

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 29 August 2024

Public Authority: Liverpool City Region Combined Authority

Address: 1 Mann Island
Liverpool
Merseyside
L3 1BP

Decision (including any steps ordered)

1. The complainant has requested a copy of a mayor's work diary for a 12-month period. Liverpool City Region Combined Authority ("the authority") refused the request under section 14(1) of FOIA (vexatious requests).
2. The Commissioner's decision is that the council was correct to refuse the request under section 14(1) of FOIA.
3. The Commissioner does not require further steps.

Request and response

4. On 27 February 2024, the complainant wrote to the authority and requested information in the following terms:

"Please provide the full work diary of Mayor Steve Rotheram for the 12 month period proceeding the receipt of this request"

5. The authority responded on 15 March 2024. It refused the request under section 14(1) of FOIA.
6. Following an internal review the authority wrote to the complainant on 15 April 2024. It maintained its initial decision.

Scope of the case

7. The complainant contacted the Commissioner on 17 April 2024 to complain about the way their request for information had been handled.
8. The Commissioner considers that the scope of his investigation is to determine whether the authority was correct to refuse the request under section 14(1) of FOIA.

Reasons for decision

9. 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.
10. The term "vexatious" is not defined in FOIA. However, the Commissioner's guidance¹ states 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.

¹ <https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/section-14-dealing-with-vexatious-requests/>

11. 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.
12. However, the Commissioner 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.
13. The emphasis on protecting public authorities' resources from unreasonable requests was acknowledged by the Upper Tribunal in the leading case on section 14(1), *Information Commissioner vs Devon County Council & Dransfield* [2012] UKUT 440 (AAC) (28 January 2013)². Although the case was subsequently appealed to the Court of Appeal, the Upper Tribunal's general guidance was supported, and established the Commissioner's approach.
14. However, the Commissioner also accepts that there may be cases where a request could be considered to be vexatious because the amount of time required to review and prepare the information for disclosure would place a grossly oppressive burden on the public authority. This is the position adopted by the authority in this case.
15. The Commissioner's guidance on section 14 states that there is a high threshold for refusing a request on such grounds. It says that a public authority is most likely to have a viable case where:
 - the requester has asked for a substantial volume of information and
 - the authority has real concerns about potentially exempt information, which it will be able to substantiate if asked to do so by the Commissioner, and
 - any potentially exempt information cannot easily be isolated because it is scattered throughout the requested material.

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

The complainant's arguments

16. The complainant argues that the mayor's diary is public information. They argue that there the mayor should not have any meetings which the public cannot be told about.
17. The complainant further argues that the authority could easily provide the information which they have requested. They highlighted a previous request for similar information made Liverpool City Council in which the information was provided in redacted form.
18. The complainant also argues that the council has applied section 14 to refuse the request when they have made very few requests to the authority previously.

The authority's arguments

19. The authority applied section 14(1) to refuse the request on the basis that responding to it would create a grossly disproportionate burden upon it. It has not argued that the request is vexatious due to the actions of the complainant or due to the nature or number of their previous requests for information to it.
20. It clarified that the mayor's work diary is held in a Microsoft Outlook calendar. It said that the entries in this calendar include details of both internal and external meetings (held with a range of partners and stakeholders, from community groups to central government), details of personal and private engagements, family member's details, information about identifiable authority staff, detailed travel arrangements and information about party-political activities. It said that the entries also include a clear indication of the travel patterns of the mayor, which it considered would create a security risk to disclose into the public domain.
21. It therefore considers that a range of possible exemption would apply to the diary entries, such as:
 - Section 21 – information already reasonably accessible in relation to public meeting details available on its website
 - Section 22 – information intended for future publication as above
 - Section 35 and 36 – government policy and prejudice to the effective conduct of public affairs for meetings with Government, stakeholders and internally
 - Section 38 – endangering health and safety with regard to the Metro Mayor's travel plans
 - Section 40(2) - Personal data of a third parties
 - Section 43 – trade secrets and prejudice to commercial interests

22. It said that in addition to the above, some entries may include party-political activities. It argued that these would sit outside of the official duties of the mayor and so its assessment of the diary entries would also need to consider whether these would actually be held by the authority for the purposes of FOIA.
23. It said that it had received similar requests from other requestors previously, and noted that in response to a previous request for six months of diary entries, the time taken to disclose the information had far exceeded the 18-hour cost limit provided by section 12 of FOIA (appropriate limit).³
24. It said that in this case, it had carried out a sampling exercise of one month of the requested timeframe, which took 3 hours to complete. Therefore, it estimated that responding to the whole request in this case would take roughly 36 hours.
25. It said that the authority's, and the mayor's, profile have significantly increased in recent years, and the mayor regularly makes public appearances. It noted that whilst it has provided information of this nature to requestors previously, the expanded role and duties has greatly increased the work which would be required in order to respond to such requests.
26. The authority considered the wider public value of it disclosing the information. It recognised that there is a public interest in knowing that the mayor is active in his role, and in it being as open and transparent as possible about the activities of the mayor and their office.
27. It said that as a result of the discussions surrounding responding to this request, it is now considering how to manage the mayor's diary differently in the future. It is considering how information of the sort requested can be recorded so that it can be disclosed without infringing upon the efficiency of the office or making unwarranted disclosures of personal information.
28. The authority argued that it had provided help and assistance to the complainant in reformulating their request so that some information could be provided. It suggested to the complainant that they narrow

³ As set by the [Freedom of Information and Data Protection \(Appropriate Limit and Fees\) Regulations 2004](#).

their request to a period of 6 months of diary entries rather than 12, but the complainant did not respond to this.

29. The authority also highlighted a previous decision notice by the Commissioner relating to a request for the work diary of Grant Shapps over a 16-month period.⁴ The Commissioner's decision in that case was that the Department for Trade was correct to refuse the request under section 14(1). It noted that the time estimate for responding in that case was 43 hours, whereas in this case it is 36 hours, but it also noted that the fees regulations set a higher appropriate limit for the application of section 12 under FOI for central government than for local government.
30. Finally, the council provided the Commissioner with samples of the mayor's outlook calendar in order to support its arguments.

The Commissioner's analysis

31. The authority applied section 14 on the basis of the grossly disproportionate burden responding to the request would place on it.
32. Paragraph 7.14 of the [Code of Practice](#), issued by the Cabinet Office under section 45 of FOIA, makes clear that public authorities should always consider section 12 first in these circumstances.
33. The Commissioner recognises that providing a copy of 12 months of Outlook calendar entries would not, in itself, exceed the appropriate limit set by section 12 of FOIA. However, in estimating the time it would take to respond to a request, section 12 of FOIA does not allow a public authority to include within its calculations the time it would take to analyse, consider, and redact exempt information from the information caught within the scope of the request.
34. The authority, however, argues that it is the process of analysing the data which would create the disproportionate burden in this case. It argues that this is due to the number of entries which would need to be considered over the relevant period of time, and the number of different exemptions which might be applicable to these entries.

⁴ <https://ico.org.uk/media/action-weve-taken/decision-notices/2022/4022827/ic-148740-m6d1.pdf>

35. The Commissioner therefore accepts that the authority has appropriately considered and discarded the application of section 12.
36. The Commissioner also accepts the authority's argument that a large number of individual entries would fall within the 12-month period stipulated by the request. He accepts that this voluminous amount of data would need to be fully analysed in order to determine what information should be exempted from disclosure from within it. He also accepts that exempt information would be likely to be scattered throughout that information, and that it would take a significant amount of time and resources to locate, identify, consider, and redact that information prior to the information being disclosed.
37. Whilst he notes that the entries are likely to have many which are similar in nature to each other, (for instance, recurring meetings or activities), and only one of these entries may need full consideration in order to be informed about the likely outcome for other similar entries, the Commissioner notes the results of the authority's sampling exercise. Given the results of this, he is satisfied that responding to the request would far exceed the time limit set by section 12 of FOIA, and that responding would create a significant burden upon the authority.
38. Whilst the Commissioner notes that, in effect, the reason the authority is unable to provide a response is due to the way in which it has recorded the mayor's diary entries, he must make his decision based upon the way that the requested information is held, not on any alternative ways in which it could or 'should' be.
39. The public has an expectation that information on the mayor's activities should be disclosed and that the actions of the authority as a whole will be transparent about its actions and its decisions. However, where doing so would create a grossly oppressive burden upon the authority which would take significant resources in order to respond, then this may be disproportionate to the value of the information which would be disclosed.
40. The Commissioner notes that the authority has said that it is now considering making changes so that relevant parts of the diary can be disclosed in the future. In the meantime, in its refusal notice to the complainant, it advised the complainant that if they agreed to narrow the scope of their request to 6 months of data, this would be responded to. The complainant, however, has not agreed to do so.
41. Applying the above to the tests referred to in paragraph 13, therefore:
 - The Commissioner is satisfied that the request encompasses a large volume of information – 365 days of diary entries.

- The Commissioner is also satisfied that the mayor's diary would include information which is potentially exempt under a number of different exemptions, such as those highlighted by the authority. Each of the entries would need to be considered separately to decide if an exemption applies.
 - The Commissioner is satisfied that potentially exempt information would be scattered throughout the diary as it is a record of the daily activities of the mayor.
 - Finally, the Commissioner has balanced the public value of the information being disclosed against the work which would be involved in responding to the request. He has decided that responding to the request would be disproportionately burdensome upon the authority.
42. For the above reasons, the Commissioner has decided that the authority was correct to apply section 14(1) to refuse the request in this instance.

Right of appeal

43. 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

44. 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.
45. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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