

Freedom of Information Act 2000 (Section 50)

Decision Notice

Dated 3 September 2007

Public Authority: Department for Regional Development for Northern Ireland
Address: Clarence Court
10-12 Adelaide Street
Belfast
BT2 8GB

Summary

The complainant in this instance made a request to the Department for Regional Development for Northern Ireland ("DRD") on 1 January 2007 for a) copies of statistics for the last 10 years regarding problems with annual reports and b) copies of strategies developed for clearing backlogs of annual reports and for preventing their recurrence ("the request"). The complainant had made numerous previous requests relating to the same theme since the Freedom of Information Act 2000 ("the Act") came into force on 1 January 2005. The DRD replied to the complainant's request on 29 January 2007 stating that in light of the previous requests the DRD considered the request to be vexatious and was therefore applying section 14(1) of the Act to the request.

The Commissioner's Role

1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

The Request

2. The Information Commissioner ("the Commissioner") has received a complaint which states that on 1 January 2007 the following request for information was made to the DRD in accordance with Section 1 of the Act:

"I request the following records:

- a) *copies for each of the last 10 years of the statistics regarding problems with overdue annual reports (item 6.1 of WBR 25/9/06 refers)*
- b) *copies of strategies developed for clearing backlogs of annual reports and for preventing their recurrence ("the request").*

3. **Who is the complainant in this case?**

When he received the complaint, the Commissioner noted that it was made by an individual who purported to be acting on behalf of her husband, who had made numerous previous requests for information from the DRD. It was therefore necessary for the Commissioner to decide as a preliminary issue who he should treat as the actual complainant in this case (the individual or her husband).

4. When he received the complaint, the Commissioner noted that it was made by an individual who purported to be acting on behalf of her husband, who had made numerous previous requests for information from the DRD. It was therefore necessary for the Commissioner to decide as a preliminary issue who he should treat as the actual complainant in this case (the individual or her husband).

5. Although an assumption built into the Act is that it is “blind” as to the identity and motive of a requestor, the Commissioner accepts that both are valid considerations in deciding whether a request is vexatious under section 14(1) of the Act. It was therefore essential to establish from the outset the identity of the complainant in this case as that was fundamental to the Commissioner’s decision in this matter.

6. In this case, the request was made by an individual acting on her husband’s behalf. The Commissioner notes that this is the same individual who complained to the Commissioner about the DRD’s handling of the request. In her initial letter of complaint, that individual made it clear that she was acting in a ‘representative’ capacity only. Further, when asked by the Commissioner to provide further information in relation to this complaint, a response was received from the individual’s husband, providing a point of contact via his e mail address. He provided his wife’s e mail address also. In these circumstances the Commissioner has concluded that the relationship between these persons is that of a principal and an agent.

7. Section 50 (1) of the Act provides that:-

“Any person (in this section referred to as “the complainant”) may apply to the Commissioner for a decision whether, in any specified respect, a request for information made by the complainant to a public authority has been dealt with in accordance with the requirements of Part I.”

The Commissioner notes that section 50 provides only for the person who requested the information to make a complaint to his office under the Act.

8. The terms ‘any person’ and ‘complainant’ are not defined in the Act. Section 50 simply denotes the complainant as being “any person”. In the absence of a specific definition of the word ‘person’ in the Act, the Commissioner considers that it is appropriate to rely on the definition of that word outlined at section 5 and Schedule 1 of the Interpretation Act 1978. That section provides that:-

‘ “person” includes a body of persons corporate or unincorporate.’

9. The Commissioner is mindful of the interpretative criteria relating to statutory construction, to the effect that (unless the contrary intention appears) an enactment imports by implication the legal principle embodied in the maxim *qui facit per alium*,

facit per se” (one who acts through another, in law acts himself). In light of this, the Commissioner interprets the phrase “any person” in section 50 of the Act as meaning any natural or legal person. This means that where an enactment refers to a person it is taken to include that person’s agent, authorised either expressly or by implication to act on that person’s behalf (Halsbury’s Laws of England/Statutes/Volume 44(1) 1449).

10. The Commissioner is mindful that in practice, individuals may for a variety of reasons (such as incapacity, age or convenience) ask others to request information and/or to make a complaint to him, on their behalf. In this case, he is satisfied that the individual who made the request and who complained to him, was merely acting in the capacity of an agent and is not ‘the complainant’ for the purposes of section 50 of the Act. Therefore, in this Decision Notice any reference to the **complainant** is a reference to the principal rather than his agent.

Correspondence between the complainant and the DRD

11. On 29 January 2007 the DRD corresponded with the complainant to inform him that it was unable to provide the requested information as it considered the complainant’s request to be vexatious under section 14(1) of the Act.
12. On 4 February 2007 the complainant corresponded with the DRD to request an internal review of its decision not to provide him with the requested information.
13. On 21 February 2007 the DRD corresponded with the complainant informing him of the result of the review. This correspondence stated that the original decision had been made in compliance with the Act and that section 14(1) still applied.

The Investigation

Scope of the case

14. On 22 February 2007 the complainant applied to the Commissioner for a decision as to whether his request had been dealt with in accordance with the requirements of Part I of the Act.

Chronology of the case

15. **22 February 2007.** The complainant submitted the complaint to the Commissioner, who responded on 13 March 2007 by requesting a copy of the DRD’s initial response to his request. The complainant provided this to the Commissioner on 14 March 2007. The Commissioner subsequently wrote to the complainant informing him that his case was to be allocated to a case officer and at the same time informed the DRD of the fact that a complaint had been made.
16. **22 February 2007.** The complainant submitted the complaint to the Commissioner, who responded on 13 March 2007 by requesting a copy of the DRD’s initial response to his request. The complainant provided this to the

Commissioner on 14 March 2007. The Commissioner subsequently wrote to the complainant informing him that his case was to be allocated to a case officer and at the same time informed the DRD of the fact that a complaint had been made.

15. **9 May 2007.** The Commissioner wrote to the complainant and the DRD providing the name and contact telephone number of the caseworker to whom the case had been allocated. On 22 May 2007 the Commissioner wrote to the DRD requesting clarification of the criteria used in its application of section 14(1) of the Act to the request.
16. **11 June 2007.** The DRD provided to the Commissioner its detailed submissions regarding the application of section 14(1) to the request. The DRD advised the Commissioner that careful consideration had been given to this issue before refusing the requests as vexatious. It stated that it had also taken into account the Commissioner's published guidance (Awareness Guidance 22) which was issued on 1 November 2004 and updated in January 2006 on vexatious requests when considering the request. It should be noted, however, that, when considering this complaint, the relevant guidance referred to by the Commissioner as "Awareness Guidance 22" elsewhere in this Decision Notice was issued on 23 July 2007 by the Commissioner. That is an updated version of that guidance which was originally considered by the DRD.

Analysis and Conclusions

Section 14 – Vexatious or repeated requests

17. Section 14 of the Act provides that:-

"Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious"

18. The DRD, in its letter to the complainant dated 29 January 2007, cited section 14(1) as its reason for not complying with the complainant's request for information.
19. The DRD indicated in that correspondence that it had previously declined to provide information to the complainant in relation to the recurring theme of "Annual Reporting Issues" on the grounds that the request was vexatious.
20. There is no definition of the term "vexatious" in the Act. Dictionary definitions refer to "causing annoyance or worry". As stated by the Information Tribunal in the case of **Ahilathirunayagam v Information Commissioner and London Metropolitan University** (20 June 2007), its normal use is to describe activity that is likely to cause distress or irritation, literally to vex a person to whom it is directed.
21. As stated at paragraph 9 above, the Commissioner has recently issued new Awareness Guidance (Awareness Guidance 22) in relation to vexatious and repeated requests. In paragraph 2 of Part A of this guidance, the Commissioner states that the effect, as well as the intention, of these requests will need to be

considered. Even though the requester may not have explicitly intended to cause inconvenience or expense, it will be appropriate to treat the request as vexatious if it meets the test as set out at paragraph 22 below.

22. Firstly, the request must impose a significant burden upon the public authority in terms of expense or distraction. Provided this threshold criteria is met, the request must also meet at least one of the following criteria:-
- It clearly does not have any serious purpose or value
 - It is designed to cause disruption or annoyance
 - It has the effect of harassing the public authority
 - It can otherwise be fairly characterised as obsessive or manifestly unreasonable
23. The complainant has to date submitted 120 requests under the Act to the DRD. 35 of these requests relate to the theme of annual reporting issues. The DRD indicated on 1 June 2005 that it considered his latest request, dated 4 May 2005, to be vexatious. It considered the cumulative effect on the DRD of his requests to date and concluded that his latest request formed part of a pattern of successive requests for information relating to the same recurring themes, including annual reporting issues.
24. The complainant made 3 subsequent requests to the DRD relating to the theme of annual reporting issues, including a request made on 22 November 2006 for “a written strategy for clearing festering old annual reporting backlogs”. He was advised by the DRD on 19 December 2006 that this request covered one of the recurring themes as outlined in its letter of 1 June 2005 and that therefore the DRD would not be complying with the request.
25. The Commissioner accepts that the effect of the request, when taken together with all of the previous requests, imposes a significant burden upon the DRD in terms of distraction. In reaching this conclusion the Commissioner has taken into account representations from the DRD to the effect that these themed requests involve hundreds of pieces of correspondence and resources are deployed in replying to them which could be more effectively used elsewhere in the DRD. The DRD has advised the Commissioner that at one stage the complainant was making 2-3 requests per day and that at least three members of staff within the DRD were working full time on dealing with those requests. The Commissioner is satisfied therefore that the threshold criteria is met and will consider the criteria set out at paragraph 22 above.
26. The Commissioner has considered whether the request and the previous requests have any serious purpose or value. The complainant has indicated to the Commissioner that the information is necessary to facilitate applications for Industrial Injuries Benefits. The DRD has not sought to argue that the request lacks serious purpose or value and it is the view of the Commissioner the request was made for a specific purpose.

27. Although the DRD has not sought to argue that the request is designed to cause disruption or annoyance to it, the Commissioner, having considered the request and all the correspondence in this particular case, has concluded that the request is not designed to cause disruption or annoyance to the DRD as it is clearly being made for a specific purpose.
28. The DRD has not argued that the request has the “effect of harassing” it. The Commissioner, having had sight of the request and the previous requests, does not consider their language or tone to be abusive, offensive or framed in such a way as to harass the DRD. The Commissioner, while accepting that it was not the complainant’s intention to harass the DRD, considered whether the request nevertheless had the *effect* of harassing the DRD. Although the Commissioner was satisfied that the request imposed a significant burden upon the DRD in terms of distraction, he notes that there was no evidence to conclude that the cumulative effect of the requests was to harass the DRD.
29. The Commissioner has considered whether the request can otherwise be fairly characterised as being manifestly unreasonable in accordance with his recently issued guidance. It is easier to identify such requests when there has been frequent previous contact with the requester or the request forms part of a pattern, for instance, when the same individual submits successive requests for information. Although these requests may not be repeated in the sense that they are requests for the same information, taken together they may form evidence of a pattern of obsessive requests so that an authority may reasonably regard the most recent request as vexatious.
30. The DRD has submitted to the Commissioner that the complainant has been making requests relating to the same themes to the DRD for several years. One theme of the complainant’s requests is that of “annual reporting issues”. The DRD has provided evidence to the Commissioner of the complainant’s 35 previous requests along the theme of annual reporting and contends that, in light of these, the request forms part of a pattern of requests which, taken together, can be characterised as obsessive or manifestly unreasonable.

The Commissioner’s conclusions

31. The Commissioner has considered the nature and themes of the request and all the complainant’s previous requests, the grounds for refusal and the conduct of the DRD. The background of 120 requests along recurring themes prior to the request made on 1 January 2007 demonstrates the general behaviour of the complainant and provides evidence to support the view of the DRD that the request was vexatious.
32. The Commissioner has also taken into account the fact that the DRD had previously advised the complainant in correspondence on two occasions, namely 1 June 2005 and 19 December 2006, that the requests which were the subject of that correspondence and related to the same theme as the request (annual reporting issues) were being treated as vexatious. Despite this having been made clear to the complainant, he made the request, albeit through his agent. The Commissioner is of the view that this is behaviour on the part of the complainant that can fairly be characterised as obsessive. The Commissioner is satisfied

therefore that the request fulfils the criteria of being fairly characterised as obsessive or manifestly unreasonable. In conclusion, therefore, the Commissioner is satisfied that the request, having fulfilled at least one of the criteria as set out in paragraph 22, is a vexatious request within the meaning of section 14(1) of the Act.

The Decision

33. The Commissioner's decision is the DRD was correct to rely upon section 14(1) of the Act, which does not oblige a public authority to comply with a request for information if that request is vexatious.

Steps Required

34. In view of his decision that the DRD was correct to rely upon section 14 in relation to the request, the Commissioner requires no steps to be taken.

Right of Appeal

36. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal
Arnhem House Support Centre
PO Box 6987
Leicester
LE1 6ZX

Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@dca.gsi.gov.uk

Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is served.

Dated the 3rd day of September 2007

Signed

**Marie Anderson
Assistant Commissioner (NI)
Information Commissioner's Office
Regus House
33 Clarendon Dock
Belfast
BT1 3GB**