

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date 11 June 2009

Public Authority: Department for Transport
Address: Great Minster House
76 Marsham Street
London
SW1P 4DR

Summary

The complainant made a request to the Department for Transport (DfT) on 11 January 2008 for information which recorded the Traffic Management Team's comments sent to Rosie Winterton MP on his 2,500 word paper entitled Traffic Management. From January 2005 up until this request being made the complainant submitted a total of 67 requests to the DfT relating to issues surrounding traffic management. Taking into account correspondence leading up to the request on 11 January 2008, the DfT deemed this request vexatious under section 14(1) of the Freedom of Information Act 2000 (the "Act"). The Commissioner has considered this request in the context and background in which it was made and has decided that the DfT applied the Act correctly in refusing to comply with the request under section 14(1) of the Act.

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 made a request on 11 January 2008 for the following information:-

"The 2,500-word paper Traffic Management I sent to Mr Buckley was originally intended for Miss Winterton, but she insisted that I deal with your team. I understand you sent your comments to Miss Winterton.

Please send me a copy.”

3. The DfT responded to the request on 11 February 2008. It refused the request under section 14(1) of the Act as it deemed it to be vexatious. No internal review was carried out and the DfT referred the complainant to the ICO if he was dissatisfied with the response he had received.

The Investigation

Scope of the case

4. The complainant contacted the Commissioner on 3 March 2008 as he did not believe the DfT had provided him with a response to his request. Once the Commissioner had resolved that a response had been provided to the complainant's request the case was allocated to a case resolution team on 22 May 2008. The case was allocated as the complainant had expressed dissatisfaction with the DfT's reliance on section 14(1). Therefore the Commissioner sought to determine whether or not section 14(1) had been correctly applied in this case. In the circumstances of this case the Commissioner exercised his discretion and accepted the complaint without an internal review having been carried out.

Chronology

5. The Commissioner initially contacted the DfT on 22 May 2008 to explain that the case had been referred to a casework team for investigation and that it would be allocated to a case officer for consideration in due course. The DfT responded on 27 June 2008. It provided the Commissioner with a list of requests that the complainant had made to it from January 2005 up until the request relevant to this case along with a brief description of the topic of the request in dispute.
6. On 9 January 2009 the Commissioner wrote to the complainant to confirm the scope of the complaint on which his investigation would be based. The Commissioner confirmed he understood the complainant to be concerned with the DfT's refusal to provide him with comments made to Rosie Winterton MP regarding his traffic management paper. The Commissioner asked the complainant to contact him in the event that he did not agree with the scope of the complaint as set out in that letter. As the complainant did not contact the Commissioner to dispute the scope of the complaint as detailed in his letter of 9 January 2009, the Commissioner proceeded with his investigation upon this basis. The Tribunal has upheld this approach in *Griffin v The Information Commissioner EA/2008/0017*, at paragraph 19 of that judgement it is stated that, "...the Decision Notice makes it quite clear that the Commissioner informed the complainant that he was going to

investigate items i to x...The Decision Notice proceeds on the basis of the investigation into those pieces of information alone....The Tribunal finds therefore that it does not have jurisdiction to consider requests for information that were set outside the Decision Notice at the very commencement of the Commissioner's investigations." The Commissioner considers that in this case the scope of the complaint the Commissioner was going to investigate was clearly defined at the outset.

7. On 9 January 2009 the Commissioner also contacted the DfT in order to discuss its handling of the complainant's request. The Commissioner asked the DfT to provide arguments as to why it believed that section 14(1) had been correctly engaged in this case. He referred the DfT to the following guidance when considering and providing its response:-

http://www.ico.gov.uk/upload/documents/library/freedom_of_information/practical_application/vexatious_requests_a_short_guide.pdf

8. The DfT responded on 9 February 2009 and provided further detail to support its reliance on section 14(1) in this case. On 12 February 2009 the Commissioner asked the DfT for clarification on several outstanding issues.
9. On 23 March 2009 the DfT provided the Commissioner with a copy of all of the correspondence it had exchanged with the complainant between January 2005 and 11 January 2008. The Commissioner has therefore taken into account all of the correspondence leading up to the request dated 11 January 2008. The DfT gave additional details to support its application of section 14(1) and in doing so referred to the Commissioner's guidance mentioned above and the ICO's Charter for Responsible Requests.

Analysis

Procedural matters

Section 14

10. Section 14(1) of the Act states that:

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

The full text of section 14 is available in the Legal Annex at the end of this notice.

11. The Commissioner issued revised guidance entitled "Vexatious or

repeated requests” in December 2008 as a tool to assist in the consideration of when a request can be treated as vexatious. The guidance sets out key questions for public authorities to consider when determining if a request is vexatious which are set out below (the link to this guidance is provided at paragraph 7 above).

- i) Would compliance would create a significant burden in terms of expense and distraction?
- ii) Would the request is designed to cause disruption or annoyance?
- iii) Would the request has the effect of harassing the public authority or its staff?
- iv) Would the request can otherwise fairly be characterised as obsessive?
- v) Would the request has any serious purpose or value?

12. The guidance indicates that an affirmative response to all of the questions is not necessary for a request to be deemed vexatious. However its states that to judge a request as vexatious a public authority should usually be able to make persuasive arguments under more than one of the headings.

13. The Commissioner has considered whether the DfT has provided sufficient arguments in support of any of the criteria above in its application of section 14(1) in a particular case. In doing so he has considered all of the correspondence between the complainant and the DfT from January 2005 to 11 January 2008 and the complainant's dealings with the public authority prior to 1st January 2005.

Whether compliance would create a significant burden in terms of expense and distraction:

14. The Commissioner considers the Tribunal decision, *Betts v Information Commissioner EA/2007/0109* to be relevant in this case. Paragraph 34 of that decision stated that, “albeit it may have been a simple matter to send the information requested in January 2007, experience showed that this was extremely likely to lead to further correspondence, further requests and in all likelihood complaints against individual officers. It was a reasonable conclusion for the Council to reach that compliance with this request would most likely entail a significant burden in terms of resources”.

15. The Commissioner notes from the correspondence that has been provided by the DfT that between January 2005 and 11 January 2008 the complainant made 67 requests under the Act. All of the requests,

including the one that is the subject of this decision, related to the subject of traffic management. The Commissioner considers that the DfT did endeavour to engage with the complainant and respond to many of his numerous requests before coming to the conclusion that this request was vexatious.

16. Upon considering the arguments put forward by the DfT and viewing the extensive correspondence generated between the complainant and the DfT, the Commissioner accepts that requests frequently overlapped or were repeated and therefore required careful consideration before they were able to decide how the case should be dealt with under the Act and provide a response to the complainant.
17. The Commissioner accepts, on the basis of the evidence provided, that responding to the complainant's requests often generated further requests and correspondence. Therefore, whilst it may not have been burdensome to respond to the disputed request in isolation, the Commissioner is persuaded that a response would have likely generated further linked requests and correspondence. In view of this he is satisfied that the request would have resulted in significant burden in terms of expense and distraction.
18. Furthermore the Commissioner accepts that the requests were often sent to a variety of officials and on some occasions sent directly to the Secretary of State or Ministers which added to the burden placed upon the DfT in co-ordinating responses and ensuring that all points were responded to. This was despite requests the DfT made to the complainant that he direct all correspondence to one particular team. The Commissioner also considers that officials were often diverted from carrying out their usual duties in order to respond to these requests. He notes that the DfT estimated that its officials had spent in excess of 100 hours dealing with the complainant's requests over the three years prior to the request relevant to this case.

Whether the request can otherwise fairly be characterised as obsessive:

19. In the Commissioner's view, the test to apply here is one of reasonableness. In other words, would a reasonable person describe the request(s) as obsessive? The Commissioner's guidance suggests that;

'It will be easier to identify these 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 as vexatious.'

20. The Commissioner is of the view that the number of requests which were addressed to different officials and sometimes Ministers along with the complainant's tendency to repeat and build upon requests during the period between January 2005 and 11 January 2008 demonstrated that the complainant was behaving in an obsessive manner. The DfT has stated that it did not believe that there was any sign that the requests would come to any form of conclusion unless it agreed to re-evaluate and/or change its current traffic management systems. The DfT had attempted to explain to the complainant why its current traffic management systems are as they are and had explained to the Commissioner that the current systems had been thoroughly discussed and debated by officials within the DfT. Furthermore it explained to the complainant that its current traffic management practices were based on consensus and the experience of custom and practice over many years.
21. The DfT also explained why many of the complainant's ideas could not be implemented in the UK without compromising road user safety. The Commissioner considers that despite receiving this advice and information the complainant continued to make requests relating to this issue. The Commissioner therefore believes that no response would satisfy the complainant unless the DfT agree to re-evaluate and/or change its current traffic management policies.
22. In addition to persistent requests made under the Act, the Commissioner has also taken into account the earlier interaction between the DfT and the complainant. He understands that in fact the complainant had been engaged in correspondence with the DfT regarding the same traffic management issues since 2003. He was advised by DfT that it had decided to draw correspondence on the topic to a close on 28th August 2004. On 1st January 2005 when the Act came into force the complainant submitted 14 requests for information. Prior to deeming the disputed request vexatious, the DfT had also refused requests on at least 3 occasions on the basis of section 14(2) because they were deemed to be repeated. Despite the refusals the complainant persisted in making requests for the same or substantially similar material.
23. In relation to the evidence above the DfT highlighted the Commissioner's Charter for Responsible Requests and argued that the complainant's requests fell short of several of the standards. In particular it argued that, although related to a policy dispute rather than a grievance, the complainant's persistent requests were an attempt to re-open discussion and correspondence that had previously been brought to a close. On the basis of the evidence provided the Commissioner is persuaded by this argument.
24. The Commissioner also notes that there is no evidence that failures on the part of the DfT when responding to requests necessitated or encouraged additional requests. In fact it is possible, in light of the

paragraph above, that the DfT could have legitimately refused earlier requests on the basis of section 14(1). Arguably its legitimate attempts to respond to the complainant initially have simply resulted in more requests.

25. The Commissioner considers the detail above constitutes significant evidence that the request in dispute in this case can reasonably be described as obsessive.

Whether the request has any serious purpose or value:

26. The DfT has suggested that the purpose of the complainant's request was to persuade it to re-evaluate and or change its current traffic management policies. It has argued that as this result is unlikely there is no serious purpose or value to making the request.
27. The Commissioner notes that the comments submitted have not been made in the context of a consultation exercise or because the DfT is considering a relevant change to its traffic management. Whilst in some instances it may nevertheless be legitimate to lobby a government department, the Commissioner is satisfied that this is not the case here. In reaching this conclusion he has taken into account the fact that the DfT has explained to the complainant why traffic management policies cannot be changed in line with his ideas due to safety issues. He also notes that the complainant was advised by the DfT that traffic management practices were based on consensus as well as custom and practice and that in most cases there was no research comparing them to theoretical or other alternatives. A considerable amount of the information previously requested was not held by the DfT but where it was it was generally provided.
28. As there is little possibility that the DfT is going to change or re-evaluate its current traffic management policies in line with the complainant's suggestions and he has been informed of this and because he has continued to make similar requests the Commissioner has concluded that the disputed request has no serious purpose or value.

Commissioner's Conclusion

29. As explained previously it is not necessary for every factor relevant to vexatious requests to be satisfied in order to refuse a request on the basis of section 14(1). In this case the Commissioner considers that there are sufficient grounds to uphold the application of section 14(1) on the basis of the three factors mentioned above and therefore he has not considered the outstanding points set out in his guidance. He considers that the arguments that compliance with the request would create a significant burden in terms of expense and distraction and that it can be fairly characterised as obsessive or manifestly unreasonable are particularly significant. Whilst he considers it to

have less weight than the other factors he is also nevertheless satisfied that the request does not have any serious purpose or value.

30. Taking all of the circumstances of the case into account, the Commissioner has noted that the complainant has demonstrated a similar pattern of behaviour to that which the Information Tribunal outlined in the case of *Coggins v Information Commissioner EA/2007/0130*;

“The number of FOIA 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.”

31. Having considered all of the above the Commissioner believes that section 14(1) of the Act was correctly applied in this case.

The Decision

32. The Commissioner’s decision is that the DfT correctly applied section 14(1) as the complainant’s request can be correctly categorised as vexatious under the provisions of the Act.

Steps Required

33. The Commissioner requires no steps to be taken.

Right of Appeal

34. 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

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 11th June 2009

Signed

**Jo Pedder
Senior Policy Manager**

**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.”