

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 12 July 2023

Public Authority: Channel Four Television Corporation
Address: 124 Horseferry Road
London
SW1P 2TX

Decision (including any steps ordered)

1. The complainant has requested information relating to complaints made to Speak Up about bullying. Channel 4 refused the request as vexatious under section 14(1) of FOIA.
2. The Commissioner's decision is that Channel 4 is not entitled to rely on section 14(1) of FOIA in this case.
3. The Commissioner requires Channel 4 to take the following steps to ensure compliance with the legislation.
 - Issue a fresh response to the complainant which does not rely on section 14(1) of FOIA.
4. The public authority must take these steps 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. On 11 July 2022 the complainant made the following information request to Channel 4 via WhatDoTheyKnow. It started as follows:

"On Jan 5, 2022, Deadline published an article with statistics on your Speak Up whistleblowing facility. Deadline reported that according to C4, responding to an FOI request, of 24 complaints made to Speak Up in 2021 '10 were partially upheld, eight were upheld and three were not upheld."

6. The information requests that followed were:

- "Did Speak Up partially uphold a complaint against Rumpus Media in June 2021 on the basis they had not conducted an investigation into claims of bullying?"
- Did Speak Up conclude that Rumpus had failed to properly investigate the same bullying complaint in both March 2020 and March 2021, as stated by Speak Up Evaluation Member, Kirstin Furber?
- Does failure to properly investigate a bullying complaint properly constitute a breach of Channel 4's Supplier Code of Conduct?
- Has Rumpus Media to date properly investigated the bullying complaint in question?
- Has Rumpus Media submitted a report to Channel 4 from this investigation? If so, when?
- Have any complaints ever been made to [name redacted] about Rumpus Media potentially covering up wrongdoing or victimising someone that reported bullying?
- If so, what action did [name redacted], and Channel 4 take to investigate such complaints?"

7. Channel 4 responded on 8 August 2022. It explained that, as stated in a previous response from October 2021 in relation to an earlier request, the request had exhausted Channel 4's request handling and section 14(1) of FOIA applied.

8. The complainant requested an internal review of this decision on 12 August 2022. Channel 4 conducted an internal review and responded with the outcome on 9 September 2022 upholding the decision to refuse the request as vexatious.

Reasons for decision

9. This reasoning covers whether Channel 4 is entitled to rely on section 14(1) of FOIA to refuse the complainants request.

10. Under section 14(1) of FOIA a public authority is not obliged to comply with a request for information if the request is vexatious.
11. Broadly, vexatiousness involves consideration of whether a request is likely to cause a disproportionate or unjustified level of disruption, irritation, or distress.
12. To analyse vexatiousness, the Commissioner considers four broad themes that the Upper Tribunal (UT) developed in *Information Commissioner vs Devon County Council & Dransfield* [2012] UKUT 440 (ACC):
 - Value or serious purpose
 - Motive
 - Burden; and
 - Harassment to staff
13. The Commissioner will first look at the value of the requests as this is the main point in favour of the request not being vexatious. He will then look at the negative impacts of the requests ie the three remaining themes of burden, motive, and harassment, before balancing the value of the requests against those negative impacts.
14. By way of background, before considering the arguments from both parties, the request is about the outcome of a specific Speak Up investigation involving Rumpus Media Ltd and allegations of bullying. "Speak Up" is a facility provided by Channel 4 via which suppliers and/or their employees can raise concerns with Channel 4.

The public authority's position

15. Channel 4 have provided the Commissioner with some background to the complaint and the request. It advised the Commissioner that in essence this complaint was a continuation of an earlier request also relating to Rumpus and Speak Up that was considered by the Commissioner in another decision notice¹. At the time the request being considered here was received, Channel 4 had been made aware that the Commissioner had been asked to consider the outcome of the earlier request that has since had a decision notice issued.
16. Channel 4 considers these requests to be closely related as they both ask for information relating to the Speak Up investigation involving

¹ [ic-136681-z7z2.pdf \(ico.org.uk\)](#)

Rumpus and allegations of bullying. Channel 4 has emphasised that the complainant would have been aware the Commissioner was considering Channel 4's approach in the earlier request when they submitted their new request for information and this demonstrates the complainant did not give Channel 4 sufficient time to consider his initial appeal before submitting a further request.

17. In terms of burden, Channel 4 points to a decision of the Upper Tribunal² which suggests public authorities consider the number, pattern, duration and breadth of requests when considering burden. In keeping with this approach Channel 4 set out to the Commissioner the burden it considered responding to the request would have.
18. Channel 4 showed that the first FOIA request it received from the complainant about Speak Up was on 16 September 2021. This was responded to on 27 September, with Channel 4 refusing to confirm or deny if the information was held. On the same date of this refusal a new request was made relating to Speak Up, Rumpus and bullying. A response was sent on 22 October 2021 refusing this request.
19. Channel 4 then states that between 23 October 2021 and 24 October 2021 the complainant sent 11 emails to the FOIA team at Channel 4 expressing dissatisfaction with the response and suggested in one email that Channel 4 were "treating Speak Up as some kind of 'black ops' unit". Channel 4 did an internal review of this request and this was later the subject of the Commissioner's decision notice referred to earlier IC-136681-Z7Z2.
20. On 25 October 2021 (the day after the 11 emails were sent) a new request was submitted for all information relating to requests received in the previous month by Channel 4 that were refused under section 41 of FOIA. In the internal review response to this request Channel 4 advised the complainant they had exhausted the complaint process and section 14 was engaged.
21. The current request being considered here was submitted on 12 July 2022 and Channel 4 advised it was refused under section 14 in line with how it had advised the complainant it would treat such requests in the aforementioned internal review response. Channel 4 argue that having internally reviewed its refusal to supply the information on two previous occasions carrying out a third internal review would impose an

² [Dransfield & Anor v The Information Commissioner & Anor \[2015\] EWCA Civ 454 \(14 May 2015\) \(bailii.org\)](#)

unnecessary burden and that dealing with the volume of correspondence each request generates imposes a burden. Channel 4 considers it has consistently tried to provide additional information to assist the complainant in understanding the decision it made.

22. Channel 4 advises it typically receives around 80-100 requests under FOIA per year and it is smaller than other television broadcasters so given the low request rates it would be difficult for Channel 4 to justify maintaining a large FOIA team.
23. In 2021 the complainant submitted three FOIA requests about Speak Up/Rumpus between September and December 2021 and Channel 4 states this amounted to 12.5% of the total requests received in that period. Over the same period it also carried out four internal reviews and it therefore considers in the context of the resource available the request has imposed a burden on the organisation. Channel 4 also stresses this does not include the burden from the other correspondence generated around the requests such as the 11 emails sent in one weekend.
24. In addition to this, outside of FOIA, Channel 4 has received correspondence about Speak Up/Rumpus that it states amount to 150 emails and letters.
25. In terms of the pattern of the requests, Channel 4 considers they have often been made in quick succession and in one case submitted on the same date another was refused, before Channel 4 had an opportunity to conduct an internal review. Channel 4 has pointed to a request made on 29 November 2021 asking what information was published on Channel 4's publication scheme and then on the next day the complainant requested an internal review on another request.
26. Channel 4 also advised that during late 2021 the complainant consistently expressed dissatisfaction with the time taken to respond to requests. One example given to the Commissioner was within a series of emails which, taken together, according to Channel 4 amounted to a roughly 4500 word request for an internal review.
27. Channel 4 has confirmed the current request was made in July 2022 and the first request on this subject was made 10 months earlier in September 2021. Given this Channel 4 considers it is reasonable to assume that requests on this subject will continue to be made into the future, especially as the Speak Up investigation was related to alleged incidents taking place up until March 2020.

28. Channel 4 acknowledges the requests appear to be borne out of a genuine concern relating to the topic of the requests. This request was the fourth FOIA request relating to Speak Up.
29. In one internal review response it was noted:

“I do not see how it would be reasonable to assume that having had the request refused on a number of previous occasions, Channel 4’s response would be any different on the fourth occasion. Given at the time you submitted your request, you were aware that an ICO decision on this matter was pending, submitting this further request at that time could be interpreted as being designed to cause an unjustified level of disruption.”
30. The current request is focused on the outcome of the Speak Up investigation. Channel 4 states the Speak Up Evaluation Group provided the complainant with a copy of the outcome of their investigation in June 2021 and this document sets out the Speak Up Evaluation Group’s conclusions against each of the allegations raised so it is reasonable to state the complainant had the necessary information to answer their own request.
31. Channel 4 acknowledges that, on plain reading, the request has serious purpose, given it seeks to understand a decision made by Channel 4’s Speak Up committee. However, it considers that given the complainant was given the outcome of the investigation the serious purpose is somewhat diminished.
32. Channel 4 has pointed to the earlier decision notice in which the Commissioner found in favour of Channel 4, agreeing that in confirming a specific Speak Up complaint had been raised, Channel 4 would be setting the precedent for the routine disclosure of information that could identify whistleblowers. At the time this request was made the decision was yet to be issued but the complainant was aware it was pending. Channel 4 considers this demonstrates “unreasonable persistence” in pursuing the request and that this diminishes the value of the request.
33. Channel 4 also considers there has been a consistent pattern of accusations of wrongdoing and dishonesty. Usually at the point an individual, team or organisation do not reach the same conclusion on an issue as the complainant, or do not respond to correspondence in what the complainant deems to be an appropriate timeframe. There have been demonstrable examples of the complainant referring to staff as dishonest and allegations of Channel 4 covering up misconduct.
34. Channel 4 also argue that whilst the complainant may perceive their request is made in connection with the review of a decision by the

Speak Up committee they view as controversial, that decision had been looked at and re-examined in a variety of contexts by the time this latest FOIA request was raised, including by Channel 4's CEO, a non-Executive Director/Chair of Channel 4's Audit Committee and two Channel 4 Board Chairs.

The complainant's position

35. The complainant points out that their first request to Channel 4 on this subject was in September 2021 and Channel 4 refused to confirm or deny if information was held. The complainant admits a lack of FOIA knowledge at this time and subsequently realised the request as worded was unlikely to result in information being provided. They state this then resulted in a second request being made and refused under section 41 of FOIA. The complainant acknowledges they challenged this refusal over several emails rather than in one email requesting an internal review.
36. At the point that Channel 4 informed the complainant they would engage section 14(1) to refuse any future requests about Speak Up (in the internal review of 22 December 2021) the complainant's view of their request to Channel 4 was that they had :
- submitted one request refused under section 40(5)(a) and not challenged;
 - submitted a slightly re-worded version of this request;
 - had this request refused under section 41 and sent several emails to highlight procedural breaches, ask for an internal review and correct some alleged misunderstandings; and
 - made a separate meta-request about a data set.
37. The complainant argues that Channel 4 are a public corporation with over a thousand employees, and a dedicated FOIA team so it is not reasonable to state that future requests would be vexatious when only three FOIA request had been made, even if several emails had been sent over one weekend.
38. The complainant has referred to the Commissioner's guidance on section 14³ in which it states that some of the mitigating factors against a request being vexatious is if previous requests have been dealt with

³ [How do we consider burden, motive and harassment? | ICO](#)

poorly or with conflicting/confusing responses. The complainant argues this is the case here.

39. Turning to the request that has been refused under section 14 now; the complainant firstly points out that they submitted this request seven months after the last and secondly that it is for a different data set. They point out this request was prompted by a subsequent news story and asks for information about how data was classified for that article. It also additionally asks for clarification on Channel 4 procedures. They argue there have been conflicting statements regarding the investigation of Rumpus so it was deemed appropriate, following the article, to ask for clarification about this.
40. On the subject of other correspondence the complainant has had with Channel 4 outside of FOIA; the complainant acknowledges they have had correspondence with Channel 4 regarding subject access requests.
41. They also accept they have sent multiple emails in quick succession but have explained the reasoning for this to both the Commissioner and Channel 4.
42. However the complainant stresses that:

“it took three months of emailing to get a review of Speak Up’s investigation by C4’s Audit Committee Chair, and two months of emailing to get the outcome of that when he said it would take a week. There are also countless examples of FOIA requests and DSARs where I have had to challenge C4’s response, often multiple times in great detail, to finally obtain information that should have been released.”
43. The complainant highlights that Channel 4 has not questioned their motive for making the requests and it would not be reasonable to suggest that dealing with four FOIA requests and three internal reviews over 11 months is onerous or burdensome.
44. On the subject of harassment and distress the complainant acknowledges they have named people in their requests but they are senior figures and should be publicly accountable. The complainant has used social media, in particular Twitter, to post comments about their experience with Rumpus and Channel 4, including posting a comment about the personal relationship between two employees.
45. In regard to overall public interest in the request, the complainant states that the proper conduct of public bodies’ investigations has been established by tribunal as of particular public interest. Public interviews with senior Channel 4 staff have stressed the importance of Speak Up as a mechanism for preventing bullying and harassment in the industry. As such the complainant argues scrutinising the efficacy of Speak Up is a

matter of public interest and the request is clearly not just about the specific Speak Up investigation the complainant has an interest in but about other Speak Up investigations.

The Commissioner's position

46. Both Channel 4 and the complainant have provided substantial arguments to the Commissioner and the Commissioner has only summarised the points most relevant in this notice. It is clear there is significant background to the issues and there has been correspondence outside of FOIA that has, at times, walked a fine line of what is acceptable communication.
47. Allegations of wrongdoing and cover-ups are not unusual for public authorities to receive and the Commissioner expects that, for the most part, these will not be particularly distressing for staff as they will be made about an organisation in general rather than a specific individual. That being said, some specific employees of Channel 4 have been named by the complainant as being involved in misconduct albeit at a senior level. However, the Commissioner does not consider this on its own tips the request into being vexatious.
48. Much of the correspondence referred to by Channel 4 that shows a pattern of behaviour relates to the complainant's wider issues with Channel 4/Speak Up/Rumpus and not to the complainant's FOIA request. The Commissioner can factor in the wider picture of a complainant's interactions with a public authority when determining if a request is imposing an unreasonable burden and he has considered this here.
49. The interactions do show there has been a reasonable volume of correspondence, some of which did contain accusations of wrongdoing and misconduct. However, it is also clear that some of the correspondence was clarifying earlier emails, acknowledging correspondence, informing Channel 4 of intentions to refer matters or pointing out procedural errors. None of these would appear to be unreasonable communications. There is a somewhat scattergun approach to these communications which the complainant is not unaware of but has explained to both the Commissioner and Channel 4.
50. In terms of the requests themselves, the Commissioner is minded to agree with the complainant that there has not been an excessive number of requests and they have been spaced out. A gap of seven months between the last requests would appear to show that the complainant is not making requests simply to cause disruption and it would seem this latest request was prompted by a media article.

51. The complainant has argued that the request is not solely about the complaint they raised with Speak Up but is wider than this. There are certainly elements of the request that this is true of, for example one part of the request asks about what constitutes breaches of the Supplier Code of Conduct although arguably this is still entwined with the complainant's issue with Speak Up/Rumpus.
52. As such, the Commissioner does not think it would be fair to say there is no purpose or value to the request or that there is no wider value in a request that seeks to hold to account a mechanism (Speak Up) designed to report wrongdoing.
53. In this case, taking into account the above, the Commissioner does not find that the request has met the high hurdle of being vexatious. It does not seem that responding to the request would impose an unreasonable burden on Channel 4 . Nor has the correspondence sent by the complainant created an unreasonable pressure on Channel 4 as some of the emails are legitimately about their requests under FOIA or data protection legislation and some do not require responses. General allegations of wrongdoing and cover-ups are not likely to be distressing to staff and there is still evidence of a wider purpose or value to the requests.
54. For the above reasons, the Commissioner has decided that section 14 of FOIA does not apply to this request. He would however point out that complaints are considered on a case by case basis. Just because the Commissioner has found here that section 14 is not engaged in this case that does not mean that he would not find it engaged in relation to similar requests in the future, particularly if contact persists via channels other than established routes such as Channel 4's complaints processes and information requests processes.

Right of appeal

55. 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

56. 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.
57. 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

Jill Hulley
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