

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 19 February 2018

Public Authority: Office of the Immigration Services
Commissioner

Address: 5th Floor
21 Bloomsbury Street
London, WC1B 3HF

Decision (including any steps ordered)

1. The complainant made a request for information containing 114 questions. Full details of the request and OISC supporting evidence is contained in a confidential annex which has not been made available to the public for the reasons explained in the Notice.
2. The Commissioner's decision is that Office of the Immigrations Services Commissioner (OISC) has correctly applied section 14(1) (vexatious requests) to the request.
3. The Commissioner does not require the public authority to take any steps as a result of this decision notice.

Request and response

4. On 2 June 2017, the complainant wrote to OISC with a list of 114 questions/requests. In broad terms these can be categorised as requests for information about former employees, allegations of misconduct and opinions on why certain individuals made certain statements. This appears to arise from the complainant's previous dealings with the OISC. As there is a lot of personal data entwined with the requests relating to the complainant and third parties it is not possible to provide the full requests in this Notice or redact them appropriately and therefore a confidential annex has been made available to the OISC only. Examples of some of the requests made are however provided in paragraphs 27 and 28.

5. OISC responded on 29 June 2017 and refused to provide any of the requested information citing section 14(1) of the FOIA as its basis for doing so.
6. Following an internal review OISC wrote to the complainant on 1 August 2017 and maintained its original position.

Scope of the case

7. The complainant contacted the Commissioner on 4 September 2017 to complain about the way his request for information had been handled.
8. The Commissioner then explained to the complainant that section 1 of the FOIA states:
 1. *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*

However, this right of access only extends to 'recorded information' and does not extend to answering questions that ask for an opinion or in response to allegations made. The complainant acknowledged this on 20 December 2017.

9. The Commissioner therefore considers the scope of this case to be to determine if the OISC has correctly cited section 14(1) of the FOIA in response to the complainant and dealt with the request in accordance with the legislation.

Background

10. The OISC explained that the complainant has had extensive dealings with the OISC and is fully familiar with the regulatory regime. Two of the complainant's previous organisations were registered by the OISC, before their registrations were cancelled in 2014.
11. The complainant exercised his statutory right to appeal against both of the OISC's cancellation decisions, and these proceedings concluded on 5 October 2017. A costs order was awarded in the OISC's favour.
12. OISC provided a further chronology which is contained in the confidential annex. It should be noted that although the Commissioner

has taken this information into consideration, she has not solely relied on it when making her decision.

13. The Commissioner wrote to OISC to ask if it would consider the complainant's request if it was refined to asking for information that it may hold, rather than for opinions.
14. In its submission to the Commissioner, the OISC explained that it would be difficult to envisage a situation in which the request could be amended so as to be reasonable and a proper use of the FOIA procedure.
15. Ultimately, it would consider the request only if the complainant is able to take into account the feedback in its letter dated 29 June 2017 and to amend his request accordingly - in terms of the tone, content and length.

Reasons for decision

Section 14 – vexatious requests

16. Section 14(1) of FOIA states that section 1(1) does not oblige a public authority to comply with a request for information if it is vexatious. There is no public interest test.
17. 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*. 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.
18. In the Dransfield case, the Upper Tribunal also found it instructive to assess the question of whether a request is truly vexatious by considering 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 of or distress to staff.
19. 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).

20. 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.
21. 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.
22. The Commissioner has identified a number of 'indicators' which may be useful in identifying vexatious requests. These are set out in her published guidance and, in short, they include:
 - Abusive or aggressive language
 - Burden on the authority
 - Personal grudges
 - Unreasonable persistence
 - Intransigence
 - Frequent or overlapping requests
 - Deliberate intention to cause annoyance
23. 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.

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http://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)

24. The Commissioner's guidance suggests that if a request is not patently vexatious 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. In doing this the Commissioner considers that a public authority should weigh the impact of the request upon it and balance this against the purpose and value of the request.
25. In its submission to the Commissioner, the OISC has provided a background to the request. It has argued that 114 questions would objectively create a significant burden on its resources. It further stated that its refusal letter cited 'unreasonable persistence' and it maintained that 114 questions can be objectively construed as 'manifestly unreasonable'.
26. It further stated that it considered that the request has the effect of harassing the public authority or its staff. The request also contained a number of accusations or sought an opinion on allegations. OISC therefore considered that the request lacked any serious purpose or value.
27. The Commissioner has reviewed the request and notes that several parts may well relate to information held by OISC, for example;

What caselaw does the OISC rely on relating to the supervision of immigration advisers by EEA Lawyers regulated by an EEA regulatory body when deciding on supervision procedures?

What jurisdiction does the OISC have to regulate those who are supervised by an EEA Lawyer regulated by a regulatory body for lawyers in the EEA, under section 84(2) of the immigration and asylum act 1999 to provide immigration services?

28. However, the majority of the request asks the OISC to provide answers to specific allegations, for example;

Please answer the allegation that it is unlawful and exceeding the OISC's authority to prevent all those working under the supervision of an EEA lawyer providing immigration services from doing so. Please comment on the allegation that the OISC failing to provide details of apparent supervision procedures in writing and then threatening prosecution is in breach of Article 6 of the Human Rights Act.

Please answer the allegation that [redacted] committed perjury in his statements relating to the [redacted] and [redacted] Court proceedings?

Please explain exactly what the OISC thinks is a client account as it applies to OISC registered advisers and whether this is different to what

a bank considers to be a client account?

Please answer the allegation that for many years it was difficult if not impossible for OISC registered advisers to obtain a client account which banks would recognise as being a Client Account?

29. The complainant also makes allegations against named staff and also asks for details of why particular individuals no longer work for the OISC.
30. The Commissioner's guidance has emphasised that proportionality is the key consideration for a public authority when deciding whether to refuse a request as vexatious. The public authority must essentially consider whether the value of a request outweighs the impact that the request would have on the public authority's resources in responding to it.
31. Aspects that can be considered in relation to this include the purpose and value of the information requested, and the burden upon the public authority's resources.

Purpose and value of the request

32. The Commissioner has reviewed the circumstances of the request, and recognises that the complainant holds concerns about how the OISC has dealt with him.
33. However, the Commissioner is aware that the complainant has had extensive dealings with the OISC and is familiar with the regulatory regime having exhausted the internal and external appeals mechanisms available to him in connection with his earlier disputes which did not find in his favour.
34. When considering whether a request is vexatious a public authority may also need to take into account wider factors such as the background and history of the request. The Commissioner considers the background to the request is very relevant here. From the evidence provided by the OISC it appears to the Commissioner that the complainant was party to legal proceedings which were unsuccessful.

The Commissioner's view

35. The Commissioner acknowledges that there are many different reasons why a request may be vexatious, as reflected in her guidance. There are no prescriptive 'rules', although there are generally typical characteristics and circumstances that assist in making a judgement about whether a request is vexatious. A request does not necessarily have to be about the same issue as previous correspondence to be

classed as vexatious, but equally, the request may be connected to others by a broad or narrow theme that relates them.

36. A commonly identified feature of vexatious requests is that they can emanate from some sense of grievance or alleged past wrong-doing on the part of the authority.

37. As the Upper Tribunal in *Information Commissioner vs Devon County Council & Dransfield* [2012] UKUT 440 (AAC), (28 January 2013) observed:

"There is...no magic formula – 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".

38. In her guidance on dealing with vexatious requests, the Commissioner recognises that the FOIA was designed to give individuals a greater right of access to official information with the intention of making public bodies more transparent and accountable.

39. While most people exercise this right responsibly, she acknowledges that a few may misuse or abuse the FOIA by submitting requests which are intended to be annoying or disruptive or which have a disproportionate impact on a public authority.

40. The Commissioner recognises that public authorities must keep in mind that meeting their underlying commitment to transparency and openness may involve absorbing a certain level of disruption and annoyance.

Was the request vexatious?

41. The Commissioner considered OISC's submission and the complainant's position regarding the information request in this case. She also notes the background to it.

42. As in many cases which give rise to the question of whether a request is vexatious, the evidence in the present case showed a history of previous and subsequent information requests. Clearly in this case, OISC considers that the context and history supports its argument that the request is vexatious.

43. In its submission to the Commissioner, OISC did not provide evidence specifically as to the burden that would be caused by this particular request. The burden on the OISC in this matter arises principally from

the resources and staff time that it would spend on addressing the complainant's information request and related correspondence.

44. The Commissioner recognises that the complainant had his reasons for pursuing information from the OISC. He is clearly not satisfied with how the OISC has dealt with him. However, disclosure of the requested information would do nothing to resolve that central dispute. In view of this, the Commissioner considers that the request for information has no wider value or purpose beyond the complainant's pursuit of his personal grievance against the OISC.
45. She considers it clear that the complainant appears to be attempting to pursue his grievances through the FOIA regime and that it is not an appropriate mechanism for pursuing such concerns. The Commissioner considers that there is no public interest in them being played out in public, under the FOIA regime.
46. The purpose of section 14 of the FOIA is to protect public authorities and their employees in their everyday business. In her guidance, the Commissioner recognises that dealing with unreasonable requests can place a strain on public authorities' resources and get in the way of delivering mainstream services or answering legitimate requests. Furthermore, these requests can also damage the reputation of the legislation itself.
47. The Commissioner is satisfied that the complainant is trying to use the FOI legislation for a purpose for which it was not intended. It appears to the Commissioner that the complainant is now using the legislation to continue to express dissatisfaction with the outcome of legal proceedings and to cause OISC annoyance.
48. Complying with the 114 requests in question would be a burden to OISC and the Commissioner is satisfied that the burden would be disproportionate, as the requests have little or no value or purpose.
49. The complainant has made a number of allegations and the Commissioner has no evidence of misconduct by OISC. The request further demonstrates unreasonable persistence given that the complainant has already been through the appropriate appeals processes, and appears to be pursuing a personal matter as he feels OISC has treated him unfairly. On this occasion, the Commissioner therefore agrees with the OISC that the request can be categorised as vexatious under section 14(1) of the FOIA.

Right of appeal

50. 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

51. 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.
52. 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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