

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 2 December 2024

Public Authority: Cabinet Office

Address: 70 Whitehall
London
SW1A 2AS

Decision (including any steps ordered)

1. The complainant requested information about the Cabinet Office's guidance regarding the ICO's view on an aspect of the application of a certain exemption under FOIA. The Cabinet Office 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 the Cabinet Office 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. The complainant made the following request on 12 September 2023:-
`..“The recorded information I now request is any held at the date of this request which comprises, records or is related to contact with the ICO leading to assertions made by the Cabinet Office FOI Team on 29 August 2023 as follows: “Our understanding is that that the ICO's position...has been a matter raised...since...2012” “Your underlying grievance...has been considered in detail”.

5. As the Cabinet Office refused that request under section 12 of FOIA, and provided the complainant with advice as to refining it as per its obligations under section 16 of FOIA, the complainant then on 17 April 2024 submitted the following request:-

REFINEMENT

"The recorded information...is any...which comprises, records or is related to contact with the ICO in the period 1 October 2022 to 29 August 2023 leading to the assertions made by the Cabinet Office FOI Team on 29 August 2023 as to (1) CabOff's understanding of the ICO's position at 29 August 2023 and as to (2) the consideration in detail (taken to mean judicial consideration) of what it described as my underlying grievance (taken to mean my position that there is no right to delegate the Qualified Person function set out in to FOIA section 36)".

PS In due course I may send you and the ICO an edited and tidied up version of the Note I made when considering possible refinement, in order for you to reconsider the Refusal of FOIR 3 during the Internal Review period. October 2022 is the date when my MP first wrote to the IC about section 36, for instance.'

6. The Cabinet Office responded on 16 May 2024 stating that it was refusing the complainant's refined request under section 14(1) of FOIA (vexatious requests).
7. The complainant sought an internal review on 23 May 2024 and the Cabinet Office responded on 18 July 2024 stating that it upheld the position that section 14(1) was applicable to the complainant's refined request.

Reasons for decision

Section 14(1) – vexatious requests

8. The following analysis considers whether the request was vexatious.
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.

10. 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.
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 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.
13. 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. Although the case was subsequently appealed to the Court of Appeal, the UT’s general guidance was supported, and established the Commissioner’s approach.
14. 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.
15. 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).

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

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

16. 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).

The Cabinet Office's view

17. 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.
18. This request follows, and is related to, a long chain of events. The requester has been making FOI requests related to the Information Commissioner's Office (ICO) guidance on section 36 (prejudice to effective conduct of public affairs) of FOIA since at least 2015.
19. In a previous case with the complainant, the Cabinet Office referred the Commissioner to an Upper Tribunal (UT) decision (the parties being the complainant and another public authority) which sets out some of the history and context to this matter.³
20. The Cabinet Office's understanding is that the ICO's position with regard to the delegation of the Qualified Person's role as set out at section 36 of the Act and associated guidance has been a matter the complainant has raised, including through the appeals process, since at least 2015. It recognises that the complainant remained dissatisfied with the ICO's handling of his concerns, and with the Minister's subsequent response to the Member of Parliament.
21. It also considers that the tone and some of the language in the complainant's correspondence, such as 'a bogus Act' and 'evasion', implies bad faith on the part of the civil servants who have dealt with both his and the MP's correspondence. Whilst it may not be the complainant's deliberate intention, the language he has used is both unnecessarily confrontational and inappropriate.
22. In its response to the complainant's original request of 12 September 2023 the Cabinet Office provided clear advice on how they could refine

³ GIA/1680/2018

their request to potentially bring it within cost limit and informed them that continued deliberately broad and burdensome requests would be refused under section 14 of FOIA.

23. As the complainant has not meaningfully refined their request the Cabinet Office has seriously considered the value and purpose of any further requests to be vastly diminished by the burden caused from the complainant's persistence in this matter. It strongly reiterates that it is satisfied that any value and purpose of the request does not justify the disruption, irritation and distress which would be caused by handling the request.

The Commissioner's view

24. The Commissioner believes that the Cabinet Office was entitled to rely on section 14(1) of FOIA to refuse the request because it was vexatious.
25. The Commissioner is satisfied that the request is one which follows similar earlier requests and serves no easily discernible benefit to the public. The request forms part of "vexatious" conduct that the complainant has directed at the Cabinet Office, which was previously identified by the Commissioner and the Information Tribunal as vexatious, as defined by FOIA.
26. The Commissioner accepts the Cabinet Office's assertion that the request was potentially disrupting and burdensome. It is clear from a reading the request that it is unnecessarily convoluted and difficult to read and ascertain what information is actually being requested.
27. Having read the previous cases in order to understand the context and history of the request, the Commissioner considers that his reading of the complainant's correspondence to the Cabinet Office at times accords with the Cabinet Office's assertion that the complainant uses language which is often "unnecessarily confrontational and inappropriate". Whether intended or not, the Commissioner finds that this would cause an element of avoidable distress to Cabinet Office staff.
28. The Commissioner is entirely satisfied that the complainant's request was a vexatious one for the purposes of FOIA. The Cabinet Office has clearly demonstrated this to be the case. The Commissioner is of the firm view that the request was a vexatious one for the purpose of section 14 and therefore the Cabinet Office was entitled not to process the request

Right of appeal

29. 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

30. 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.
31. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Deirdre Collins
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