

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 26 October 2015

Public Authority: The Information Commissioner's Office

Address: Wycliffe House
Water Lane
Wilmslow
SK9 5AF

Decision (including any steps ordered)

1. The complainant made 7 requests to the Information Commissioner's Office (ICO) between 20 March 2015 and 17 April 2015 for various information including metadata, the use of debit and credit cards by ICO officials, legal costs, travel and accommodation costs and information relating to legal arguments and the ICO's vexatious guidance. The ICO refused to comply with the requests as it considers they are vexatious under section 14(1) of the Freedom of Information Act (FOIA).
2. The Commissioner's decision is that the ICO has correctly applied section 14(1) FOIA in this case, it was not therefore obliged to comply with the requests.
3. The Commissioner requires no steps to be taken.

Request and response

4. On the following dates the complainant requested information of the following description:

IRQ0575625 - 20 March 2015:

"a PDF copy of the Metadata and in particular a copy of all internal and external emails containing my name between 2005 and Feb 2015."

IRQ0575780 - 23 March 2015:

- "1. How many ICO officials have Debit/Credit Cards?.*
- 2. Who authorises the use of issuance of Debit/Credit Cards?*
- 3. Please provide me with copies of Bank Statement for the last two years on every ICO card holder.*
- 4. Who scrutinies and approves Debit/Credit Card use at the ICO?"*

IRQ0576624 - 27 March 2015:

- "1. The full legal costs incurred by the ICO defending the Prince Charles Case which concluded yesterday in the Supreme Court.*
- 2. All costs include Legal Fees for QC, Travel, Accommodation, Food etc.*
- 3. Copies of Meta Data on this case, including emails and personal notes from Cse officers"*

IRQ0577045 - 31 March 2015:

- "1. Full cost to the ICO for representing this attached case.*
- 2. Full Cost of KBW QC lawyers for case representation."*

IRQ0577046 - 31 March 2015:

"an electronic copy of the ICO skeleton argument for the recent Google V Vidal-Hall Case"

IRQ0577797 – 8 April 2015

"the full cost of the attached guidelines.

Please also advise me why this document was not produced before the Court of Appeal on the 27th Jan 2015 ref C3/2013/1855 Dransfield.

Please also advise me why these latest guidelines do NOT make one single reference to the Dransfield Vexatious decision ref GIA/3037/2011."

IRQ0578937 – 17 April 2015

"a breakdown of the entire costs of the subject total.

Costs to include ALL matters pertaining to this case including, caseworks ,FTT/UT/Court of Appeal/Supreme Court, Legal Fees, travel and accommodation,ETC,ETC. ."

5. On 21 April 2015 the ICO responded. It refused to comply with the seven requests as it considered they were vexatious under section 14(1) FOIA.

6. The complainant requested an internal review on 22 April 2015. The ICO sent the outcome of its internal review on 20 May 2015. It upheld its original position.

Scope of the case

7. The complainant contacted the Commissioner on 21 May 2015 to complain about the way his requests for information had been handled.
8. The Commissioner has considered whether the ICO correctly applied section 14(1) FOIA in this case.

Reasons for decision

9. Section 14(1) FOIA provides that a public authority is not obliged to comply with a request if it is vexatious.
10. The Commissioner's guidance¹ on the application of section 14(1) FOIA refers to an Upper Tribunal decision² which establishes the concepts of 'proportionality' and 'justification' as central to any consideration of whether a request is vexatious.
11. The guidance suggests that 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. Where this is not clear, the Commissioner considers that public authorities should weigh the impact on the authority and balance this against the purpose and value of the request. Where relevant, public authorities will need to take into account wider factors such as the background and history of the request.
12. The ICO explained that it considers the 7 latest requests from this complainant are vexatious for the following reasons:

¹http://www.ico.org.uk/for_organisations/guidance_index/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/dealing-with-vexatious-requests.ashx

² *Information Commissioner vs Devon County Council & Dransfield* [2012] UKUT 440 (AAC) (28 January 2013)

- The frequency and overlapping nature of these requests – it said that the complainant had made eight requests during the previous month. The ICO said that it had not had opportunity to fully consider its response to one before it received others. It said that the requests are individually burdensome in terms of the work that would be required to respond.
 - Several of the requests are on themes which the complainant has previously been informed will not be responded to; the use of 'Dransfield' in written correspondence - which is only so frequent because of the legal precedents set, the legal spend of the ICO, the ways in which ICO staff spend money and suggesting fraudulent and/or unlawful behaviour by members of ICO staff.
 - While the ICO can see there might be some public interest in disclosure of some of the information requested, this does not override the public interest in trying to ensure proper and legitimate use of the FOIA. However, it can't see any public interest in particular in relation to the requests for metadata. Ultimately, it said that the requests do not justify the resources it would take to respond.
 - In relation to comments made that the requests are 'new' and therefore can't be vexatious, the ICO highlighted that it has found before that this deliberate attempt to find a 'new' topic or a 'new' angle, simply to try and evade the application of section 14 (1) is vexatious in itself.
 - The contextual background in which it received these requests demonstrates that this is a further example of the pattern of behaviour it has seen before. The submission of multiple requests in quick succession conforms to a pattern and the flurry of recent requests strongly indicates that if the ICO were to provide a response to the requests the correspondence would continue with each response generating further requests, complaints and correspondence. The submission of multiple requests in quick succession conforms to a pattern previously observed and suggests strongly that the previous behaviour, which the ICO deemed to be vexatious, is likely to be repeated.
13. The ICO reiterated that it does consider each request it receives on its own merits. It explained that it has provided responses to some requests from this requester and the pattern of behaviour shows no sign of abating when it does respond. Each response the ICO sends generates a new request or complaint or a response which is accusatory or offensive in nature.

14. The ICO confirmed that it has previously refused requests in reliance on section 17 (6) without sending any written response. It explained that it responded to this clutch of requests because of the passage of time since the last response of this type and because it considered carefully whether section 14 (1) was applicable and wanted to demonstrate that it had thought about it. Having decided it was vexatious, it considered a formal response explaining its arguments again was appropriate.
15. The ICO confirmed that it is committed to protecting the request process and trying to ensure that resources are used in a proportionate way. The fundamental reason it finds these requests to be vexatious, is that responding to them would distract resources from responding to genuine requests for information. The ICO considers they are an abuse of the FOIA process. It considers the context, history and continuing pattern of behaviour demonstrate very clearly that these requests are not designed to extract useful information for the public good, but to irritate and force correspondence just because it is possible to do so.
16. It concluded that it has made similar arguments to the Commissioner before in similar cases involving the same requester and the application of section 14 (1) and this position was upheld. It summarised that its position remains much the same as it was.
17. The Commissioner acknowledges that a number of Decision Notices have been issued previously to this complainant which upheld the ICO's application of section 14(1) FOIA. The Commissioner considers that the theme of some of the information that has been requested in this latest tranche of requests is a theme that has run through a number of earlier requests and section 14(1) FOIA was previously upheld. The Commissioner has therefore taken this and the complainant's previous pattern of behaviour into account when considering these latest requests. The detail of this is contained within the previous Decision Notices issued³.

Unreasonable persistence

18. The guidance states that to show unreasonable persistence, the public authority must demonstrate that the requester is attempting to reopen an issue which has already been comprehensively addressed by the public authority, or otherwise subjected to some form of independent scrutiny.

³ FS50532725, FS50537765, FS50537756, FS50539902

19. The ICO has explained that several of the requests are on themes which the complainant has previously been informed will not be responded to; correspondence relating to the complainant, which is only so frequent because of the legal precedents set, the legal spend of the ICO, the ways in which ICO staff spend money and suggesting fraudulent and/or unlawful behaviour by members of ICO staff.
20. As stated above a number of Decision Notices have been issued by the ICO in relation to requests made by this requester, many of which relating to the same themes raised again within this latest tranche of requests. This demonstrates an unreasonable persistence on the part of the complainant.

Intransigence

21. The guidance states that to show intransigence, the public authority must demonstrate that the requester takes an unreasonably entrenched position, rejecting attempts to assist and advise out of hand and shows no willingness to engage with the authority.
22. The ICO has argued that the contextual background in which it received these requests demonstrates that this is a further example of the pattern of behaviour it has seen before. The submission of multiple requests in quick succession conforms to a pattern and the flurry of recent requests strongly indicates that if it were to provide a response to the requests the correspondence would continue with each response generating further requests, complaints and correspondence. The submission of multiple requests in quick succession conforms to a pattern previously observed and suggests strongly that the previous behaviour, which the ICO deemed to be vexatious, is likely to be repeated.
23. The Commissioner considers that given the length of time the complainant has been making requests for information on the same or similar themes, the number of requests made in quick succession and the fact that a number of previous Decision Notices have been issued upholding the ICO's application of section 14(1) FOIA, the ICO has demonstrated that the complainant has taken an unreasonably entrenched position.

Frequent or overlapping requests

24. The guidance states that the public authority must demonstrate that the requester submits frequent correspondence about the same issue or sends in new requests before the public authority has had an opportunity to address their earlier enquiries.

25. The ICO has clearly demonstrated that there is a link between the theme of the requests and that new requests are submitted before the ICO has had the opportunity to respond to previous requests.
26. The Commissioner considers that due to the length of time the complainant has been making requests to the ICO regarding these issues, the number of requests made and the fact that the requester is submitting new requests before previous requests have been responded to, this demonstrates that the requests are frequent and overlapping.
27. The ICO has also confirmed that in addition to the FOIA requests, the complainant frequently writes directly to a number of senior members of staff at the ICO. Some members of staff receiving 10-20 emails on average per week. The nature of the correspondence is extremely offensive and it regularly contains unfounded allegations of a criminal nature about particular members of staff. The Deputy Commissioner for FOIA wrote to the complainant on 19 May 2015 to explain why this behaviour is unacceptable and also to confirm that FOIA requests are always considered on a case by case basis. Despite this, the complainant's correspondence persists. The Commissioner considers that this provides further background information leading up to and surrounding the FOIA requests which are the subject of this Notice.
28. The Commissioner recognises that the unreasonable persistence, intransigence and the frequency and overlapping nature of the requests outweighs any public interest in responding to the requests due to the drain on resources this would cause and the diversion from other functions and duties.
29. The Commissioner is satisfied that the 7 latest requests are vexatious and that section 14(1) has been applied correctly.

Right of appeal

30. 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: www.justice.gov.uk/tribunals/general-regulatory-chamber

31. 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.
32. 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

Pamela Clements
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