

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 17 June 2019

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

Note: This decision notice concerns a complaint made against the Information Commissioner ('the Commissioner'). The Commissioner is both the regulator of the FOIA and a public authority subject to the FOIA. She is therefore under a duty as regulator to make a formal determination of a complaint made against her as a public authority. It should be noted, however, that the complainant has a right of appeal against the Commissioner's decision, details of which are given at the end of this notice. In this notice the term 'ICO' is used to denote the ICO dealing with the request, and the term 'Commissioner' denotes the ICO dealing with the complaint.

Decision (including any steps ordered)

1. The complainant made seven requests between 18 December 2018 and 3 January 2019 for information relating to 'note and file orders'. Some of the requests were however unclear.
2. On 14 January 2019 the ICO refused to comply with the requests under section 14(1) FOIA as it considered the requests to be vexatious. The Commissioner considers that the ICO correctly applied section 14(1) to the requests.
3. The Commissioner requires no steps to be taken.

Request and response

4. The complainant made seven requests to the ICO summarised as follows:

IRQ0809965 18 December 2018 relates to note and file orders.

IRQ0808598 19 December 2018 relates to note and file orders.

IRQ0809015 24 December 2018 relates to note and file orders.

IRQ0810463 25 December 2018 request is unclear.

IRQ0809477 2 January 2019 relates to note and file orders.

IRQ0809959 2 January 2019 request is unclear. It was also copied to over 100 governments email addresses.

IRQ0810030 3 January 2019 relates to note and file only orders. It was also copied to approximately 100 government email addresses.

5. On 14 January 2019 the ICO responded. It refused to comply with the requests under section 14(1) FOIA as it considered the requests to be vexatious.
6. The complainant requested an internal review on 14 January 2019. The ICO sent the outcome of its internal review on 26 January 2019. It upheld its original position.

Scope of the case

7. The complainant contacted the Commissioner on 26 January 2019 to complain about the way his requests for information had been handled.
8. The Commissioner has considered whether the ICO was correct to refuse to comply with the requests under section 14(1) FOIA.

Reasons for decision

Section 14 – vexatious or repeated requests

9. Under section 14(1) of the FOIA a public authority is not obliged to comply with a request if the request is vexatious.

10. The term 'vexatious' is not defined in the FOIA but the Commissioner has identified a number of 'indicators' which may be useful in identifying vexatious requests. These are set out in her published guidance¹ and, in short, they include:
- Abusive or aggressive language;
 - Burden on the authority – the guidance allows for public authorities to claim redaction as part of the burden;
 - Personal grudges;
 - Unreasonable persistence;
 - Unfounded accusations;
 - Intransigence;
 - Frequent or overlapping requests;
 - Deliberate intention to cause annoyance.
11. 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.
12. The Commissioner's guidance goes on to suggest that, if a request is not patently vexatious, the key question the public authority must ask itself is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress. In doing this the Commissioner considers that a public authority should weigh the impact of the request on it and balance this against the purpose and value of the request.
13. Where relevant, public authorities also need to take into account wider factors such as the background and history of the request.
14. At the time of the ICO's submission to the Commissioner, it held records of 15 freedom of information requests that it had received from this complainant (however, there may well be more as casework over two years old is usually deleted in line with the ICO's retention schedule). These requests predominately relate to the Northern Ireland Civil Service (NICS) with a common theme referring to what the complainant considers to be "note and file orders". Some of the requests also relate

¹ <https://ico.org.uk/media/for-organisations/documents/1198/dealing-with-vexatious-requests.pdf>

to mental health and psychiatric advice but also make reference back to the common theme of NICS and 'note and file orders'.

15. The ICO pointed out that many of the requests are simply unclear. It explained that it takes considerable time to try and break down the correspondence to any actual relevant request covered by the legislation. Furthermore some of the requests are copied to other organisations. Sometimes including approximately 100 other email addresses.
16. Within the wording of the requests the complainant often wishes the ICO 'good luck' in dealing with them.
17. The ICO also referred to a request it dealt with under reference IRQ0725591. In the ICO's response to this request dated 21 March 2018 the requester was informed "I can confirm following a search of our records in relation to any advice we have provided public authorities in Northern Ireland that none has been given regarding 'Note and File Only Orders'. No information falling within the scope of your request is held."
18. When dealing with this particular request the ICO also made enquiries regarding 'Note and file orders' as it was a term it was not familiar with. It would appear the term either does not exist or is not widely used in any familiar context.
19. Despite this response the complainant has continued to make requests to the ICO and it considers this to be an unreasonable persistence on his part. Even when his requests are not dealt with pursuant to section 14 FOIA they still take time to consider, document and record and the aggregated burden of dealing with them puts considerable pressure on, and is a disproportionate use of, the ICO's resources. This in turn has a knock on effect to the service provided to other members of the public. It is questionable whether this is in the 'spirit of the act' under which the requests are made. The complainant's communications appear to be obsessive, and given that the ICO has already explained to the complainant that it holds no information in relation to 'note and file orders' these requests lack any serious purpose in terms of the wider public interest and are ultimately futile.
20. The Commissioner has considered the ICO's submission and she has been persuaded by its arguments that the complainant's requests can be categorised as vexatious. The complainant's requests are a further group of requests that are either unclear or relate to 'note and file orders' which the ICO has confirmed is not a familiar or widely used term. The ICO has a record of 15 requests in total (although it has confirmed that there are likely to have been more) and the ICO has already confirmed that no information is held in relation to 'note and file orders'. The way the requests are worded, wishing the ICO 'good luck' in

dealing with the requests also implies the complainant is aware the requests will be difficult to process and/or satisfy.

21. The Commissioner therefore agrees that the complainant is using the FOIA as a means to re-visit a subject area in relation to which the ICO has already confirmed it does not hold any relevant information.
22. The Commissioner is satisfied that responding to the complainant's current requests would be a burden to the ICO that is disproportionate to the request's value and purpose. The Commissioner is therefore satisfied that the requests can be correctly categorised as vexatious under section 14(1) of the FOIA.

Right of appeal

23. 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@Justice.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

24. 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.
25. 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.....

Gemma Garvey
Senior Case Officer

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SK9 5AF