

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 17 June 2024

Public Authority: Ministry of Justice
Address: 102 Petty France
London
SW1H 9AJ

Decision (including any steps ordered)

1. The complainant has requested information from the Office of the Public Guardian ('the OPG') for specified documentation as to why OPG 2015 investigation details cannot be disclosed in subject access requests to those being investigated. The OPG is an executive agency of the Ministry of Justice ('the MOJ'), the MOJ therefore being the relevant public authority. The MOJ considered the request to be vexatious in accordance with section 14(1) of FOIA and, as a result, relied on section 17(6) of FOIA to decline to issue a further refusal notice.
2. The Commissioner's decision is that the request was vexatious and that the MOJ was entitled to rely on section 17(6) of FOIA to decline to issue a further refusal notice.
3. The Commissioner does not require any steps to be taken as a result of this notice.

Request and response

4. On 14 January 2024, the complainant wrote to the MOJ and requested information in the following terms:

"Please may I have the exact parts of all policies, protocols, procedures, codes and legislations/Acts covering why any details of information gained/disclosed by OPG investigations in 2015

cannot be disclosed to the person being investigated in SARs [Subject Access Requests]¹?”

5. The MOJ responded on 25 January 2024 and advised it would not be taking the complainant’s request of 14 January 2024 forward. It referred to its previous correspondence, sent to the complainant on 19 May 2021, in which the MOJ had explained that it deemed her requests (of 18 April 2021, 25 April 2021, 26 April 2021 and 4 May 2021) to be vexatious for the following reasons:
 - a) burden on the authority
 - b) frequent and overlapping requests
6. The refusal notice provided on 19 May 2021 also informed the complainant that the MOJ considered any further FOIA requests relating to the complainant’s underlying case [specific details redacted] to be vexatious in accordance with section 14(1) of FOIA. As a result, the MOJ advised the complainant that it would not respond to any further FOIA requests associated with this subject matter. It stated that, under section 17(6) of FOIA, it would not issue refusal notices to any such requests but confirmed that the complainant was “at liberty to make Freedom of Information requests to the MOJ in the future which are not in the scope of topics made vexatious in this response”.
7. The complainant requested an internal review on 25 January 2024 (of her request of 14 January 2024), which also included a further FOIA request for:

“... a copy of the OPG guidance that states what information was allowed to be disclosed outside the OPG about people the OPG were investigating in 2015”?
8. The MOJ responded on 30 January 2024 as follows:

“I can only reiterate my previous message – we informed you on 19 May 2021 that under section 17(6) of FOIA we will not respond to further FOI requests relating to your case.

I consider that your recent requests fall within the scope of the May 2021 refusal notice and therefore we will not be taking the matter further.”

¹ The Data Protection Act allows individuals to make SARs relating to themselves personally

Scope of the case

9. The complainant contacted the Commissioner on 7 February 2024 to complain about the way her request for information had been handled. She said she had not submitted FOIA requests about her case pre-May 2021, rather that they were letters to civil servants that the MOJ had “turned into FOIA requests so they would not have to deal with them”. The Commissioner acknowledges that requests for recorded information need to be considered under the terms of FOIA.
10. Her complete grounds of complaint (which are not replicated here for confidentiality reasons) were relayed to the MOJ by the Commissioner as part of his investigation – this included the complainant’s statement that she had “gained a huge amount of new information” which was not elaborated upon.
11. The Commissioner considers that there are two distinct but related questions that he must address, namely whether the current request was vexatious (section 14(1) of FOIA) and, if so, would it have been unreasonable in the circumstances to have expected the MOJ to have issued a refusal notice (section 17(6) of FOIA).

Reasons for decision

Section 14 – vexatious requests

12. 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.
13. The word “vexatious” is not defined in FOIA. However, as the Commissioner’s guidance on section 14(1)² states, the exemption is designed to protect public authorities by allowing them to refuse requests which have the potential to cause a disproportionate or unjustified level of disruption, irritation, or distress.
14. 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. These requests can also damage the reputation of the legislation itself.

² <https://ico.org.uk/for-organisations/dealing-with-vexatious-requests-section-14/>

15. Most people exercise their right of access responsibly. However, a few may misuse or abuse FOIA by submitting requests which are intended to be annoying, disruptive or which have a disproportionate impact on a public authority. The Commissioner's guidance on what may typify a vexatious request stresses that it is always the request itself, and not the requestor, which is vexatious. However, a public authority may also consider the context of the request and the history of its relationship with the requester when this is relevant.
16. 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")³. Although the case was subsequently appealed to the Court of Appeal, the UT's general guidance was supported, and established the Commissioner's approach.
17. 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.
18. The four broad themes considered by the UT in Dransfield were:
 - the burden (on the public authority and its staff);
 - the motive (of the requester);
 - the value or serious purpose (of the request); and
 - any harassment or distress (of and to staff).
19. However, the UT emphasised that these four broad themes are not a checklist, and are not 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 guidance includes a number of indicators that may apply in the case of a vexatious request. 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 the case will need to be

³ <https://administrativeappeals.decisions.tribunals.gov.uk/Aspx/view.aspx?id=3680>

considered in reaching a judgement as to whether a request is vexatious.

21. Sometimes it will be obvious when a request is vexatious, but sometimes it may not. The Commissioner therefore considers that the key question to consider is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress. This will usually involve weighing the evidence about the impact on the authority and balancing this against the purpose and value of the request. This should be judged as objectively as possible; in other words, whether a reasonable person would think that the purpose and value of the request are enough to justify the impact on the public authority.
22. In particular, the Commissioner accepts that there may be cases where a request could be considered to be vexatious because the amount of time required to review and prepare the information for disclosure would place a grossly oppressive burden on the public authority. This is the position adopted by the MOJ in this case, together with the frequency and overlapping nature of the complainant's requests.

The complainant's position

23. The complainant's position is set out in the 'Scope' section of this notice and in other aspects as covered below.

The MOJ's position

24. The MOJ provided the Commissioner with an Excel spreadsheet detailing the 25 requests received from the complainant, and the various questions asked within each of those requests – including two examples of the actual FOIA requests to illustrate how the complainant's requests are set out. This covers the period from 18 July 2020 to 25 January 2024; the last two requests post-date the one under consideration in this notice. In addition, the MOJ provided details of a former Data Protection complaint from 2021, on the same subject matter, which had been assessed by the Commissioner.
25. The MOJ told the Commissioner that:

"Our log of requests from [the complainant] between 2020 and 2024 comprises 240 questions. Her correspondence is typically lengthy and repetitious in nature and required OPG to carefully separate out the various points that required a response among the general narrative provided. When assessing her requests prior to the May 2021 response, we considered which regime was applicable to each point she was raising – this was a mix of FOIA and data subject rights such as the right of access. In some cases, we responded as 'business as usual' (ie not under one of

the statutory regimes) to try and help her with the issues she was raising.

This meant that a request could be split into, for example, an FOI response (where she was asking for non-personal recorded information), and a Subject Access Request ['SAR'] (personal information). The identification of the aspects of her various items of correspondence before the May 2021 response which were considered to be FOI requests was a significant piece of work involving the detailed review and extraction of relevant passages from the extensive material received from [the complainant]."

26. To illustrate this, the MOJ cited an example of one FOI request received in February 2021 which consisted of 5,786 words and 36 questions that it was able to identify. The MOJ stated that the time and effort taken to interpret the complainant's correspondence to identify the most appropriate legal regime with which to formulate responses, if any, has been "a highly time-consuming task".
27. The MOJ referred to the complainant's grounds of complaint (relayed by the Commissioner to it for consideration), and the complainant's view that the:

"main point is this new FOIA [ie that received on 14 January 2024] was another legitimate request which "OPG has refused it as vexatious, yet the ICO states organisations cannot "refuse a new request solely on the basis that you have classified previous requests from the same individual as vexatious".

28. In response, the MOJ told the Commissioner:

"OPG did not refuse the 14 January 2024 request solely on that basis. In line with the information given to [the complainant] in the 19 May 2021 response, under section 17(6) of the FOIA, the MOJ made it clear it would no longer be responding to FOI requests in relation to the underlying case or further requests which overlap with those previously made. Additionally, MOJ made it clear that it would not issue refusal notices for such requests, where it would be unreasonable to expect the department to do so. While we did not issue a refusal notice in response to the January 2024 request, we issued a brief e-mail to explain why we would not take her request forward. This was to help manage her expectations and make clear she would not receive a substantive reply. The request of 14 January 2024 from [the complainant] clearly relates to the underlying case. Indeed, the majority of [the complainant's] correspondence over the

years relates to her dissatisfaction that OPG investigated her in [details redacted].”

29. The MOJ told the Commissioner that, despite its 19 May 2021 response, the complainant had continued to submit “frequent and extensive correspondence about the same issues, with no significant change in approach to structuring questions despite previous responses seeking clarification and suggesting refocusing the questions”.
30. The MOJ explained that the complainant has exhausted the OPG complaints procedure and expressed its view that she appears to be seeking to use FOIA to continue her disagreement with the actions taken in relation to her case. The MOJ said it has processed a number of FOI and SARs for the complainant over the past several years, providing her with all the information she was entitled to, and explaining the reasons why any information was withheld in these disclosures. Accordingly, the MOJ told the Commissioner it views her current request as a continuation of her complaints against OPG in relation to how it dealt with the underlying case some years ago and as misuse of of the right of access to recorded information under FOIA.
31. By way of further background to its May 2021 decision to apply section 14(1) of FOIA, the MOJ advised that in the nine and a half months between 18 July 2020 and 4 May 2021, the complainant had submitted 17 separate pieces of correspondence (to the OPG) containing 173 questions which were considered under FOIA.
32. The MOJ stated that these requests included extensive repetition, with some received before there was any opportunity to respond to the previous one. The MOJ explained that significant volumes of enquiries were also received from the complainant before, during and after this time period which did not fall under the remit of FOIA.
33. Additionally, during the period between July 2020 and May 2021, the MOJ said the complainant was writing to multiple named officials in OPG and MOJ raising requests. As the correspondence and requests related to the complainant’s underlying case, they were referred to the OPG to process. The MOJ told the Commissioner that:

“This placed an oppressive burden on the OPG to review and respond to all requests, impacting on the availability of the subject matter experts within the OPG team to respond to any other work requests. This did not represent fair or effective use of public money and had an adverse impact on the services we could provide to other customers. The sheer volume of [the complainant’s] correspondence with OPG and the need to divert resources away from other customers was causing some distress among team members. This was not a sustainable position.

Section 14 (1) of FOIA is designed to protect public authorities by allowing them to refuse any requests which have potential to cause a disproportionate or unjustified level of disruption, irritation or distress. The MOJ firmly believe this was the case with the complainant's requests."

34. The MOJ also provided details of the complainant having sent:

"multiple e-mails to officials both in OPG and MOJ HQ, often attaching voluminous letters running to thousands of words each.

Despite our response letters clearly outlining the appeal routes open to her, [the complainant] also complained to the MOJ Permanent Secretary about how OPG had handled her requests. This resulted in various OPG and MOJ officials having to spend considerable time addressing the matters raised to the detriment of other work.

[The complainant] has repeatedly indicated in her correspondence that she was not making an official complaint about the underlying case but gathering information to enable her to do so. However, and in line with the OPG Complaints Policy, these were treated as complaints where they did not fall under statutory regimes such as FOIA and GDPR.

[The complainant] has been advised that she has exhausted the OPG complaints procedure, and it is our view that she is seeking to reopen her complaints via the FOIA route. Despite OPG attempting to provide comprehensive answers to her correspondence prior to May 2021, [the complainant] continues to raise the same issues again and again. MOJ consider this to be unreasonable behaviour and causes significant disruption to the department's business. OPG considers [the complainant's] complaints about the underlying case to be closed, and we cannot reopen correspondence on this matter.

[The complainant] has previously been advised that she can ask her MP to escalate the matter to the Parliamentary and Health Service Ombudsman (PHSO) if she is unhappy with the outcome of her complaints... OPG also received and responded to a letter from [the complainant's MP] in October 2016. If we no longer relied on s14(1), it is highly likely, given the lengthy history in this case, that [the complainant's] correspondence would again increase to the levels seen in 2020-22 and cause significant disruption to the department's business.

As requested, we have considered [the complainant's] grounds of complaint and considered whether to change our response to the information request. Following this consideration, we can confirm

we do not wish to change our response. We have stated our full and final arguments as to why we think the exemption and section 17(6) refusal notice apply”.

The Commissioner's decision

35. In cases where a public authority is relying on section 14(1), it must demonstrate why it considers that a request is a disproportionate, manifestly unjustified, inappropriate, or improper use of FOIA.
36. The Commissioner is not able to reproduce all the MOJ's submissions in relation to the background, because to do so would reveal personal information about the complainant. As the regulator for Data Protection, the Commissioner takes account of the need to protect personal data.
37. The Commissioner is mindful that both the MOJ and the complainant are fully aware of the background and history leading up to this request. The Commissioner has taken all the MOJ's submissions, together with the complainant's grounds of complaint, into account in reaching his decision in this case.
38. Having been made aware of the background, history and context of this request, the Commissioner is satisfied that there is no wider benefit to the general public that would flow from the MOJ responding to the complainant's request of 14 January 2024. Whilst he acknowledges the complainant's position, the Commissioner is satisfied that the matters which resulted in her request have been fully considered by the MOJ and they have not been substantiated. The complainant therefore appears to be attempting to 're-open' matters that have already been thoroughly considered, and to be requesting a significant amount of information in the hope that she might find something to further her personal aims.
39. In summary, the Commissioner is satisfied that this request can be traced back to the complainant's underlying case with the OPG/MOJ. That matter has been examined and re-examined and it was made clear to the complainant in May 2021 that further FOIA requests about her underlying case would be treated as vexatious.
40. Despite this, the complainant has submitted three further FOIA requests to the Commissioner's knowledge (two of which post-date the request under consideration here but which illustrate her persistence). It is apparent that the complainant seems determined to continue to submit FOIA requests about her underlying case despite having been advised that they will be treated as vexatious and will not be responded to. The Commissioner is satisfied that continuing to interpret and respond to the complainant's requests about her underlying case would constitute an oppressive burden, particularly given the frequency and extensive content of some of those requests.

41. Based on the evidence provided, the Commissioner is satisfied that the request of 14 January 2024 was vexatious and thus the MOJ was entitled to rely on section 14(1) of FOIA to refuse it.

Sections 17(5) and 17(6) of FOIA – refusal of request

42. Section 17(5) of FOIA usually requires a public authority that wishes to refuse a request as vexatious to issue a refusal notice, stating that fact, within 20 working days of the request having been received.
43. However, the exception to this rule is contained in section 17(6) of FOIA. This allows a public authority to not issue a refusal notice if:
- it considers the request in question to be vexatious,
 - it has already refused a previous request from that person as vexatious and,
 - in all the circumstances, it would be unreasonable to issue a further refusal notice.

Was the MOJ obliged to issue a refusal notice?

44. As set out above, section 17(6) of FOIA allows a public authority to not issue a refusal notice where three conditions are met.
45. In relation to the first criteria, the MOJ has relied upon a position that the request is vexatious – and, as explained above, was justified in doing so.
46. The second criteria has also been met as the MOJ had informed the complainant in May 2021 that her request was vexatious in accordance with section 14(1) of FOIA and issued a refusal notice. It advised the complainant that it would not issue a refusal notice to any future FOIA requests associated with her underlying case in accordance with section 17(6) of FOIA. The complainant had the opportunity to complain to the Commissioner about that response, but did not do so.
47. Finally, the Commissioner must consider whether the third condition was met, namely whether it would have been unreasonable in circumstances to have issued a fresh refusal notice.
48. Whilst the Commissioner notes that, at the point the request was received, it had been almost three years since the MOJ had last issued a refusal notice, he also notes that the request relates to the same matter and that nothing significant had changed during the intervening period. Whilst the complainant made reference to having “gained a huge amount of new information” in her submitted grounds of complaint, she has not elaborated on this. Furthermore, the Commissioner considers

that FOIA is not the correct channel through which to try to raise concerns about her personal underlying case, particularly given any disclosure under FOIA is effectively made to the 'world at large'.

49. The First Tier Tribunal in *Scranage v Information Commissioner EA/2020/0153*⁴ cautioned against assuming that the mere passage of time would materially affect whether or not a public authority may continue to rely on section 17(6) of FOIA. The Tribunal noted that the purpose of this part of the legislation was designed to protect scarce public resources from individuals who repeatedly abuse their right of access.
50. The Commissioner notes that, despite not issuing further refusal notices, the complainant continues to send correspondence to the MOJ on the subject of her underlying case. He further notes that she has made at least two further FOIA requests on this subject since the request under consideration here.
51. The Commissioner agrees that, in the circumstances, it would have been unreasonable to have expected the MOJ to have issued a fresh refusal notice. Simply refusing the earlier requests as vexatious had clearly not brought matters to a close and therefore the MOJ is entitled to draw a line in the sand.
52. Continuing to issue further refusal notices would, in the Commissioner's view, only serve to prolong the correspondence further whilst diverting the MOJ's staff away from their core functions.
53. The Commissioner is therefore satisfied that the MOJ was entitled to rely on section 17(6) of FOIA in not issuing a refusal notice.

Other matters

54. The complainant obviously has the right to appeal this decision to the First Tier Tribunal if she considers that the Commissioner has incorrectly applied the law.
 55. However, in the absence of a successful appeal, the Commissioner, mindful of the comments in *Scranage*, wishes to place the complainant on notice that he is likely to rely on section 50(2)(c) to refuse to issue decisions in respect of any further complaints she submits about the MOJ which relate to this matter. Whilst any further complaints will be assessed on their own merits, it would undermine the purpose of section
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⁴ *Scranage, Kevin (EA.2020.0153) 29.01.21.pdf* (tribunals.gov.uk)

Reference: IC-286965-G5W5



17(6) of FOIA if the MOJ was constantly to be asked to re-justify its use of the exemption.

Right of appeal

56. 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

57. 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.

58. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Carol Scott
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