

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 24 April 2017

Public Authority: Home Office
Address: 2 Marsham Street
London
SW1P 4DF

Decision (including any steps ordered)

1. The complainant requested information from the Home Office relating to two cases listed in the Animals in Science Regulation Unit's Annual Report 2014 which had been referred to the Crown Prosecution Service.
2. The Home Office argued that the request was vexatious because complying with it would place a grossly oppressive burden on it. It therefore refused the request on the basis of section 14(1) of the FOIA (vexatious request).
3. The Commissioner's decision is that the Home Office was entitled to refuse to comply with the request on the basis of section 14(1). She requires no steps to be taken as a result of this decision.

Background

4. The 2014 annual report¹ of the Animals in Science Regulation Unit (ASRU) describes the work of the unit during 2014 in regulating work under the Animals (Scientific Procedures) Act 1986 (ASPA) as amended in 2012.

¹ <https://www.gov.uk/government/publications/animals-in-science-regulation-unit-annual-report-2014>

Request and response

5. On 7 April 2016, the complainant wrote to the Home Office and requested information in the following terms:

"Would you please disclose the information you hold in relation to the two cases, which according to p26 of the Animals In Science Unit Inspectorate Annual Report (see https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/469846/asru-annual-report-2014.pdf), were referred by you in 2014 to the Crown Prosecution Service".
6. The Home Office responded on 6 May 2016. It confirmed that it held the requested information but refused to provide it. It cited section 12 of the FOIA (cost of compliance exceeds the appropriate limit) as its basis for doing so.
7. The Home Office suggested that the complainant may wish to consider refining her request in order to bring it under the cost limit and provided advice on how to do so.
8. The complainant requested an internal review on 9 May 2016. The complainant told the Home Office that, without knowing what the documents contain, it was not possible to refine the request. However she explained the nature of the information she was seeking.
9. Following further correspondence between the two parties, the Home Office sent the complainant the outcome of its internal review on 26 July 2016. It revised its position, saying that section 12 had been incorrectly cited and that section 14 of the FOIA (vexatious request) should have been applied instead.
10. It further advised that even if the request was refined, it was quite possible that section 14(1) FOIA would still apply, or other relevant exemptions.
11. The Home Office sent the complainant a copy of that correspondence on 19 August 2016 as it appears that she did not receive the correspondence sent on 26 July 2016.

Scope of the case

12. The complainant contacted the Commissioner on 17 November 2016 to complain about the way the request for information had been handled.

13. The complainant explained, in some detail, why she considered that the request "*is clearly not vexatious*". The complainant highlighted the particular importance of the requested information in this case.
14. The complainant also disputed how the volume of recorded information in scope of the request "*could be more than a fraction of the claimed 6,000 pages*".
15. During the course of the Commissioner's investigation the Home Office confirmed its application of section 14(1) FOIA.
16. The analysis below considers the Home Office's application of section 14(1) of the FOIA to the requested information.

Reasons for decision

Section 14 vexatious request

17. Section 14(1) of the FOIA allows a public authority to refuse to comply with a request if it is considered to be vexatious.
18. Section 14(1) may be used in a variety of circumstances where a request, or its impact on a public authority, cannot be justified.
19. The Commissioner recognises 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. 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, would a reasonable person think that the purpose and value are enough to justify the impact on the public authority.
20. 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 claimed by the Home Office in this case.
21. However, the Commissioner considers that there is a high threshold for refusing a request on such grounds. The Commissioner's published

guidance² explains that an authority is most likely to have a viable case where:

- the requester has asked for a substantial volume of information **and**
- the authority has real concerns about potentially exempt information, which it will be able to substantiate if asked to do so by the ICO, **and**
- any potentially exempt information cannot easily be isolated because it is scattered throughout the requested material.

22. During the course of her investigation, the Commissioner asked the Home Office to explain its reasoning for applying section 14(1) FOIA.

23. She reminded the Home Office of the clarification that the complainant had provided in her correspondence of 9 May 2016 and 4 July 2016 regarding the nature of the requested information.

The Home Office's position

24. In this case, the Home Office told the complainant that all incidents of compliance are fully investigated, as a result of which it held "*numerous documents*".

25. In that respect the Home Office told the complainant:

"... in order to fully comply with your request the responding unit would have to manually review and check an estimated 6000 pages of documents to see which parts could theoretically be disclosed to you (and which parts would need to be redacted under exemptions of the Act)".

26. In its submission to the Commissioner, the Home Office stated that, to fully comply with the request, it would have to manually review an estimated 7,500 pages of documents. It estimated that the staff resource required to carry out that task would be in excess of 500 hours.

27. The Home Office told the Commissioner that its view was informed by its experience of complying with a request in 2015 which related to some of the same material in the scope of the request which is the subject of this decision notice.

² <https://ico.org.uk/media/for-organisations/documents/1198/dealing-with-vexatious-requests.pdf>

28. The Home Office explained that in order to calculate the number of hours it would take to complete the work in this case, it had conducted a broad estimate of how much information it held on each of the two cases.
29. It provided the Commissioner with details of the calculations it used to arrive at the estimate. For example, it told the Commissioner that, using an reading speed of 250 words a minute meant that it would take:

"..at least 3 minutes to read and redact each page of text. In some cases of course, substantially more....."
30. It explained that additional time would be required for review and printing. The Home Office concluded:

"...we recognise that not each page will require redactions or will hold full text. Despite this conservatism we still estimate around 500 hours of staff effort"
31. With reference to the sensitivity of the subject matter of the requested information, the Home Office advised the complainant that the responding unit had real concerns about potentially exempt information. It explained that:

"... such potentially exempt information cannot be easily isolated because it is scattered throughout the 6,000 pages of documents"
32. In correspondence with the Commissioner, the Home Office told her that having located, retrieved and extracted the relevant information, a senior Inspector would be required to review all of the documents. That sensitivity review would be required to remove any references to scientific practices or processes that might include intellectual property as well as to identify any information exempt from disclosure, for example as a result of being prohibited from disclosure by an enactment.
33. The Home Office provided further evidence in support of that position, describing the process it would need to go through in order to review the documents. For example, it explained that it must ensure that any information provided would not allow for triangulation or identification of an establishment or person.

The complainant's position

34. In support of her view that the request was not vexatious, in her submission to the Commissioner the complainant referenced the Commissioner's guidance as well as matters heard before both the First-tier Tribunal and the Upper Tribunal.

35. In support of its position that the information should be provided, the complainant explained why she considers that the request is of value. For example she told the Commissioner:

"It need hardly be said that animal experiments are a matter of acute controversy, with public opinion divided and evolving... Imposing appropriate sanctions where there are licence infringements is an important aspect of that".

36. In correspondence with the Home Office, the complainant disputed that the time taken to carry out the physical redactions "*could amount to anything like 24 hours*".
37. Emphasising that it was appropriate, when determining whether or not a request was vexatious, to take into account the value of the request, the complainant told the Commissioner it was clear:

"... that the sole basis on which the Home Office says that the request is vexatious is the burden complying with it would, it says, represent".

The Commissioner's position

38. The Commissioner was mindful of the wording of the request in this case, noting that the request was for "*the information you hold in relation to the two cases*". In light of that wording, the Commissioner considered that the request had the potential to cover a broad range of information.
39. She acknowledged that the Home Office told the complainant on 26 July 2016:
- "... I consider that you have now clarified your original request (intentionally or not) Theoretically, the responding unit could now go back and consider your request afresh (a new FOI request)".*
40. On that point, having advised that section 14(1) FOIA applied, in the same correspondence the Home Office told the complainant:
- "...even if you were to refine your request because of the sheer volume of material in scope, it is quite possible that section 14(1) would still apply, or other relevant exemptions such as section 44(1)(a) [FOIA] Prohibitions on Disclosure".*
41. From the evidence she has seen, the complainant did not make a fresh request following the Home Office's advice and nor did the Home Office treat the clarification as a new request.

42. With regard to the first criterion listed at paragraph 21 above, the Commissioner specifically raised with the Home Office the complainant's concerns about the volume of information that it claimed fell within the scope of the request.
43. The Home Office confirmed how the documents pertaining to the two cases requested are held and provided an estimate of the number of pages of text involved in each of the two cases.
44. The Commissioner accepted that whichever estimate of the total number of pages of documentation involved was the more realistic - 6,000 pages or 7,500 pages - that both figures quoted by the Home Office could be seen as a significant volume of information falling within the scope of the request.
45. With regard to the second criterion, the Commissioner accepted that in light of the subject matter – information relating to cases which were considered to be sufficiently serious to warrant referral to the prosecuting authorities – the information was likely to be sensitive. It followed that she therefore accepted that it was very likely that other exemptions would apply to some of the requested information and that the Home Office's concerns about the need to apply further exemptions were legitimate.
46. Having accepted that a detailed and considered review of the information was necessary, the Commissioner considered the Home Office's estimate of the time it would take to comply with the request. She noted that its estimate was informed by its experience of responding to an earlier request involving some of the same information. She was satisfied that the calculations provided by the Home Office evidenced that to comply with the request would place a grossly excessive burden on it.
47. Having considered the submissions from both parties, and on the basis of the evidence provided to her, the Commissioner was satisfied that the Home Office had demonstrated that the three criteria are met. She was satisfied that complying with the request would place a grossly excessive burden on the Home Office. The Commissioner therefore concluded that the Home Office could rely on section 14(1) to refuse the request.
48. In reaching this conclusion, the Commissioner took into account the purpose and value of the request. The Commissioner recognised that disclosure of the information could provide the public with an insight into non-compliance cases and potentially lead to greater transparency in relation to the Home Office's role in relation to allegations of licence infringements. However, the Commissioner was satisfied that despite the potential benefits of disclosure, given the very significant burden

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which complying with the request would place on the Home Office,
section 14(1) FOIA should be upheld.

Right of appeal

49. 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

50. 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.

51. 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

**Jon Manners
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