

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 21 October 2010

Public Authority: Ministry of Justice
Address: 102 Petty France
London
SW1H 9AJ

Summary

The complainant's legal representatives made various information requests on three separate dates stemming from a long running issue between the complainant and the public authority. The public authority refused these requests under section 14(1) of the Act on the grounds that they were vexatious. The conclusion of the Commissioner is that the public authority accurately characterised these requests as vexatious and so section 14(1) provided that the public authority was not obliged to comply with these 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.

The Request

2. The complainant made the following information requests that are the subject of this Notice:

21 July 2009:

(a) *"...complete recorded information ... regarding the handling of the complaint which [name redacted] says has been investigated"*

(b) *"the full recorded information ... regarding the processing of matters following receipt of the letter from my MP to the response sent by the Minister and any other material arising or occasioned in connection with the matter from which the underlying relevant information regarding my concern will be revealed"*

(c) *"the information requested by my solicitor from the Treasury Solicitor relating to the MoJ"*

(d) *"if you will let me know, as my solicitor has already requested in respect of the Information Tribunal proceedings, which individuals (who are subject to external professional regulation) have been involved with and or responsible for the matters relating to me and (name redacted) deceased"*

(e) *"why there was such a delay in responding to my complaint"*

(f) *"unspecified 'legacy issues' – please identify them for me"*

(g) *"what role and responsibility the Corporate Management Board have with regard the situation"*

(h) *"what steps [have the Corporate Management Board] taken and propose to take with regard to ensuring that my complaint and requests for information were promptly processed"*

18 August 2009:

(i) *"Who is the author of the attached letter [dated 18 August 2008]?"*

7 September 2009:

(j) *"...who will be undertaking the review [of the handling of the complainant's previous information request]? Who is the author of the letter of 18.08.09 and why has the identity of that person not been disclosed on the letter or provided in response to the request for that information by e-mail on 18.08.09."*

3. The public authority responded to the 21 July 2009 requests on 18 August 2009 and refused the request. Section 21(1) (information accessible by other means) was cited in relation to some parts of the request, with section 14(1) (vexatious requests) cited in relation to the remainder. The public authority also made reference to section 14(2) (repeated requests) in this refusal notice.

4. The public authority responded to the requests of 18 August and 7 September 2009 on 14 September 2009. These requests were refused under section 14(1) as they were believed to be vexatious.
5. The complainant subsequently responded and requested that the public authority carry out internal reviews of its handling of these requests. In relation to the 21 July 2009 requests, the public authority responded with the outcome of the review on 7 October 2009. The conclusion of this review was that the citing of section 21(1) was rescinded and section 14(1) was instead cited in response to all of these requests.
6. In relation to the requests of 18 August and 7 September 2009, the public authority responded with the outcome of the internal review on 3 November 2009. The conclusion of this review was that the refusal under section 14(1) was upheld.

The Investigation

Scope of the case

7. The complainant's legal representatives (the "representatives") contacted the Commissioner's office initially on 5 November 2009. At that stage the representatives stated that their client wished *"the handling of all her subject access and Freedom of Information Requests to be reviewed by the ICO"*.
8. The public authority referred in the refusal notice of 18 August 2009 to some of the requests being for the personal data of the complainant and that they should therefore be handled as subject access requests made under section 7 of the Data Protection Act 1998. At the outset of this case it was clarified by the public authority that all of the requests from the correspondence of 21 July 2009 that are quoted above were treated as information requests made under the Freedom of Information Act and, therefore, were refused under section 14(1) of that Act.
9. In an email of 5 November 2009 the representatives requested to be informed when this complaint had been allocated to a case officer within the Commissioner's Office as they wished to provide representations at that stage. In an email of 31 March 2010, the representatives were informed that this complaint had been allocated to a case officer and were invited to make their representations. The representatives, despite their earlier indication that they wished to

provide representations, declined to provide representations at that time and instead suggested that they should be informed of the arguments made by the public authority and given the opportunity to comment on these.

10. In the interest of progressing this case promptly, and in line with his normal practice, the Commissioner took the decision not to copy the arguments between the parties. He therefore chose not to revert to the representatives following the receipt of further argument from the public authority. The Commissioner would stress that the representatives were invited to make their representations as they had indicated they intended to, but they chose not to do so. He would also note that his normal approach will be to offer both complainant and public authority one opportunity to provide their submissions, after which he might at his own discretion revert to them for clarification about their response. It is not his role, however, to act as an intermediary between complainant and public authority by presenting the arguments made by one party to the other. This is particularly so where the focus of his investigation is whether requests for information are vexatious, requiring an assessment of the requests and their impact on the public authority.

Chronology

11. The Commissioner contacted the public authority on 31 March 2010. At this stage the public authority was asked to respond with further reasoning as to why it believed that the complainant's requests were vexatious.
12. After a delay, the public authority responded to this on 25 May 2010. The public authority at this stage provided some further explanation for its refusal of the request, but this in general included little detail.
13. The Commissioner reverted to the public authority for further clarification on 8 June 2010. The public authority responded with some further detail about its reasoning for citing section 14(1) on 7 July 2010.

Background

14. The public authority has described the background to its communications with the complainant as part of its explanation for the citing of section 14(1) in this case. These communications relate to a 1950 murder conviction for which the defendant was sentenced to

death and executed. This conviction was quashed in 2003 and in 2006 it was determined that a right to compensation existed in relation to the wrongful conviction and that the amount of compensation would be determined by an independent assessor.

15. The complainant has an interest in this compensation claim and her legal representative has acted for her in this regard. The public authority has stated that the complainant had an application for an interim compensation award rejected by the independent assessor in April 2008, but was advised that further consideration of this application would be given if certain information was provided by the complainant via her representative. The public authority advised the Commissioner that this claim has not been progressed since April 2008.
16. It also appears to be the case that an impasse has been reached in relation to a DNA test of a sample of the remains of the individual executed in 1950. This impasse appears to centre upon whether the cost of the DNA test will be borne by the public authority or by others.

Analysis

Substantive Procedural Matters

Section 14

17. The public authority refused the complainant's requests under section 14(1). This provision provides that a public authority is not obliged to comply with a request if it is vexatious. The task for the Commissioner here is, therefore, to consider whether the requests quoted above can be accurately characterised as vexatious.
18. The Commissioner's published guidance on section 14(1) sets out the following five factors to take into account when considering whether a request is vexatious.
 - i. Whether compliance would create a significant burden in terms of expense and distraction.
 - ii. Whether the request is designed to cause disruption or annoyance.
 - iii. Whether the request has the effect of harassing the public authority or its staff.

- iv. Whether the request can otherwise fairly be characterised as obsessive or manifestly unreasonable.
 - v. Whether the request has any serious purpose or value.
- 19. The Commissioner's analysis here is based upon these factors and his conclusion on how many of these apply in relation to the complainant's requests. The Commissioner has taken into account the representations of the public authority when forming this conclusion and the Commissioner would note at this point that it was evident from these representations that the public authority was concerned about the burden imposed through all of its dealings with the representatives, not just those that relate to the complainant. The issue here is whether the *request*, rather than the *requester*, is vexatious. This means that, whilst it is the contact between the public authority and the representatives which relates to the complainant's request which is the subject of the analysis, the wider dealings between the representatives and the public authority unrelated to that request may provide relevant evidence (for example, about the intentions and general conduct of the representatives).
 - i. Would compliance create a significant burden in terms of expense and distraction?
- 20. The public authority has stated that in 2009 a total of 21 information requests were received from the complainant or her representatives relating to broadly the same subject matter. The public authority has also stated that information requests were made by the representatives prior to this with the earliest relevant request having been made in November 2006. The public authority has also stated that it has received voluminous correspondence from the representatives aside from information requests and that a search of its '*electronic corporate record*' for the representatives returns 1,325 records, many of which the public authority states are emails from the representatives.
- 21. The stance of the public authority does not appear to be that the work involved in compliance with these specific requests would constitute a significant burden; instead, these points have been made as evidence that compliance with these requests would be likely to lead to further information requests and other correspondence from the complainant and her representatives. On the issue of whether compliance with these requests would be likely to lead to further requests, the Commissioner notes the evidence provided by requests (i) and (j), which resulted from the response to the other requests in question

here, as well as the representations from the public authority about the volume of related information requests that have been made to it. As to the impact of the wider dealings between the complainant and her representatives and the public authority, the Commissioner notes the evidence of the volume of relevant communications revealed by a search of the public authority's database.

22. The approach of taking into account, when assessing whether a request is vexatious, the likelihood of further correspondence and information requests arising from compliance with the request in question is in line with that taken by the Information Tribunal in the case *Coggins and Information Commissioner* (EA/2007/0130). The Tribunal described the contact between the complainant and the public authority in that case as:

"...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..." (paragraph 28).

23. The Commissioner notes that, as well as what this quote reveals about the general approach of the Tribunal to section 14(1), its first part could also serve as an accurate description of the approach of the representatives when pursuing the complainant's issues.
24. On the basis of the evidence described above, and in line with the approach of the Information Tribunal in *Coggins*, the Commissioner finds that compliance with these requests would impose a significant burden upon the public authority in terms of expense and distraction as a result of the further correspondence and information requests from the complainant and her representatives that would be likely to result.
- ii. Were the requests designed to cause disruption or annoyance?
25. Whilst it may well be the case that the requests in question here have or would cause disruption or annoyance, the issue to consider is whether these requests were *designed* to have this effect. The Commissioner has previously concluded that a request was designed to have such an effect in a case where the complainant had admitted as much in writing. Whilst such direct evidence is not a prerequisite for this factor to apply, it is necessary for there to be a clear justification for concluding that disruption or annoyance was the purpose of the request.

26. In this case the Commissioner is not aware of evidence to suggest that this was the purpose of this request. The public authority has provided no evidence to suggest that this was the case and so the Commissioner concludes that, regardless of the manner in which the complainant and her representatives have conducted their wider dealings with the public authority, they have not designed these requests to specifically cause disruption or annoyance.
- iii. Do the requests have the effect of harassing the public authority or its staff?
27. Covering first whether the requests have the effect of harassing the public authority, of note here is the history preceding the requests described above in the Background section. On the basis of the description given by the public authority, it appears that the complainant and her representatives are attempting to utilise the Act to further their cause, but that this is in the absence of attempts to do so having been made via more appropriate channels. The fact that the representatives submit overlapping requests and use the responses to requests as the basis to submit further requests, as well as the significant volume of other correspondence between the complainant and her representatives and the public authority, has been covered above. On the basis of these points taken together, the Commissioner finds that the requests do have the effect of harassing the public authority.
28. Turning to whether the requests have the effect of harassing individual members of staff, requests (d), (i) and (j) are for the names of individual staff members. The public authority has referred to special handling arrangements that are in place for dealing with correspondence from the complainant and her representatives and has stated that, where individual staff members have become known to the complainant and her representatives, a disproportionate amount of their time is then taken in dealing with them. On the basis of this evidence, the Commissioner considers it likely that knowledge of the names requested in (d), (i) and (j) would be used to communicate with those staff members directly as an alternative to communicating with the public authority via more appropriate channels, and so concludes that requests (d), (i) and (j) do have the effect of harassing members of staff within the public authority.
- iv. Can the requests otherwise fairly be characterised as obsessive or manifestly unreasonable?
29. In considering whether the complainant's requests can be fairly characterised as obsessive, the Commissioner has addressed whether

the line between persistence and obsession has been crossed by the complainant when making these requests. The Commissioner may conclude that an information request is obsessive where the requester is making requests in order to pursue an issue that could reasonably be regarded as resolved. This is in line with the approach taken by the Information Tribunal in the case *Ahilathirunayagam v London Metropolitan University* (EA/2006/0070), in which it stated when considering section 14(1):

"The background history between the Appellant and the University...and the fact that the request, viewed as a whole, appeared to us to be intended simply to reopen issues which had been disputed several times before..." (paragraph 32).

30. In this case, as noted above at paragraphs 14 to 16, the issue of the compensation award appears to be ongoing. The Commissioner does not, therefore, believe that the requests could be fairly characterised as obsessive on the basis that the complainant is attempting to pursue an overall issue that could reasonably be regarded as resolved. The complainant does, however, appear to be seeking to utilise the Act to extend some resolved ancillary issues as covered below.
31. As to whether these requests could fairly be regarded as manifestly unreasonable, the Commissioner considers that this is the case in relation to some of the individual requests and the reasons for this are as follows:
- In request (a), the complainant seeks to prolong a complaint that has already been acknowledged by the public authority and investigated.
 - From the wording of request (b) it is apparent that the public authority responded to the complainant's MP, but the complainant is again seeking to prolong the issue of this correspondence through this request.
 - In request (c) the complainant appears to be attempting to import perceived problems with information requests made to a different organisation to her dealings with the public authority.
 - In requests (d), (i) and (j) the complainant appears to be attempting to personalise her dealings with the public authority by requesting the names of individuals.
- v. Do the requests have any serious purpose or value?
32. The Commissioner has considered each of the requests separately when assessing whether these have any serious purpose or value. He concludes that the following requests do not.

- Request (a); it is evident from the wording of this request that the complaint referred to had already been acknowledged and investigated prior to this request. This is also an ancillary issue not related to the complainant's core concern.
- In requests (d), (i) and (j), the complainant requests the names of individuals. The view of the Commissioner is that the issues which the complainant and her representatives have are with the public authority in a corporate sense and that there is debatable value in requests for the identities of individuals.
- Requests (g) and (h); the Corporate Management Board is made up of the most senior officials within the public authority and exists to make overall strategic decisions. The Commissioner considers it unlikely that the complainant or her representatives would genuinely expect the Corporate Management Board to be directly involved in the complainant's issues and so these requests have no serious purpose.

Conclusion

33. In relation to all of the requests, the Commissioner has found that these would impose a significant burden in terms of expense and distraction, and would also have the effect of harassing the public authority. The Commissioner has additionally found that at least one of the other factors also applies in relation to requests (a), (b), (c), (d), (g), (h), (i) and (j). On the basis that at least three of the five factors set out above apply, for the reasons given above, to requests (a), (b), (c), (d), (g), (h), (i) and (j), the Commissioner finds that they are vexatious and so section 14(1) provides that the public authority is not obliged to comply with these requests.
34. In relation to requests (e) and (f), the decision of the Commissioner is more finely balanced as his finding was that only two of the five factors apply in relation to these requests. However, given the context of the wider dealings between the complainant and her representatives and the public authority, including the other information requests (both those in this case and the further requests that the public authority has reported having been received from the complainant and her representatives), the Commissioner considers it clearly justified to characterise requests (e) and (f) as vexatious. Section 14(1) therefore also applies in relation to these requests.

The Decision

35. The Commissioner's decision is that the public authority dealt with the requests for information in accordance with the Act in that it accurately characterised the complainant's requests as vexatious and, therefore, section 14(1) provided that the public authority was not obliged to comply with these requests.

Other matters

36. The Commissioner considers that the nature of the complainant's request is such that some of the information held by the public authority may be the personal data of the complainant, notwithstanding the fact that the public authority handled the request solely by reference to the Freedom of Information Act. He is therefore in the process of carrying out an assessment of the public authority's compliance with the Data Protection Act 1998 in relation to its handling of this matter.

Right of Appeal

37. 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

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 21st day of October 2010

Signed

**Jon Manners
Group Manager**

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

Legal Annex

Section 1

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 14

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"