

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 19 December 2019

**Public Authority:** UK Research and Innovation  
**Address:** Polaris House  
North Star Avenue  
Swindon  
SN2 1FL

### Decision (including any steps ordered)

---

1. The complainant requested information about spending by illness. UK Research and Innovation (UKRI) refused the request as vexatious.
2. The Commissioner's decision is that the request was vexatious and UKRI was therefore entitled to rely on section 14(1) of the FOIA to refuse it.
3. The Commissioner does not require any further steps.

### Background

---

4. On 7 May 2019, noting a chart from UKRI's annual report, the complainant sought information from UKRI in the following terms:  
  
    "[1] Please could you send me MRC spend by illness for 2018. In your 2018 annual report you produce this chart on p24. It is labelled 2017 but I am looking for the underlying £ values for 2018 in xls and the information I require to separate neurological and mental health spend.  
  
    [2] My objective is to ascertain % spend by illness for illness specific funding if you cannot produce this using the methodology above please attempt to get close to producing this and provide narrative as to where data is not comparable. If you have MeSH and or HRCS data.  
  
    [3] If you cannot produce the data as per question 1 please can you explain why.



*[4] Please complete this once you have fulfilled 1 and/or 2 above, with respect to the FOI time limits. I understand you provide some information on mental health spend at UKRI level. If you can provide the information as requested in 1 for the other Research Councils and / or Innovate Uk and/or at an aggregate level please do so."*

5. UKRI responded on 23 May 2019. It provided the requested information in respect of element [1] (and thus did not need to respond to elements [2] and [3]) and stated that it did not hold information within the scope of element [4].
6. On 24 May 2019, the complainant contacted UKRI again. He noted that the data that had been provided to him did not sum to the same figure as the gross research expenditure for the relevant years and asked UKRI to explain the difference, broken down by type of illness.
7. On 14 June 2019, UKRI responded. It noted that the two sets of figures were arrived at via different methods and should not be expected to match. It also provided an explanation as to why this was the case.

## **Request and response**

---

8. On 25 June 2019, the complainant wrote to UKRI in the following terms:

*"Please see attached FOI. As mentioned previously I would be happy to discuss this information request on the phone if that would expedite it. I believe that you breached FOI legislation not contacting me previously as I had requested. If you had done this with the initial request I would already have the answers to this FOIA."*

9. The complainant attached a spreadsheet with numerous blank fields titled "accounting for unallocated MRC expenditure." The spreadsheet invited UKRI to break down the difference between the two sets of figures referred to in his previous request into various categories.
10. UKRI responded on 23 July 2019. It now refused the request as vexatious, relying on section 14(1) of the FOIA to do so.

## **Scope of the case**

---

11. The complainant contacted the Commissioner on 30 August 2019 to complain about the way his request for information had been handled.



He does not appear to have sought an internal review at that point, despite having been offered one by UKRI.

12. On 15 July 2019, the Commissioner issued decision notice FS50807193<sup>1</sup> in which she found that a previous request which the complainant had made was vexatious.
13. In view of her findings in the earlier decision notice and the fact that the new request appeared to be for similar information, the Commissioner considered that insisting upon an internal review would serve no useful purpose. She therefore accepted the complaint without an internal review.
14. The Commissioner considers that the scope of her investigation is therefore to determine whether the present request was vexatious.

## Reasons for decision

---

### Section 14 - Vexatious

15. Section 1(1) of the FOIA states that:

*Any person making a request for information to a public authority is entitled –*

- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and*
- (b) if that is the case, to have that information communicated to him.*

16. Section 14 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.*

17. The term “vexatious” is not defined within the FOIA. The Upper Tribunal considered the issue of vexatious requests in *Information Commissioner v Devon CC & Dransfield* [2012] UKUT 440 (AAC). It commented that “vexatious” could be defined as the “manifestly unjustified, inappropriate or improper use of a formal procedure”. The Upper

---

<sup>1</sup> <https://ico.org.uk/media/action-weve-taken/decision-notices/2019/2615457/fs50807193.pdf>



Tribunal's approach in this case was subsequently upheld in the Court of Appeal.

18. The *Dransfield* definition establishes that the concepts of proportionality and justification are relevant to any consideration of whether a request is vexatious.
19. *Dransfield* also considered four broad issues: (1) the burden imposed by the request (on the public authority and its staff), (2) the motive of the requester, (3) the value or serious purpose of the request and (4) harassment or distress of and to staff. It explained that these considerations were not meant to be exhaustive and also explained 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 requests." (paragraph 45).
20. The Commissioner has published guidance on dealing with vexatious requests<sup>2</sup>, which includes a number of indicators that may apply in the case of a vexatious request. However, even if a request contains one or more of these indicators it will not necessarily mean that it must be vexatious.
21. When considering the application of section 14(1), a public authority can consider the context of the request and the history of its relationship with the requester, as the guidance explains: "*The context and history in which a request is made will often be a major factor in determining whether the request is vexatious, and the public authority will need to consider the wider circumstances surrounding the request before making a decision as to whether section 14(1) applies*".
22. However, the Commissioner is also keen to stress that in every case, it is the request itself that is vexatious and not the person making it.
23. In some cases it will be obvious when a request is vexatious but in others it may not. The Commissioner's guidance states: "In cases where the issue is not clear-cut, the key question to ask is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress."

---

<sup>2</sup> <https://ico.org.uk/media/for-organisations/documents/1198/dealing-with-vexatious-requests.pdf>



24. In her earlier decision notice, the Commissioner set out, at some length, the pattern of events and factors which had led her to conclude that that request was vexatious. The Commissioner considers that it would serve no purpose to reproduce that analysis in full here, but she did conclude in that notice that:

*"The Commissioner has reviewed the series of 14 requests the complainant submitted to UKRI up to 28 July 2018, a summary of which UKRI has provided to her. She notes that the requests are often multipart and sometimes overlapping. They are for information on similar matters; broadly research funding allocation and financial matters, and UKRI has explained where it has already addressed parts of the request through its responses to other requests for information from the complainant. The Commissioner also notes how UKRI's response to one request often generates another request from the complainant, and further questions and requests for opinions. Indeed, the complainant submitted a further three requests in his request for an internal review in this case. On this evidence she considers that if UKRI fully complies with the current request, the complainant is likely to submit a further request on the same or similar subject. In the Commissioner's view, the complainant's correspondence with UKRI is unlikely to draw to a close and is likely to continue in the same vein.*

*"Through previous requests UKRI has provided the complainant with a significant amount of the information he is seeking and has also facilitated a meeting for him with MRC. The Commissioner notes the number of hours UKRI says it has spent dealing with complainant's requests up to the date of this request; over 350 hours. The Commissioner sees no reason to doubt this figure, given the length of time it has been corresponding with the complainant, the volume and nature of his requests, which are often multi-part, of a complex, technical nature and requiring the input of various teams. And while the information the complainant has requested may be of interest to him, he has not put forward a compelling case that it has any wider public interest. As such, the Commissioner finds that complying with this request would be a continuation of what has been a significant burden to UKRI and that the burden is disproportionate this request's value."*

25. Given her findings, the Commissioner considers that it would be unnecessary and burdensome for UKRI to have to make its case again from scratch. Given that she maintains her earlier decision was correct, it is sufficient for UKRI to demonstrate that the same factors and patterns of behaviour have persisted since the earlier request was made.



*The complainant's position*

26. The burden of proof will always be upon the public authority to justify why a request is vexatious. It is not for the complainant to explain why the request is vexatious. Nevertheless, the Commissioner offered the complainant the opportunity to make submissions which might challenge UKRI's arguments or explain the value behind the requests.
27. The complainant responded to say that:

*"Just to say my objective for the FOI was to determine the % of funding allocated to different illnesses by MRC. I think it is in the public interest to know this because the information could be used to show that one group of people with a certain illness got more or less funding than another. If there are disparities I aim to challenge MRC as to why and how they propose to make funding fairer for everyone.*

*"I made it clear in my first FOI, point 2 (in May?), what I was trying to achieve. I offered to discuss my request by phone in order to both explain and expedite it. It's not my fault UKRI did not provide all the information the first time I asked for it. I think there should be a category for vexatious respondents who purposefully avoid answering an FOI. I complain about UKRI on that basis they have been vexatious."*

*UKRI's position*

28. UKRI demonstrated to the Commissioner that, in the intervening period between the first request recorded in this decision notice and the request which was the subject of the previous notice, the complainant had submitted six further requests. It also noted that he had continued to make requests subsequent to the one being considered here.
29. UKRI stated that it had not made a detailed calculation of the time spent on these new request but, referencing the figure of 350 hours in the Commissioner's earlier decision, "conservatively" estimated that the total time spent responding to the complainant was now over 400 hours.
30. Whilst the precise wording of the requests varied, there was an underlying theme of UKRI's spending – particularly on mental health.
31. UKRI also noted that the complainant had sent correspondence to its chief executive and each of the Research Council Executive Chairs setting out a "Guardian Matrix Test", which he had designed himself. The complainant demanded:



*"Please complete and sign The Guardian Matrix Test and return it to me by 1200 Friday 19 July. Failure to do this I will take as failure to pass the Test and take equality seriously."*

32. Although UKRI was keen to stress that it had responded to some of the complainant's requests, it saw no sign that the correspondence was likely to cease.

*The Commissioner's view*

33. Whilst the Commissioner has considered this request afresh, it is clear that the patterns of behaviour identified in her earlier decision notice have persisted and, if anything, intensified. She therefore finds that this request was also vexatious.
34. Whilst the number of requests since the previous notice is not high, the requests themselves have often been complex and would have required a great deal of co-ordinating across departments in order to provide a response. Whilst no single request may have exceeded the cost limit on its own, the cumulative effect would have been substantial and it is not clear that UKRI would have been able to aggregate the requests for the purposes of a section 12 refusal (cost of compliance exceeds appropriate limit).
35. The complainant has argued that UKRI had "not provided what he had asked for", but it seems reasonably clear to the Commissioner that UKRI had responded to the request as it was submitted. If there is a divergence between the information the complainant *wants* and that which he *requests*, that rests with the complainant, not the public authority. The requests under consideration were clear. They did not require clarification to answer.
36. Having had regard to the correspondence, the Commissioner considers that a more likely explanation for the complainant feeling compelled to make follow-up requests was because he did not get the answer that suited him.
37. The complainant has made clear that he is campaigning for what he sees as "fairer" funding for mental health research. He has also queried the way UKRI compiles its accounts.
38. The Commissioner has looked carefully at the issues which the complainant raised but she does not see them as adding to the value of the request. The complainant appears to have chosen his conclusion already and is now submitting broad requests in the hope that he will find the evidence to support that conclusion.



39. The patterns of behaviour evident in the Commissioner's earlier decision notice have persisted, as has the ongoing burden on UKRI to respond.
40. The "Guardian Matrix Test", in the Commissioner's view, gives a strong indication that the complainant is using his access rights in a manner which is inappropriate.
41. She therefore finds that the request was vexatious and therefore UKRI was entitled to rely on section 14(1) to refuse it.



## Right of appeal

---

42. 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](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

43. 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.
44. 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 .....**

**Phillip Angell**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**