

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 8 December 2022

**Public Authority:** Government Legal Department

**Address:** 102 Petty France

Westminster

London

SW1H 9GL

### **Decision (including any steps ordered)**

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1. The complainant requested information from the Government Legal Department ("the GLD") linked to their historic First-tier tribunal appeal. The GLD refused the request under section 14(1) of FOIA (vexatious requests).
2. The Commissioner's decision is that the request was vexatious and therefore the GLD was entitled to rely upon section 14(1) of FOIA to refuse it.
3. The Commissioner does not require any steps.

### **Request and response**

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4. On 22 September 2021, the complainant made the following request for information to the GLD:

"I am requesting the following information regarding First-tier tribunal appeal [reference redacted] (information rights).

Correspondence between [redacted] and [redacted] /any other person regarding [redacted] submissions (rule 14 application) to the Tribunal

in Nov (6-13) 2013 about patient numbers listed in a letter dated 23/10/09, and [redacted] response to the Registrars follow up questions about the letter. Correspondence between [redacted] and [redacted] from (Dec 17 2013 to Jan 30 2014) concerning the decision to disclose the patient numbers on January 9th 2014.

Correspondence between GLD and [redacted] between (Jan1-Feb 20) 2014 about a [redacted] rule 14 application dated 21 Jan 2014 concerning [redacted] expert report.

Correspondence between [redacted] solicitor and his clients/ [redacted] between (June 20-July 2) 2014, regarding reasons for disclosure of patient numbers in Jan 2014. The clients referred to in [redacted] email of July 2nd, 2014? A Department, Agency, in addition to the [redacted]?

Correspondence between [redacted]/GLD and counsel / [redacted] /any third party in preparation for [redacted] submissions to the Tribunal confirming that the patient numbers were part of the disputed information and reasons why they were disclosed in 2014, at a Tribunal hearing (17 Dec 2015) and in a written rule 14 application dated 12 Jan 2016.

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Any document/pages of a report, that lists fatal reports of individual patients from study sites in countries such as US, Italy, Belgium, Italy, Germany, Pakistan, Thailand and India, (as described by solicitors and others during the appeal). The disclosed patient numbers listed in the letter 23/10/09, (cross referenced to the pages under appeal), belong to patients from three countries, Spain, Hungary and one other country."

5. On 30 December 2021, the GLD responded and said the request was being refused because it was vexatious under section 14(1) of FOIA.
6. Following an internal review, the GLD wrote to the complainant on 21 March 2022, upholding its position.

### **Scope of the case**

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7. The complainant contacted the Commissioner on 20 June 2022, to complain about the way their request for information had been handled. They dispute that the request is vexatious.
8. This notice covers whether the GLD correctly determined that the request was vexatious.

## Reasons for decision

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### Section 14(1) – vexatious requests

9. Section 14(1) of FOIA states that a public authority is not obliged to comply with a request for information if the request is vexatious.
10. The word “vexatious” is not defined in FOIA. However, as the Commissioner’s updated guidance on section 14(1)<sup>1</sup> states, it is established that section 14(1) is designed to protect public authorities by allowing them to refuse any requests which have the potential to cause a disproportionate or unjustified level of disruption, irritation or distress.
11. FOIA gives individuals a greater right of access to official information in order to make bodies more transparent and accountable. As such, it is an important constitutional right. Therefore, engaging section 14(1) is a high hurdle.
12. However, the ICO recognises that dealing with unreasonable requests can strain resources and get in the way of delivering mainstream services or answering legitimate requests. These requests can also damage the reputation of the legislation itself.
13. The emphasis on protecting public authorities’ resources from unreasonable requests was acknowledged by the Upper Tribunal (UT) in the leading case on section 14(1), *Information Commissioner vs Devon County Council & Dransfield* [2012] UKUT 440 (AAC), (28 January 2013) (“Dransfield”)<sup>2</sup>. Although the case was subsequently appealed to the Court of Appeal, the UT’s general guidance was supported, and established the Commissioner’s approach.
14. Dransfield established that the key question for a public authority to ask itself is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress.
15. The four broad themes considered by the Upper Tribunal in Dransfield were:
  - the burden (on the public authority and its staff);

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<sup>1</sup> <https://ico.org.uk/for-organisations/dealing-with-vexatious-requests-section-14/>

<sup>2</sup> <https://administrativeappeals.decisions.tribunals.gov.uk/Aspx/view.aspx?id=3680>

- the motive (of the requester);
  - the value or serious purpose (of the request); and
  - any harassment or distress (of and to staff).
16. However, the UT emphasised that these four broad themes are not a checklist, and are not exhaustive. They stated:

“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” (paragraph 82).

### **The Public Authority's view**

17. The GLD advised the complainant that they considered the request to be vexatious, for the following reasons:

“Please note that we have responded to a number of requests from you pertaining to similar / the same information. You have made copious requests following your original request in 2010, and both the [redacted] and the Government Legal Department (“GLD”) have provided information pursuant to these requests to varying degrees.

#### **Previous Decisions – Summary**

There was a ruling by the First-tier Tribunal (“FtT”) in May 2016 dismissing your FOIA appeal in respect of similar requests for patient data. This was on the basis that s.41 FOIA, an absolute exemption, applied. Your application for permission to appeal the FtT’s decision was refused by the Upper Tribunal, as was your application to judicially review the Upper Tribunal’s refusal of permission to appeal.

Following a further FOIA request from you relating to the same subject-matter, GLD provided a response on 24 October 2017 refusing to disclose correspondence between GLD and the [redacted] regarding patient numbers. This refusal was on the basis that s42(1) FOIA 2000 – legal professional privilege – applied. GLD’s decision was upheld by the ICO in a Decision Notice ([reference redacted] ) dated 21 January 2019.

During the course of the FOIA request mentioned in the above paragraph, on 22 May 2018 you also requested emails exchanged between [redacted] and [redacted] (a barrister’s clerk) regarding Information Rights Tribunal (FtT) case [reference redacted] . This request related to the same subject-matter. Following release to you of some relevant emails (redacted to remove personal information), an

internal review was conducted at your request. Further emails between [redacted] and the barrister's clerk that came to light during the internal review were then provided to you, together with the internal review report dated 27 June 2018 ("Internal Review Report"). It was additionally noted in the Internal Review Report that "there is no other relevant information in the possession or control of GLD which could be disclosed in response to such request."

It is also relevant to note that, on 1 December 2017, you requested the following information from [redacted] relating to the same subject-matter:

"Please can you provide a copy of the email sent from the [redacted] to the [redacted] on 20th November 2013 concerning a letter dated 23 October 2009 for a tribunal appeal ref: [redacted] . Any internal [redacted] correspondence and correspondence to the [redacted]/GLD regarding the disclosure of patient numbers contained in this letter dated 23 October 2009 for the same appeal." The ICO ultimately provided a Decision Notice dated 7 November 2018 ([reference redacted] ) in which the ICO upheld that the requests were vexatious and that the [redacted] was not obliged to comply with it.

#### Current Request

Your FOIA request dated 22 September 2021 relates to (i) patient data and (ii) documentation that attracts legal professional privilege relating to that data. It is, in essence, the same information that you have been requesting since 2010 and in respect of which you have been unsuccessful in Tribunal proceedings and before the ICO.

Under section 14(1) of the FOIA a public authority is not obliged to comply with a request if the request is vexatious. The ICO has issued guidance on the meaning of vexatious requests. The definition includes situations where there is unreasonable persistence, namely where the requester is attempting to reopen an issue that has already been comprehensively and conclusively addressed by the public authority, or otherwise subjected to some form of independent scrutiny; and/or where the requester submits frequent correspondence about the same issue."

#### **The Commissioner's decision**

18. In cases where a public authority is relying on section 14(1), it is for the public authority to demonstrate why it considers that a request is a disproportionate, manifestly unjustified, inappropriate or improper use of FOIA.

19. The Commissioner notes that the "First-tier tribunal appeal [reference redacted]" referred to in the request, related to an information request the complainant had made to [public authority name redacted] in 2008 for mortality information which had been redacted from a report. The redacted information included patient identification number, age, gender, as well as information about their symptoms, diagnosis, treatment and treatment outcome. as, it was determined, the information had been provided in confidence. The Commissioner had issued a decision notice ([reference redacted]) upholding the refusal of [public authority name redacted] to disclose the information under section 41 as it had been provided in confidence. The complainant then appealed the decision notice and the Information Tribunal, in [reference redacted], upheld the Commissioner's decision.
20. The GLD's reference to [reference redacted] in the response letter of 30 December 2021, relates to a decision notice the Commissioner issued in 2019 about a request the complainant made to the GLD for "Correspondence between GLD and the [redacted] regarding patient numbers disclosed in a letter dated 23 October 2009 for case [reference redacted] from 2014-2016". The request was refused as the information was determined to be exempt under section 42 - legal professional privilege (the GLD had represented and provided legal advice to the [redacted] in a new tribunal in 2016).
21. The GLD also refer to the Commissioner's decision notice referenced [redacted], which was issued in 2018 in respect of a complaint about a request made to [public authority name redacted]. The complainant does not think this relevant as it is about a different public authority. The Commissioner has reviewed that decision notice and notes that although the request was made to a different public authority ([redacted]), it does relate to tribunal reference [redacted] and correspondence between [redacted], [redacted] and the GLD "regarding the disclosure of patient numbers contained in this letter dated 23<sup>rd</sup> October 2009 for the same appeal". The Commissioner notes that the request was refused by [public authority name redacted] as vexatious. [public authority name redacted] explained that it held records of 18 requests from the complainant predominately about [tribunal reference redacted] and found that "the complainant's unwillingness to accept the independent determination of the FTT (in an appeal that took six years to come to a conclusion), and repeated requests on the same topic, or for the same information, indicate a level of unreasonable persistence and obsessiveness with these matters". The [public authority name redacted] noted that the First-tier tribunal had dismissed the complainant's appeal and promulgated its decision in May 2016 and the subsequent application to the Upper Tribunal was also dismissed. The [public authority name redacted] considered that the request was an attempt to revisit matters it considered to be fully resolved.

22. The GLD does appear to have taken into account the context and history of the complainant's previous information requests to it. It refers to the requests being "copious" and considers that they pertain to the same subject matter, namely information related to the same tribunal appeal, about patient numbers and correspondence.
23. The complainant has not provided the Commissioner with any evidence that their other requests to the GLD are not related to the same matter.
24. Although the GLD's reference to [reference redacted] does not relate to a request made directly to the GLD, this decision notice (about a request to [public authority name redacted]) does appear relevant as it demonstrates the complainant's apparent obsession with this issue.
25. It is noted that information redacted from the report was considered exempt as provided in confidence and some correspondence previously requested between the GLD and [public authority name redacted] had been considered to be exempt under legal professional privilege.
26. It is the Commissioner's view that there does appear to be a common theme to the complainant's requests to the GLD (and other public authorities) and he considers that they demonstrate a level of unreasonable persistence on the part of the complainant to pursue their own private grievance, with their apparent motive being to try to reopen matters that have already been scrutinised and decided by the appeal tribunals and which appear to be of interest to the complainant personally rather than of value to the wider public.
27. The Commissioner believes that the request was vexatious and therefore the GLD was entitled to rely on section 14(1) of FOIA to refuse the request.

Right of appeal

28. 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](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

29. 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.
30. 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 .....**

**Michael Lea**  
**Team Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
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