Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 28 September 2022

Public Authority: Medicines and Healthcare Products Regulatory Agency

Address: 10 South Colonnade
Canary Wharf
London
E14 4PU

Decision (including any steps ordered)

1. The complainant requested information from the Medicines and Healthcare Products Regulatory Agency (MHRA) relating to the Quantitative Risk Assessment (QRA) data and report. The MHRA refused the request under section 14(1) of FOIA (vexatious request).

2. The Commissioner's decision is that the request was vexatious and therefore the MHRA was entitled to rely upon section 14(1) of FOIA to refuse it.

3. The Commissioner does not require any steps to be taken as a result of this decision notice.

Request and response

4. On 8 December 2021, the complainant made the following request for information:

> "Please provide the Quantitative Risk Assessment, (QRA) data and report which demonstrates that the MHRA Yellow Card Vaccine Adverse Reports are NOT the result of vaccine adverse effects?"

5. On 17 January 2022, the MHRA responded by saying the request was being refused because it was vexatious under section 14(1) of FOIA.

6. The complainant requested an internal review on 17 January 2022. The MHRA's response upheld their initial reliance on section 14(1) of FOIA.

Scope of the case

7. The complainant contacted the Commissioner on 26 February 2022 to complain about the way their request for information had been handled.

8. This notice covers whether the MHRA correctly determined that the request was vexatious.

Reasons for decision

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)[1] 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")[2]. 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.

[1] https://ico.org.uk/for-organisations/dealing-with-vexatious-requests-section-14/

[2] https://administrativeappeals.decisions.tribunals.gov.uk/Aspx/view.aspx?id=3680

15. The four broad themes considered by the Upper Tribunal 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).

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 MHRA's view

17. The MHRA has said: "The use of the specific text in the FOI "the quantitative risk assessment data and report which demonstrates that the MHRA Yellow Card vaccine adverse reports are not the result of vaccine effects?" in each of the 292 requests clearly demonstrates a link between these FOI requests, resulting in them being classed as 'similar'. The volume of these similar FOI requests received in such a relatively short space of time is demonstrably unusual." And "Receiving a large volume of similar FOI requests in a short space of time would have had a negative effect on the operation of the Agency and, as such, adversely affect public health, suggesting that this could be a campaign intended to cause disruption to the Agency."

18. They noted the complainant's view that:

    "I disagree with the MHRA decision NOT to provide me with the information I have requested under the Freedom of Information Act 2000."

    However, they countered this by saying "The Agency had explored alternative responses to the FOI, and it was decided after consultation with a range of departments within the Department of Health that the use of a section 14 (1) exemption in responding was correct."

The complainant's view

19. The complainant has said:

> "I was somewhat surprised by their response since this is my first freedom of information request on the organisation. I then followed up with a requested for an internal review, since in my opinion they were NOT acting within the spirit of the FOI legislation. I eventually received a response to the internal review, which mirrored their original response. I find it surprising that this report is not publicly available, considering they have nearly two years of data to work with and analyse? The MHRA continuously makes statements that these vaccines are safe but refuses to release the evidence that support their position, what is the basis of refusal? "We are continuing our vital safety work in monitoring the use of all Covid-19 vaccines, to ensure that their benefits in protecting people against Covid-19 disease continue to outweigh any risks," MHRA Chief Executive June Raine said in a statement. I can only conclude that the MHRA are issuing unsubstantiated statements about the experimental COVID vaccines without any documentary evidence to support its claims. The burden of proof lies with the MHRA to prove that the vaccines are safe and not causing death or the other forms of negative reactions."

The Commissioner's decision

20. 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.

The value of the request

21. The Commissioner acknowledges that the subject matter may be of public interest.

22. He accepts that, by seeking transparency and accountability, a request will have value or serious purpose.

The negative impacts of the request - burden, motive, and harassment

23. The Commissioner acknowledges that the MHRA considers that the motive of the requester is to cause undue disruption.

24. The Commissioner has been provided with evidence the MHRA says confirms a targeted campaign that was designed to place undue burden

on the agency. The Commissioner considers that the information supplied by MHRA is evident of such a campaign.

25. He considers that, in the circumstances of this case, this lessens the value of the request and supports the argument that the request is vexatious.

Balancing the value of the request against the negative impacts

26. In reaching a decision in this case, the Commissioner has balanced the purpose and value of the request against the detrimental effect on the public authority.

27. He has also considered, in light of the evidential targeted campaign against the MHRA, whether, at the time, the request crossed the threshold of what was reasonable.

28. To the extent that the volume and wording of the requests (292) referenced by the MHRA in support of its view that the request is vexatious, adds to the overall picture when linked to the request under consideration in this case. The Commissioner has taken them into account as he considers that they are relevant to the extent that they explain the nature of the dealings between the parties and a pattern of behaviour.

29. The purpose of section 14 of FOIA is to protect public authorities and their employees in their everyday business. In his guidance, the Commissioner 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.

30. The Commissioner acknowledges that there is clearly weighty public interests relating to information about vaccines. However, the MHRA have evidenced why the timing and wording of the this request is relevant to the other similar requests, at the time of this request.

31. Having balanced the purpose and value of the request against the detrimental effect on the MHRA, the Commissioner is satisfied that the request was not an appropriate use of FOIA procedure.

32. The Commissioner considers that the request was vexatious and therefore the MHRA was entitled to rely on section 14(1) of FOIA to refuse the request.

Right of appeal

33. 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

34. 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.

35. 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 .....

Philip Angell
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