

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 30 October 2024

Public Authority: Information Commissioner
Address: Wycliffe House
Water Lane
Wilmslow
SK9 5AF

Decision (including any steps ordered)

1. The complainant has requested the entire contents of each of his complaint files. The above public authority ("the public authority")'s final position was to rely on section 14 of FOIA (vexatious) to refuse the request.
2. The Commissioner's decision is that the request was vexatious and therefore section 14(1) of FOIA was engaged. The public authority breached section 17 of FOIA as it failed to confirm, within 20 working days, that it was relying on section 14 to refuse the request.
3. The Commissioner does not require further steps to be taken.

Request and response

4. On 1 December 2023, the complainant wrote to the public authority and requested information in the following terms:

"Please could I have a copy of:

- all the records you hold in any open or closed cases of mine held on your case management system

- any other internal or external correspondence relating to me or my

cases

"I'd expect the records to include any metadata about the cases such as dates, internal classification information, recorded outcomes etc as well as the substantive documents/correspondence.

"To the extent any of this is not released under a subject access request, I'd like it to be considered under FOI."

5. The public authority responded to the Subject Access Request (SAR) part of the overall request on 14 December 2023. It stated that it would need to verify the complainant's identity before it could process his request. ID was provided the same day.
6. On 20 December 2023, the public authority contacted the complainant again. It stated that the FOIA part of the request was likely to exceed the FOIA cost limit and suggested that the complainant may wish to refine it. The complainant declined to do so.
7. The public authority issued a refusal notice in respect of the part of the request that fell to be dealt with under FOIA on 12 January 2024. It relied on section 12 of FOIA to refuse the request. It upheld this stance following an internal review.

Scope of the case

8. During the course of the Commissioner's investigation, the public authority informed him that it now wished to rely on section 14 of FOIA instead of section 12. A public authority may change the exemption on which it wishes to rely at any time.

Reasons for decision

Section 14 - vexatious

9. Section 14 allows a public authority to refuse a request that is vexatious. A vexatious request is one that would impose a disproportionate burden or would be a manifestly unjustified use of a formal procedure.
10. Even a request with a serious purpose or value can be vexatious if the burden of responding to that request alone would be grossly oppressive.
11. For a request to impose a grossly oppressive burden, the Commissioner would expect the public authority to demonstrate three things:

- That the volume of material that may fall within scope is very large.
- That a significant proportion of the information is likely to be exempt from disclosure.
- That the exempt and non-exempt material cannot easily be separated.

Information in complaint files

12. Dealing with requests for the contents of a complaint file can be a tricky business. As the [Commissioner's guidance](#) explains, it should not be assumed that all information must be the personal information of the person who made the complaint, purely by virtue of being contained within the file.
13. Public authorities must also have regard to the wording of the request. Even where information does not itself identify an individual, it may nevertheless become personal information when put beside a request.

What happens when a request spans access regimes?

14. The Commissioner has produced [guidance](#) for dealing with requests that cut across the various access regimes.
15. Information that relates to the personal information of the requester is exempt under section 40(1) of FOIA. Such information would usually be available under a SAR.
16. Given the nature of the information that has been requested, the Commissioner considers it likely that a considerable proportion of the records within scope will contain the complainant's own personal information. The public authority accepts this, but maintains that there will be a significant amount of information that is not personal information and falls to be dealt with under FOIA.
17. Whilst it is unnecessary to calculate costs in this particular complaint (as the public authority is no longer relying on section 12 of FOIA), the Commissioner considers that the general principle set out in his guidance – that such a request should be dealt with under FOIA first – applies here too.
18. Therefore, in order to comply with the request under FOIA, the public authority must first gather all the information that falls within scope; then separate out the information that should be dealt with via SAR and then deal with the residual information accordingly. Once that process

has been completed, the public authority should look at its obligations under SAR.

The public authority's position

19. The public authority explained to the Commissioner that the requested information totalled in excess of 2,000 pages across 28 different complaints.
20. Within this information, the public authority explained that there was likely to be a mixture of the complainant's own personal information, the personal information of third parties and some information that it was prevented by section 132 of the Data Protection Act (and therefore section 44 of FOIA) from disclosing.
21. The public authority argued that there was no straightforward way of separating these categories of information and therefore the only way of doing so was via a manual review of all 2,000 pages which, at an average of one minute per page, would take more than 33 hours.
22. The public authority noted that it had already spent around 30 hours dealing with the SAR. Therefore the total amount of time required to deal with this request would be at least 63 hours.
23. When the Commissioner asked what the 30 hours required to process the SAR had involved, the public authority explained that:

“it took approximately 33 hours to review all the information held, decide what information was in scope of the FOIA request and what information was exempt. Once it was determined what data was held and what would be exempt, it then took an additional 30 hours to abstract the exempt information from the information in scope of the request.”
24. In addition, the public authority noted that it would need to consult with each complained-about organisation to establish whether each one was happy for information that it had provided in the course of the complaint to be disclosed. This would add to the time required. Without this consent, section 44 of FOIA would apply.
25. Lastly, the public authority explained that it considered the value of the request to be low. It explained to the Commissioner that:

“Due to the highly private reason for this request, we consider it highly likely that the information held would only be of any real significance to the requester.

"As well as this, given that the requester refused to refine their request, we feel this demonstrates that even they may have had no interest in obtaining any of the information we held. If the information was of particular interest to the requester, then it is likely that they would have refined their request rather than asking for a formal response so they could complain to the regulator."

The Commissioner's view

26. Whilst the Commissioner does not accept the public authority's estimate of the burden, he does still consider that the burden is disproportionate to the value of the request.
27. The Commissioner has set out, in paragraph 18 of this notice, the correct sequence for dealing with a request that spans multiple regimes. It is the one the public authority should have been following when it first responded to the request and the one on which its estimate of the burden should now be based.
28. The first stage is that all information should be gathered; the second, that FOIA and non-FOIA information should be separated and; third, the FOIA information dealt with accordingly.
29. The public authority appears to be double-counting the time necessary to separate the two categories of information. If a document contains a mixture of FOIA and non-FOIA information, it does not take five minutes to separate out the FOIA information and a further five minutes to separate non-FOIA information from the same document. Once information has been separated, it has been separated, there is no need to repeat the process.
30. The estimate of the burden of compliance needs to be based on the tasks the public authority would have needed to take had it dealt with the request correctly at the first opportunity. The public authority's estimate appears to be based on the tasks that it would have to undertake now, were it required to revisit the request.
31. The public authority has stated that it took 30 hours to extract all the information that would be disclosable under SAR. On the basis that the public authority would have needed some additional time to decide what information may be exempt under section 44 of FOIA, the Commissioner accepts that an estimate of around 33 hours to separate out the information exempt under sections 40(1) and 44 of FOIA would be reasonable – as it appears to be based on actual data. He does not accept that an estimate of 63 hours is reasonable.
32. In addition, the Commissioner accepts that the public authority would need to consult with third parties. The Code of Practice does require

public authorities to consider consulting with the original owners of the information in such circumstances.

33. The public authority has not explained how many organisations the 28 complaints relate to. However a figure of half an hour to identify the information provided by that organisation, contact the organisation and (where necessary) chase a response does not seem unreasonable. Even if only ten organisations are involved, that would add an additional five hours to the estimate.

Purpose and motive

34. The Commissioner is not persuaded that the request was improperly motivated.
35. It is not unreasonable for any individual to want to see the information contained within their own complaint files. The complainant also has a right, under UK GDPR, to see the personal information the public authority holds about him.
36. The public authority did initially ask the complainant to refine his request and he refused to do so. The public authority argues that this was unreasonable.
37. However, the Commissioner notes that the complainant was originally informed that an unrefined request would likely be refused under section 12 of FOIA. By inference, the public authority now appears to accept that it would not be entitled to rely on section 12.
38. The Commissioner has seen no evidence that the actual process of extracting the information that would fall within scope (regardless of the access regime) would be burdensome. The burden arises as a result of separating exempt and non-exempt information – a process the public authority may not take into account for the purpose of applying section 12.
39. Furthermore, the Commissioner notes that the public authority did not, in any of its responses, indicate exactly what information would fall within the scope of a FOIA request (ie the information that was within the complaint file but not his personal information). Had the public authority (for example) informed the complainant that the information being considered under FOIA largely consisted of responses received from organisations and that his correspondence to and from the public authority largely fell under SAR, he might have decided not to pursue, or to restrict, either the FOIA or the SAR element.
40. Finally the Commissioner also notes that in its response asking for the request to be narrowed, the public authority stated that:

"Before any request is completed, we would need to consider whether it is in the public interest for us to dedicate the resources necessary to carry out this kind of search, or whether it represents an unreasonable burden on us as a public authority. This in accordance with section 14 of FOIA."

41. However, it then added:

"Please note, the application of section 14 is not certain and will be dependent on the information requested."

42. In the Commissioner's view, the reasonable requester would infer that a fresh request stood a good chance of being refused as vexatious. The public authority was, on the one hand telling the complainant that his request needed refining, but on the other, telling him that it may refuse a narrower request as vexatious.

43. Given these mixed messages and the fact that section 12 probably did not apply anyway, the Commissioner does not consider it unreasonable for the complainant to have refused to refine his request. Nor does the fact that he did refuse imply that the request was improperly motivated to begin with.

44. The Commissioner turns next to the serious value or purpose of the request.

45. The Commissioner accepts that the complainant has a right to seek his own personal information. He also has a right to seek information held in his complaint files.

46. However, the Commissioner also notes that the information will largely be of value only to the complainant. Whilst this does not mean that the request itself has no value, it does mean that the value to the general public of complying with the request is much more limited.

47. The Commissioner recognises that, on the face of it, the requested information would be of some value to the general public. This is because it would demonstrate how the public authority deals with complaints.

48. However, such public value as there may be would be undermined considerably by the amount of information that would actually be disclosed under FOIA.

49. The public authority has rightly drawn attention to the amount of personal information within the records. The Commissioner accepts that a large proportion of the information would be personal information and therefore exempt from disclosure under FOIA.

50. The public authority has also noted that section 44 is likely to apply and the Commissioner recognises that this would be the case – for example where an organisation had provided the public authority with a copy of information it had withheld from disclosure to the complainant.
51. Once all the exempt information is removed, the Commissioner is sceptical that the residual information would be of considerable value to the general public. Much (such as template wording) is likely to be highly generic, or in the public domain, or both. Therefore complying with the request under FOIA would provide only a very limited insight into the public authority's processes.
52. Given the considerable burden in dealing with the request and the very limited public value of the information that would ultimately be disclosed, the Commissioner considers that complying with the request would impose a disproportionate burden. The request is therefore vexatious.

Procedural matters

Refusal notice

53. Section 17 of FOIA requires a public authority wishing to refuse a request as vexatious to issue a refusal notice, stating that fact, within 20 working days.
54. Given that the public authority did not begin relying on section 14 until the Commissioner's investigation had begun it breached section 17 of FOI.

Advice and assistance

55. Whilst the Commissioner has already noted that the public authority could have provided more helpful information to the complainant than it did (see paragraph 39), he is satisfied that it provided reasonable advice and assistance.
56. A public authority is not required to lavish ingenuity on thinking up all the possible ways in which a request can be refined. It need only provide some possibilities or state that the request cannot be meaningfully refined within the cost limit.
57. In its response of 20 December 2023, the public authority set out five different methods by which the complainant could have refined his request. Again, it could have gone further and indicated (for example) exactly how much the timeframe for the request would need to be

reduced by or how many complaint files it could provide. However, the Commissioner is satisfied that the advice the public authority did provide would have enabled a reasonable requester to have submitted a less burdensome request.

58. The Commissioner is therefore satisfied that the public authority discharged its obligations under section 16 of FOIA.

Other matters

Seeking identification

59. The complainant argued that the public authority did not issue its original refusal notice within 20 working days and as such breached section 17 of FOIA.
60. The complainant was unhappy that the public authority had awarded itself extra time to process the request, by taking the date it had "received" the request to be the date on which he had verified his identity, not the date he had originally asked for information. He argued that it had not been necessary to seek identification in order to process the FOIA part of his request.
61. Given that he has already found a breach of section 17, which would have occurred regardless, the Commissioner does not consider it necessary to determine the correct date of receipt. However, he does consider it helpful to address the underlying issue.
62. A public authority can, in certain circumstances, ask a requester to verify their identity. This might be because it has reason to believe that the requester is not using their real name or because it needs to determine whether the request needs to be dealt with under FOIA, SAR or a combination of the two.
63. The Commissioner notes that the public authority originally contacted the complainant to seek identification on 14 December 2023. It stated that "the statutory timeframe" would only begin once identification had been provided, but the correspondence only referred to SAR, not FOIA.
64. When the complainant raised this matter via an internal review, the public authority responded to say that it had been entitled to seek identification because the requester had made some of his requests via whatdotheyknow.com (WDTK) and that:

"consequently, we needed your ID in order to verify the extent in which the information held within requests made on WDTK fell within the

scope of your request and whether or not they needed to be handled solely under FOIA.”

65. In the circumstances of this case the Commissioner does not consider that there was a need to seek identification in order to process the FOIA element of the request.
66. Given that requesters using WDTK are not required to verify their identity, it is not clear how having the complainant verify their identity to the public authority would have altered the treatment of this part of the request.
67. In any case, the complainant made clear in his request that he wanted the information contained in “my” complaint files. That should have alerted the public authority to the need to consider its obligation under SAR. Furthermore, even if the public authority was genuinely unable to determine which of the complaint files it held were the complainant’s files, it is not clear why having identification would have made this task any easier.
68. As a point of principle, an organisation is entitled to ask a requester to verify their identity for the purposes of processing a SAR.
69. The Commissioner is aware that the complainant has disputed that verification was necessary, for that purpose, in this instance. That matter has already been dealt with as part of a different complaint. This decision notice only considers whether delaying the request to seek ID was appropriate under FOIA.
70. The Commissioner appreciates that it can be difficult to deal with a request that spans two access regimes with different rules. It can also be confusing for the requester if different parts of their request progress at different speeds.
71. Nevertheless, the Commissioner is not persuaded that it was necessary, in the circumstances, for the public authority to have treated the provision of ID as having reset the clock on the FOIA request.

Wording of refusal notices

72. The Commissioner would recommend that the public authority revisit the wording quoted in paragraphs 40 and 41. Not only are these paragraphs unclear in their own terms but, when coupled with a suggestion that the present request is, or is likely to be, refused, such wording is likely to leave a reasonable requester confused as to whether they should narrow their request or not.

Right of appeal

73. 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

74. 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.
75. 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

Roger Cawthorne
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