

**Freedom of Information Act 2000 (FOIA)
Environmental Information Regulations 2004 (EIR)**

Decision notice

Date: 20 October 2022

Public Authority: North East Combined Authority
Address: c/o South Tyneside Council
Town Hall & Civic Offices
Westoe Road
South Shields
NE33 2RL

Decision (including any steps ordered)

1. The complainant made multiple information requests to the North East Combined Authority ("the NECA") relating to the Tyne Tunnels. The NECA refused the request under section 14(1) of FOIA (vexatious requests).
1. The Commissioner's decision is that the requests are vexatious and therefore the NECA was entitled to rely upon section 14(1) of FOIA to refuse them.
2. The Commissioner does not require any steps.

Request and response

3. During the time period between 11 October 2021 and 3 November 2021, the complainant made the following requests for information to the NECA. The information requests related to the following information:-
 - "request for Magistrate and County Court information. 11 October 2021

- request for UTCN statistics (and related information). 12 October 2021
 - request for Court Case (and related) information between TT2 and NECA. 12 October 2021
 - request for copy of proposed new Tyne Tunnels Byelaws 2021. - 21 October 2021
 - request for a copy of the previous T&C's of the Tyne Tunnels, prior to approx. mid July 2021. 3 November 2021
4. On 5 November 2021, the NECA responded and said the requests were being refused because they were vexatious under section 14(1) of the FOIA.
5. Following an internal review, the NECA wrote to the complainant on 20 December 2021, upholding its position.

Scope of the case

6. The complainant contacted the Commissioner on 13 December 2021 to complain about the way their requests for information had been handled.
7. This notice covers whether the NECA correctly determined that the requests were vexatious.

Reasons for decision

Section 14(1) – vexatious requests

8. 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.
9. 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

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

cause a disproportionate or unjustified level of disruption, irritation or distress.

10. 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.
11. 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.
12. 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.
13. 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.
14. 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).
15. However, the UT emphasised that these four broad themes are not a checklist, and are not exhaustive. They 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).

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

The NECA's view

16. The NECA provided an explanation of the background of the complainant's information requests. The complainant has engaged over the past two years in a campaign against the Tyne Tunnels with a particular focus against TT2 Limited (the operator of the Tyne Tunnels as a contractor). The complainant is unhappy with aspects of the tolling arrangements at Tyne Tunnels. The NECA also advise that the complainant is an administrator of a Facebook group and website which criticises the T2 and encourages members of the public to dispute charges relating to the Tyne Tunnels. It is the NECA's view that his interest had apparently stemmed from a family member receiving an Unpaid Toll Charge Notice from TT2. The charge was disputed and subsequently cancelled by TT2.
17. The NECA's advises that the complainant has made a large amount of information requests to them in a short time period. There were 51 requests for information made between the dates of 9 March 2021 and 7 September 2022 in regard to the Tyne Tunnels. The NECA also calculated 27 requests for information were made between 8 March and 2 November 2021, which they argue is the equivalent of one every 9 days. They assert that the complainant's requests constituted 45% of the FOI enquiries in 2021 up until 2 November 2021. Further to this point, the NECA advise that, on top of information requests, the complainant has also sent 108 emails accumulatively to them made up of queries and complaints. The NECA argue that these information requests have significantly impacted their resources by diverting significant time away from their core duties.
18. The NECA believe that the complainant's main concern is about the arrangements in place for the pursuit and enforcement of unpaid tolls. Therefore the NECA finds it appropriate to question the following against this concern: whether the pursuit and enforcement arrangement that are in place are lawful?; whether the requests seek information that has value in connection with this point. The NECA advise that the pursuit and enforcement arrangements deployed by TT2 are lawful, and that the complainant was provided with the relevant information on 6 May 2022 in response to another information request. The NECA does not believe that the complainant is concerned as to whether or not the pursuit and enforcement arrangements at Tyne Tunnels are lawful. Therefore it is their belief that because the requests do not affect the lawfulness of the arrangements, they do not hold wider value.
19. The NECA has also contested against the behaviour of the complainant, specifically them submitting frequent and overlapping requests. The

NECA argue that the complainant's requests overlap to a significant degree as they all connect to the same broad issue: Tyne Tunnels tolling operations. The NECA state that officers within their organisation have been tasked with having to keep track of what is being asked for, what is a repeated request and what has already been responded to which has further contributed to the impact on resources.

20. The NECA mention that there have been numerous attempts to engage with the complainant in person to enter into meaningful conversations, which could assist Tyne Tunnels customers. The complainant attended a meeting in May 2022 along with fellow campaigners. The NECA thought this was a positive meeting that explored many of the issues that the complainant had raised, especially focussing on court enforcement processes and byelaws. This meeting led to an offer from the NECA to work in collaboration with the complainant and his colleagues on the publication of Enforcement Policy documents to assist customers and provide clarity on the enforcement process. The complainant declined the offer.
21. In a Facebook group in which the complainant is an administrator, the complainant has described himself as the following:

"the person who broke NECA's FOI system".
22. He has also posted messages suggesting that others should use channels such as the SAR process to get 'revenge'. Messages include:

"If we've helped you, repay the favour and complain to NECA! If you like what we're trying to do, help us and complain to NECA. We make it easy for you...just copy and paste the following and email to complaints@northeastca.gov.uk"

"If you really want revenge, submit a Subject Access Request"
23. NECA claim that in previous emails to them, the complainant expressed their intention to destroy TT2. The NECA believe that this shows an unjustified, inappropriate and improper use of formal procedure.

The complainant's view

The complainant disputes this as requests are vexatious and considers that the NECA should respond to each and every one regardless of their claimed burden.

The Commissioner's decision

24. 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.
25. The history of the complainant's contact with the NECA and the context of the request provide overwhelming evidence of unreasonable persistence and unreasonable burden.
26. The complainant has made a large amount of information requests to the NECA, covering the same broad issue. The Commissioner therefore agrees that when the NECA were dealing with the complainant's information requests they would have had to look at previous information requests dealt with to decipher whether there was an overlap. This would further impact on the NECA's limited resources.
27. The NECA has previously made attempts to informally resolve issues that the complainant has made against Tyne Tunnels which the complainant has previously declined. However, after previously declining to collaborate on publication of Enforcement Policy documents, the complainant still continues to make information requests regarding the same broad issue. Further to this the other campaigners were more open to negotiations as opposed to the complainant. This further shows that the complainant's pursuance was more of personal interest rather than of wider public value.
28. The complainant has exhibited a personal vendetta against the NECA, in his style of campaigning. In the Facebook group that the complainant is administrator of, the complainant uses the terms "revenge" and assists members of the group in making complaints to the NECA, even when they are not directly relating to making requests about Tyne Tunnels. This clear demonstration of intent to abuse the FOIA process lends compelling weight to the argument that the requests are vexatious.
29. The Commissioner's decision is that the requests were vexatious and therefore the NECA was entitled to rely on section 14(1) of FOIA to refuse them.

Regulation 12(4)(b) of the Environmental Information Regulations 2004 (EIR)

30. Regulation 12(4)(b) of the EIR states that:

"For the purposes of paragraph (1)(a), a public authority may refuse to disclose information to the extent that- (b) the request for information is manifestly unreasonable;"

31. The Commissioner has not had sight of the withheld information but notes that the NECA also informed the complainant that they would not respond to the requests "so far as may be applicable, related provisions in Regulation 12(4)(b) of the Environmental Information Regulations 2004."
32. The Commissioner's decision is that should any of the withheld information prove to be environmental in nature, then it would be exempt by virtue of Regulation 12(4)(b) of the EIR. As there is no material difference between a request that is vexatious under section 14(1) of FOIA and a request that is manifestly unreasonable on vexatious grounds under the EIR, the same arguments apply to both.
33. Having considered the public interest test under Regulation 12(1)(b) of the EIR, the Commissioner's decision is that the requests are vexatious and that the public interest of transparency does not outweigh the significant burden which would be placed upon the NECA in providing responses.

Right of appeal

34. 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

35. 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.
36. 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

Michael Lea
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Information Commissioner's Office
Wycliffe House
Water Lane
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