

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 8 November 2023

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

Decision (including any steps ordered)

1. The complainant requested information from the Cabinet Office (CO) relating to briefing materials in response to an Urgent Question in Parliament. The CO refused the request under section 14(1) of FOIA (vexatious requests).
2. The Commissioner's decision is that the request was not a vexatious request.
3. The Commissioner requires the CO to take the following step 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 CO 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 FOIA and may be dealt with as a contempt of court.

Request and response

5. On 4 July 2023, the complainant made the following request for information to the CO:

“Please disclose an electronic copy of all briefing materials which were supplied to the Paymaster General in relation to the Urgent Question asked on 11 January 2022 in the House of Commons.

In formulating your response, you will want to take account of what the Information Commissioner said in his decision notice IC-159959-L0Y7 in the final sentence of para 38.”

6. On 2 August 2023, the CO responded and said the request was being refused because it was vexatious under section 14(1) of FOIA.
7. Following an internal review, the CO wrote to the complainant on 25 August 2023, upholding its position.

Scope of the case

8. The complainant contacted the Commissioner on 25 August 2023 to complain about the way their request for information had been handled.
9. The Commissioner’s decision in this case relates solely to whether or not the CO correctly determined that the request was vexatious. The Commissioner has not considered the requested information and cannot comment on whether or not it ought to have been disclosed to the complainant.

Reasons for decision

Section 14(1) – 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.
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 general 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.

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

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. The Court of Appeal upheld the UT's decision and supported 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 UT 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).
17. However, the UT emphasised that these four broad themes are not a checklist, and are not exhaustive. It 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. In its response to the ICO the CO said "While we accept that there is legitimate public interest in transparency around ministerial briefings generally and allegations of gatherings on government premises during Covid restrictions specifically, we judge that there is limited value, purpose and public interest in this specific request".
19. The CO explained that this was because "the Information Commissioner provided a Decision Notice on 4 July (IC-159959-L0Y7)³ which set out that the Cabinet Office is entitled to rely on section 36 as its basis for refusing the request."

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

³[IC-159959-L0Y7](#)

20. The CO did not provide, in the initial response or the internal review, any further supporting arguments as to why it considered the request which is the subject of this decision notice to be vexatious.

The complainant's view

21. In their request the complainant also referred to the previous decision notice as set out at para 19 above (IC-159959-L0Y7), in which their request for the same information was refused under section 36 of FOIA.
22. The complainant argues that, when referring to the public interest in that decision notice, the Commissioner said:

“The Commissioner has considered the points raised by CO in favour of maintaining the exemption and has concluded, by a narrow margin, that they carry greater weight. In reaching this view, when assessing those points in the circumstances of this case he has given particular weight to the fact that the information was, at the time of the request, recently created. However, the Commissioner may have reached a different view had the information been older at the time of the request given the strong public interest in disclosure.”

23. Therefore, given the passage of time the complainant argues it is reasonable to make a second request for the information in question.

The Commissioner's decision

24. 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.
25. In reaching a decision in this case the Commissioner has considered the responses provided by the CO and the arguments presented by the complainant.
26. In the Commissioner's opinion the CO has not demonstrated that this request meets any of the four broad themes considered by the UT in Dransfield. The CO has cited the previous decision notice but this considers the exemption at section 36 rather than the exclusion provided by section 14 of FOIA. In respect of section 14 the arguments provided to the Commissioner are too generic to carry significant weight. Therefore the Commissioner is not persuaded that the CO is entitled to rely on section 14 in order to refuse the request.

27. Furthermore, the Commissioner has had regard to his comment in the previous decision notice that, given the passage of time, the public interest in disclosing the information might in future outweigh the arguments for maintaining the section 36 exemption in respect of a future request for the same information. The Commissioner has seen insufficient evidence to suggest that the CO has given proper consideration to the passage of time when responding to the request.
28. Given that the requests are over 12 months apart the Commissioner is of the opinion that the complainant has allowed a reasonable amount of time to pass before making a second request. The Commissioner is satisfied that the time that has passed is likely to have an impact on consideration of the public interest. Therefore he concludes that the CO ought to have accepted the request as valid and considered whether or not the requested information should be disclosed.
29. For the reasons set out above the Commissioner finds that the request was not vexatious and the CO was not entitled to refuse it under section 14(1) of FOIA.

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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.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

**Sarah O’Cathain
Senior Case Officer
Information Commissioner’s Office
Wycliffe House
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SK9 5AF**