

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 26 August 2021

Public Authority: Public Health England
Address: Wellington House
133-155 Waterloo Road
London
SE1 8UG

Decision (including any steps ordered)

1. The complainant has requested information relating to several job roles.
2. The Commissioner's decision is that the Public Health England (PHE) has failed to demonstrate on what grounds section 14(1) is engaged and therefore is not entitled to rely on the exemption.
3. The Commissioner requires PHE to take the following steps to ensure compliance with the legislation:
 - Issue a fresh response to the request which does not rely upon section 14(1).
4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 21 December 2020, the complainant wrote to PHE and made a request for information. Due to the length of this request it is outlined in an annex to this notice.
6. PHE responded on 22 January 2021 and refused to provide the requested information citing section 14(1) (vexatious requests) of the FOIA.

7. Following an internal review PHE wrote to the complainant on 27 January 2021 and maintained its original position.

Scope of the case

8. The complainant contacted the Commissioner on 3 February 2021 to complain about the way that their request for information had been handled.
9. The Commissioner therefore considers the scope of her investigation to be to determine if PHE is entitled to rely upon section 14(1) as a basis for refusing to comply with the request.

Reasons for decision

Vexatious requests

10. Section 1(1) of the FOIA states that:

"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."*

11. Section 14 of the FOIA states that:

"Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious."

'Vexatious'

12. The term 'vexatious' is not defined within the FOIA. The Upper Tribunal considered the issue of vexatious requests in *Information Commissioner v Devon CC & Dransfield* [2012] UKUT 440 (AAC). It commented that 'vexatious' could be defined as the 'manifestly unjustified, inappropriate or improper use of a formal procedure'. The Upper Tribunal's approach in this case was subsequently upheld in the Court of Appeal.
13. The Dransfield case also considered four broad issues: the burden imposed by the request (on the public authority and its staff), the motive of the requester, the value or serious purpose of the request and harassment or distress of and to staff. A public authority may take these

factors into account when considering if a request for information is excessive.

14. The Dransfield definition confirms that it is important to consider proportionality and justification of any request before deciding it is vexatious.
15. The Commissioner has published guidance on the factors that may typify a vexatious request¹. However, it is important to note that even if a request contains one or more of these indicators it will not necessarily mean that it must be vexatious and the request must be considered against the issues outlined above.
16. When considering the question of vexatiousness, a public authority can consider the context of the request and the history of its relationship with the requestor, as the guidance explains: *'The context and history in which a request is made will often be a major factor in determining whether the request is vexatious, and the public authority will need to consider the wider circumstances surrounding the request.'*
17. In some cases it will be obvious when a request is vexatious but in others it may not. The Commissioner's guidance states: *'If the authority is unsure whether it has sufficient grounds to refuse the request, then the key question it should consider is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress. This will usually mean weighing the evidence about the impact on the authority and balancing this against the purpose and value of the request.'*

The complainant's position

18. The Commissioner notes that it does not fall upon the complainant to explain why the request is not vexatious; rather the burden falls upon PHE to explain why the request is vexatious. However, the complainant has outlined their position to the Commissioner.
19. Within its refusal notice, PHE indicated that the complainant had submitted *'the same request to multiple recipients both within PHE and external partners'* and *'repeated identical questions on the same matter.'*
20. When requesting an internal review into this matter, the complainant asked PHE, *'this information has not been provided previously...If PHE*

¹ [dealing-with-vexatious-requests.pdf \(ico.org.uk\)](https://ico.org.uk/dealing-with-vexatious-requests.pdf)

has provided it previously, as suggested, then please direct me to the content.' This matter was not addressed by PHE in its internal review outcome.

21. The complainant has explained the Commissioner that the requested information was previously available on PHE's intranet site but has subsequently been removed, hence their request for information. The Commissioner cannot verify this claim.
22. The complainant is concerned that disclosure of this information is within the public interest and would allow both the complainant and other employees to examine whether the Equality Act 2010 has been breached.
23. Whilst she recognises that the FOIA is purpose blind, the Commissioner understands that the complainant is concerned about unequal pay. The complainant has explained that the information which is the subject of this request differs from any previous legal claim that they have brought against PHE.

PHE's position

24. In its submission to the Commissioner PHE explained that it *'believes this request is in relation to an Equal Pay claim that [the complainant] has been pursuing, unsuccessfully, since 2017.'*
25. PHE expanded on this, explaining that *'the request has been made in the hope of discovering information which would support his entrenched view that PHE has not paid him in accordance with the equal pay provisions in the Equality Act 2010, a claim that has been dismissed by an Employment Tribunal.'*
26. Furthermore, *'In addition to the Employment Tribunal, [the complainant] has also submitted a number of Freedom of Information requests to PHE on this matter, raised internal grievance proceedings, and sought to refer this issue to the Civil Service Commission.'*
27. Ultimately, PHE believes that this request represents the complainant's attempt to pursue a matter that has already been addressed by PHE and an independent authority. In PHE's opinion, this request demonstrates the complainant's unreasonable persistence and entrenched position.
28. These factors are all touched upon within the Commissioner's guidance. However, the Commissioner does not consider this to be a clear-cut case.
29. As part of her investigation into this matter, the Commissioner requested *'details of any wider context and history to the request if PHE believes that this background supports its application of section 14(1).'*

The Commissioner also asked '*Please provide any relevant documentary evidence/background evidence to support such a claim.*'

The Commissioner's view

30. The Commissioner acknowledges that, on the surface, this request does not appear to represent any wider public interest. She takes on board PHE's assertion that the request appears to represent an attempt to reopen an issue which has already been addressed by PHE, or otherwise subjected to some form of independent scrutiny. The Commissioner can clearly see that this request for information represents a matter that is of utmost importance to the complainant personally.
31. However, returning to paragraph 15, this does not automatically mean that the request is vexatious and it is up to PHE to persuade the Commissioner that section 14(1) has been appropriately engaged. To do so, the Commissioner must consider the evidence that PHE has provided and here is where she considers PHE's submission is lacking.
32. Whilst PHE has touched upon the complainant's previous legal case, grievance and referral of the complainant's concern to the Civil Service Commission, it has failed to contextualise these incidents in relation to the request for information.
33. Without this context, the Commissioner cannot verify PHE's claim that this request for information is an attempt to reignite this dispute.
34. PHE has also failed to address the complainant's concerns that they have not previously requested this information under the FOIA or another avenue. PHE has also failed to engage the Commissioner on this topic and has not outlined how the complainant's previous requests for information were handled. In the Commissioner's scoping letter she specifically asked, '*if the applicant has submitted previous requests, were those requests handled appropriately?*'
35. PHE cannot cite any previous requests for information that the complainant may have made, either under the FOIA or outside of it, and it fails to engage either the complainant or the Commissioner any further on this subject.
36. Whilst the Commissioner accepts that this request represents a matter of significant importance for the individual, she considers that PHE may have failed to acknowledge any value or serious purpose that the request may hold. This value and serious purpose can be as general as the public interest in transparency and engagement with the FOIA.
37. The Commissioner would argue that the requested information would be of specific interest, and potential benefit, to PHE staff since the

complainant is concerned that wrongdoing has occurred and that this information is not readily available outside of the act.

38. The Commissioner also considers the fact that the complainant alleges this information has been removed is a relevant factor in this case and, should the requestor require this information to pursue a separate, fresh appeal then the request is not necessarily vexatious.
39. The Commissioner also notes that in PHE's refusal notice it states '*PHE will review its decision to not respond to further correspondence on the same matter in 6 months' time.*' It is not clear to the Commissioner what PHE is trying to say with this statement.
40. If PHE is indicating that the request will not be vexatious if submitted in six months' time, the Commissioner would argue that this lends itself to the argument that the request is not vexatious as the history and context of the request is unlikely to diminish during this time.
41. PHE has explained that '*The requested information comprises of over 100 job descriptions, some of which date back as far as 2015, and to provide this information would require considerable time and resource from PHE, especially the HR and Freedom of Information teams, at a time when the organisation is a key responder to the COVID-19 pandemic.*'
42. Unfortunately, PHE has provided no further detail on the '*considerable time and resource*' that it is referring to and there is no quantifiable evidence in relation to the burden that compliance with the request would pose.
43. The Commissioner concurs that some of the information contained with the request, specifically '*job description and job evaluation documentation*' should be routinely available to staff outside of the FOI framework and concurs with the requestor that this information should not be burdensome to provide.
44. PHE could have conducted a sampling exercise to determine how long it would take to provide the requested information in relation to one job role. Furthermore, PHE may have wished to investigate which of the job roles specified within the request still exist within the organisation. This would have allowed PHE to estimate the extent of the requested information that it actually holds and how burdensome compliance with the request would be.
45. The Commissioner understands PHE's position in relation to this request. However, the Commissioner scoping letter to PHE clearly stated: '*The Upper Tribunal has been critical of evidence which did not provide sufficient detail of the context to the request.*'

46. In this case, the complainant has presented more compelling arguments than PHE. Coupled with PHE's failure to provide sufficient context, background and evidence within its submission to the Commissioner, she has no option but to conclude that PHE is not entitled to rely on the exemption in this instance.

Right of appeal

47. 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

48. 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.
49. 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

Alice Gradwell
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Annex

"Under the Freedom of Information Act 2000, please provide me with the following information:

- All documentation relating to job evaluation JEGS060;*
- Details of all staff members who have worked in the job role JEGS060;*
- Details of all staff members who have worked in the job role entitled 'Head of Risk Management';*
- Intranet job description library content for G6 and G7 job roles;*
- All correspondence and documentation related to the business management review, including the 100 plus job descriptions that were assessed;*
- The job description and job evaluation documentation for the following job roles as identified as part of the Securing Our Future process:*
 - Business Manager to Nat Executive (Business Planning and Commercial Development)*
 - Business Manager for National Director (Planning, Partnerships and Performance)*
 - Business Manager to CKO & Communications Lead (Integrated Business Management & Operations Division)*
 - Business Manager to National Executive Director (Health and Wellbeing)*
 - Performance reporting (Strategy Accountability, Performance and Partnerships Team)*
 - Strategy manager (Strategy Policy and Partnering Team)*
 - Older Adults Policy Implementation Manager (Older People Team)*
 - Public Health Analyst (NHS Health Check Programme)*
 - Diet and Obesity Business Manager (Health and Wellbeing)*
 - NHS Health Check Blood Pressure Manager (Health and Wellbeing)*
 - Healthy Places Manager (Healthy Places)*
 - Health Equity Coordinator (Health Equity)*
 - Health Equity Analyst (Health Equity)*
 - Health Equity Manager (Health Equity)*
 - Mental Health and Wellbeing Analyst (Mental Health and Wellbeing)*
 - Business Manager (Dental Public Health)*
 - Business Manager (Marketing Activation)*
 - Business Manager (UKNSC)*
 - Finance and Business Manager (Young Person and Adult)*
 - National Cancer Prevention Strategy Coordinator (Cancer Screening Programme)*
 - Finance and Business Manager (Cancer Screening Programme)*
 - QA Advisor (Quality Assurance, London)*
 - Business Manager (Quality Assurance, National Team)*
 - QA Co-Ordinator (West Midlands Cancer QARC)*
 - Information Service for Parents Project manager*
 - Cancer Screening Programme Project Manager*

- *Assistant HR Business Partner Behavioural Insights Research Analyst (Science & Strategic Information Division (H&W Directorate)*
- *Senior Analyst (Population Health Sciences, R&D Office, Academic Relationships & Contracts)*
- *KLS Manager (Knowledge & Library Services (KLS))*
- *Business Manager (KIT (London))*