

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 28 March 2011

Public Authority: The Student Loans Company
Address: 100 Bothwell Street
Glasgow
G2 7JD

Summary

The complainant requested the issue date of a specific version of a document known as the 'Correspondence Manual' from the Student Loans Company (the "SLC"). This was refused as the SLC believed the request was made as part of an old case which it considered to be closed. When the complainant made it clear this was a new request, the SLC refused to provide it under section 14(1) of the Freedom of Information Act 2000 (the "Act"). The Commissioner finds that the SLC was correct to refuse the request as vexatious. He also found some procedural breaches of the Act.

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. On 22 June 2007 the complainant asked the SLC for 12 listed documents in electronic format. Following the Commissioner's intervention, the SLC gave the complainant all of the documents in electronic format apart from one (a 'Correspondence Manual'). This required manual redaction. The SLC argued that the redacted hard copy was too large to be easily scanned and emailed by its systems and that it was not reasonably practicable to provide an electronic copy. It therefore provided the document as a paper copy (with some redactions).

3. The matter was referred to the Commissioner approximately one year after the complainant's original request. The SLC explained that the version of the 'Correspondence Manual' that existed at the time of that request was version 19, but that now version 19 was held only in hard copy format. The current version of the document was now version 20 and this was held in electronic format. The SLC explained that version 19 and 20 did not differ much and it would be happy to provide version 20 in electronic format.
4. In a Decision Notice regarding the above case (FS50241605) dated 14 December 2009, the Commissioner concluded that it would not be reasonably practicable for the SLC to provide version 19 of the document in electronic format.
5. In that Decision Notice the Commissioner made clear that he had taken into account the particular circumstances of this case in coming to his conclusion and that he was mindful that the SLC had *"offered to provide the updated document which it does hold in electronic format to the complainant"*.
6. The complainant appealed to the Information Tribunal (the "Tribunal") (EA/2010/0026). In April 2010, in an attempt to resolve the dispute, the Tribunal offered the complainant an electronic copy of version 19 of the document. However, despite the offer, the complainant indicated that he wished to continue with the appeal.
7. The appeal was struck out and the complainant made an application to set aside this decision. This was refused and the complainant made a written application to the Tribunal for permission to appeal to the Upper Tribunal. The (First Tier) Tribunal refused this appeal and informed the complainant he could appeal directly to the Upper Tribunal. The Commissioner understands that the complainant has advised the First Tier Tribunal that he intends to pursue such a course of action.
8. On 28 December 2006 the complainant asked the SLC to provide him with a document entitled "CLASS Training Manual". A Decision Notice was issued on 30 July 2008 requiring the SLC to disclose it (case reference FS50156040). The SLC supplied the requested information to the complainant in hard copy format.
9. The complainant made a new complaint to the ICO about the format in which the "CLASS Training Manual" had been provided. A Decision Notice was issued on 4 February 2009 in which the Commissioner ordered the SLC to provide the document in electronic format (case reference FS50217416).

10. On 22 December 2007 the complainant wrote to the SLC and requested an electronic copy of its administrative procedures and policies covering the receipt and processing of applications for the deferment of the repayment of student loans. The SLC provided a hard copy of the requested documents.
11. In February 2009 the Commissioner issued a Decision Notice (case reference FS50217416) ordering the SLC to provide these procedures and policies in an electronic format. In April 2009 the complainant repeated his request for electronic copies and asked for an internal review. The SLC explained that it had not provided the information electronically because at the time of the request in December 2007, it had access to limited scanning facilities. The case was referred to the Commissioner. In January 2010 the SLC provided the requested documents in electronic format.

The request

12. On 16 May 2010 the complainant wrote to the SLC and asked them the following:

"You offer to provide me with an electronic copy of issue 20 of the document known as the Correspondence Manual. If you would advise me of the date on which issue 20 of the document came into effect at Student Loans Company, I would be grateful."
13. The SLC and the Commissioner both consider that this is a request for the date on which version 20 of the 'Correspondence Manual' came into effect. It is not a request for version 20 of the document itself.
14. On 25 May 2010 the SLC informed the complainant that no further information would be provided in relation to this request. It explained that his appeal to the Information Tribunal on the issue of the 'Correspondence Manual' had been struck out and given the time that had elapsed since its offer to provide him with an electronic copy of version 20, which he had never taken up, it was of the opinion that this matter was now concluded.
15. On 26 May 2010 the complainant informed the SLC that he required a response under the Act. He explained that he could appeal the Tribunal's findings to the Upper Tribunal and that the information he had asked for about the date on which version 20 of the 'Correspondence Manual' came into effect was pertinent to the case. He also argued that the SLC's refusal to provide the requested information countered the findings of the Commissioner in his Decision Notice of 14 December 2009 (see paragraph 5).

16. On 7 June 2010 the SLC asked the complainant to clarify that his request was a new request under the Act.
17. On 8 June 2010 the complainant requested an internal review of the SLC's response.
18. The SLC explained that its internal review would consider:
 1. Whether or not the request for an internal review was appropriate.
 2. Why no explanation for non-disclosure of information was provided.
 3. Its delays in dealing with the request of 16 May 2010.
19. The SLC explained it had considered that the complainant's request for information of 16 May 2010 had been sent as part of case reference number FS50241605. In that case the complainant had requested information including an electronic copy of version 19 of the 'Correspondence Manual' (22 June 2007). During the course of the investigation, the SLC offered the complainant an electronic copy of version 20 of the same document (in an email dated 1 October 2009). He did not take up this offer.
20. No further communication was received from the complainant until his email of 16 May 2010. The SLC regarded this as part of his original request and refused it as the SLC considered the matter closed.
21. The complainant's request for an internal review confirmed to the SLC that he considered the request as a new request. As the SLC had not previously treated it as a new request, it considered that an internal review was not appropriate at that time.
22. Instead, the SLC provided a formal response to the request on 15 June 2010. It informed the complainant that it regarded his request as vexatious in accordance with section 14(1) of the Act.
23. The SLC was satisfied that until this clarification was received, it was correct not to provide a formal response to the complainant.
24. The SLC is aware that it should respond to a request for information within 20 working days and that it has a duty to clarify any requests within this time period. It considered that this response was within the 20 day limit.
25. On 22 July 2010 the SLC conducted an internal review and reiterated its position that the request was vexatious in accordance with section 14(1) of the Act.

The Investigation

Scope of the case

26. On 31 August 2010 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider the following points:
- He did not accept that his request was vexatious.
 - He did not consider that the SLC had responded within 20 working days.

Chronology

27. On 14 October 2010 the SLC wrote to the Commissioner and submitted further arguments to support its application of section 14(1) of the Act to this request.
28. On 21 December 2010 the Commissioner received further arguments from the SLC.
29. On 17 January 2011 the complainant made his own submissions to the Commissioner in support of his request.

Analysis

30. The full text of section 14(1), section 10(1) and section 17(5) can be found in the Legal Annex to this Notice.

Substantive Procedural Matters

Section 14 Vexatious and repeated requests

31. Section 14(1) states:

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

32. In the ICO's published guidance about vexatious requests (Awareness Guidance 22)¹, it is stated that for a request to be proved vexatious, it

¹ This guidance can be found on the ICO website at:

is necessary to make strong arguments under one or more of these headings:

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

33. It is not necessary for all of the above criteria to be satisfied in order for a request to be deemed vexatious; indeed a strong argument in one may outweigh weaker arguments in the others. As the Information Tribunal commented in the case of *Coggins v the Information Commissioner (EA/2007/0130)* ("Coggins"):

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

Could the request fairly be seen as obsessive?

34. The guidance to vexatious requests explains that the wider context and history of a request is important to this question. Relevant factors include the volume and frequency of correspondence, requests for information that has already been seen or a clear intention to reopen issues that have already been debated and considered.
35. In this case, the requestor has a substantial history of making freedom of information requests to the SLC. Between January 2006 and February 2008, the SLC has a written record of 47 separate requests made by this complainant under the Act.
36. The SLC has argued that this history of repeated and related complaints and requests for information, made under the Data Protection Act 1998 as well as the Act, demonstrates that the

http://www.ico.gov.uk/upload/documents/library/freedom_of_information/detailed_specialist_guides/vexatious_and_repeated_requests.pdf

complainant's requests can fairly be seen as part of an obsessive course of conduct.

37. This Notice is concerned with one of two recent requests the complainant made to the SLC in May and July 2010 (see also FS50351891). The complainant has argued that his correspondence with the SLC in connection with these two complaints has been neither voluminous nor frequent and consists of 9 emails only.
38. The complainant has also argued that his request is not for information he has already seen and it is not an attempt to reopen an issue already debated and considered. For these reasons he does not consider his request to be obsessive.
39. However, the Commissioner considers that the complainant's current request for the date of issue of the electronic copy of version 20 of the 'Correspondence Manual' is very obviously linked to his past complaints. It would appear to be an attempt to reopen an issue which has been considered at length by both the Commissioner and the Tribunal (in case EA/2010/0026). It can therefore fairly be described as obsessive.
40. The complainant has argued that he requires this information for use as factual evidence in a further appeal to the Upper Tribunal; however the First Tier Tribunal has informed him that he does not have valid grounds for an appeal to the Upper Tribunal.
41. It is the Commissioner's view that the complainant's appeal to the Upper Tribunal stems from his request to the SLC of June 2007 (FS50241605). He complained to the Commissioner about the SLC's refusal to provide him with an electronic copy of version 19 of a 'Correspondence Manual'. The Commissioner found that the SLC had handled the request in accordance with the Act as he was satisfied that it was not reasonably practicable for the SLC to provide version 19 in electronic format.
42. The complainant appealed and during the appeal proceedings he was offered an electronic version of the requested document by the Tribunal. However, the complainant indicated that he still wished to continue with the appeal.
43. His "motivating factors" for this included:
 - (1) the public interest in ensuring the Commissioner's compliance with the law, in particular with regard to adverse consequences arising from the Commissioner's 'robust approach to complaints';

- (2) the public interest in ensuring the SLC's compliance with the Act in the context of his underlying concerns about the way it handles information requests;
 - (3) vindication of the complainant, in particular given the arduous nature of the circumstances of the complainant.
44. The Tribunal however, struck out this appeal on the grounds that the complainant had originally received the requested information, (albeit in a different format to that required) and had since been offered it in the format requested. The Tribunal also observed that "vindication" was no basis for an appeal. The Tribunal was therefore satisfied that there was no reasonable prospect of the complainant's case succeeding.
 45. The Tribunal also explained that it did not have jurisdiction to monitor or influence the way the Commissioner carries out his statutory obligations or the way in which public authorities carry out their duties under the Act. It explained that none of the matters raised by the complainant would amount to grounds of appeal that the Tribunal had jurisdiction to consider.
 46. The complainant made an application to set aside this decision. This was refused by the Tribunal.
 47. The complainant then made a written application to the Tribunal for permission to appeal to the Upper Tribunal against the decision to strike out the appeal. This was refused.
 48. It was explained that the right to appeal against a decision of the Tribunal is restricted to those cases that raise a point of law. The complainant had argued that his case raised eight errors of law. However, the Tribunal found that the application for appeal did not identify any ground that amounted to an error of law. The Tribunal could not therefore grant leave to appeal and permission was refused.
 49. Consequently, the complainant has exercised his right to apply directly to the Upper Tier Tribunal for leave to appeal. The current information request regards information he believes he requires for that appeal.
 50. The Commissioner acknowledges that in appealing directly to the Upper Tier Tribunal, the complainant is exercising his legitimate right; however, the Commissioner considers that the complainant's refusal to accept the repeated judgment of the Tribunal demonstrates his intention to reopen issues that have already been debated and considered. This is because the request which is the subject matter of this decision notice – the date version 20 of the 'Correspondence

Manual' came into effect – relates directly to the matters disposed of in a previous Tribunal case.

51. The Commissioner considers that the complainant's history of requests and his refusal to accept the view of the Tribunal does indicate obsessive behaviour and that there are therefore strong grounds for refusing the request as vexatious under this heading alone.

Is the request harassing the authority or causing distress to staff?

52. The SLC has argued that the volume of requests means that, taken together, they have formed a pattern whose cumulative effect would be characterised by any reasonable person as obsessive and manifestly unreasonable and therefore have the effect of harassing the SLC.
53. The Commissioner's guidance suggests that the request should be viewed in context and that relevant factors could include the volume and frequency of correspondence.
54. In addition, in the case *Gowers vs. the Information Commissioner and London Borough of Camden (EA/2007/0114)* ("*Gowers*") the Tribunal found that if the nature of the request was that it was "*likely to vex*" the person receiving it, the request could reasonably be said to be vexatious.
55. Taking into consideration the volume of correspondence since the original request was made in 2007, the Commissioner is satisfied that the effect of the complainant's correspondence is undoubtedly harassing. This request is part of a pattern of correspondence which although not identified as personal or hostile, puts pressure on the organisation and is likely to vex the person receiving it.

Would complying with the request impose a significant burden in terms of expense and distraction?

56. The guidance states that when deciding if the request would impose a significant burden, it should be considered whether providing a response would divert or distract staff from their usual work.

57. The Tribunal in *Gowers* said:

"...that in considering whether a request is vexatious, the number of previous requests and the demands they place on the public authority's time and resources may be a relevant factor" (paragraph 70).

58. In the case of *Coggins*, the Tribunal found that a "*significant administrative burden*" was caused by the complainant's correspondence with the public authority, which started in March 2005

and continued until the public authority applied section 14 of the Act in May 2007. The complainant's contact with the public authority ran to 20 information requests, 73 letters and 17 postcards. The Tribunal said this contact was:

"...long, detailed and overlapping in the sense that he wrote on the same matters to a number of different officers, repeating requests before a response to the preceding one was received....the Tribunal was of the view that dealing with this correspondence would have been a significant distraction from its core functions..." (paragraph 28).

59. In this instance the complainant has a history of making repeated requests and complaints to the SLC. When considered collectively the Commissioner considers that the correspondence over the past 4 years will have involved the SLC in a significant workload which will have distracted it from its core functions and placed an unreasonable demand upon its staff.
60. The guidance also states that the wider context to a request can be relevant: if responding to this request would lead to significant number of further requests it may fairly be described as imposing a significant burden.
61. The complainant has argued that his request was made with a view to resolving a particular issue for the purpose of assisting with the determination of his appeal. He has argued that there is no reason why providing the requested information would lead to a series of linked requests or complaints.
62. However, the SLC has argued that the possibility exists that compliance with this request would lead to further correspondence.
63. The Commissioner considers that this seems likely in the circumstances. Past experience clearly suggests that the provision of this information would lead to further correspondence and a further burden on the SLC.
64. The Commissioner is also mindful that responding to this request would continue to involve the SLC in work which diverts staff from their usual activities. It has not been suggested that the request in itself would be burdensome; however it is apparent that it is one request in a pattern of requests and correspondence which has created a significant workload in the past and is likely to lead to further work.

Is the request designed to cause disruption or annoyance?

65. It is difficult to demonstrate that a requestor's intention is to cause disruption and the SLC acknowledges this. However it does consider

that the complainant's multiple requests all relate to an underlying complaint and therefore demonstrate that the purpose is to cause disruption. The SLC does not believe that the complainant's behaviour indicates a genuine desire to receive the information. The SLC has argued that this is demonstrated by requests for the same information at different points in time.

66. The Commissioner also considers it to be relevant that the complainant has received a copy of version 19 of the 'Correspondence Manual'. The SLC has provided the complainant with a hard copy of the document, as it existed at the time of his original request. In addition, during the appeal proceedings, the complainant indicated that even if the Tribunal provided him with a copy of the information in the form he was requesting (electronic format), he would not wish to withdraw his appeal.
67. To request the date of issue of version 20 of the document does suggest that the complainant is motivated by a desire to make a point. His past behaviour would appear to confirm this.
68. However, the complainant does consider that there is a serious purpose behind the request. The Commissioner is therefore unable to conclude that the request is designed to cause disruption or annoyance.

Does the request lack any serious purpose or value?

69. The guidance is clear that the Act is not generally concerned with the motives of an applicant; however if a request clearly lacks a serious purpose or value it may support an argument that it is vexatious.
70. The complainant has argued that his request has a serious purpose and that he requires the information as it is pertinent to his appeal to the Tribunal.
71. The SLC has explained that the complainant has already been provided with version 19 of the 'Correspondence Manual' in hard copy and that it offered to supply a copy of version 20 on 1 October 2009, which the complainant did not act upon. The SLC considers that given the timescale between the offer and subsequent repeat of the request, and given the fact that there is also no real variance in content between version 19 and version 20, the request lacks a serious purpose.
72. The request clearly holds significance for the complainant and in isolation it could be argued that there is a serious purpose in being provided with the date of issue of version 20 of the 'Correspondence Manual'. However, the Commissioner is mindful that 7 months elapsed

before the complainant made this request after he was offered a copy of the manual itself in October 2009.

73. The complainant has been provided with a hard copy of the manual he originally requested and he has since been offered electronic copies of versions 19 and 20. The issue of whether the SLC could have provided version 19 of the manual in electronic format in 2007 has been considered and rejected.
74. It is apparent that this request has no purpose other than to revisit past complaints which have already been dismissed by the Commissioner and the First Tier Tribunal. The Commissioner is therefore satisfied that it lacks any serious purpose or value.

Conclusions

75. In the light of the above arguments, the Commissioner's conclusion is that the public authority was correct to refuse this request as vexatious.
76. This request follows four years of correspondence with the SLC and it complies with the criteria for an obsessive request set out in the Commissioner's guidance. Whilst the complainant might not intend to harass the SLC, the effect of this request is certainly likely to vex the staff receiving it. It also appears that the provision of this information will not be the end of the matter. The request can be seen to be an attempt to continue with a line of questioning which the SLC and the Tribunal have already addressed.

Procedural requirements

Section 17(5)

77. Section 17(5) of the Act requires that if a public authority wishes to apply section 14 to an information request, it should inform the applicant of this fact within the time for complying with section 1(1).
78. The request was dated 16 May 2010 and quoted the reference number of an old case (FS50241605). The SLC provided a response to the complainant 7 working days after this date. However, this response informed the complainant that the SLC considered the matter to be closed and that it would not provide any further information in relation to that case. The SLC later confirmed that it did not consider this request to be a new information request.
79. Once the complainant had indicated that he regarded this request as a new request (in his request for an internal review of 26 May 2010), the SLC provided a further response to the complainant 21 working days

after the request (on 15 June 2010). This time the SLC informed the complainant that the requested information was exempt under section 14(1) of the Act.

80. The Commissioner therefore finds that in taking 21 days to respond, the SLC failed to issue a refusal notice to the complainant within the statutory time period for compliance with section 1(1). The SLC is therefore found to be in breach of section 17(5).

The Decision

81. 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:

- The public authority correctly refused the request for information as vexatious under section 14(1) of the Act.

82. However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:

- The SLC failed to provide a refusal notice to the complainant within the statutory time period contained within the provisions set out in section 17(5).

Steps Required

83. The Commissioner requires no steps to be taken.

Right of Appeal

84. 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

85. 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.

86. 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 28th day of March 2011

Signed

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

Legal Annex

Section 1: General right of access

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 10: Time for Compliance

Section 10(1) provides that –

“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.”

Section 14: Vexatious or Repeated Requests

Section 14(1) provides that –

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

Section 17: Refusal of Request

Section 17(5) provides that-

“A public authority which, in relation to any request for information, is relying on a claim that section 12 or 14 applies must, within the time for complying with section 1(1), give the applicant a notice stating that fact”.