

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 23 March 2015

Public Authority: Office of Communications
Address: Riverside House
2a Southwark Bridge Road
London
SE1 9HA

Decision (including any steps ordered)

1. The complainant made a request for the subject line of emails which contained both the words 'amateur' and 'interference'. The Office of Communications (Ofcom) refused the request as vexatious under section 14(1) of the FOIA. The Commissioner's decision is that Ofcom has correctly applied the vexatious provision at section 14(1). He does not require any steps to be taken.

Request and response

2. On 4 November 2014 the complainant made a request under the FOIA:
*'Please provide the following:

The full subject line of any emails where the subject line contains both the words "Amateur" and "Interference" (case insensitive) and were sent in the calendar year 2013. This relates to what you call "hobby radio".'*
3. Ofcom responded on 27 November 2014 stating that it considered the request to be vexatious and therefore covered by section 14(1) of the FOIA. The public authority referred the complainant to previous similar requests of 27 September, 19 November and 12 December 2013 which were refused under section 12 of FOIA. Ofcom also referred to this request as a 'fishing expedition'.

4. The complainant requested an internal review on 28 November 2014 and questioned the ability of Ofcom to interrogate their information systems.
5. Ofcom responded on 23 December 2014 and refused to provide the requested information as their position remained unchanged.

Scope of the case

6. The complainant wrote to the Commissioner on 18 January 2015 to complain about the way his request for information had been handled:

'My complaint is two-fold, 1) that Ofcom's decision to treat me as vexatious given the evidence provided is manifestly unreasonable and 2) that Ofcom have publicly lied about their ability to interrogate their email system and thus failed to discharge their obligation under DPA'

7. The Commissioner has examined the request and related correspondence from both the complainant and Ofcom. The Commissioner has considered the scope of the case to be whether Ofcom is entitled to rely on the vexatious provision at section 14(1) of the FOIA.

Reasons for decision

8. Section 14(1) of FOIA states that section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious. There is no public interest test.
9. The term "vexatious" is not defined in the FOIA. The Upper Tribunal considered the issue of vexatious requests in the case of the *Information Commissioner v Devon CC & Dransfield*¹. The Tribunal commented that vexatious could be defined as the "*manifestly unjustified, inappropriate or improper use of a formal procedure.*" The Tribunal's definition clearly establishes that the concepts of proportionality and justification are relevant to any consideration of whether a request is vexatious.
10. The Upper Tribunal also found it instructive to assess the question of whether a request is truly vexatious by considering four broad issues:

¹ GIA/3037/2011

(1) the burden imposed by the request (on the public and its staff); (2) the motive of the requester; (3) the value or serious purpose of the request; and (4) any harassment or distress of and to staff. The Upper Tribunal did, however, also caution that these considerations were not meant to be exhaustive. Rather, it stressed 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).

11. In the Commissioner's view, the key question for public authorities to consider when determining if a request is vexatious is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress.
12. The Commissioner has identified a number of "indicators" which may be useful in identifying vexatious requests. These are set out in his published guidance on vexatious requests². 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.
13. Ofcom has identified several indicators as being present within the request. It considered that the request was a repeat request, was obsessive, caused distress to staff, and imposed a significant burden designed to cause disruption or annoyance to Ofcom.

The request is obsessive - Unreasonable persistence

14. The Commissioner would characterise an obsessive request as one where 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.

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

15. In the Commissioner's view, the test to apply here is reasonableness. Would a reasonable person describe the request as obsessive in the circumstances? For example, the Commissioner considers that although a request in isolation may not be vexatious, if it is the latest in a long series of overlapping requests or other correspondence then it may form part of a wider pattern of behaviour that makes it vexatious.
16. The Commissioner accepts that at times there is a fine line between obsession and persistence and although each case is determined on its own facts, the Commissioner considers that an obsessive request can be most easily identified where a complainant continues with the request(s) despite being in possession of other independent evidence on the same issue. However, the Commissioner also considers that a request may still be obsessive even without the presence of independent evidence.
17. Ofcom has explained that it has a long standing and close working relationship with the Radio Society of Great Britain (RSGB), which represents the needs and interests of 'hobby radio' enthusiasts, of which the complainant is one.
18. As of 5 March 2015, Ofcom had 25 requests for information from the complainant on their case management system, all relating to hobby radio and associated issues.
19. This request is the same as his previous request of 27 September 2013:
'Please provide the following:

The full subject line of any emails where the subject line contains both the words "Amateur" and "Interference" (case insensitive) and were sent between January 1st 2013 and September 27th 2013'
20. Ofcom applied section 12 (costs) and the complainant sent a refined request on 19 November 2013:
'please supply the email subjects for the month of August 2013 and limited to a cost of £450.'
21. Ofcom again applied section 12 and the complainant sent a further request on 12 December 2013:
'Please would you tell me how many hours obtaining one month's worth of emails would take?

Please also tell me what email server you are using and whether this server is hosted by Ofcom or externally.

How many email accounts are there?'

22. On 11 December 2013, Ofcom again applied section 12:

'The words "amateur" and "interference" can be attributed to any team within Ofcom and to search through all emails for each member of staff would take an inordinate amount of time and resources, even just for one month.'

23. Section 14(2) of FOIA states: Where a public authority has previously complied with a request for information which was made by any person, it is not obliged to comply with a subsequent identical or substantially similar request from that person unless a reasonable interval has elapsed between compliance with the previous request and the making of the current request.

24. Ofcom acknowledge that this request is identical to the one submitted in September and November 2013. Ofcom have stated that *'a reasonable interval has not elapsed – the nature of the search, the type of information requested and the process Ofcom would have to go through would be identical.'*

25. The Commissioner has taken into account the context and background to the request and considers that the complainant's persistence has reached the stage where it could reasonably be described as obsessive.

The request is designed to cause disruption

26. Ofcom have stated that it considers the complainant to be submitting requests to cause disruption. As the request is for the subject line only (and not the content of the emails) it is of limited value and a 'fishing expedition'.

27. Ofcom have stated in their November 2014 response to the complainant that *'we consider that the request would impose a significant burden on Ofcom as we would be required to sift through a substantial volume of information to isolate and extract the relevant information. We did invite you in our response of 25 October 2013 to submit a narrower and more focussed request, however your request of 19 November 2013 remained too wide.'*

28. Therefore Ofcom have on a number of occasions provided an explanation on the work needed to search, sift, isolate and extract the information to answer the request. The Commissioner has considered the complainant's complaint that *'Ofcom have publicly lied about their ability to interrogate their email system and thus failed to discharge their obligation'*. However, the Commissioner will not consider the functionality of particular email systems and is satisfied that there is no evidence to suggest that Ofcom have not told the truth.

29. The Commissioner has considered all the correspondence presented to him and found that there is sufficient evidence to suggest that the request was vexatious in that it is without merit or value to the public.

The request has the effect of harassing the public authority and causing distress to staff

30. The Commissioner considers that a requester is likely to be abusing the section 1 rights of the FOIA if he uses FOIA requests as a means to vent anger at a particular decision, or to harass and annoy the authority, for example by submitting a request for information which he knows to be futile. When assessing whether a request or the impact of dealing with it is justified and proportionate, it is helpful to assess the purpose and value of the request.
31. The FOIA is generally considered applicant blind, but this does not mean that a public authority may not take into account the wider context in which the request is made and any evidence the applicant has imparted about the purpose behind their request.
32. In this case, following from the previous requests in 2013 Ofcom stated that *“it would cause disproportionate and unjustified disruption and irritation to even make enquiries of the appropriate team, let alone that it would take in excess of 18 hours to find the requested information”*.
33. In the complainant's correspondence with Ofcom he has *‘frequently made personal allegations against Ofcom colleagues. He also has a significant online presence through which he asks ‘Ofcom – Corrupt or incompetent’. It is clear from his blog and our own correspondence ... that the intention of his requests for information is not to bring an important issue into the public sphere, but to pursue a personal agenda.’*
34. The Commissioner has considered the purpose of the request in the context of the other correspondence and taking into account the obsessive persistence of the complainant, finds that the effect is to harass the public authority and cause distress to members of staff.

The Commissioner's decision

35. Taking into consideration the findings of the Upper Tribunal that a holistic and broad approach should be taken in respect of section 14(1), the Commissioner has concluded that Ofcom was correct to find the request vexatious. He has balanced the purpose and value of the request against the detrimental effect on the public authority and is satisfied that the request is both obsessive and has the effect of harassing the public authority. Accordingly, the Commissioner finds that section 14(1) has been applied appropriately in this instance.

Right of appeal

36. 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: <http://www.justice.gov.uk/tribunals/general-regulatory-chamber>

37. 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.
38. 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

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