

Freedom of Information
Internal Review decision

Internal Reviewer	Chantelle Taylor, Advisor, Information Policy and Compliance
Reference	IR2013098 (RFI20131643 and RFI20131894)
Date	4 April 2014

Requested information

The applicant wrote to the BBC on 4 November 2013 via WhatDoTheyKnow (RFI20131643) requesting the following information under the Freedom of Information Act 2000 ('the Act'):

"Please provide details of all independent investigations carried out by the BBC in to the alleged holocaust during World War Two."

The applicant then wrote to the BBC on 16 December 2013 again via WhatDoTheyKnow (RFI20131894) requesting the following information under the Act:

"Could you please provide me with the following information on the alleged murder of 6 million jews by the Germans during World War Two known as the "holocaust":

How many hours of BBC TV Channels or Radio Stations programming were there supporting this allegation and how many refuting it over the last five years?

Could you break the figures down for each year and separate for TV and radio please?

How much was paid for this information? Please separate the figures for supporting and refuting this allegation."

The BBC's response

The BBC replied to both requests with a single response on 20 December 2013. It explained that it considered the requests vexatious under section 14(1) of the Act and explained that as such, it was not obliged to respond. The BBC explained the reasoning for its decision by referring to the Information Commissioner's guidance with respect to vexatious requests, and determined that the requests could fairly be characterised as 'harassing the authority' and 'designed to cause disruption or annoyance'.

Issues on review

On 23 December 2013 the applicant wrote to the BBC to seek an internal review on the decision reached in RFI20131643. The applicant stated that the "refusal to a perfectly reasonable request is totally unjustified".



On 14 January 2014 the applicant wrote to the BBC to seek an internal review on the decision reached in RFI20131894. The applicant requested a review on the basis that the original request "seems a reasonable request".

The purpose of this review is to consider whether the BBC was correct in deciding that both requests could be refused under section 14(1) of the Act.

Decision

I uphold the BBC's original handling of the requests and the analysis for my decision is set out below. In considering this appeal I have reviewed the original requests; the BBC's response; the Information Commissioner's guidance on dealing with vexatious requests; and previous decisions of the Upper Tribunal under section 14(1).

Analysis - Section 14(1)

Section 14(1) confirms that a public authority does not have to comply with a request for information if the request is vexatious.

The Information Commissioner's Office ('ICO') detailed guidance, *Dealing with vexatious requests (section 14)*¹, was developed to help authorities determine when a request can be refused as vexatious. Paragraph 9 of this guidance explains 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 position was acknowledged by the Upper Tribunal in *Information Commissioner v Devon County Council & Dransfield [2012] UKUT 440 (AAC), (28 January 2013)*.

It should be noted that the ICO has confirmed that public authorities should not regard section 14(1) as something to be applied only in the most extreme circumstances. Rather, authorities are encouraged to consider its use in any case where they believe the request is disproportionate or unjustified.

Meaning of 'vexatious'

Whilst not defined in the Act, the meaning of 'vexatious' has been considered by the ICO and in case law.

The Upper Tribunal in *Dransfield* took the view that the ordinary dictionary definition of the word is of limited use, as the question of whether a request is vexatious ultimately depends upon the circumstances surrounding that request.

¹ http://ico.org.uk/news/blog/2013/~/media/documents/library/Freedom_of_Information/Detailed_specialist_guides/dealing-with-vexatious-requests.pdf



The Tribunal also considered two previous section 14(1) decisions by the First Tier Tribunal before determining that 'vexatious' could be defined as the "...manifestly unjustified, inappropriate or improper use of a formal procedure."

As a result, the ICO concluded that the key question a public authority must ask itself is "whether the request is likely to cause a **disproportionate** or **unjustified** level of disruption, irritation or distress".

Identifying vexatious requests

Section 14(1) can only be applied to the request itself and not the individual who submits it. In practical terms, this means that an authority cannot refuse a request on the grounds that the requestor himself is vexatious. It follows that an authority cannot refuse a new request solely on the basis that it has classified previous requests from the same individual as vexatious.

The ICO has produced a list of indicators as a point of reference to aid authorities in its determination of vexatious requests. These indicators are not definitive nor are they limiting. Public authorities may refuse a request as vexatious based on its own assessment of all the relevant circumstances. The list includes:

- Abusive or aggressive language
- Burden on the authority
- Personal grudges
- Unreasonable persistence
- Unfounded accusations
- Intransigence
- Frequent or overlapping requests
- Deliberate intention to cause annoyance
- Scattergun approach
- Disproportionate effort
- No obvious intent to obtain information
- Futile requests
- Frivolous requests

Context and application of section 14(1)

As noted above, an authority cannot refuse a request on the grounds that the requestor himself is vexatious. Furthermore, a public authority cannot insist on knowing why an applicant has requested information before dealing with a request. However, paragraph 43 of the guidance confirms that an authority can take into account the wider context in which the request is made and any evidence the applicant is willing to volunteer about the purpose behind their request.

As at the date of the applicant's last request, the BBC had received 12 requests from the applicant through the WhatDoTheyKnow website since October 2013. It should

be stressed that whilst this is not a decisive factor in this decision, the volume, breadth, and pattern of those requests are relevant in terms of the burden placed on the BBC and its staff. The applicant's previous requests cover some of the following:

- Does the BBC have a policy of promoting multiculturalism? [RFI20131470]
- Why does the BBC support "The Coudenhove-Kalergi Plan – The Genocide Of The People Of Europe" AKA multiculturalism. [RFI20131648]
- The total cost of the Nelson Mandela funeral coverage. [RFI20131901]
- Please provide all BBC funding for the last fifteen years including gifts, loans, sponsorship etc. from each organisation, group or individual by amount for each year [RFI20131448].

In my view the above requests support the argument that the current requests are vexatious because they demonstrate a considerable strain on the BBC's resources.

The applicant was advised in the original response that public authorities are not obliged to comply with a request for information if the request is vexatious. The applicant may also be aware that a public authority is under no obligation to explain why a request is vexatious. Nevertheless, the ICO recommends that public authorities include the reasoning for its decision in the refusal notice.

Having reviewed the ICO's guidance and the decisions of the Upper Tribunal, I agree with the BBC's original decision that the following questions demonstrate that the requests are designed to harass/annoy the BBC and cause distress to its staff. In particular, I consider that the following questions demonstrate this:

- "Please provide details of all independent investigations carried out by the BBC in to the alleged holocaust during World War Two"; and
- How many hours of BBC TV Channels or Radio Stations programming were there supporting this allegation [the holocaust] and how many refuting it over the last five years?

The BBC decided to classify these requests as vexatious because it considered them to be an improper use of the Act. I do not consider that the purpose and value of the requests provides sufficient grounds to justify the disruption and irritation that would be incurred by complying with the requests, and therefore I consider that the BBC was correct to classify the requests as vexatious.

Alternative approaches

The ICO's guidance recommends that before deciding that a request is vexatious, public authorities should first consider whether there are any viable alternatives to dealing with the request.

The vast majority of the requested information falls outside the scope of the Act. This is because the Act does not apply to the BBC in the way it does to most public



authorities in one significant respect. It recognises the different position of the BBC by saying that it covers information 'held for purposes *other* than those of journalism, art or literature'. This means the Act does not apply to information held for the purposes of creating the BBC's output or information that supports and is closely associated with these creative activities.

The BBC could have responded to say that the requested information is outside the scope of the Act. However, I consider that it was reasonable to classify the requests as vexatious because they are an improper use of the Act for the reasons given above. Furthermore, the BBC has already explained to the applicant on several occasions that information that is held for the purposes of 'journalism, art, or literature' is outside the scope of the Act.

Finally, I apologise to the applicant for the delay in completing this review.

Appeal Rights

If you are not satisfied with the outcome of your internal review, you can appeal to the Information Commissioner. The contact details are: Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF; telephone 0303 123 1113 or email caserwork@ico.org.uk.