

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 19 January 2010

Public Authority: Ministry of Defence
Address: Info-Access Pol 3
Level 6, Zone E
Main Building
Whitehall
London SW1A 2HB

Summary

The complainant made a series of requests from November 2007 to February 2008 to the Ministry of Defence concerning the safety of life rafts following a fatal incident in 1998. The public authority declared them vexatious under section 14. The Commissioner has investigated and finds that the public authority correctly applied section 14 to the requests.

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.

Background

2. The Commissioner is aware as a result of his investigation that the complainant has grave concerns about working practices at the Sea Survival Equipment Test Centre (SSETC) and the safety of MOD life rafts. From June 2007 he began making information requests on this subject and leading up to the requests dealt with in this Decision Notice the Commissioner is aware of a further 4 requests and letters from the complainant to the public authority on subjects relating to the SSETC and life rafts.

The Requests

3. The Commissioner notes the public authority provided details of the information requests made by the complainant in the fifteen month period between 15 June 2007 and 9 September 2008. The Commissioner has not seen copies of all of these requests or the responses sent by the public authority but notes the public authority's claim that the complainant made twenty two requests during that period. In response to the first eight of these requests the public authority states that it provided a full response, including one response that the information was not held and a further response inviting the complainant to refine his request as replying to the original request would exceed appropriate limits.
4. In responding to the various information requests made by the complainant during this period the public authority also offered to meet with the complainant. A meeting was held between the complainant and the public authority in April 2008 and the complainant agreed to forward all the documents he held on the subject of his requests to allow them to be reviewed by the public authority. Subsequently, the public authority reimbursed the costs incurred by the complainant in posting these documents. Although this meeting took place after the public authority had refused the requests covered by this Decision Notice under section 14 of the Act it appears to the Commissioner to be relevant evidence of the authority's attempt to act helpfully and to resolve the complainant's requests satisfactorily.
5. Against this background, this Decision Notice deals with the series of requests for information that the complainant made from November 2007 to February 2008 and which are detailed in Annex 1. A timeline is also provided at Annex 2 which shows when the requests were made and the response of the public authority.
6. Following receipt of request "e" detailed in Annex 1 made on 8 February 2008, the public authority wrote to the complainant on 15 February 2008 issuing a refusal notice, acknowledging the various letters primarily about MOD life rafts and the MOD Sea Survival Equipment Test Centre (SSETC). It listed subjects which the public authority now considered closed and which it would no longer answer as it considered the repeated requests vexatious.

The Investigation

Scope of the case

7. On 2 May 2008 the complainant contacted the Commissioner to complain about the way his requests for information had been handled.
8. The Commissioner's investigation sought to establish whether the Act had been correctly applied by the public authority. In particular the complainant asked the Commissioner to consider the public authority's decision to declare his requests

vexatious, so the investigation focussed on the application of section 14 to the request made on 8 February 2008.

Chronology

9. On 12 February the Commissioner wrote to the complainant to advise that his investigation of the complainant was about to begin. On 11 March 2009 the Commissioner contacted the public authority to request copies of two information requests made by the complainant. The public authority was also asked to explain its statement in previous communications with the complainant that concerning his earlier requests he had received all the information that he was entitled to under the Act.
10. The public authority responded on 18 March 2009 and provided copies of the two information requests as well as a copy of the reply sent. The public authority undertook to provide further information to support its statement that the complainant had already received all the information that he was entitled to under the Act. On 14 April 2009 the public authority sent details of the information requests that the complainant had made between June 2007 and September 2008, which is referred to at paragraph 3 above.

Analysis

Procedural matters

Section 14 Vexatious and repeated requests

11. Section 14(1) states:
“Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious.”
12. The Commissioner’s approach to considering whether section 14 has been applied correctly can be summed up by assessing the following statements in relation to the request:
 - it would create a significant burden in terms of expense and distraction
 - it is designed to cause disruption or annoyance
 - it has the effect of harassing the public authority
 - it can otherwise fairly be characterised as obsessive or manifestly unreasonable
 - it clearly does not have any serious purpose or value
13. It is not necessary for all of the above criteria to be satisfied in order for a request to be deemed vexatious; indeed a strong argument in one may outweigh weaker arguments in the others. As the Information Tribunal commented in the case of *Coggins v the Information Commissioner (EA/2007/0130)*

“a decision as to whether a request is vexatious within the meaning of section 14 is a complex matter requiring the weighing in the balance of many different factors. The Tribunal is of the view that the determination whether a request was vexatious or not might not lend itself to an overly structured approach...” (paragraph 20).

Would it create a significant burden in terms of expense and distraction?

14. The public authority asked the complainant to refine the first request listed in this Decision Notice (request “a” in Annex 1), but stated that it did not receive a reply. The requested information covered a 10 year period and covered not only the whole of the Royal Navy but also the SSETC. In 1997, according to UK Defence statistics published by the MOD there were 101 Royal Navy ships, excluding 21 in the Royal Fleet Auxiliary Service. Over a ten year period this would have involved substantial searches in several MOD locations and involved several staff. The first request followed four earlier requests, which had sought information on similar topics and which the public authority had responded to either by providing the information requested or advising that it was not held.
15. Following the complainant’s failure to refine the first request and the receipt of the further requests detailed in Annex 1, the public authority wrote to the complainant on 19 February 2008 to inform him that they considered section 14 of the Act applied to his requests. In doing so, they stated that his requests had “imposed a significant burden on MOD resources and I believe they can fairly be characterised as obsessive and manifestly unreasonable (one of the Commissioner’s criteria).” Therefore the authority declared that requests relating to the safety of MOD life rafts and incidents involving life rafts (excluding information relating to new incidents) would not be responded to if raised by the complainant.
16. The Commissioner’s Awareness Guidance Number 22 states:

“...to determine whether a request imposes a significant burden, a public authority should consider whether complying with the request would cause it to divert a disproportionate amount of resources from its core business. However where the only concern...is the burden on resources...it should consider whether it would be more appropriate to apply section 12...”
17. In line with his guidance the Commissioner takes the view that where the public authority’s only concerns relate to the costs of complying with the request then section 12 should be applied to that request rather than section 14. The Commissioner notes that in the present case the public authority did raise section 12 with regard to the first request but invited the complainant to refine his request to avoid potential difficulties with section 12. The complainant did not provide the necessary refinement or clarification and rather followed up the first request with further requests on the same general topics. The Tribunal in *Gowers v the Information Commissioner & the London Borough of Camden (EA/2007/0114)* said “...that in considering whether a request is vexatious, the number of previous requests and the demands they place on the public authority’s time and resources may be a relevant factor” (para. 70).

18. In the case of *Coggins v the Information Commissioner (EA/2007/0130)*, the Tribunal found that a “significant administrative burden” (para. 28) was caused by the complainant’s correspondence with the public authority, which started in March 2005 and continued until the public authority applied section 14 in May 2007. The complainant’s contact with the public authority ran to 20 information requests, 73 letters and 17 postcards. The Tribunal said this contact was “...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 would have been a significant distraction from its core functions...” (para 28).
19. The Commissioner considers it appropriate for the public authority to consider the aggregated effect of dealing with the requests. As noted at paragraphs 3 and 4 of this Notice the public authority has provided the Commissioner with details of the series of information requests the complainant has made on similar topics starting in June 2007. The authority provided requested information or stated that no information was held or requested clarification to narrow the scope of a request on twelve occasions prior to issuing the refusal notice on 15 February 2008, applying section 14(1) of the Act. As noted at paragraph 4 of this Notice the authority also met with the complainant after issuing the section 14 refusal notice to formally hear his concerns and receive any papers the complainant wanted to submit. The Commissioner notes the public authority appeared to be acting helpfully, although this would have clearly been a burden on resources and would have had the effect of distracting staff from their core function. In conclusion the Commissioner accepts that taking together the action already taken by the public authority and the potential for further correspondence and follow-on requests from the complainant, the effect of complying with the requests would have placed a significant burden on the public authority.

Was the request designed to cause disruption or annoyance?

20. The Commissioner is satisfied that the complainant has a genuine concern and that the requests were not meant to be disruptive in themselves. In that sense he does not believe they were primarily intended to cause annoyance or disruption to the public authority. However, the Commissioner notes the complainant has provided copies of further requests that show that he has continued to make similar requests to various parts of the public authority and to different Government Ministers since receiving the section 14 refusal notice. While these requests may have been motivated by the failure so far to obtain the information requested in the Commissioner’s view they also have the potential to cause disruption or annoyance.

Did the request have the effect of harassing the public authority or causing distress to staff?

21. This consideration takes into account the effect a request has had on a public authority regardless of the requestor’s intention. The Commissioner recognises that some cases arise in connection with a grievance or complaint which an individual is pursuing against a public authority. In this case the public authority

stated that communication from the complainant had been over a number of years. They had provided what information they could and some was not held. However the complainant did not seem able to accept this. The public authority arranged a meeting at which they received further evidence from the complainant. However, this did not satisfy the complainant as he was hoping the meeting would be more of an exchange of information. Overall, the Commissioner considers that the effect on the public authority was one of harassment, intended or not. He does not however consider that distress would necessarily have been caused.

Could the request be seen as obsessive?

22. In assessing whether a request can be deemed obsessive or manifestly unreasonable, a public authority may take into account previous knowledge it has of the requestor as well as previous grievances, disputes or complaints involving the requestor.
23. In reaching their decision to apply section 14, the public authority took into account the fact the complainant had been in correspondence with them over a long period of time, they had provided information for all requests where possible and had acted in a helpful manner. The complainant had supplied information to the public authority raising issues he wished them to consider and the public authority confirmed these had been thoroughly investigated on more than one occasion. Following the section 14 refusal the public authority had met with the complainant and he had been able to submit further information for review after the meeting. The public authority had reviewed the material and had advised the complainant of the outcome of that review. In addition the public authority had reimbursed costs incurred by the complainant when submitting the further information.
24. The public authority's decision to treat the complainant's requests as vexatious was partly based on the grounds that they believed that the requests were obsessive and manifestly unreasonable. The public authority concluded that although the requests were not "repeated" in the sense that they were not requests for exactly the same information, taken together they formed a pattern of obsessive thematic requests relating as they did to the NLMK1 life rafts and the Charterhouse School Incident. The Commissioner notes that although for the most part they postdate the issue of the section 14 refusal notice, the complainant has sent similar requests for information to the Prime Minister, the Secretary of State for Defence, the Parliamentary Under Secretary State for Defence as well as the Freedom of Information Team in the Ministry of Defence. He has also raised the matter with his local MP.
25. Taking all this into account the Commissioner considers the requests can fairly be seen as obsessive.

Does the request lack any serious purpose or value?

26. The Commissioner is satisfied that the complainant was genuine in his concern to establish the facts surrounding a fatal accident involving a life raft, so is content that there was purpose or value in the request.

Conclusion

27. In conclusion, on balance the Commissioner is satisfied that when taken in the context of previous correspondence and communication the requests had the effect of causing a degree of harassment and they placed a significant burden on the public authority. Whilst the Commissioner accepts the complainant had a serious purpose in making the requests and his intention was not to cause disruption or annoyance, this was outweighed by the fact that requests had the effect of harassing the public authority and could be seen as being obsessive.

The Decision

28. The Commissioner's decision is that the public authority dealt with the request for information in accordance with the Act by correctly applying section 14(1).

Steps Required

29. The Commissioner requires no steps to be taken.

Right of Appeal

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

First-tier Tribunal (Information Rights)
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 19th day of January 2010

Signed

**Anne Jones
Assistant Commissioner**

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

Annex 1 Requests made by the complainant to the public authority

- a. On 6 November 2007, the complainant requested the following information:

“All information, where the Royal Navy and Sea Survival Equipment Test Centre (SSETC) at Naval Base Portsmouth have experienced safety problems with the NLMK1 life raft since April 1997 to the present day.”

- b. On 19 December 2007, the complainant made a request for information for a copy of an independent survey of the raft involved in the Charter House School incident.

- c. On 4 February 2008 the complainant requested the following information:

“Life raft incident at Charter House School, Godalming on 26 January 1998.

1). To confirm that the two dates for the Board of Enquiries were held by the Royal Navy on the 10 February 1998 and 10 March 1998.

2). For all copies of documents on any other meetings held between the Royal Navy, Ministry of Defence and its departments on this incident.

3). For all copies of documents on all Service dates of all the Survival Equipment supplied by the Royal Navy prior to the incident at Charter House School on the 26 January 1998 on the training Life raft S/No 12964. All the types of Life Jackets and Survival Suits used at the school.

4). For all copies of documents of witness statements recorded at the time of the incident and passed onto the Health and Safety Executive and Coroner's Court.

5). For all copies of documents held on both Naval Board of Inquiries of their thorough investigation on all the Survival Equipment used at Charter House School, on their findings, to the Health and Safety Executive, Police and Coroner's Court.

6). For all copies of documents on both Naval Board or Inquiries of their own conclusion to the cause of the accident.

7). During both thorough investigations held by the Royal Naval Board of Inquiries, during the 10 February 1998 and 10 March 1998. Had they considered that this incident warranted a Criminal Investigation?

d. On 6 February 2008 the complainant requested the following information:

Charter House School Fatality

- 1). The date of the visit made to HMS Sultan, Gosport, Hants, by the Technical Authority (SSA/LE432). And the substantial reason for visit.
- 2). For all copies and documents of the findings recorded by the Technical Authority (SSA/LE432) of their visit to HMS Sultan, Gosport, Hants. Including their thorough inspection of the NILE Mk II training life raft S/N 12964.
- 3). For all copies and documents of the service dates when this equipment was last serviced prior to the incident at the Charter House School on 26 January 1998 on the training life raft S/N 12964, the type of life jacket used on the exercise and survival suits.
- 4). For all copies and documents of the Technical Authority (SSA/LE432) on their thorough investigation.
- 5). Were all the findings from Technical Authority (SSA/LE432) on the training life raft S/N 12964, the life jackets and survival suits, used on the day, of the Charter House School incident of 26 January 1998 passed onto the Coroner's Office, the Police and Health and Safety Executive to assist them in their investigation?

I am also requesting under the Freedom of Information Act 2000 for the following concerning the department at HMS Sultan, Gosport, Hants:

- 1). For all copies of documents on the dates and places where Survival courses were held at schools, in Teaching children on Survival Courses conducted by instructors from HMS Sultan.
- 2). For all copies of documents from 8 October 1993 to 26 January 1998 where the NILE training life raft S/N 12964 was used on these School survival courses life raft incident at Charter House School.

e. On 8 February 2008 the complainant requested the following information:

- "1). For all copies of documents on the dates of the first new NLMK1 life rafts tested, serviced and issued direct from the Sea Survival Equipment Test Centre (SSETC) HM Naval Base, Portsmouth, Hants to Royal Naval and Royal Fleet Auxiliary (RFA) ships. The total of ships fitted in 1998 by this department with NLMK1s.
- 2). For all copies of documents from January 1998 to December 1998 on all new NLMK1 life rafts supplied direct from RFD Beaufort's Ltd (Liverpool) and had been failed when tested and serviced by the SSETC HM Naval Base, Portsmouth, Hants on all reasons for failure.

- 3). For all copies of documents on the dates of the first new NLMK1 life rafts tested serviced and issued direct from RFD Beaufort's Ltd (Liverpool) to Royal Naval and Royal Fleet Auxiliary (RFA) ships. And the total of ships fitted in 1998 by this department with NMLK1 life rafts.
- 4). For all copies of documents from January 1998 to December 1998 on all new NLMK1 life rafts that had failed when being tested and serviced by RFD Beaufort's Ltd (Liverpool) and for all reasons for failure.

- 5). For all copies of documents of the test and service procedures used by the SSETC HM Naval Base, Portsmouth, Hants and RFD Beaufort's Ltd (Liverpool).

Annex 2 – Timeline of requests and responses

<u>Request received</u>	<u>Response by public authority</u>	<u>Internal Review requested</u>	<u>Internal Review reply</u>
6 Nov 2007 (a)	30 Nov 2007 (requested refinement) 30 Jan 2008 (no refinement received) 20 Feb 2008 (no refinement received)		
20 Dec 2007 (b)	22 Jan 2008 (Information not held)	15 Apr 2008	25 Jun 2008
4 Feb 2008 (c)	} 8 Apr 2008 (provided some information, } withheld some)		
6 Feb 2008 (d)			
8 Feb 2008 (e)	15 Feb 2008 (requests declared vexatious) 20 Feb 2008 (no response as request vexatious)	29 Feb 2008	4 Aug 2008

Legal Annex

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.