

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 20 December 2011

Public Authority: Department of Enterprise, Trade and Investment

Address: Room 72C Netherleigh
Massey Avenue
Belfast BT4 2JP

Decision (including any steps ordered)

1. The complainant requested communications between and from three named parties,
"referring to me and / or CAM Benchmarking Limited (CBL)."
2. The Information Commissioner's decision is that the Department of Enterprise, Trade and Investment (DETI) correctly applied section 14(1) to the request.
3. The Information Commissioner (the Commissioner) requires no steps to be taken.

Request and response

4. The complainant was dismissed from Invest Northern Ireland (Invest NI), following an investigation by KPMG accountants into a company he was managing. DETI became involved in June 2005 as Invest NI's then Finance Director formally asked it to use its powers under the Companies Order to appoint "competent persons" to secure the accounting records of the said company.
5. Invest NI's decision to dismiss the complainant was upheld at Industrial Tribunal and costs were awarded against the complainant. The company was subsequently wound up in 2008. Since then the

complainant has been in frequent correspondence with both DETI and Invest NI on a variety of issues surrounding the company.

6. On 17 May 2010, the complainant wrote to DETI and requested information in the following terms:

"I am now, in this email, requesting all communication between the three parties and separately emanating from any of them referring to me and / or CAM Benchmarking Limited (CBL), the parties being [name redacted], [name redacted] and [name redacted]."

7. DETI responded on 15 June 2010. It stated that the response constituted a refusal notice under section 17 of the FOIA as it was refusing to disclose the requested information to the complainant, under section 14(1) of the FOIA.
8. Following an internal review DETI wrote to the complainant on 7 July 2010. The reviewer upheld the original decision not to disclose the requested information, again citing section 14(1) of the FOIA as a basis for non-disclosure.

Scope of the case

9. The complainant contacted the Commissioner to complain about the way his request for information had been handled.
10. The complainant also raised other issues that are not addressed in this Notice because they are not requirements of Part 1 of the FOIA.

Reasons for decision

11. Section 14(1) of the FOIA states that

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

12. The Commissioner has issued guidance about vexatious requests which explains that for a request to be deemed vexatious, the Commissioner will consider the context and history of the request. The Commissioner will also consider the strengths and weaknesses of the arguments presented by the complainant and the public authority against the following five factors:

- whether the request can otherwise fairly be characterised as obsessive;

- whether the request has the effect of harassing the public authority or its staff;
 - whether compliance would create a significant burden in terms of expense and distraction;
 - whether the request is designed to cause disruption or annoyance; and
 - whether the request has any serious purpose or value.
13. The Commissioner does not consider it necessary to consider each of the five factors in every case, but has set out below the relevant factors in this case, and the applicable arguments.

Can the request fairly be seen as obsessive?

14. The Commissioner has considered whether or not the complainant's request can be characterised as obsessive or manifestly unreasonable, bearing in mind that at times there is a thin line between obsession and persistence on the part of a complainant.
15. The Commissioner has also had regard to the Tribunal's comments in the case of *Ahilathirunayagam v London Metropolitan University*.¹ The Tribunal found that even if a request appears reasonable in isolation, it may be vexatious when considered in the context of the correspondence generated by it, which in turn leads to new requests being made regarding the same subject area. The Commissioner has therefore taken into account the previous dealings the complainant had with DETI when determining whether the request can be correctly characterised as obsessive.
16. DETI has described the complainant's correspondence as being voluminous and repetitive in nature. It also referred to the "haranguing tone" of some of his correspondence and to his persistence and unwillingness to engage with any evidence contradictory to his own viewpoint.
17. The Commissioner has considered the evidence put forward by DETI in support of its position. This included details of correspondence from the complainant on similar issues, dating back to 2006. DETI indicated that the complainant made a similar request in March 2009, which it

¹ EA/2006/0070.

responded to, and that the complainant appeared to accept its response. DETI states that the current request is simply one item in a long history of correspondence between DETI and the complainant regarding the same topics and issues. Although DETI's involvement in the events which are the focus of the complainant's grievance was minimal, it holds at least three very full files and voluminous other correspondence from the complainant all relating to those events.

18. DETI states that the request which is the subject of this notice was an attempt to re-open issues which had previously been resolved by way of decisions made by other independent bodies such as KPMG and the Industrial Tribunal. The complainant also made the same request to Invest NI under discovery as part of a High Court case, which has now concluded. A representative of Invest NI has confirmed to the Commissioner that the complainant received the information under discovery. Since the complainant was therefore in possession of both the information, having obtained it under discovery, and of independent evidence on the same issues from other independent bodies, the Commissioner considers that the complainant was requesting information he already had, thereby attempting to re-open previously resolved issues. The Commissioner therefore considers that the complainant's request can be fairly characterised as obsessive.

Does the request constitute a significant burden in terms of expense and distraction?

19. When determining whether a request imposes a significant burden, the Commissioner's view is that a public authority should consider whether complying with the request would cause it to divert a disproportionate amount of resources from its core business.
20. The Commissioner is also assisted by the Information Tribunal's comments in the case of *Gowers v the Information & London Borough of Camden*.² The Tribunal emphasised that previous requests received may be considered in the context of the request in question.
21. It is therefore appropriate for the Commissioner to take into account the complainant's previous interaction with a public authority when determining whether the request represents a significant burden to it. This means that even if the request does not impose a significant burden when considered in isolation, it may do so when considered in context. Therefore in this case the Commissioner has considered not

² EA/2007/0114

only the request itself but also the background and history to the request, which has generated a sizeable amount of correspondence between the complainant and DETI.

22. DETI advised the Commissioner that it had received (and continued to receive) a considerable volume of correspondence from the complainant all relating to the same underlying issues. The Commissioner accepts that the request itself, whilst seemingly straightforward when taken in isolation, was part of a pattern of voluminous correspondence which had diverted staff away from their core functions and caused considerable staff time and costs to be expended.
23. The Commissioner has considered DETI's arguments, and the evidence it provided. He has seen evidence to support DETI's view that requests generate correspondence, which in turn generates further requests. This imposes a significant burden on DETI as it must deal with the requests and the correspondence. The evidence provided by DETI to the Commissioner is a schedule of correspondence between DETI and the complainant, which is attached as a confidential annex to this notice.
24. The Commissioner is therefore satisfied that, although the complainant's request may not be complex or burdensome in itself, when taken into the context of the complainant's history and the entirety of his previous correspondence and dealings with DETI on the same underlying issues, it does constitute a significant burden in terms of both expense and distraction.

Does the request have the effect of harassing the public authority or its staff?

25. In determining whether a request has the effect of harassing an authority or causing distress to staff, the Commissioner's guidance states that the focus should be on the likely effect of the request seen in context, and not on the intention of the requester. The relevant question is whether having to deal with the request would be distressing or harassing, regardless of the subject of the request.
26. The Commissioner considers that relevant factors could include the volume and frequency of correspondence, the use of hostile, abusive or offensive language, an unreasonable fixation on an individual member of staff, or mingling requests with accusations or complaints.
27. The Commissioner has seen evidence to support DETI's assertion that there is a high volume and frequency of correspondence in relation to

these requests. DETI has described the complainant's approach as "hostile, provocative and personal" and has stated that this has had the effect of harassing staff in DETI. DETI has further stated to the Commissioner that the complainant's correspondence has contained implied and explicit allegations against individual members of staff, which has caused a high level of stress among staff within DETI. This is exacerbated by the fact that the complainant routinely copies correspondence to other external persons and organisations which are not immediately within the context of his grievance.

28. The Commissioner has examined a considerable amount of information relating to the complainant and its background and history. He considers that the language and tone of the complainant's correspondence is often abusive, at times attacking the personal integrity of certain staff members. In light of this the Commissioner accepts DETI's assertion that DETI staff feel harassed by the complainant's approach and the tone of his correspondence. Therefore the Commissioner is satisfied that the complainant's requests have the effect of harassing DETI and causing distress to its staff.

Conclusion

29. The Commissioner notes the complainant's explanation that he has been in a long-standing dispute regarding his dismissal from Invest NI, in which DETI became involved in 2005. The complainant clearly feels that he has been treated unfairly and states that he is making the request for good reasons, with no intention of placing a significant burden on DETI or harassing its staff. However the Commissioner is of the view that DETI has provided strong evidence that the complainant's request represents a pattern of correspondence, often including personal comments and accusations which have the effect of harassing the DETI staff dealing with the complainant. The Commissioner is of the view that compliance with the complainant's request would be likely to lead to further correspondence and requests, which would be likely to place a significant burden on DETI. Therefore the Commissioner is satisfied that the request was vexatious, and that DETI correctly applied section 14(1) to it.

Other matters

30. Section 16 of FOIA obliges a public authority to provide advice and assistance to a requestor. In March 2009 the complainant made a

request to DETI, point 4 of which was for the same information in the request which is the subject of this notice. Although DETI responded promptly, it did not address point 4 of the request. The complainant did not pursue this point, except to state in subsequent correspondence to DETI that he would wait to obtain it under discovery. The Commissioner considers that, by way of advice and assistance, DETI should have directed the complainant to Invest NI and informed him that he could obtain the information he sought in point 4 of his request under discovery.

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,
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

Faye Spencer
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF