bill at Lords report stage. DLUHC advised it would not be appropriate for it to publish the response to the "call for evidence" which would set out the Government's policy position on this matter and publicly disclose analysis of the information requested, while the matter is under active consideration by Parliament.
20. DLUHC concluded that it is still its intention to respond to the "call for evidence" and when this is done, the response will include a summary of the responses received.

### **The complainant's view**

21. The complainant explained that disclosing the requested information would support the principles of openness, transparency and accountability that the public justifiably expect. They argued that DLUHC has failed to publish information which was expected of it.
22. The complainant advised that the requested information does have purpose and value and any burden placed on the DLUHC would be overridden by the public interest, particular as there has already been a two year delay since the call to evidence period had ended.
23. The complainant went further and explained that as 4370 responses had been submitted, a public interest was clearly demonstrated and the DLUHC has a duty to report on the outcome of this consultation in a timely manner.
24. The complainant explained that they strongly disagreed with the view that the publication of the response to the "call for evidence" would set out the Government's policy position on this matter and publicly disclose analysis of the information requested, while the matter is under active consideration by Parliament. They advised that the policy position was already well known.

25. The complainant stated that DLUHC has large resources to hand and to describe the request is vexatious/burdensome was an attempt to retain information it did not wish for the public to see. They concluded that the call to evidence had a statement<sup>3</sup> regarding data protection and FOIA, therefore they could not see why information may be exempt.

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

26. 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.
27. The Commissioner is satisfied that for the request to be responded to in full, the DLUHC would have to undertake a large amount of work, which would be burdensome. The Commissioner also notes that even if DLUHC only spent one minute reviewing each response, this would still require 72 hours of work. The Commissioner notes that under section 12(1) of FOIA, DLUHC would be entitled to refuse requests that require in excess of 24 hours. This demonstrates that the amount of work required to respond to the request would be excessively burdensome.
28. However, the Commissioner must consider whether the burden is outweighed by the public value in this matter.
29. The Commissioner accepts that the number of responses to the "call to evidence" does indicate that it is of widespread interest. There is some value in disclosing information that would show how the various stakeholders have reacted.
30. However, the Commissioner is unable to agree that the value of the request is so profound as to justify the considerable burden that would be placed on DLUHC if it attempted to comply with the request.
31. The Commissioner also refers to the statement released on the Government's website which the complainant referred to in their complaint, which advised that information may be subject to FOIA (link can be seen in footnote below). Any information supplied by an individual which was considered to be confidential should detail why it has been deemed as confidential. The document went onto say the following:

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<sup>3</sup> [Local authority remote meetings: call for evidence - GOV.UK \(www.gov.uk\)](http://www.gov.uk)

"If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances."

32. This statement clearly demonstrates that information of a confidential nature could have been included in these responses, meaning DLUHC's assumption that some information may need to be redacted is reasonable. The Commissioner notes that there are multiple exemptions which would allow DLUHC to redact information under FOIA, for example information which may have been provided in confidence and therefore exempt from disclosure under section 41. As the regulator of data protection legislation, the Commissioner would also expect DLUHC to have checked that any information it disclosed complied with its obligations to protect personal data,
33. The Commissioner also notes that previous calls for evidence summary responses<sup>4</sup> have been published on the Government's website, which further supports the DLUHC argument that information will be published at a later date. The Commissioner notes that the complainant had queried how publishing at a later date would be less burdensome than responding to this request, however he notes that like the previous calls to evidence, its likely only a summary of responses will be provided, rather than each response as requested in this matter. The Commissioner also notes that DLUHC would be able to take longer than the 20 working days required by FOIA in order to carry out this work.
34. The Commissioner believes that the request was vexatious and therefore DLUHC was entitled to rely on section 14(1) of FOIA to refuse the request.

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<sup>4</sup> [Digital Identity: Call for Evidence Response - GOV.UK \(www.gov.uk\)](http://www.gov.uk) [Pensions tax relief administration CfE final.docx \(publishing.service.gov.uk\)](http://publishing.service.gov.uk)

## Right of appeal

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35. 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](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

36. 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.
37. 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 .....**

**Roger Cawthorne**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**