

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 8 December 2011

Public Authority: Department for International Development
Address: 1 Palace Street
London
SW1E 5HE

Decision (including any steps ordered)

1. The complainant made three separate requests: two on 15 January 2010 and one on 8 February 2010. All three have been considered in this notice.
2. The Commissioner's decision is that the Department for International Development (the DfID) correctly deemed the complainant's requests to be vexatious in line with the provisions of section 14(1) of the Freedom of Information Act 2000.
3. The Commissioner requires the public authority to take no further steps to ensure compliance with the legislation.

Background

4. The complainant is an ex-employee of a corporation which is part of the World Bank Group (WBG). Her employment with this corporation was terminated several years ago. She alleges that this termination was carried out with the purpose of hiring cheaper personnel and consultants to do her work and further alleges that facts regarding this were concealed by the corporation. Following this, she has been party to legal proceedings with the WBG regarding the termination of her employment. These have concluded and did not find in her favour.
5. The complainant has used several avenues of complaint in hope of potential redress against the WBG and the DfID. These include Ministers of the DfID, Members of Parliament, the Serious Fraud Office (SFO), the Commissioner, the Cabinet Office, the World Bank President and World Bank Executive Directors. All of these have been in relation to the complainant's alleging of fraud within the WBG and in many cases her allegations of the DfID's collusion in these frauds.

6. The DfID conducted its own review of the projects in which the complainant alleged fraud and could find no supporting evidence. All subsequent submissions to the DfID by the complainant, either by information requests or related correspondence have been in relation to this subject matter, namely the complainant's alleging of fraud.
7. It should be pointed out that due to an administrative error by the Commissioner a decision notice regarding the complainant, section 14(1) of the Act and requests to the DfID has already been produced. This notice relates to requests made by the complainant after the ones being considered here. Because of this, no evidence has been considered in this notice that goes beyond the date of the oldest request being considered here, namely 8 February 2010.

Request and response

8. On 15 January 2010 and again on 8 February 2010, the complainant wrote to the DfID and requested information as follows:

Request 1 (made on 15 January 2010 and amended by complainant 17 January 2010; amendments in bold)

'1. Respecting a letter dated 28 September 2007 I sent to Alex Gibbs, British Executive Director to the International Monetary Fund (IMF) and the World Bank Group (WBG) attaching a copy of a complaint I filed with the WBG Department of Institutional Integrity (INT) dated 13 September 2007, on what date did Mr Gibbs or any other official at the British Delegation to the IMF/WBG forward it to DFID officials per my request that the complaint be considered by Douglas Alexander, International Development Secretary and UK Governor of the WBG?

The complaint in question libelled amongst other WBG officials, [a named person 1], Director of Operations, Human Resources & Administration Department at the World Bank. Archived minutes of DFID's Human Resources Committee now in the public domain disclose that [a named person 1] was appointed a non-executive director of that DFID committee and sat on it from at least the beginning of 2007 through 2008. That is to say, [a named person 1] was a key committee member over the period my complaint was considered by DFID and which resulted in an official ministerial letter and decision dated 31 January 2008 from [a named person 2] to state that DFID could not get involved in the matter and allegations I had raised.

*2. Did DFID **ministers** and their officials discuss the matter with [a named person 1] at any time, if so when and who were the **ministers** and officials in question?*

3. *Did DFID ministers and their officials discuss the matter with [a named person 3] then on a four-year secondment from the WBG to DFID (2004-08) as Director-General Country Programmes and a member of the DFID Management Board? **Who were the ministers and officials in question?***

4. ***When** and with which other persons at the WBG did DFID ministers and their officials discuss or otherwise communicate on the matter including, but not limited to: (i) officials at the UK Delegation; (ii) INT; (iii) the President to which INT reports directly; (iv) the Vice President for Human Resources & Administration? **Who were the ministers and officials in question?***

5. *What written material, including, but not limited to correspondence with, or minutes pertaining to discussions with any of: (i) the WBG; (ii) HM Treasury; (iii) House of Commons Select Committee/s; (iv) the National Audit Office; (v) the Cabinet Office; (vi) the Office of the Prime Minister; (vii) the Serious Fraud Office; and, (viii) the Metropolitan Police, does DFID hold in respect of the complaint allegations and all matters pertaining thereto?*

Request 2 (made 15 January 2010)

'1. Who nominated [a named person 4] to become a DFID non-executive director, member of the management board and chair of the audit committee?

2. Did DfID ask for, and did [a named person 4] provide, a declaration of conflict of interest being as she was Finance Director of Daiwa Securities SMBC which regularly acts as underwriter and co-lead manager of securities issued by the World Bank and International Finance Corporation for which Daiwa receives significant financial remuneration?

3. The bio on [a named person 4] provided on DFID's public website fails to declare the prima facie conflict of interest noted at (2). Why?

4. In the course of her employment with DFID, on how many occasions, and on what dates, has [a named person 4] declared a conflict of interest when considering matters pertaining to the World Bank and International Finance Corporation? What were those matters about?

5. On how many occasions, and on what dates, has [a named person 4] recused herself from DFID discussions and considerations pertaining to matters related to the World Bank and International Finance Corporation? What were those matters about?

Request 3 (made 8 February 2011)

'Under the FOI Act, DfID is asked to provide the following information in answer to the following questions:

- 1. Under what general and specific circumstances, and for what reasons, does and/or must, DfID seek legal advice and opinions from: (i) Treasury Solicitors; (ii) Lawyers and/or legal professionals in the Foreign & Commonwealth Office (FCO).*

 - 2. Specifically with respect to DfID's relations and transactions with international organisations, including, but not limited to, the international financial institutions, under what general and specific circumstances, and for what reasons, does and/or must, DfID seek legal advice and opinions from: (i) Treasury Solicitors; (ii) FCO Lawyers.*

 - 3. Where substantiated allegations of serious misconduct against an international organisation are brought to the attention of DfID as the designated representative of the UK Government on the boards of international organisations in which the UK is a member, under what circumstances, and for what reasons, does and/or must DfID refer the matter for legal advice or opinion to: (i) Treasury Solicitors; (ii) FCO lawyers and/or legal professionals.*

 - 4. In respect of Agreements and Arrangements entered into between DfID and any constituent part of the World Bank Group (WBG) for UK financial contributions to any WBG-administered trust fund, which of the following legal authorities, and under what specific circumstances, would DFID rely upon for legal advice, opinion and clearance, for entering into the Arrangement/Agreement in question: (i) Treasury Solicitors; (ii) FCO Lawyers; (iii) other legal authorities - in which case please specify.'*
9. The DfID responded on 12 February 2010. It stated that it would not be responding to any of the three requests as it considered them all to be vexatious, stating that, *'...we believe that your requests are causing unjustified disruption and harassment to DFID and placing an excessive burden on public resources.'*

 10. Following an internal review the DfID wrote to the complainant on 3 March 2010. It stated that its original response was correct and that it still considered the complainant's requests to be vexatious for the above reasons.

Scope of the case

11. The complainant contacted the Commissioner to complain about the way her requests for information had been handled. She did not consider her requests to be vexatious and believed them to have a serious purpose.
12. The Commissioner considers the scope of this investigation to therefore be whether or not the DfID were correct to consider the complainant's requests vexatious. The Commissioner has considered all three requests together, in line with the method taken by the DfID and the manner in which the complaint was made to the Commissioner by the complainant.

Reasons for decision

13. Section 14(1) of FOIA states that:

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

14. Previous Information Tribunal (Tribunal) decisions have aided the Commissioner when coming to a decision as to whether or not a request is vexatious. In determining whether a request is vexatious or not, 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:

- Would complying with the request impose a significant burden in terms of expense and distraction?
- Could the request fairly be seen as obsessive?
- Does the request have the effect of harassing the authority or causing distress to its staff?
- Is the request designed to cause disruption or annoyance?
- Does the request lack any serious purpose or value?

15. The Commissioner agrees with the Tribunal that the bar need not be set too high in determining whether to deem a request vexatious. He also agrees with the Tribunal that the term 'vexatious' should be given its ordinary meaning, which is that it 'vexes' (causes irritation or annoyance; in relation to section 14(1), the annoyance must be caused by the process of complying with the request).

Obsession

16. The DfID has argued that the three requests being considered here can be seen as obsessive when viewed in light of the longstanding grievance and employment dispute the complainant has had with the WBG and in the context and pattern of her dealings with the DfID. It has explained

that from 2007 up until the request being considered here, the complainant has gone through several avenues of complaint regarding her allegations of fraud against the DfID.

17. The complainant has submitted a series of correspondence to the DfID requesting it to investigate these allegations. Following an investigation by the DfID's internal audit team the complainant was informed that there was no basis to her allegations, the conclusion being that this was a personnel matter between her and the WBG. Subsequent to this conclusion, the complainant made at least three requests about the same subject matter, prior to the three being considered in this Notice.
18. The Commissioner would consider the first three requests made after the conclusion of the internal audit team's investigation when combined with the requests being considered in this Notice, in isolation, to not be a particularly large amount and therefore not strongly indicative of an obsession with the subject matter. However, when combined with the surrounding correspondence relating to the allegations of fraud, from 2007 up to the date of these requests, the Commissioner accepts there is more likelihood of the requests being obsessive.
19. The Commissioner considers that strong indicators of obsession with a subject are circumstances where a requestor persists with requests, despite being in possession of independent evidence that the issue has been resolved. In this case, the complainant has made independent complaints and allegations of fraud against the DfID to the Parliamentary and Health Service Ombudsman (PHSO), the Serious Fraud Office (SFO) and the Metropolitan Police Service (MPS). All three of these complaints were made before the date of the first request considered in this notice. Furthermore, all of these bodies decided to not progress the complainant's allegations any further. All three bodies made this clear before the complainant made the requests being considered in this notice.
20. The Commissioner would accept that the PHSO, SFO and MPS are all legitimate bodies in which to take allegations of governmental fraud. The Commissioner would also accept that none of these bodies wishing to pursue the allegations further indicates that the allegations were not valid and to pursue them further following these conclusions is an indicator of obsession with the subject matter.
21. The Commissioner considers this to be analogous to a previous Information Tribunal (Tribunal) decision in which a requestor continued to pursue a matter after independent investigations had suggested a contrary view¹. It was the persistence of the requestor, combined with

¹ <http://www.informationtribunal.gov.uk/DBFiles/Decision/i125/Welsh.pdf>

the background and context of the request which made the request vexatious in that instance. The persistence of the complainant here, when combined with the background and context of her dealings with the DfID, indicates this request as obsessive.

22. Given this, the Commissioner considers this request to be obsessive, when viewed in light of the requests on the same subject matter having been made after the PHSO, SFO and MPS have all concluded that there were no grounds to the complainant's allegations on the subject matter; the DfID's internal audit team finding there to be no reason to pursue an allegation of fraud; and the DfID having already concluded that this was an employment issue between the complainant and the WBG, not a DfID matter.

Significant Burden

23. The DfID has explained that dealing with the volume and frequency of the complainant's correspondence has been time consuming and has distracted staff across the DfID from their normal duties. Again, the Commissioner would concede that the number of requests made by the complainant in this case, when viewed in isolation, is not great. However, the Commissioner has considered this in the context of the cumulative effect of the voluminous nature and content of the requests and their varying complexity combined with all of the other voluminous and varied correspondence relating to her allegations of fraud to the DfID submitted prior to the requests being considered here. Consequently, the Commissioner considers that this request has imposed a significant burden on the DfID in terms of its continued and protracted correspondence with the complainant on the same subject matter.
24. The DfID has explained that at some stage up to the requests being considered here, every member of the DfID's FOI team have dealt with some of the complainant's correspondence. As well as this, 22 senior members of staff within other departments of the DfID have had to respond to correspondence, deal with accusations or have been in correspondence with other public authorities in relation to the complainant's issue.
25. Furthermore, the DfID has explained that much of the complainant's requests and correspondence overlap, are amended or added to in quick succession and often contain voluminous attachments. The Commissioner considers all of the above to indicate that dealing with the complainant's requests has distracted the DfID's staff from their core duties. To deal with the complainant's request further, particularly given the unwillingness of the PHSO, SFO and MPS to investigate her allegations further, would impose a significant administrative burden on the DfID.

Harassing the authority or causing distress to staff

26. The Commissioner accepts that there is no evidence to suggest that the complainant has the intention of harassing the DfID or its staff.
27. The level of correspondence that the DfID has had to deal with and the number of staff involved in doing this when combined with independent evidence that the complainant's issue has no validity, her unwillingness to accept these conclusions and her accusations of staff wrongdoing has had the effect of causing a great deal of frustration to the DfID's staff. The DfID has pointed out that this has been upsetting and has caused a great deal of annoyance to its staff, who have spent a disproportionate amount of time in dealing with the complainant's submissions and have tried hard to assist her with these.
28. The Commissioner does accept that the complainant's requests and correspondence have had the effect of harassing its staff. The Commissioner considers this evident when compared to a previous Tribunal decision, which is again analogous to the request being considered here and which the Commissioner finds persuasive².

Serious Purpose

29. The Commissioner accepts, and the DfID itself has noted, that the complainant has made her requests with the genuine belief that a fraud has occurred and that the requests, and this one specifically, have a serious purpose. The complainant clearly considers that a fraud has occurred and her reasons for contacting the DfID are her attempts to uncover this fraud. However, the Commissioner considers that none of the PHSO, SFO or MPS wanting to pursue the complainant's allegations further has mitigated any potential serious purpose and this has been further eroded by the complainant's unwillingness to accept any such conclusions.

Conclusion

30. The Commissioner considers that the complainant's request and the surrounding evidence is indicative of an obsession with the subject matter and has imposed a significant burden on the DfID. Even if his other findings were to be excluded, the Commissioner considers these

² <http://www.informationtribunal.gov.uk/DBFiles/Decision/i80/Gowers.pdf> - in particular '*...what we do find is that the Appellant often expressed his dissatisfaction with the CCU in a way that would likely have been seen by any reasonable recipient as hostile, provocative and often personal...and amounting to a determined and relentless campaign to obtain any information which he could then use to discredit them....we find that taken in their context, the requests are likely to have been very upsetting to the CCU's staff and that they...are likely to have felt deliberately targeted and victimised....*' (paras 53 & 54).

two characteristics of a vexatious request alone to be sufficient to support the DfID's conclusion that this request is vexatious.

Right of appeal

31. 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: 0300 1234504

Fax: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

32. 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.
33. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this Decision Notice is sent.

Signed

Alexander Ganotis
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