

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 3 December 2009

Public Authority: Ministry of Justice
Address: 102 Petty France
London
SW 1H 9AJ

Summary

The complainant made an information request to the Ministry of Justice regarding the implementation of the Freedom of Information Act 2000 and the conduct of civil servants. The public authority deemed the request vexatious and relying on section 14 of the Act refused to meet the request. In investigating the MoJ's handling of the request, the Commissioner also considered the request in the context and background in which it was made. He finds that the public authority's refusal to comply with the request by virtue of section 14 of the Act was correct. However, the Commissioner has concluded that the public authority breached section 17(5) of the Act by failing to provide the complainant with the refusal notice within 20 working days of his 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 complainant, in a letter dated 11 September 2006, made the following request for information to Lord Falconer, the then Lord Chancellor and Secretary of State for Constitutional Affairs:
 - (a) Implementation of Lord Falconer QC's assurance that the new Department (i.e. then the Department of Constitutional Affairs) "starts from a simple rule that it was there for the people".

- (b) The Department's own rules on complying with section 10 of the Freedom of Information Act 2000 (the Act).
 - (c) Statistic showing the extent of compliance with section 10 of the Act.
 - (d) Internal rules on the observance of the Civil Service Code, and in particular the requirement to deal with the public sympathetically and promptly.
 - (e) Guidance on the handling of correspondence from the public included in the training for development of leadership skills for the Senior Civil Service and in communications .
 - (f) The considerations on the possible amendments of the Act.
3. The Department of Constitutional Affairs (now known as the Ministry of Justice and referred to as the MoJ throughout the remainder of this Decision Notice) in reply, issued a refusal notice dated 13 October 2006.
4. The refusal notice stated that the MoJ believed that the information request was designed to disrupt Departmental business and was part of the complainant's campaign to justify a long standing grievance he held against them. The MoJ go on to say that the complainant's use of the Act was a mere attempt to circumvent its own complaints procedure and refused the complainant's request for information. The ground relied upon was that provided by section 14 of the Act namely that the information request was vexatious.
5. The complainant sought a review of the MoJ decision in a letter dated 21 October 2006. The MoJ conducted the review as per the complainant's request and upheld its original decision. This outcome was communicated to the complainant in a letter dated 5 February 2007.

The Investigation

Scope of the case

6. On 23 March 2007, the complainant contacted the Commissioner to complain about the handling of his information request by the MoJ. The complainant also raised other issues that are not addressed in this Notice because they are not requirements of Part 1 of the Act.

Chronology

7. The Commissioner wrote to the complainant and the MoJ on 18 December 2007. In his letter to the complainant, the Commissioner set out his understanding of the complaint. In his letter to the MoJ, the Commissioner asked for further information

about its refusal of the information request. In particular, the full rationale behind its decision to refuse the request on the grounds it was vexatious was sought.

8. In reply to the Commissioner's queries, the MoJ explained (in a letter dated 25 January 2008) that there was a shared history (their retained file dated from 1999) between the complainant and the MoJ. During that time, according to the MoJ, it had often answered the complainant's previous queries notwithstanding that they were often repetitious and/or irrelevant given the MoJ's functions. This and other correspondence from the complainant formed the opinion of the MoJ that his primary purpose was to disrupt its legitimate business. In 2007 the Permanent Secretary at the MoJ (formerly the Department for Constitutional Affairs) therefore approved that all calls and correspondence from the complainant should be handled as follows-
 - only correspondence sent that raises new and substantial issues would receive a response;
 - the complainant must send new correspondence to only one named official, who will arrange a reply, if appropriate;
 - correspondence that revisits issues that have already been dealt with or deemed a continuation of his long-standing grievance will be placed on file unacknowledged;
 - staff were instructed to terminate his calls to the Department.
9. The MoJ went on to say that, the Ministry of Defence and the Cabinet Office had considered it necessary to adopt similar procedures for dealing with the complainant. This leads to the belief expressed by the MoJ that the complainant possesses and pursues a personal vendetta against a number of government Departments including itself.
10. On 1 April 2008 the Commissioner asked the MoJ to "provide significantly more detail (such as dates, frequency, content, and volume) of the complainant's previous correspondence that supports your assertion and/or supply a copy of the same" to support its claims.
11. On 12 May 2008, the MoJ told the Commissioner that the complainant had sent the following correspondence to them -
 - 1999 – 2 letters
 - 2001 – 3 letters
 - 2002 – 21 letters
 - 2003 – 9 letters
 - 2004 – 2 letters
 - 2005 – 33 letters
 - 2006 – 37 letters
 - 2007 – 62 letters
 - 2008 – 25 letters (as of May 2008)

12. The MoJ has also provided the Commissioner with examples of the complainant's correspondence that supported their reliance on the exemption provided by section 14. These examples comprised the following correspondence (their contents are outlined at paragraph 29 below) to the MoJ from the complainant;
 - 1 page letter dated 23 April 2005
 - 1 page letter dated 7 June 2005
 - 1 page letter dated 7 June 2005
 - 1 page letter dated 23 June 2005
 - 1 page letter dated 23 June 2005
 - 2 page letter dated 27 July 2005
 - 2 page letter dated 2 August 2005
 - 1 page letter dated 3 August 2005
 - 1 page letter dated 6 August 2005
 - 1 page letter dated 19 August 2005
 - 20 letters (of various lengths) received between January and September 2006
13. The MoJ also provided the Commissioner with examples of the complainant's correspondence that post-dated the information request which, in the context of this complaint, have been disregarded.
14. In a letter, dated 19 May 2008, the Commissioner informed the complainant of the MoJ's explanations regarding the type and frequency of the correspondence he had sent to them and the burden this placed on them. In the letter, the complainant was invited to comment on these explanations if he so wished. The complainant said in reply that he had persuasive evidence to refute the MoJ's allegations. The complainant failed to produce such evidence notwithstanding repeat requests (dated 29 May 2008, 23 July 2008 and 08 January 2009 respectively) for the same from the Commissioner.

Findings of fact

15. In April 2005, the complainant wrote to the MoJ to express his concerns regarding the proper interpretation and scope of the Act. This topic was continued by the complainant in these subsequent letters to the MoJ including those dated the 7 and 23 June 2005. By way of a letter dated the 27 July 2005 the complainant wrote to then Secretary of State critical of its response to his recent correspondence and telephone calls.
16. On the 2 August 2006, the complainant wrote to the MoJ complaining about the delays he had encountered due to the lateness of their replies to his earlier correspondence. The complainant also requested that he be provided with the training details of senior staff members, this request was made by reference to the Act. The MoJ, in a letter dated the 5 September 2006, provided their reply to that information request including some of the requested information. The complainant's reply, dated 11 September 2006, was critical of the MoJ and made a further information request that is the subject matter of this decision notice.

17. The Commissioner, having regard to the documents produced by the MoJ (and the complainant's comments on them) accepts as factually correct the MoJ assertions about the frequency and type of correspondence they received from the complainant. On viewing the exemplified correspondence it is clear that the complainant would frequently send by facsimile transmission the same letter to multiple recipients at the MoJ and would often enclose copies of previous correspondence.

Analysis

Procedural matters

18. Section 17(5) states that a public authority, which is relying on a claim that section 14 applies, must give notice of that fact to the complainant by the twentieth working day from receipt of the information request.
19. The request for information was made on the 11 September 2006 whilst the notice regarding the MoJ reliance on section 14 was issued on the 13 October 2006; by failing to give that notice to the complainant within twenty working days, from receipt of the request, the MoJ breached section 17(5) of the Act.

Section 14

20. The MoJ claims that section 14 of the Act is applicable to the request.
21. Section 14(1) provides-

Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious.
22. Having regard to the Information Tribunal's decision in the matter of Gowers-v-The Information Commissioner (paragraph 47 and 70 EA/2007/0114) the Commissioner will consider the context and history of a request in addition to the request itself in relation to one or more of the following five factors to reach a reasoned conclusion as to whether a reasonable public authority could refuse to comply with a request on the grounds that it is vexatious:
 - 1) Whether compliance would create a significant burden in terms of expense and distraction.
 - 2) Whether the request is designed to cause disruption or annoyance.
 - 3) Whether the request has the effect of harassing the public authority or its staff.
 - 4) Whether the request can otherwise fairly be characterised as obsessive or manifestly unreasonable.

5) Whether the request has any serious purpose or value.

23. The Commissioner further notes that the Information Tribunal in *Hossack v Department for Work and Pensions* (EA/2007/0024, at paragraph 11) stated that the threshold for finding a request for information vexatious need not be set too high as the consequences are much less serious than the finding of a vexatious conduct in other legal contexts.
24. In *J. Welsh v Information Commissioner* (EA/2007/0088, paragraph 21), the Information Tribunal noted that when considering section 14 -
- ‘...the general principles of FOIA that the identity of the requester is irrelevant, and that FOIA is purpose blind, cannot apply. Identity and purpose can be very relevant in determining whether a request is vexatious. It follows that it is possible for a request to be valid if made by one person, but vexatious if made by another; valid if made to one person, vexatious if made to another.’
25. Regarding how difficult it should be, the tribunal said (at paragraph 26) to establish whether a request is vexatious –
- “... there is a danger that setting the standard of vexatiousness too high will diminish public respect for the principles of free access to information held by public authorities enshrined in the Act. There must be a limit to the number of times public authorities can be required to revisit issues that have already been authoritatively determined simply because some piece of as yet undisclosed information can be identified and requested...”
26. In *David Gowers v Information Commissioner* (EA/2007/0114, paragraph 27) the Information Tribunal noted that when considering section 14 –
- “The proper inquiry must be as to the likely effect of the request on a reasonable public authority. In other words, the standard to be applied is an objective one.”
27. The Commissioner full guidance on the interpretation and implementation on section 14(1) of the Act can be found on the Information Commissioners website at:
- http://www.ico.gov.uk/upload/documents/library/freedom_of_information/detailed_specialist_guides/awareness_guidance_22_vexatious_and_repeated_requests_final.pdf
28. The Commissioner notes that the complainant’s information request letter makes it clear that the information request arises out of his previous correspondence to the MoJ dated the 2 August 2006. Upon reading that letter, it is apparent that it was in turn generated by the failings of the MoJ (as perceived by the complainant) in its response to his earlier correspondence dated the 29 August and 30 October 2005. On viewing the 29 August 2005 letter, it is apparent that it was generated by the complainant’s dissatisfaction with the MoJ’s response to

his earlier correspondence to them dated the 27 July and 3,6 and 19 August 2005.

29. The correspondence shows the complainant seeking to engage the MoJ on the proper interpretation and implementation of the Act (and codes made there under) or on statements made in the Houses of Parliament. The response from the MoJ is comprehensive and makes it clear that ultimately, interpretation of the Act or its subordinate legislation remains a judicial one. Notwithstanding the MoJ's response, subsequent letters from the complainant become argumentative; in addition the complainant sends the same mail to various people within the MoJ by post and fax. In part, these later letters focus on the MoJ's inadequate response as perceived by the complainant.
30. The Commissioner considered the most relevant factors from those listed in paragraph 22 in order to determine whether the MOJ had correctly applied section 14 to the request.

(1) Whether compliance would create a significant burden in terms of expense and distraction.

31. The Commissioner notes that the complainant wrote over one hundred letters to the MOJ between 2002 and 2006 when the request, which is the subject of this complaint, was made. Identical letters with copies of previous correspondence attached were frequently sent by facsimile transmission and post to a number of different officials at the MoJ. It appears to the Commissioner that officials at the MoJ would often have been diverted from carrying out their usual duties in order to respond to these requests.
32. The Commissioner acknowledges that the MoJ did try to engage with the complainant and responded to many of his numerous request before deciding to apply section 14 to the request under consideration.
33. The Commissioner is satisfied that, given the number of previous requests and the demands that they placed on its staff and their ability to carry out its core business, it was reasonable for the MoJ to conclude that compliance would have created a significant burden on them in terms of expense and distraction.
34. The Commissioner further notes that the Tribunal in *Graham Betts v Information Commissioner (EA/2007/0109)* also suggested that even if it would not create a significant burden to respond to the material request, it may still be reasonable for a public authority to conclude that compliance would result in a significant burden if in answering that request, it was "...extremely likely to lead to further correspondence, further requests and in all likelihood, complaints against individual officers..." (paragraph 34).
35. The evidence seen by the Commissioner shows that the complainant's letters were invariably generated by the complainant's discontent with the MoJ's replies to his earlier correspondence. In the Commissioner's view it was therefore reasonable for the MoJ to conclude that a response to this specific request would invariably lead to further correspondence and requests from the complainant that

would have placed a significant burden on it, both in terms of costs and by diverting staff away from their core functions.

(4) Whether the request can otherwise fairly be characterised as obsessive or manifestly unreasonable

36. The Commissioner's Guidance notes that obsessive requests are usually a very strong indication of vexatiousness and will often fall into several other categories. It states that the wider context and history will be particularly important here, as it is unlikely that a one-off request could ever be obsessive. Relevant factors could include the volume and frequency of correspondence, requests for information the requester has already seen, or a clear intention to use the request to reopen issues that have already been debated and considered.
37. The complainant, the Commissioner finds, wrote over one hundred letters to the MoJ between 2002 and 2006 when the request, which is the subject of this complaint, was made. The history, volume and type of the correspondence flowing from the complainant to the MoJ (and his attempts to reopen issues that had already been addressed), prior to the information request, strongly evidences that the information request can fairly and properly be characterised as obsessive and/or a manifestly unreasonable one.

Commissioner's Conclusion

38. The Commissioner is satisfied that two of the factors relevant to determining whether a request is vexatious were met in relation to this specific request, that the request created a significant burden in terms of expense and distraction for the MoJ and that it could be characterised as obsessive or manifestly unreasonable.
39. In addition the Commissioner notes that the complainant indicated that he had persuasive evidence to refute the MoJ's allegations but failed to produce any evidence, despite repeated requests from the Commissioner to do so.
40. The Commissioner also notes the significant similarities between the circumstances surrounding this request and those considered by the Tribunal in the case of *Coggins v Information Commissioner EA/2007/0130* where it stated:
- "The number of (...information...) requests, the amount of correspondence and haranguing tone of that correspondence indicated that the Appellant was behaving in an obsessive manner. It was apparent that this would, over the relevant period, have caused a significant administrative burden on the Council. The Appellant's correspondence was difficult to deal with as it was often very long, detailed and overlapping in the sense that he wrote on the same matters to a number of different officers, repeating requests before a response to the preceding one was received"

The Tribunal was of the view that dealing with this correspondence and his requests would have been a significant distraction from its core functions” (paragraph 28).

The Decision

41. The Commissioner’s decision is that the MOJ correctly applied section 14 (1) as the complainant’s request can be correctly categorised as vexatious under the provisions of the Act. However, the Commissioner has also concluded that the MoJ breached section 17(5) by failing to issue a refusal notice within 20 working days.

Steps Required

42. The Commissioner requires no steps to be taken.

Right of Appeal

43. 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@tribunals.gsi.gov.uk.
Website: www.informationtribunal.gov.uk

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.

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 December 2009

Signed

**Gerrard Tracey
Assistant Commissioner**

**Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Legal Annex

General Right of Access

Section 1(1) provides that -

“Any person making a request for information to a public authority is entitled –

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him.”

Section 1(2) provides that -

“Subsection (1) has the effect subject to the following provisions of this section and to the provisions of sections 2, 9, 12 and 14.”

Section 1(3) provides that –

“Where a public authority –

(a) reasonably requires further information in order to identify and locate the information requested, and

(b) has informed the applicant of that requirement,

the authority is not obliged to comply with subsection (1) unless it is supplied with that further information.”

Section 1(4) provides that –

“The information –

(a) in respect of which the applicant is to be informed under subsection (1)(a), or

(b) which is to be communicated under subsection (1)(b),

is the information in question held at the time when the request is received, except that account may be taken of any amendment or deletion made between that time and the time when the information is to be communicated under subsection (1)(b), being an amendment or deletion that would have been made regardless of the receipt of the request.”

Section 1(5) provides that –

“A public authority is to be taken to have complied with subsection (1)(a) in relation to any information if it has communicated the information to the applicant in accordance with subsection (1)(b).”

Section 1(6) provides that –

“In this Act, the duty of a public authority to comply with subsection (1)(a) is referred to as “the duty to confirm or deny”.”

Vexatious or Repeated Requests

Section 14(1) provides that –

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

Section 14(2) provides that –

“Where a public authority has previously complied with a request for information which was made by any person, it is not obliged to comply with a subsequent identical or substantially similar request from that person unless a reasonable interval has elapsed between compliance with a previous request and the making of the current request.”

Refusal of Request

Section 17(1) provides that -

“A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which -

- (a) states that fact,
- (b) specifies the exemption in question, and
- (c) states (if that would not otherwise be apparent) why the exemption applies.”

Section 17(2) states –

“Where–

- (a) in relation to any request for information, a public authority is, as respects any information, relying on a claim-
 - (i) that any provision of part II which relates to the duty to confirm or deny and is not specified in section 2(3) is relevant to the request, or
 - (ii) that the information is exempt information only by virtue of a provision not specified in section 2(3), and
- (b) at the time when the notice under subsection (1) is given to the applicant, the public authority (or, in a case falling within section 66(3) or (4), the responsible authority) has not yet reached a decision as to the application of subsection (1)(b) or (2)(b) of section 2,

the notice under subsection (1) must indicate that no decision as to the application of that provision has yet been reached and must contain an estimate of the date by which the authority expects that such a decision will have been reached.”

Section 17(3) provides that -

“A public authority which, in relation to any request for information, is to any extent relying on a claim that subsection (1)(b) or (2)(b) of section 2 applies must, either in the notice under subsection (1) or in a separate notice given within such time as is reasonable in the circumstances, state the reasons for claiming -

(a) that, in all the circumstances of the case, the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing whether the authority holds the information, or

(b) that, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.”

Section 17(4) provides that -

“A public authority is not obliged to make a statement under subsection (1)(c) or (3) if, or to the extent that, the statement would involve the disclosure of information which would itself be exempt information.

Section 17(5) provides that –

“A public authority which, in relation to any request for information, is relying on a claim that section 12 or 14 applies must, within the time for complying with section 1(1), give the applicant a notice stating that fact.”

Section 17(6) provides that –

“Subsection (5) does not apply where –

- (a) the public authority is relying on a claim that section 14 applies,
- (b) the authority has given the applicant a notice, in relation to a previous request for information, stating that it is relying on such a claim, and
- (c) it would in all the circumstances be unreasonable to expect the authority to serve a further notice under subsection (5) in relation to the current request.”

Section 17(7) provides that –

“A notice under section (1), (3) or (5) must –

- (a) contain particulars of any procedure provided by the public authority for dealing with complaints about the handling of requests for information or state that the authority does not provide such a procedure, and
- (b) contain particulars of the right conferred by section 50.”