

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 6 September 2024

Public Authority: Department for Energy Security and Net Zero
("DESNZ")

Address: 3-8 Whitehall Place
London
SW1A 2AW

Decision (including any steps ordered)

1. The complainant requested information relating to the historical handling of his settlement with the British Coal Corporation. DESNZ relied on section 14(1) of FOIA (vexatious) to refuse the request.
2. The Commissioner's decision is that the request was vexatious and therefore DESNZ was entitled to rely upon section 14(1) of FOIA to refuse it.
3. The Commissioner does not require any steps.

Request and response

4. On 13, 15, 20 and 23 January 2024 the complainant requested the information on various elements of his accident compensation in particular with respect to the application of legal professional privilege ("LPP"). The complainant wrote to DESNZ and requested information in the following terms:

13 January 2024

"As per attached (19)¹ please provide all the hypothetical Legal Professional Privileged LPP advice, used to produce paragraphs 8,9,10,11 & 12."

On 15 January 2024

"I attach a letter by William Rickett now the DESNZ in which he is absolutely correct not to give an answer to FOIA request.

(2) how much was in court on the 22/4/1996

As this held Legal Professional Privileges LPP as seen in (1)

Please provide under the FOIA all the hypothetical LPP advice that made up the rest of William Rickett's letter that could be given. Please note the purpose and motive to my requests of late are to show how hypothetical LPP advice must be provided and correct LPP cannot."

On 20 January 2024

"In regards to 23,24 & 25 as attached.

Please provide the hypothetical Legal Professional Privileged LPP advice that resulted in the fictional "out of court" settlement in 23,24 & 25.

Motive and purpose. To show a pattern LPP being abused."

On 23 January 2024

"Under the FOIA 2000 please provide all the untruthful hypothetical legal advice under section 42 FOIA that made up the attached 16 May 2007 letter.

Purpose and motive; abuse of LPP advice legislation to make fake personal data."

Also on 23 January 2024

¹ "19" is page 2 of Decision Notice FS50645026

<https://ico.org.uk/media/action-weve-taken/decision-notices/2017/2014595/fs50645026.pdf>

"Regarding the two attached letters to Stephen Hepburn a member of Parliament.

Please provide me with under the FOIA, the hypothetical legal advice, that made up the contents of these two letters.

Purpose and motive; to show the abuse of so called LPP."

5. On 15 January 2024 DESNZ also received an email addressed to "Complaints Manager" which covered the same content as a narrative, not a request.
6. DESNZ responded on 31 January 2024 advising that the requests were being treated as vexatious in reliance of FOIA section 14(1). He was also informed that in accordance with FOIA Section 17(6) DESNZ would not be required to issue any further refusal notices under Section 14(1) and should he persist in continuing with this correspondence it would file his letters without response.
7. On 4 February 2024 the complainant requested an internal review. DESNZ responded on 29 February 2024 upholding the application of section 14(1).
8. The complainant contacted the Commissioner on 8 March 2024 to complain about the handing of his requests. He advised:

"Careful consideration must be given to whether a person is "Vexatious" or "Not Vexatious" and given that under section 42 FOIA truthful LPP advice is exempt, being deemed vexatious is because you are not vexatious and being deemed not vexatious is because you are."

Background

9. The Commissioner notes that he has previously issued decision notices FS50463281² on 19 March 2013 and IC-279490-M7L5 on 13 August 2024³ concerning issues related to this case. In 2013 the decision notice
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² https://ico.org.uk/media/action-weve-taken/decision-notices/2013/817518/fs_50463281.pdf

³ <https://icosearch.ico.org.uk/s/search.html?collection=ico-meta&profile=decisions&query>
[accessed via case reference search]

was served on the Department for Business, Innovation and Skills ("BIS") (a predecessor of DESNZ). The background set out in that notice and the notice earlier this year is relevant to this notice. Furthermore the Commissioner issued a decision notice FS50645026⁴ on 1 August 2017 to the Department of Work and Pensions upholding its application of section 14(1) with regard to part of an information request and section 40(1) – personal data to the remainder of the request with regard to associated issues. The First-tier Tribunal appeal [EA/2013/0072] concerns the complainant's appeal of the Commissioner's section 14(1) determination in decision notice FS50463281. The Tribunal dismissed the appeal.

10. The complainant has been in contact with the department and its predecessors since 1998 concerning his accident claim against the former British Coal Corporation (BCC). The liabilities transferred to the Department of Trade and Industry on 1 January 1998 and then to successive departments, the Department for Business, Enterprise and Regulatory Reform (BERR), the Department of Energy and Climate Change (DECC), the Department for Business, Energy & Industrial Strategy (BEIS) and now DESNZ.
11. DESNZ explained that the complainant's accident happened on 13 September 1991. The complainant's case went to Court and he was represented throughout. Liability was never conceded. The case settled in 1996 when the complainant accepted a Part 36 Offer⁵. It appears that the complainant changed his position about the settlement after he had agreed the settlement and monies had been placed in Court which had brought the action to a close.
12. The complainant has raised voluminous FOI and Subject Access Requests (SARs) with the department and its predecessors since 1998 about issues concerning his accident claim. These consist of correspondence, FOI requests, Data Protection Acts 1998 & 2018 SARs

⁴ <https://ico.org.uk/media/action-weve-taken/decision-notices/2017/2014595/fs50645026.pdf>

⁵ Part 36 offer in the Civil Procedure Rules is a provision which aims to encourage parties to try to settle their disputes by setting out the costs consequences of offers to settle if they are made in accordance with a Part 36 offer.

and letters from his MP. Many repeat the same issues multiple times, which have been addressed on previous occasions including relating to decisions made by the Commissioner.

13. DESNZ explained:

"In 2007, the Department dealt with two requests for information under the Freedom of Information Act 2000 (FOIA) and one SAR from [the complainant] concerning the accident claim and the records held in relation to another claim for respiratory disease. At the time Ian McKenzie, then Head of the Coal Liabilities Unit, responded by saying that we considered the ongoing theme of his FOI requests demonstrated obsessive and manifestly unreasonable behaviour and that the Department declared his behaviour vexatious under section 14 of FOIA.

[The complainant] was told we would acknowledge his correspondence and place it on file. [The complainant] appealed this decision and on 11 April 2008 Rachel Sandby-Thomas, the then Director General of Legal, upheld the original decision."

14. Over more recent years the complainant has frequently raised the same issues and allegations through his MPs, the department's Coal Health claims solicitors (Cameron McKenna Nabarro Olswang LLP), the department's Coal Health documents repository, Iron Mountain and via further FOI requests.

Reasons for decision

Section 14(1) – vexatious requests

15. The following analysis considers whether the requests were vexatious.
16. 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.
17. The word "vexatious" is not defined in FOIA. However, as the Commissioner's updated guidance on section 14(1)⁶ 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.

⁶ <https://ico.org.uk/for-organisations/dealing-with-vexatious-requests-section-14/>

18. FOIA gives individuals a greater right of access to official information and serves to increase the transparency and accountability of public bodies. As such, it is an important constitutional right. Therefore, engaging section 14(1) is a high hurdle.
19. 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.
20. 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")⁷. Although the case was subsequently appealed to the Court of Appeal, the UT's general guidance was supported, and established the Commissioner's approach.
21. 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.
22. 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).
23. 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).

⁷ <https://administrativeappeals.decisions.tribunals.gov.uk/Aspx/view.aspx?id=3680>

DESNZ's view

24. DESNZ explained that it believes that the recent requests demonstrate the complainant's frustration at not receiving information which he considers should have been provided and should not have been subject to LPP. This includes information refused in SARs.

25. DESNZ advised that the requests are often composed in a cryptic style where it is difficult to understand what is required. Requests refer to numbered attachments which are often part letters previously received by the complainant from many years ago. They also often contain statements which are unclear, such as:

"provide all the untruthful hypothetical legal advice"; hypothetical LPP advice must be provided and correct LPP cannot."; "please provide all the untruthful hypothetical legal advice under section 42 FOIA that made up the attached 16 May 2007 letter."

26. DESNZ has repeatedly explained to the complainant that LPP protects confidential communications between a solicitor and client. It has confirmed that any professional legal advice received by DESNZ remains privileged and the privilege has not been waived.

27. DESNZ explained that the complainant does not accept its position. It advised:

"As well as repeatedly asking the same questions over and over again to the Department he has also directed questions about his case to our Coal Health claims handlers (Nabarro Claims Solutions), solicitors (CMS) and Iron Mountain who are contracted to hold the Department's Coal Health records. He has made wild allegations about the former Nabarro solicitor who represented the Department against [the complainant] in his legal action against the former British Coal Corporation and been unpleasant and threatening to staff."

28. DESNZ advised that it had taken into account the four broad themes considered by the UT in Dransfield (as referenced above at paragraph 23) and considers the complainant's continuous use of FOIA and the DPA to pursue his issues over many years demonstrates an unreasonable persistence.

29. In terms of the burden created, DESNZ stressed the number of requests and other correspondence received by different departmental officials including DESNZ's claims handling solicitors and its repository for storing Coal Health records. This has continued for over 20 years repeatedly covering the same issues which have already been answered. The requests are often made in quick succession and are frequently overlapping. DESNZ advised that this has placed an on-going, unreasonable burden on it resulting in distracting staff from their duties.

30. DESNZ advised that for more than 20 years it has taken care to give the complainant full factual answers to his repeated questions and accusations but he refuses to accept the responses provided. DESNZ considers that the complainant seems to believe that it has been responsible for an injustice regarding his claim for compensation in 1998 and appears set on "bombarding the department with correspondence about these matters". DESNZ informed the Commissioner that:

"All of his questions and requests for information regarding his claim for compensation have been answered and a breakdown of the monies he received has been explained to him several times. He accepted a Part 36 Offer, and the case was settled in 1996 in Court. [The complainant] had his own legal representative throughout. It seems [the complainant] changed his mind about the settlement after he had agreed the settlement and monies had been placed in Court.

[The complainant's] claim has been settled in the courts and no matter how much he pursues the Department via continuous correspondence, the case will not be reopened. There can therefore be no value or serious purpose to him carrying on this behaviour."

31. With regard to the harassment or distress caused by handling the complainant's correspondence, DESNZ advised that he uses inflammatory and abusive language accusing DESNZ staff, both past and present, and those working with the department, of fraudulent or criminal activities. DESNZ advised that it is distressing for staff in public sector roles who are expected to uphold the highest standards of public service, to be accused of committing such activities. It provided correspondence from 15 January 2024 which stated:

"I have tried unsuccessfully for 17 years to make a Subject Access Request SAR because of material provided by [named individual] and [named individual] as per attached.

Both letters are correct in that they both contain hypothetical (not true) Legal Professional Privileged LPP advice which must be provided if not correct yet withholding what is correct i.e. £50,000 consisting of £33,000 £10,000 and £7,000 as requested by the DWP. In other words both letters are scams.

As you are well aware I cannot proceed to the Ombudsman and you will probably ignore this complaint, never the less a bit like " Mr Bates v The Post Office" In future I can point to this complaint to show the ICO, my MP and the police your fraud and contempt."

32. DESNZ provided further recent examples taken from requests of 14 November 2023, 12 & 15 March and 2 April 2024:

"I note your solicitor [named] was dismissed for dishonesty in 2007. My further analysis is you will all be jailed."

"And don't even think about an injunction my family and friends have a full copy and will sent to every MP in ex mining constituencies."

"Purpose of request; fraud, deceit, malfeasance in public office, theft of medical records, possible mass murder and GBH."

"One final point if the ICO agree with me, you can guarantee I will "sing like a canary" about Iron Mountain allowing thugs to perform SARs."

"Justice for the 15000 ex mineworkers murdered with the help of Iron Mountain."

The complainant's view

33. The Commissioner has received on-going correspondence from the complainant during the course of his investigation. In summary this correspondence repeats the complainant's concerns regarding the amounts of compensation received and how those amounts were calculated; the actions of a named solicitor who the complainant considers to have been dismissed for dishonesty; the actions of DESNZ in handling his SARs and requests and his considerations regarding FOIA section 42 - Legal professional privilege, with respect to those requests.
34. The complainant provided an assessment of his analysis of FOIA section 42. He states:

"The ICO show naivety at best and total lack of professional judgement at worst, section 42 LPP advice is regarding personal data;-

Section 42 (a) FOIA Honest LPP advice regarding me is exempt from section 42 FOIA and cannot be provided. However

Section 42 (b) FOIA Dishonest LPP advice regarding me is not exempt and must be provided as information held.

Section 42 FOIA as used by the DESNZ is the reverse of the DPA as it must provide information that is untrue about a person.

If an organisation relies on section 42 FOIA in regards to personal data, which it has four times in (203 & 204) the ICO should ask itself what LPP advice must then be provided under section 42 FOIA, truthful or untruthful LPP advice, with (202) being the prime example.

I am therefore not vexatious for bringing this flagrant act of misinformation, using legislation as not intended and denying SARs to

the attention of the ICO and reading (202) correctly we can see why the DESNZ have done this.”

He summarised:

“The history of this case is clear, that a person is entitled to make a Subject Access Request SAR for their personal data, which was a settlement on the 11 April 1996 for £50,000. An organisation cannot be allowed to apply section 42 guidance 23 of the FOIA to deny SARs, then say “[the complainant] is a vexatious requester”.

My motive over a 17 year period is to make a SAR.”

[The bracketed numbers cited by the complainant refer to correspondence he has received over the years these matters have been on-going.]

The Commissioner’s decision

35. 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.
36. The Commissioner acknowledges that requests for information can be prompted by the personal circumstances of the requester. His guidance⁸ explains that it is clear from the Upper Tribunal’s findings in Dransfield that when considering value and serious purpose we are concerned with assessing whether there is public interest in disclosure. This means that the requester’s private interests in the information carry little weight unless they coincide with a wider public interest.
37. The Commissioner understands that the complainant has determinedly pursued his enquiries. He accepts that the complainant believes that there have been errors to his detriment in the handling of events dating back to his accident along with attempts at concealment. This belief has driven his repeated contact to investigate and research those events in order to satisfy himself of that handling. The Tribunal referenced above in paragraph 9 advised:

⁸ <https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/section-14-dealing-with-vexatious-requests/how-do-we-assess-value-or-serious-purpose/>

"...the Appellant has diligently and determinedly pursued a line of enquiry in which he has genuine belief but which, in truth, is based on an erroneous analysis of the events surrounding the settlement of the litigation and of their potential impact on the level of CRU [Compensation Recovery Unit] recovery. That fact alone imposes on the public authority the sort of disproportionate burden, identified by the Upper Tribunal Judge Jacob in 'Wise', which justifies a refusal under section 14."

38. In his considerations the Commissioner has afforded weight to the Tribunal's findings above, in supporting the application of section 14 in this case.
39. The Commissioner advised the complainant that he had noted that his complaint to him mentioned "being deemed vexatious under section 42 FOIA". The Commissioner went on to explain that it is not a person who is considered to be vexatious under FOIA, it is their requests, and a vexatious determination is not related to FOIA section 42.
40. The Commissioner is satisfied that DESNZ has comprehensively addressed the complainant's issues. He has seen correspondence repeatedly explaining the events which the complainant appears not to be able to accept. The most recent iteration of this process is his focus on section 42 which he appears to be using to state that "dishonest" legal advice was provided in 1996 and therefore the information containing the advice is not legally privileged. The Commissioner notes DESNZ has tried to explain that legally privileged information may be withheld from a SAR but this is not the application of section 42 in the FOIA.
41. The Commissioner has considered whether the complainant has been reasonable in his pattern of requests. The outcomes of the complainant's previous complaints to the ICO have to some extent supported the application of section 14 in this case. The broad issues set out in the Dransfield case have assisted him in this consideration.
42. The Commissioner recognises that it is common for a potentially vexatious request to be the latest in a series of related requests submitted by an individual. The greater the number of requests received, the more likely it is that the latest request may be considered as vexatious. This is because the collective burden of dealing with the previous requests, combined with the burden imposed by the latest request, may mean that a tipping point has been reached, rendering the latest request vexatious.
43. The Commissioner does not consider that public authorities should be expected to accept disproportionate burden in meeting their commitments to transparency and openness. The evidence provided by

DESNZ and the Commissioner's own experience of the historical concerns of the complainant demonstrate that there is a high likelihood that the complainant is unlikely to ever be satisfied with DESNZ's response. If it had responded to the request of 13 January 2024 the Commissioner considers that further requests would have been forthcoming. To some extent the requests which followed within a 10 day period demonstrate this point. The Commissioner is satisfied that providing a response would have continued to prolong correspondence and an unfair burden to DESNZ.

44. Regarding the distress caused to DESNZ's staff, the Commissioner considers that the burden which previous requests and associated correspondence have imposed is clear, particularly for specific staff members. Some of the requests and correspondence use inappropriate language and make unsubstantiated allegations of criminal behaviour or wrong doing. The Commissioner considers that the complainant's correspondence with DESNZ and himself has demonstrated that he holds personal grudges against specific members of DESNZ and its predecessors' staff past and present.
45. The complainant advised the Commissioner in paragraph 34 that his motive for 17 years had been to "make a SAR". DESNZ has advised the Commissioner that it has received multiple SARs since 2007. Since January 2021 alone BEIS/DESNZ received over 40 emails making repeated SARs and associated complaints. The Commissioner understands that the complainant has been seeking information about himself and the events affecting him personally. However, he has taken an entrenched position and appears to have refused to accept DESNZ's and predecessor departments' repeated attempts to provide explanations to assist his understanding. Any value which could be attributed to the request in this case is questionable. The Commissioner notes that there is little, if any, public interest in the request. The unreasonable persistence of the complainant to pursue matters which have been comprehensively addressed has reached the tipping point mentioned in paragraph 42.
46. The Commissioner is satisfied that in the circumstances of this case DESNZ was entitled to rely on section 14(1) of FOIA to refuse the requests set out in paragraph 4 because they were vexatious.

Right of appeal

47. 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

48. 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.
49. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Susan Hughes
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF