

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 12 January 2016

Public Authority: Home Office
Address: 2 Marsham Street
London
SW1P 4DF

Decision (including any steps ordered)

1. The complainant has requested information relating to the handling of a previous request for information. The Home Office refused to comply with the request because it considered it vexatious under section 14(1) of the FOIA.
2. The Commissioner's decision is that the Home Office was not entitled to refuse to comply with the request under section 14(1) of the FOIA. The Commissioner requires the Home Office to take the following steps to ensure compliance with the legislation.
 - The Home Office should disclose to the complainant any information it holds which is relevant to his request or it should issue a new refusal notice which is compliant with the provisions of section 17(1) of the FOIA.
3. The Home Office must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

4. On 9 January 2015, the complainant wrote to the Home Office and requested information in the following terms:

"I believe this is what you refer to as a Meta Data Request. This relates to FOI request 33552 - SAR Response Times (<https://www.whatdotheyknow.com/request/s...>).

Please provide all stored information about the handling of this request, including but not limited to full copies of all internal memos/emails, case handling files and any other information you store."

5. On the 6 February 2015 the Home Office responded to the request for information refusing it under section 12(1) of the FOIA.
6. The complainant made a request for internal review to the Home Office on the 8 February 2015. The Home Office provided an internal review on the 3 March 2015 stating that the application of section 12(1) had not been applied appropriately and now considered the request to be vexatious under section 14(1) of the FOIA.

Scope of the case

7. The complainant contacted the Commissioner on 24 February 2015 to complain about the way his request for information had been handled.
8. The Commissioner has considered whether or not the Home Office was entitled to rely on the vexatious provisions at section 14(1) of the FOIA.

Background

9. The complainant's 'meta request' is for information about the Home Office's handling of an earlier request for information. The handling of this request is currently being investigated by the Commissioner.

Reasons for decision

10. Section 14(1) of the FOIA states that section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious. There is no public interest test.
11. The FOIA does not define the term vexatious, but it was discussed before the Upper Tribunal in the case of *the Information Commissioner v Devon County Council & Dransfield* [2012] UKUT 440 (AAC), (28 January 2013).

12. In that case the Upper Tribunal concluded that the term 'vexatious' could be defined as the *"manifestly unjustified, inappropriate or improper use of a formal procedure"*. The Tribunal made clear that the decision of whether a request is vexatious must be based on the circumstances surrounding the request.
13. The Dransfield judgement proposed four broad issues that public authorities should bear in mind when considering whether FOI requests are vexatious:
 - the burden of meeting the request;
 - the motive of the requester;
 - the value or serious purpose of the request; and
 - any harassment or distress caused.
14. The Upper Tribunal cautioned 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 request."* (paragraph 45).
15. In the Commissioner's view the key question for public authorities to consider when determining if a request is vexatious is whether the request is likely to cause disproportionate or unjustified level of disruption, irritation or distress. The public authority should take into account the background and history of the request where this is relevant.
16. The Commissioner has also identified a number of indicators which may be useful in identifying vexatious requests. These are set out in his published guidance on vexatious requests.
17. 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 a case will need to be considered in reaching a judgement as to whether a request is vexatious.
18. The Home Office explained that of the four issues or themes, burden is probably the most important single consideration; they state that the judgement says near the beginning that *"The purpose of section 14... must be to protect the resources (in the broadest sense of that word) of the public authority from being squandered on disproportionate use of FOIA"*.

19. The Home Office state that providing the 'meta data' requested by the complainant in this case would have placed "*a not insignificant burden*" on the Home Office; they explain that this is why the initial response refused the request on cost grounds, which they believed would be disproportionate to any value the request might have.
20. The Commissioner notes that throughout this investigation the Home Office has failed to provide any substantive evidence to demonstrate why responding to this request would place an unacceptable burden on it, in terms of vexatiousness, as the public authority.
21. The Commissioner would also note that a 'meta request' is a request for recorded information about the handling of a previous information request. Meta requests do not have any special status under the FOIA, nor are there any specific exemptions for this type of request, therefore a public authority should treat a 'meta request' in the same way as any other information request. This was confirmed by the High Court in *Home Office and Ministry of Justice v Information Commissioner's Office* ([2009] EWHC 1611 (Admin), 6 July 2009) when it stated:

"It is important to emphasise that information about how previous requests were handled is not accorded any special treatment in the Act. There is no provision in the Act which specifically permits requests about such information to be refused...The Information Tribunal ("the Tribunal") recognised that when it said its decision in this case that "Parliament intended that meta-requests should be dealt with in the same way as any other requests otherwise Parliament would have provided this, which in our view they have not done so"."

22. The Commissioner is in agreement with the Tribunal decision in *Home Office and Ministry of Justice v Information Commissioner's Office* that a 'meta request' cannot be deemed vexatious just by its very nature of being a request about a previous request. However, this may be considered as a factor, for example, when assessing the motive, the value or purpose of a request.
23. In the absence of substantive evidence in support of the Home Office's claim that this request is vexatious under section 14(1) of the FOIA, the Commissioner therefore considers that the Home Office was not entitled to rely upon section 14(1) of the FOIA to refuse to comply with this request.

Right of appeal

24. 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: 0300 1234504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: <http://www.justice.gov.uk/tribunals/general-regulatory-chamber>

25. 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.
26. 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

Gerrard Tracey
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