

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 25 May 2010

Public Authority: Children and Family Court Advisory and Support Service (CAFCASS)
Address: National Office
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South Quay Plaza
189 Marsh Wall
London
E14 9SH

Summary

The complainant requested eight items from the public authority to assist him in going to court about his ongoing dispute with it. The public authority applied section 14 [vexatious requests] to the request. This meant it was not obliged to comply with section 1(1)(a) or (b). It upheld its position within its internal review. The complainant referred the case to the Commissioner. The Commissioner has considered this case and believes that three elements constituted requests for the complainant's personal data and should have been considered separately under the Data Protection Act. Of the remaining five items, one was subsequently provided and he finds procedural breaches of sections 1(1)(a), 1(1)(b) and 10(1) for not confirming it was held or providing the information in 20 working days. For the final four elements he has studied the context and background in which the request was made and has determined that a reasonable public authority could have found these elements vexatious. He therefore upholds the application of section 14(1). He requires no remedial steps to be taken in this instance.

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 complainant was dissatisfied with the public authority's handling of his case and his requests were made in an effort to understand his position in respect to his wider concerns.
3. There have been a number of information requests about the issue and the Commissioner understands that the public authority's own stage 3 complaint review has been adjourned until the Commissioner makes his decision. The public authority acknowledge that the process is separate to its own complaint process, however, the decision about delaying this other process was made by the independent person who chaired the review panel in that case.

The Request

4. On 17 July 2009 the complainant requested the following recorded information in accordance with section 1(1) of the Act [the numbers have been attached by the Commissioner for ease of reference]:

[1] The reasons behind the delay. I don't want excuses at this stage – just the reasons.

[2] Who is responsible within CAF/CASS for driving this Stage 3 process forward.

[3] Memoranda of Understanding between VOICE and CAF/CASS behind the establishment of this service.

[4] Why you thought to deny me a complaint against a number of Senior CAF/CASS staff, including yourself and try and slip it into the Stage 3 process instead.

[5] Who you spoke to for guidance before phoning me with your decision.

[6] The remit and role of your in house legal advice team, their levels of qualifications and whether or not they are exempt [sic] SRA guidelines on solicitor practice. If not exempt, who heads the team?

[7] What performance related bonuses and pension contributions those who I have complained about (including yourself) received last year and hope to receive this year.

[8] The specific grounds upon which those I have complained about may be exempt from CAFCASS protection in the Courts and may be sacked.'

5. On 24 July 2009 the public authority issued a response. It stated:

'Cafcass have now considered your requests for information. The wider context and history of your questions have been taken into account and Cafcass has concluded that your requests are vexatious and repeated.

Cafcass has considered your requests to be vexatious for the following reasons:

- *The requests are deemed 'obsessive' due to the volume and frequency of your correspondence.*
- *The requests have been regarded as harassing Cafcass as well as being hostile towards individual staff.*
- *You have repeatedly requested information, which is substantially similar to previous requests and without allowing any reasonable intervals elapsing since previous requests.*
- *Requests have lacked any serious purpose or value and are along with the above burdensome for Cafcass.*

Cafcass are issuing you with a notice of refusal to process your Freedom of Information requests. Cafcass are relying on section 14(1) and 14(2) of the Freedom of Information Act 2000.'

6. On 4 August 2009 the complainant requested an internal review. He explained that in his view such a decision cannot be made without considerable evidence and asked for that evidence.

7. On 10 September 2009 the public authority communicated the result of its internal review. It upheld its position and explained:

'Internal Review – [complaint redacted] Freedom of Information Request

I have carried out the review in two parts. I first considered the response to requests made for information since the last review by my colleague [Individual A redacted] where information had been provided. I am satisfied that these were responded to appropriately, including carrying out the recommendation to

disclose further information that was made by [Individual A redacted].

I then reviewed the decision to apply the requests where the decision had been made not to disclose information because the request was deemed to be vexatious under the terms of the legislation. I am content that this description had been appropriately applied to these requests.

I therefore conclude that the refusal notice applied should be upheld.

I have informed [Individual B redacted] that any future request for information must be considered separately on its own merit.'

The Investigation

Scope of the case

8. On 4 August 2009 the complainant contacted the Commissioner to complain about the way his requests for information had been handled. He explained that he did not believe that his requests were vexatious and that the public authority had acted in a disreputable way. He explained that it was important the Commissioner made an example of the public authority, as it is rare that other people would be prepared to stand up against it.
9. The complainant also raised other issues that are not addressed in this Notice because they are not requirements of Part 1 of the Act. The Commissioner is unable to consider the public authority's conduct in respect to the court case. He is only able to consider information access issues. This is the only role that he has jurisdiction over and this decision concerns only that issue.
10. On 13 November 2009 the Commissioner set the scope of his investigation as concerning the request dated 17 July 2009 only. The complainant confirmed that he was content with the scope of the investigation on 16 November 2009.
11. On 10 February 2010 the public authority agreed to provide the answer to request 2 to the complainant. This was sent to the complainant on 15 February 2010.
12. The Commissioner has determined that the information relevant for parts 1, 4 and 5 of the request, if held, would be the complainant's

own personal data. He therefore believes that these elements of the request should have been considered to be a Subject Access Request (SAR) under section 7 of the Data Protection Act (the 'DPA'). He has not therefore considered any arguments that relate to these elements of the request when assessing the application of section 14(1) to the remainder. Further comment about the treatment of this part of the request can be located in the 'Other Matters' part of this Notice.

13. The Commissioner has only considered the application of section 14(1) to elements 3, 6, 7 and 8 of the original request in this notice.

Chronology

14. On 13 November 2009 the Commissioner wrote to the complainant. He did this to set the scope of his investigation. Exchanges of correspondence followed and the result of them led to the scope being agreed on 16 November 2009. The Commissioner explained that he would consider both Freedom of Information issues and Data Protection issues, where appropriate.
15. On 2 December 2009 the Commissioner wrote to the public authority to make detailed enquiries to the public authority.
16. Between 4 December 2009 and 10 February 2010, a number of emails were exchanged between the public authority and the Commissioner. Extensions were agreed to obtain a response to all of his questions.
17. On 10 February 2010 the Commissioner received a response to his enquiries.
18. On 12 February 2010 and 15 February 2010, the Commissioner asked for the public authority to clarify certain aspects from its initial response.
19. On 3 March 2010 the public authority provided appropriate clarification.

Findings of fact

20. The Commissioner has received evidence of the following requests for information being received prior to and within the time for compliance with the request that he is considering [he has summarised each request for clarity]:
 - 7 October 2008 – five requests in one letter. Four concern specific members of staff and one concerns the public authority's policy about how allegations of physical mistreatment are handled by its workers.

- 24 November 2008 – 14 requests in one letter. One for management information. Seven for questions about its policy and records about stress on staff. One repeat request about allegations of physical mistreatment, which had been provided as a result of the first request. Three are linked to qualifications for specific staff.
- 17 and 18 December 2008 – enquiry concerning how his complaints have been addressed.
- 17 and 18 December 2008 – nine requests in one letter. One enquiry concerning the training for two specific individuals relating to stress. Specific information requested about four individuals. Request for details of complaints. Two enquiries about the legislation.
- 10 February 2009 – seven requests in one letter. One enquiry about training to deal with stress. Two about senior pay. One about complaints handling. One about the cost of rebranding. One about their solicitors' workflow and another about auditing that process.
- 22 June 2009 – four requests in one letter. Two concern pay policy. One about an individual's pay. One enquiry about external investigations.
- 29 June 2009 – enquiry about the number of staff leaving, the reasons and whether the issue had been discussed at board level.
- 14 July 2009 – enquiry about the adjudicator's investigation and whether it accorded with practice. Further request for any information withheld previously. This request was not processed.
- 17 July 2009 – two requests in one letter. One concerns the role and remit of the internal legal advice team. One is an enquiry about the performance related pay and pensions paid to individuals who are the subject of his complaint for 2008 and 2009. This request was not processed.
- *17 July 2009 – this is the request that is being considered in this case.*
- 19 July 2009 – three requests in one letter. One concerns the paperwork about the role, requirements and training of the

Adjudicator and how they would report their findings. One about general presentation of documents to the court and one about the grounds on which the public authority may insist on removing a solicitor. This request was not processed.

21. There have also been a number of requests received after the request of 17 July 2009 which were being considered by the public authority. These include the requests dated:

- 29 September 2009.
- 15 October 2009.
- 12 November 2009.
- 3 December 2009.
- 4 January 2010.

22. The public authority has explained that it is not relying on section 14(1) in respect to them and is considering each on its own merits. For example, it has provided a full response to the request dated 15 October 2009. This was a request about how it accords with the GSCC Codes of Conduct and whether it keeps records of formal training. The Commissioner has not taken into account those requests received after the request he is looking at apart from noting that the public authority has not applied section 14(1) uniformly to them.

Analysis

Exclusion

Can the section 14(1) exclusion be applied correctly to parts 3, 6, 7 and 8 of the request?

23. Section 14(1) is an exclusion that provides that –

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

24. When assessing vexatiousness the Commissioner adopts the view of the Information Tribunal (the ‘Tribunal’) decision in *Ahilathirunayagam v Information Commissioner’s Office* (EA/2006/0070) (paragraph 32); that it must be given its ordinary meaning so would be likely to cause distress or irritation. The enquiry is based on objective standards. This has been reaffirmed by the Tribunal in *Gowers v Information Tribunal and London Camden Borough Council* (EA/2007/0114) (paragraph 27). The Commissioner has developed a more detailed test in accordance with his guidance but it is important to understand that it has

developed from these general principles and these guide him in applying his test.

25. When considering whether a request is vexatious, the Commissioner will take a more global view of the circumstances that led to it. He endorses the Tribunal's view expressed in paragraph 21 of *Mr J Welsh v the Information Commissioner* (EA/ 2007/0088) where it stated:

'In most cases, the vexatious nature of a request will only emerge after considering the request in its context and background. As part of that context, the identity of the requester and past dealings with the public authority can be taken into account. 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.'

26. The Commissioner has therefore taken into account the complainant's previous interaction with the public authority when determining whether the request can be correctly characterised as vexatious. This means that even if the request appears reasonable in isolation, it may be vexatious when considered in context.

27. The Commissioner has issued Awareness Guidance 22 as a tool to assist in the consideration of what constitutes a vexatious request. This guidance explains that for a request to be deemed vexatious the Commissioner will consider the context and history of the request as well as the strengths and weaknesses of both parties' arguments in relation to some or all of the following five factors to reach a reasoned conclusion as to whether a reasonable public authority could refuse to comply with the 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; and

(5) whether the request has any serious purpose or value.

28. When considering the public authority's reliance upon section 14(1), the Commissioner has had regard to the Information Tribunal's decision in *Mr J Welsh v the Information Commissioner* (EA/2007/0088)(at paragraph 26). In that case, the Tribunal spoke of the consequences of determining a request vexatious. It pointed out that these are not as serious as those of finding vexatious conduct in other contexts and therefore the threshold for vexatious requests need not be set too high.
29. The Commissioner has also considered whether any of the information was on the public authority's publication scheme. It is the Commissioner's view that section 14(1) cannot be relied upon where the information is available on the public authority's publication scheme. His view is that the test for a request being vexatious cannot be satisfied in those circumstances. In this case the public authority has explained that the requested information is not contained on its publication scheme. The Commissioner has checked and agrees that this is so.
30. The public authority has indicated in its arguments to the Commissioner that it believes that factors (1), (3), (4) and (5) are satisfied by these requests and this led it to the conclusion that this request was vexatious. It is noted that the factors do overlap, however, the Commissioner has structured his analysis by looking at each of them in turn.

(1) Do the remaining elements constitute a significant burden in terms of expense and distraction?

31. When considering this element of his test the Commissioner endorses the Tribunal's approach in *Welsh* (in paragraph 27). It stated that whether a request constitutes a significant burden is

"...not just a question of financial resources but also includes issues of diversion and distraction from other work..."

32. The Commissioner therefore expects a public authority to show that complying with the remaining elements of the request would cause a significant burden both in terms of costs and also diverting staff away from their core functions.
33. The Tribunal in the case of *Gowers v the Information & London Borough of Camden* (EA/2007/0114) emphasised that previous requests received may be a relevant factor:

'...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 (paragraph 70 of its decision).

34. It is also appropriate for the Commissioner to take into account the complainant's previous interaction with the public authority when making a determination of whether the remaining elements of the request represent a significant burden to a public authority as noted above. This means that even if the elements of the request do not impose a significant burden when considered in isolation, they may do so when considered in context.
35. The public authority asked for the Commissioner to take into account the following arguments which the Commissioner considers to be relevant to the burden of the request:
- The public authority is very concerned by the quantity of correspondence that it had experienced from the complainant to a number of its regional offices. Its scale, frequency and intensity have led it to experience a significant burden in terms of both expense (in relation to hours spent) and distraction from its core business of safeguarding and promoting the welfare of children whose cases are before the family courts.
 - The public authority has evidence of at least 45 information requests made in ten different letters over nine months – with the receipt of at least three letters in the month that contained the request the Commissioner is considering. These are summarised in paragraph 20 above.
 - The public authority has also spent considerable time attempting to address the complainant's concerns through its complaints process. The Commissioner has received evidence of at least 50 exchanges of correspondence. The public authority has stated that there is likely to be hundreds of such exchanges, but that it was unable to provide a complete record of all the correspondence that it had exchanged, due to the number of individuals contacted by the complainant and the amount of time it would take. However, there was no doubt that the requests added to the burden that it was experiencing.
 - The public authority has advised it assigned the complainant a single point of contact, but that the complainant has chosen not to restrict his communications to that contact.

- The complainant also makes formal complaints about staff dealing with his requests exacerbating the burden that is experienced by it. Presently there at least 15 staff who have been complained about.
 - The public authority believes that the complainant has an established pattern of contacting several members of staff on the same or different days and asking for the same information via telephone and/or email.
 - The public authority only employs a single individual to complete FOI requests for the organisation and it believes that the complainant is aware of this fact. The public authority asserted that this also exasperated the burden it experienced.
 - The public authority believes that once it provides information, it has in some cases received further requests for the same information. An example is the repeat request of 24 November 2008. Further examples can be found in the requests that were made later than the request that the Commissioner is considering.
36. The complainant explained that the burden was justifiable given the real impact that the decision of the public authority has had on him and would be likely to have on other individuals. He requires the evidence asked for to establish whether the problems the public authority were shown to have in his case are systematic.
37. The public authority has explained that it agreed that when working with families who are involved with court cases staff time is quite properly taken up, usually only involving the front line worker, local manager and court staff. However, the manner in which the complainant has conducted his relationship with it, as stated above, has meant that the distraction from its core purposes has been particularly acute in this case. It stated that this case was without precedent.
38. The Commissioner has asked the public authority if it had recorded the time it had taken to respond to the relevant requests. It explained that it had not but that it was self evident that it would have taken a considerable while to respond to the requests that it had received from the complainant. The Commissioner appreciates that this is so.
39. When considering the facts the Commissioner is satisfied that a great deal of the public authority's time has already been spent dealing with previous requests and with the complainant's associated correspondence. He notes that the complainant does have an ongoing

complaint with the public authority and that this is presently under adjudication. Taken in the context of the hours spent dealing with the previous requests and the resulting distraction from the public authority's core purposes the Commissioner considers that to comply with the request of 17 July 2009 would impose a significant burden in terms of both expense and distraction from its core purpose of safeguarding and promoting the welfare of children whose cases are before the family courts. Indeed he notes that it has taken the public authority considerable time to prepare its submissions for this investigation.

40. The Commissioner has considered the reasoning in the Tribunal decision of *Coggins v Information Commissioner* [EA/2007/0130] about what constitutes 'a significant administrative burden' and is satisfied that the requests in this case if dealt with without utilising section 14(1) would have contributed to a 'significant distraction from its core functions' (paragraph 27 of its decision).
41. The Commissioner has also considered in this determination the approach of the Information Tribunal in *Betts v The Information Commissioner* (EA/2007/0109), where the Tribunal indicated that it would be reasonable for the public authority to consider its past dealings with the complainant, particularly in relation to its experience of answering one request which would likely lead to still further requests. This had the effect of perpetuating the requests and adding to the burden placed on the authority's resources. The Tribunal said:

'...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 [public authority] to reach that compliance with this request would most likely entail a significant burden in terms of resources.'
42. The Commissioner has examined the pattern of the requests and is also satisfied that this was what was happening in this case.
43. He notes that the public authority is not applying section 14(1) uniformly and is dealing with each new request on its own merits.
44. Assessing all the circumstances of the case the Commissioner has found that the particular request would impose a significant burden in terms of expense and distraction for the reasons outlined above. He therefore finds in favour of the public authority on this factor. The Commissioner finds that this is a significant factor in favour of applying section 14(1).

(3) *Do the remaining elements have the effect of harassing the public authority or its staff?*

45. The complainant contends that there is no evidence of any of his requests harassing the public authority or its staff. He has explained that it was necessary for him to hold the public authority to account and that it was important that the Commissioner considers the context of this case.

46. The Commissioner appreciates that to harass is a strong verb and emphasises that it is the effect of the request and not the requester that must be considered. He has considered the definition in the Shorter Oxford English Dictionary and believes that the following alternative reflects what his guidance means:

'To tire out, exhaust.'

47. The public authority has provided the Commissioner with detailed personal accounts of the distress that has been caused by the complainant in respect to his dealings with it. The Commissioner is unable to mention particulars of the incidents as he believes that they amount to the personal data of the staff involved. They concern the complainant's conduct on the telephone. However, he is satisfied that they are corroborated and that they are more than one in number.

48. The public authority also claimed that the volume of previous correspondence and its nature led to its staff being harassed unnecessarily. The Commissioner notes that the incidents mentioned above about the contacting of a number of people at once and insisting on talking to senior staff contributes to this feeling of harassment. He also notes that the complainant's tenaciousness could also objectively lead to this effect, that requests [6], [7] and [8] concern specific individuals and [8] enquires about how specific individuals could be sacked.

49. The Commissioner notes that the tone of the correspondence remains cordial in all the evidence that he has received. The Commissioner accepts it was not the intention of the complainant to cause distress in this case. Indeed he believes that the intention of the complainant was to hold each and every individual accountable for their performance in a public role. He notes the Tribunal's comments in *Coggins v Information Commissioner* [EA/2007/0130] (at paragraph 62) which stated that a request can be vexatious regardless of whether the complainant intended it to be so.

50. The Commissioner has also taken into account the situation at the time of the request. The complainant was clearly going through a very stressful situation and the Commissioner believes it is equitable to appreciate that in such times it is likely that there will be some intemperance and that frustration may override the otherwise reasonable behaviour. He therefore feels that an allowance should be made in this analysis to reflect that this is the case. He has not considered merely isolated incidences but has instead looked at the effect that the complainant's behaviour has had around the time of the request. He has considered the volume of correspondence, their distribution and contemporaneous records relating to telephone conversations between the public authority and the complainant. He believes that the cumulative effect is sufficient to harass a reasonable public authority when assessing the remaining elements of the request in its context. The Commissioner therefore believes that this factor also supports the application of section 14(1) in this case.
51. The Commissioner has noted the comments in *Coggins v Information Commissioner* [EA/2007/0130] (at paragraph 28) and can confirm that he has not considered any possible distress that may have occurred as a possible consequence of disclosure as this is irrelevant when considering section 14(1).
- (4) Can the remaining elements of the request be characterised as obsessive?*
52. The public authority indicated that given the volume, frequency and nature of the requests and correspondence, it believed that this request was obsessive.
53. The complainant has explained that he has been driven to pursue his requests because of what he perceives to be the lies, incompetence and shortcomings of the public authority. He has explained that once he receives appropriate responses to his requests then he will be able to move on. He has explained to the Commissioner that in his view it is the staff of the public authority that considered his request that should be regarded vexatious, incompetent, evasive and corrupt. He has explained that this has had very negative consequences for his own rights and that he believes that it is crucial that the public authority is held to account.
54. During his investigation the Commissioner invited the public authority to expand on its arguments in relation to this factor. The public authority indicated that it felt that the requests generally had common themes and were mainly directed against two members of staff involved in his child's case. The Commissioner has noted that requests [6], [7] and [8] can be characterised in this manner. The public

authority has also explained that recent requests relate to the Chief Executive, despite it explaining to the complainant that its procedure meant that the Chief Executive never responded to complaints directly and its procedure is for the relevant line manager to respond. This explanation did not stop the complainant from requesting further information about what the Chief Executive did in relation to his complaint continuously.

55. The public authority has also informed the Commissioner that it believes that the behaviour of the complainant can only reasonably be regarded as obsessive. It explained that it believed that the general practice of the complainant is to telephone constantly asking for individual staff, and then if they are not available, to then ask for more senior members who he then contacted on a regular basis.
56. Another example of this behaviour was exhibited on 9 January 2009, when it was necessary for the Head of Legal Services to be instructed to write to the complainant to ask him to desist from calling the national office so often. It took this action because the calls were so frequent that he jammed its phone lines and prevented other service users from getting through. It explained that this is the only time it has been required to act in this way.
57. It also explained that the declaration of the request being vexatious did not lead to a difference in behaviour. It explained that this behaviour was more recently shown when in September 2009 the complainant arrived at one of its regional offices without an appointment to try and meet a member of staff from the complaints administration team. He insisted on speaking with a senior manager, who had no responsibility for complaints at that time, that happened to be there. The result was that two hours of the senior manager's time was spent listening to and trying to address the complainant's concerns and the senior manager was unable to attend the core business meeting which they had travelled to attend. The Commissioner has decided not to allow reliance on this evidence as it was after the date of the request.
58. It explained that it had also tried to provide a 'single point of contact' to enable an effective distribution of work, to provide a more responsive service to use the public authority's resources more effectively. As noted above this approach failed as the complainant did not engage with it and this provides further evidence that the behaviour exhibited was obsessive.
59. The public authority also expressed its concern about the complainant's requests for information about the stress suffered by employees and its policy with regard to that. It explained that it was deeply concerned that these requests reveal the complainant's intent to undermine its

personnel through making requests and this feeds into its belief in the complainant's obsessive behaviour. The Commissioner was not convinced by its arguments on this particular factor and notes that these arguments do not apply to the elements that are under active consideration.

60. The Commissioner accepts that at times there is a thin line between obsession and persistence and each case should be determined on its own facts. In this case, the Commissioner considers that the nature of the request falls within the definition of obsession. He finds that the evidence mentioned in paragraphs 54-56 and 58 provides sufficient evidence to show an obsession on the facts of this case.
61. He therefore believes the public authority was correct in characterising this request as obsessive and finds in favour of the public authority on this factor.

Did the remaining elements of the request have value and/or a serious purpose?

62. The complainant argued his request has value and a serious purpose since full answers will provide additional evidence to enable him to obtain judgments against the public authority's handling of his case and enable a correct verdict to be established. It will also provide real accountability and will reveal whether the problems that he has experienced were systematic.
63. The public authority believes that its complaints process is actively dealing with the complaint raised and that while the requests have some value being connected to a complaint that was upheld at Stage 2 that this value is insufficient to force it to disregard the fact that the request was in its view obsessive, harassing its staff and creating a significant burden in terms of expense and distraction.
64. The Information Tribunal in *Coggins v Information Commissioner* [EA/2007/0130] (at paragraph 20) stated that it:

"could imagine circumstances in which a request might be said to create a significant burden and indeed have the effect of harassing the public authority and yet, given its serious and proper purpose ought not to be deemed as vexatious . For instance, one could imagine a requester seeking to uncover bias in a series of decisions by a public authority, covering many years and involving extensive detail, each of fairly minor importance in themselves but representing a major issue when taken together. This might indeed be experienced as harassing

but given the issue behind the requests, a warranted course of action."

65. In light of this the Commissioner has considered whether the requests in this case have any serious purpose and if this is so, whether it would be inappropriate to deem them vexatious even when taking into account the factors outlined above which he is satisfied are met.
66. When considering serious purpose and value the Commissioner finds in favour of the complainant. He considers that there is serious value in seeking further information about the structure of the public authority, its staff and their accountability. He notes that the complaints process of the public authority has found that aspects of its case handling process were defective and this adds to the value of the purpose. The Commissioner also recognises that there is an assumption built into the Act that disclosure of information by public authorities on request is in the public interest in order to promote transparency and accountability in relation to the activities of public authorities. He therefore finds that this factor does not favour the application of section 14(1).
67. However, he believes that the significance of the value of the request must be considered together with other circumstances in this case. In this instance he is not persuaded that sufficient weight can be placed on the serious value identified to make it inappropriate to deem the requests vexatious in this case. This is in view of the information that has already been made available to the complainant, the overall context of these particular requests and his conclusions above about other aspects of his case.

Could a reasonable public authority refuse to comply with the request on the grounds that it is vexatious?

68. On the basis of the circumstances of this case, the Commissioner finds that a reasonable public authority would find the outstanding elements of the complainant's request of 17 July 2009 vexatious. In arriving at this decision, the Commissioner has had regard to the Information Tribunal's decision in *Mr J Welsh v the Information Commissioner* [EA/2007/0088], where the Tribunal commented that the threshold for vexatious requests need not be set too high. The safeguard is present to maintain the credibility of a disclosure regime. He notes that it is not necessary for every factor to be made out from his guidance. In this case he has found four factors are satisfied in this case. The Commissioner's decision in this case therefore rests on the complainant's request causing a significant burden, having the effect of harassing the public authority and being obsessive. He does not believe that its serious purpose outweighs the combined weight of those three factors on the circumstances of this case.

69. The public authority has confirmed to the Commissioner that it will continue to deal with further requests for information in line with the Act. Each request will be considered on its own merits. The Commissioner believes that this approach is correct. It is essential that it does not treat the requester, rather than the request, as being vexatious.
70. The Commissioner makes no findings as to whether the complainant's various complaints and grievances against the public authority are or are not well-founded. These are matters outside the scope of the Commissioner's jurisdiction.
71. The public authority relied on the operation of the exclusions found in both sections 14(1) and 14(2) at the date of its internal review. The Commissioner has considered section 14(1) first and as this is engaged, he has not gone on to consider the operation of section 14(2).

Procedural Requirements

72. The public authority decided not to rely on section 14(1) in relation to request 2 and provided the information during the course of the Commissioner's investigation. In not confirming it held information or providing that information in 20 working days it has breached sections 1(1)(a), 1(1)(b) and 10(1) of the Act.

The Decision

73. The Commissioner's decision is that the public authority dealt with the following elements of the request in accordance with the requirements of the Act:
- *It applied section 14(1) correctly to elements 3, 6, 7 and 8 of the request.*
74. However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:
- *It has withdrawn its reliance on section 14(1) in respect to element 2 and provided the relevant information. It has therefore breached sections 1(1)(a), 1(1)(b) and 10(1) in not providing this information within twenty working days.*

Steps Required

75. The Commissioner requires no steps to be taken. This is because the relevant information for element two was released on 15 February 2010.

Other matters

76. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern:
77. Section 7 of the DPA gives an individual the right to request copies of personal data held about them – this is referred to as a right of Subject Access. As three elements of the information being sought was in fact the complainant's personal data this request should have been dealt with as a subject access request rather than a request under the Act. The Commissioner encourages public authorities to consider requests under the correct regime in the first instance. In the Commissioner's opinion responsibility for applying exemptions and determining whether a request should be considered under the Act or the DPA rests with the public authority and not the requester.
78. Under section 42 of the DPA the Commissioner can make an assessment of the public authority's compliance with the DPA. An assessment under section 42 of the DPA is a separate legal process than that under section 50 of the FOI Act. The Commissioner is in the process of undertaking such an assessment in respect of the public authority's handling of this request and will communicate the outcome of this assessment to the complainant in due course.

Right of Appeal

79. Either party has the right to appeal against this Decision Notice to the First-Tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals
PO Box 9300
Arnhem House
31 Waterloo Way
Leicester
LE1 8DJ

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

80. 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 sent.

Dated the 25th day of May 2010

Signed

**Gerrard Tracey
Principal Policy Adviser**

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

Legal Annex

Section 1

General right of access to information held by public authorities

Section 1 of the Act provides that:

(1) 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.

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

(3) 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 10 - Time for compliance with request

(1) Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.

(2) Where the authority has given a fees notice to the applicant and the fee is paid in accordance with section 9(2), the working days in the period beginning with the day on which the fees notice is given to the applicant and ending with the day on which the fee is received by the authority are to be disregarded in calculating for the purposes of subsection (1) the twentieth working day following the date of receipt.

(3) If, and to the extent that—

(a) section 1(1)(a) would not apply if the condition in section 2(1)(b) were satisfied, or

(b) section 1(1)(b) would not apply if the condition in section 2(2)(b) were satisfied,

the public authority need not comply with section 1(1)(a) or (b) until such time as is reasonable in the circumstances; but this subsection does not affect the time by which any notice under section 17(1) must be given.

Section 14

Vexatious or repeated requests

Section 14 of the Act provides that:

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

(2) 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 the previous request and the making of the current request.

Section 40(1)

Personal Data

(1) Any information to which a request for information relates is exempt information if it constitutes personal data of which the applicant is the data subject.