

Freedom of Information Act 2000 (FOIA)

Decision Notice

Date: 31 October 2022

Public Authority: Department for the Economy
Address: Netherleigh
Massey Avenue
Belfast
BT4 2JP

Decision (including any steps ordered)

1. The complainant requested information relating to the way the Department for the Economy had assessed allegations they had made. The Department refused the request under section 14(1) of FOIA since it considered that request to be vexatious.
2. The Commissioner's decision is that the request is vexatious and the Department was entitled to rely on section 14(1). No remedial steps are required.

Request and response

3. The complainant has been in dispute with the Department¹ and its predecessor, the Department for Enterprise, Trade and Employment (DETI), for more than fifteen years. He has advised the Commissioner that his allegations have been "the subject of tribunals, a court proceeding and internal organisational enquiries, each of which has found no merit to the allegations".

¹ The Department was formed in 2016, merging the functions of two predecessor departments: DETI and the Department for Employment and Learning (DEL).

4. The complainant has also advised the Commissioner that he made allegations of misconduct and gross misconduct, to the Department, in March 2020. A departmental official advised the complainant in June 2020 that "I have concluded that all of your issues have been dealt with and closed." This correspondence also referred to a letter sent to the complainant from the Department's then Permanent Secretary in 2017, which stated that the Department did not intend to communicate further with the complainant about matters he had raised.
5. The complainant was not satisfied with this response and advised the Department that he expected to meet with the current Permanent Secretary to discuss his allegations. This was not forthcoming.

Request and response

6. The complainant requested the following information from the Department on 28 March 2021:
 1. All communication between you and Mr Lavery, whom I then wrongly believed to be Permanent Secretary of the Department for the Economy, and Mr Brennan (who replaced Mr Lavery on his retirement on 21/11/19) that relates to you / your division being appointed to respond to my communication with Mr Lavery in the matter of my allegations of misconduct / gross misconduct made against a number of departmental staff (DETI / DfE), staff of Invest NI, staff of the Insolvency Service and other related agencies.

NB You informed me on 2nd April 2020 that my communications to the Permanent Secretary of DfE had been passed to the Corporate Governance Division. Hence I ask that the communication between you and the respective Permanent Secretaries should include all those between 20th March 2020, the date of my first letter to Mr Lavery, and 31st March 2021.
 2. All communication between you and others, either superiors or subordinates, regarding the appraisal of my communications relating to my allegations that was undertaken by the Corporate Governance Division of DfE of which you are the Director.
 3. A copy of your report on the appraisal that you made available to Mr Brennan along with all related correspondence between

you and Mr Brennan from the date you provided the appraisal to him and 31st March 2021.

Your report to include:

- a. Your assessment / findings on each of my allegations.
 - b. Your suggested actions to be undertaken in regard to each of my allegations; should there have been a number of options on action to be taken, I expect that you will have outlined each of the options with the pros and cons associated with each.
 - c. The basis for your recommended option to be followed on each of the allegations.
7. The Department responded to the complainant on 27 April 2021, advising that the request was considered vexatious within the meaning of section 14(1) of FOIA.
 8. The complainant requested an internal review on 14 May 2021, and the Department responded on 11 June 2021, advising that it had upheld its reliance on section 14(1).

Scope of the case

9. The complainant contacted the Commissioner on 24 June 2021 to complain about the way his request for information had been handled. The complainant disputed that his request was vexatious.
10. The Commissioner notes that some of the requested information, if held, would comprise the complainant's personal data. The Department dealt with these parts of the request as a request under the right of access as set out in the UK General Data Protection Regulation (UK GDPR).² Complaints about the handling of the complainant's personal data fall outside the scope of this decision notice. Therefore the scope of the Commissioner's decision in this case is limited to the requested information that would not, if held, comprise the complainant's personal data.

² <https://ico.org.uk/for-organisations/guide-to-data-protection/guide-to-the-general-data-protection-regulation-gdpr/right-of-access/>

Reasons for decision

Section 14(1): vexatious request

11. Section 14(1) of FOIA states that a public authority is not obliged to comply with a request if the request is vexatious. The term vexatious is not itself defined in the legislation, but the Upper Tribunal³ has defined the purpose of section 14 as follows:

“...to protect the resources (in the broadest sense of that word) of the public authority from being squandered on disproportionate use of FOIA.”

12. The Commissioner has recently updated his published guidance on identifying vexatious requests.⁴ The Commissioner is of the opinion that the right of access to official information provided by FOIA is an important democratic right. Equally, dealing with unreasonable requests can strain resources and get in the way of delivering mainstream services or answering legitimate requests. Therefore the concepts of proportionality and justification are central to any consideration of whether a request is vexatious.

The Department's position

13. The Department advised the Commissioner that the complainant was involved in a personal dispute, and had been in protracted correspondence with the Department since 2006. The complainant had lodged complaints with the Industrial Tribunal,⁵ all of which had been dismissed in 2009. The Industrial Tribunal also issued a costs order against the complainant.
14. The Department advised that the complainant had also submitted numerous information requests and several complaints to the Commissioner. The Commissioner had issued a decision notice in 2011 which found that the Department was entitled to refuse as vexatious a

³ In *Information Commissioner v Devon County Council & Dransfield*, [2012] UKUT 440 AAC, 28 January 2013

⁴ <https://ico.org.uk/for-organisations/dealing-with-vexatious-requests-section-14/>

⁵ Industrial Tribunals are independent judicial bodies that hear and determine claims to do with employment matters: <https://www.employmenttribunalsni.co.uk/industrial-tribunals>

request submitted by the complainant.⁶ The Commissioner issued a further decision notice in 2019 which found that the Department had wrongly refused as vexatious a subsequent request for information.⁷

15. The Department advised that since 2019 the complainant had continued to correspond and submit information requests regarding his dispute. It clarified that the request which is the subject of this decision notice related to allegations made by the complainant, all of which had been considered and dismissed by the Industrial Tribunal. The Department was of the position that the complainant had not provided any new evidence, therefore it concluded that it was unable to reopen matters that had been decided by the Industrial Tribunal.
16. The Department also argued that responding to the request would cause disproportionate burden in that it would require the Department to reconsider matters which had been comprehensively dealt with over a period of nearly 17 years. It stated that the complainant's correspondence was voluminous, comprising hundreds of pages of documents including commentary and allegations.
17. The Department set out that the complainant had demonstrated a pattern of unreasonable persistence which would be likely to continue if the Department responded to this request. The Department was of the opinion that compliance with this request would lead to further requests rather than draw a line under the matter.
18. The Department recognised that the complainant had clear personal reasons for making the request, and for pursuing his dispute. However the Department did not consider there to be a wider public interest in the subject matter of the request.

The complainant's position

19. The complainant maintained that his request of 28 March 2021 was not vexatious, arguing instead that it was a reasonable request for information that was relevant to his dispute. The complainant provided the Commissioner with lengthy and detailed arguments in support of his

⁶ https://ico.org.uk/media/action-weve-taken/decision-notices/2011/678456/fs_50317682.pdf

⁷ <https://ico.org.uk/media/action-weve-taken/decision-notices/2019/2615449/fs50766422.pdf>

position. The Commissioner has considered the complainant's arguments but has not repeated them all in this decision notice.

20. The complainant argued that he had provided "overwhelming supporting evidence" to the Department on previous occasions. The complainant did not accept that his issues had been dealt with, and wished to understand how the Department had considered the evidence he had provided to it.
21. The complainant acknowledged that the Industrial Tribunal had found against him, but advised the Commissioner that he had raised concerns about the independence of the judge in that case which had not yet been dealt with.

The Commissioner's view

22. The Commissioner acknowledges the complainant's strong belief that his request is justified. It is apparent that the complainant does not accept that his dispute has been fully and fairly considered by the Department, or by the Industrial Tribunal. The Commissioner must stress that FOIA requires him to decide whether a particular request for recorded information has been handled in accordance with the requirements of the legislation. The Commissioner cannot comment on the merits or otherwise of the complainant's dispute.
23. The Commissioner is also mindful that FOIA is generally motive and applicant blind. It is the request, rather than the requester, that must be judged to be vexatious in order to rely on section 14. However, the identity and motive of the applicant is necessarily relevant to the consideration of section 14, and in this context the Commissioner considers it helpful to take account of the complainant's previous dealings with the Department.
24. The Commissioner has also had regard to the previous decision notices he has issued involving the complainant and the Department's reliance on section 14. The Commissioner must stress that his decision in any case is made on the merits of the case itself, rather than any previous case. The fact that the Commissioner has previously found a request made by the complainant to be vexatious does not provide conclusive evidence that a subsequent request is also vexatious. However the Commissioner notes that some of the arguments accepted in the decision notice issued in 2011 continue to be relevant in this case. For example, the Commissioner accepted in 2011 that it was likely that the complainant would continue to correspond with the Department in respect of his dispute, and the Department has provided evidence to show that this is in fact what happened.

25. The Commissioner also considers that weight should be given to the fact that the Industrial Tribunal considered and dismissed the complainant's case in 2009, and in fact awarded costs against him. In the Commissioner's opinion this contradicts the complainant's position that his complaints have not been fully considered. The Commissioner cannot attach any weight to the complainant's allegations about the judge.
26. The Commissioner accepts the Department's assertion that the complainant has demonstrated unreasonable persistence in pursuing his dispute. Given that the complainant has continued to correspond and make information requests for nearly 17 years, the Commissioner further accepts that the complainant is likely to continue to pursue his dispute, whether or not the Department complies with this particular request.
27. The Commissioner is of course mindful that the consequence of accepting reliance on section 14 is to deprive a requester of their right to access information under FOIA. This is not something that should be undertaken lightly, but when a public authority can provide robust arguments, supported by appropriate evidence, to demonstrate that a request is vexatious, it should not be reluctant to consider reliance on section 14.
28. The Commissioner believes that the Department in this case has provided sufficient evidence to show why it considers the request to be vexatious. Accordingly the Commissioner finds that section 14(1) is engaged in respect of the complainant's request of 28 March 2021, and the Department was not obliged to comply with that 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.

Signed

Sarah O'Cathain
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Wycliffe House
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SK9 5AF