

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 28 March 2024

Public Authority: Cabinet Office

Address: 70 Whitehall
London
SW1A 2AS

Decision (including any steps ordered)

1. The complainant submitted two requests to the Cabinet Office seeking information relating to a historical archive. The Cabinet Office refused both requests on the basis of section 14(1) (vexatious) of FOIA.
2. The Commissioner's decision is that the Cabinet Office is entitled to refuse both requests on the basis of section 14(1) of FOIA.
3. The Commissioner does not require further steps.

Request and response

4. The complainant submitted two requests to the Cabinet Office on 15 November 2022 which sought information relating to a historical archive.
5. The Cabinet Office responded to the requests on 13 December 2022 and refused to answer both of them citing section 14(1) (vexatious) of FOIA. The complainant contacted the Cabinet Office on the same day and asked it conduct and internal review.
6. The Cabinet Office upheld its application of section 14(1) of FOIA for both requests in its internal review issued on 9 March 2023.

Scope of the case

7. Having failed to receive a response to his request for an internal review, the complainant initially contacted the Commissioner on 15 February 2023 in relation to the Cabinet Office's decision to refuse both requests on the basis of section 14(1) of FOIA. Following the completion of the internal review the complainant confirmed that he wished to continue to challenge this refusal.

Reasons for decision

8. Section 14(1) of FOIA allows a public authority to refuse to comply with a request if it is considered to be vexatious.
9. Whilst the term 'vexatious' is not defined in FOIA, in the case of the Information Commissioner v Devon CC and Dransfield the Upper Tribunal commented that the term could be defined as the "manifestly unjustified, inappropriate or improper use of a formal procedure".¹ The Upper Tribunal's definition clearly established that the concepts of proportionality and justification are relevant to any consideration of whether a request is vexatious.
10. In the Dransfield case, the Upper Tribunal also found it instructive to assess the question of whether a request is truly vexatious by considering four broad issues; (1) the burden imposed by the request (on the public authority and its staff), (2) the motive of the requester, (3) the value or serious purpose of the request, and (4) harassment or distress of, and to, staff.
11. However, the Upper Tribunal did also caution that these considerations were not meant to be exhaustive. Rather, it stressed 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).

¹ [2016] UKUT 0273 (AAC)

https://assets.publishing.service.gov.uk/media/578f2b5aed915d3cfd000179/GIA_0246_2015-00.pdf

12. The Commissioner's guidance on dealing with vexatious requests sets out a number of indicators that may apply in the case of a vexatious request.² The fact that a request contains one or more of these indicators will not necessarily mean that it must be vexatious. All the circumstances of the case will need to be considered in reaching a judgement as to whether a request is vexatious, including the context of the request and the history of the public authority's relationship with the requester, when this is relevant.
13. In the very particular circumstances of this case it is not possible for the Commissioner to set out either the Cabinet Office's submissions to him, or the complainant's submissions, without the complainant being identified.³ Nor is it possible for the Commissioner to set out his findings on these submissions without the complainant being identified. Therefore these submissions, and the Commissioner's considerations of them, are not included in this notice but are set out in detail in an annex which will be sent to the Cabinet Office and complainant only.
14. For the purposes of this notice the Commissioner can confirm that he has found that the Cabinet Office can rely on section 14(1) of FOIA to refuse the two requests which the complainant submitted to it on 15 November 2022.

² <https://ico.org.uk/for-organisations/guidance-index/freedom-of-information-and-environmental-information-regulations/dealing-with-vexatious-requests-section-14/>

³ The Commissioner's general approach is that individuals who submit section 50 FOIA complaints to him will not be identified in any decision notice that is issued in relation to their case.

Right of appeal

15. 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

16. 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.
17. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Jonathan Slee
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