

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

Date: 7 July 2011

**Public Authority:** One North East (Regional Development Agency)  
**Address:** Stella House  
Goldcrest Way  
Newburn  
Riverside  
Newcastle upon Tyne  
NE15 8NY

### Summary

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The complainant made a request for information about project-related financial transactions between One North East and subsidiary companies, and for breaches of procurement requirements by One North East, together with "clawback" of grant. One North East responded citing a refusal under section 14(1) of the Act (vexatious request). The Commissioner, on balance, considers that the public authority was entitled to refuse the request under section 14(1).

### The Commissioner's Role

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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

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2. The complainant is a director of a company. This company made a formal complaint to One North East in December 2009 about the way its funding application had been dealt with and managed. The complainant himself also submitted a number of freedom of information requests via [www.whatdotheyknow.com](http://www.whatdotheyknow.com) relating to the management of Agency funds, which was one of the concerns raised in the formal complaint.

3. It became apparent on 6 January 2010 that there was a link between the formal complaint and the freedom of information requests, after the complainant requested that both the complaint and requests should be dealt with at a meeting arranged between One North East and the complainant on 27 January 2010, convened to establish agreement about the substance of the formal complaint.
4. The company's formal complaint and subsequent appeal was investigated by One North East and the findings communicated. In addition to the steps required by its complaints process, One North East asked a director from the company who was temporarily seconded to One North East to review the findings from an independent fund management perspective. His findings upheld the original funding decision. Both the complaint and One North East's application of section 14(1) and internal review outcome were reviewed and upheld by a One North East non-executive Board member.
5. One North East has explained that throughout the formal complaints process, it continued to receive freedom of information requests from the complainant, often as a result of its responses to his previous requests or following meetings with One North East employees. One North East has stated that *"the volume, frequency and overlapping nature of the requests necessitated the creation of a separate spreadsheet within the Agency's existing FOI system to track [company's name redacted] requests for compliance purposes."*
6. One North East further advised that following the completion of the formal complaints process on 10 June 2010, it continued to receive freedom of information requests from the company and the complainant, resulting in the request that is the subject of this Notice being refused under section 14(1) of the Act.

## The Request

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7. The complainant requested the following information via the *WhatDoTheyKnow.com* website from One North East on 13 July 2010:  
  
*"This request under the FOI Act is related to project related financial transactions with subsidiary companies and/or 'Special Purpose Vehicles' and funding recipients' breach of procurement requirements and 'clawback' of grant by ONE North East for the financial years of 2008/09, 2009/10 and 2010/11."*
8. There were nine separate points listed under this request which can be found under Annex A of this Notice.

9. One North East issued a refusal notice on 15 July 2010 citing section 14(1) (vexatious request).
10. The complainant requested an internal review on 19 July 2010. One North East provided the outcome of its internal review on 23 August 2010 upholding the original decision to apply section 14(1) to the request. The review also considered whether the refusal notice should have been issued to the complainant in his personal capacity and whether it was appropriate to refer to the company and to take previous dealings with the Directors of the company into consideration in refusing the request, and concluded that it was appropriate and reasonable.

## The Investigation

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### Scope of the case

11. On 23 November 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 his view that, as opposed to the 149 requests cited by One North East, he had submitted eight requests. His view is that much of his correspondence relating to his requests became necessary for reasons of clarification, because the information provided by One North East had either been *"incorrect, incomplete or contradictory"*.
12. The Commissioner also sought to determine whether One North East had properly applied section 14(1) of the Act to this request.
13. The complainant also raised other issues that are not addressed in this Notice because they are not requirements of Part 1 of the Act.

### Chronology

14. The Commissioner wrote to both One North East and to the complainant on 11 January 2011 advising that the complaint had been accepted for investigation.
15. On 9 February 2011 One North East provided a comprehensive submission in support of its application of section 14(1), which included background detail and a file of key correspondence.
16. On 12 April 2011 the Commissioner wrote to the complainant outlining that the scope of his investigation would be to determine whether One North East had properly applied section 14(1) to his request.

17. In the absence of any contention from the complainant about the intended scope, the Commissioner contacted One North East on 9 May 2011 asking if it had any additional arguments in support of its application of section 14(1) that it wished him to consider. One North East confirmed that it did not wish to add to its previously submitted arguments.

## Analysis

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### Substantive Procedural Matters

#### Section 14 Vexatious or repeated requests

18. Under section 14(1), a public authority does not have to comply with vexatious requests. There is no public interest test.
19. Section 14(1) of the Act states:

*“Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious”.*
20. The term “vexatious” is not defined further in the Act. The Commissioner notes, however, that it is the request rather than the requester which must be vexatious.
21. The Commissioner issued revised guidance entitled *“Vexatious or repeated requests”* in December 2008 as a tool to assist in the consideration of when a request can be treated as vexatious. The guidance sets out key questions for public authorities to consider when determining if a request is vexatious which are set out below.
  - (i) Could the request fairly be seen as obsessive?
  - (ii) Is the request harassing the authority or causing distress to staff?
  - (iii) Would complying with the request impose a significant burden in terms of expense or distraction?
  - (iv) Is the request designed to cause disruption or annoyance?
  - (v) Does the request lack any serious purpose or value?
22. The guidance indicates that an affirmative response to all of the questions is not necessary for a request to be deemed vexatious. However, it states that to judge a request as vexatious a public authority should usually be able to make persuasive arguments under more than one of the above headings.

23. Accordingly, the Commissioner has considered whether One North East has provided sufficient arguments in support of any of the criteria above in its application of section 14(1) in this particular case.
24. The Commissioner notes that the Information Tribunal in *Hossack v Department for Work and Pensions* (EA/2007/0024) stated, at paragraph 11, that the threshold for finding a request vexatious need not be set too high as the consequences are much less serious than the finding of vexatious conduct in other legal contexts.
25. In *David Gowers v Information Commissioner* (EA/2007/0114, paragraph 27) the Information Tribunal noted that when considering section 14:

*"The proper inquiry must be as to the likely effect of the request on a reasonable public authority. In other words, the standard to be applied is an objective one"*.
26. In considering whether or not a request is vexatious, the Commissioner considers it appropriate to take into account the context and history of a request, in addition to the request itself, in relation to one or more of the five factors listed above.

***Could the requests fairly be seen as obsessive?***

27. In the Commissioner's view, the test to apply here is one of reasonableness. In other words, would a reasonable person describe the request as obsessive or manifestly unreasonable? In answering this question, the Commissioner's view is that the wider context and history of a request is important as it is unlikely that a one-off request could be obsessive.
28. The Commissioner's published guidance states:

*"A request may not be vexatious in isolation, but when considered in context (for example if it is the latest in a long series of overlapping requests or other correspondence) it may form part of a wider pattern of behaviour that makes it vexatious"*.
29. In relation to the request being considered in this case, One North East told the complainant that it had not taken the decision to apply section 14(1) to this request lightly, explaining that it had:

*"taken into account the context and history of these requests and the requests previously made, and the information provided and your complaints (made through [company name redacted])"*.

30. It also set out the reasons it had reached its decision, which included its view that the complainant had *"submitted 149 separate requests for information since 3 December 2009"*. One North East told the complainant that:

*"almost exclusively, these requests have related to the details surrounding Agency funded investment initiatives or the Agency's FOI handling processes. We have responded to every request except those to which the refusal notice relates"*.

31. The complainant contended that he had made eight separate requests to One North East and that One North East has classified each single request as *"multiple requests"*. He also stated that *"the information provided by ONE has either been incorrect, incomplete or contradictory..."*.

32. The Commissioner has reviewed the key correspondence relating to both the formal complaint and request chronology and accepts that there is a background of requests for information and complaints in this case. One North East has outlined the wider context and history which culminated in the request, explaining that it holds *"a substantial amount of documentation in relation to this matter and can provide copies of any additional documents that [you] may require"*. It also told the Commissioner that, in its view:

*"The Agency has a strong tradition of openness and transparency and a long history of providing prompt and helpful responses to requests for information...the decision to apply the section 14(1) exemption was taken only after much serious consideration.*

*The number of thematic requests received, the volume and tone of the correspondence, the related internet campaign and the fundamental unwillingness to accept the findings of a number of investigations, indicates that the complainant was behaving in an obsessive manner..."*.

33. In considering the question of reasonableness in the context of whether a request is vexatious, the Commissioner considers it will be easier to identify these requests when there has been frequent previous contact with the requester or the request forms part of a pattern, for instance when the same individual submits successive requests for information. Although these requests may not be repeated in the sense that they are requests for the same information, taken together they may form evidence of a pattern of obsessive requests so that an authority may reasonably regard the most recent as vexatious.
34. The Commissioner accepts that there is often a fine line between obsession and persistence and each case must be considered on its

own facts. In this case, taking into account the context and background to the requests, and the frequency with which the complainant contacted One North East in relation to his request, the Commissioner considers that the requests can fairly be seen as obsessive.

***Do the requests have the effect of harassing the public authority or its staff?***

35. The Commissioner acknowledges that there will often be an element of overlap between various vexatious criteria. For instance, where a request is considered obsessive, it may be the case that it will have the effect of harassing a public authority. Whilst the complainant may not have intended to cause distress, the Commissioner must consider whether this was the effect. This is an objective test, based on whether a reasonable person would be likely to regard the request as harassing or distressing.
36. One North East has explained its view that the volume and frequency of the *“thematic and obsessive correspondence from the requestor had the effect of harassing the Agency”*. It stated that the intermingling of freedom of information requests with complaints further contributed to this harassing effect. In support of this argument, One North East provided the Commissioner with examples of flows of correspondence between it and the complainant.
37. One North East provided the Commissioner with examples of where derogatory statements had been made by the complainant about certain of its employees, resulting in one employee advising her manager that she had found the complainant's *“accusations and general approach to be distressing”*.
38. One North East explained that the complainant had published a number of his requests and responses on [www.whatdotheyknow](http://www.whatdotheyknow.com) with links to [www.helpmeinvestigate.com](http://www.helpmeinvestigate.com), where he made *“inflammatory remarks in relation to the alleged impropriety of the Agency and its executives”*.
39. The Commissioner is mindful of the fact that the question at issue is not whether the complainant intended to harass or cause distress. It is his role to consider the effect of the requests. Having taken account of the circumstances of this case, the Commissioner considers the requests can reasonably be considered as having the effect of harassing the public authority and its staff.

***Would complying with the requests impose a significant burden in terms of expense or distraction?***

40. The Act was enacted to assist people in seeking access to recorded information held by public authorities. However, it was not the intention of the Act to distract public authorities unreasonably from their other duties or for public money to be spent unproductively.
41. When considering if this factor applies, the Commissioner would expect a public authority to be able to show that complying with the request would cause a significant burden in terms of both costs and diverting staff away from their core functions.
42. One North East told the Commissioner that it had considered applying the cost limit provided for by section 12 of the Act on 6 January 2010, but had not done so. It estimated that by 6 May 2010 it had spent 120 hours in responding to *"thematic requests from [company name redacted]"* – which excluded time spent by colleagues in other teams and time spent by its freedom of information officer in locating and retrieving information from external partners.
43. In addition One North East advised that some of its employees had expressed concern that dealing with the company's requests was *"distracting them from delivering their substantive roles full"*.
44. It further explained that, as with a previous case investigated by the Commissioner in relation to Plymouth City Council (*reference FS50148542*), much of the information requested by the complainant was not required to be held by One North East for business purposes, and was often held by external private sector partners, and could therefore have been refused on that basis. One North East claimed to have gone further than it was obliged to do in order to provide help and assistance in resolving the company's complaints and requests.
45. From the evidence provided to him, the Commissioner is satisfied that, in this case, the additional work undertaken in order to meet the demands of the complainant constituted a significant distraction from the core business of the employees involved.

***Are the requests designed to cause disruption or annoyance?***

46. As discussed in the Commissioner's published guidance, this factor relates to a requester's intention and can therefore be difficult to prove. The Commissioner is mindful of the fact that under the Act the purpose behind any request is not a relevant factor. However, in examining the intent of the requester the Commissioner is considering the effect of complying with the request rather than questioning why he wants the information.



47. One North East has not forwarded any arguments in relation to the request being designed to cause disruption or annoyance for the Commissioner's consideration. The Commissioner is therefore unable to conclude that this has been demonstrated in this case.

***Do the requests lack any serious purpose or value?***

48. Whether a request has value is not of significance given that the Act is not concerned with the motives of an applicant, but rather in promoting transparency for its own sake. However, the Commissioner acknowledges that, should any authority be able to show that a request has no value or purpose, this may help bolster the application of section 14(1) when taken together with other supporting factors.
49. In correspondence with One North East, the complainant said that he was *"merely interested in obtaining accurate facts"*.
50. One North East advised the Commissioner that, particularly given the conclusion of the complaint process, and the various independent reviews and additional investigations by third parties, it was its view that *"it is unlikely that there could be any continuing justification for such requests"*.
51. The Commissioner has concluded that the request lacks any serious purpose or value.

***Are the requests vexatious?***

52. Section 14 of the Act is intended to protect public authorities from those who might abuse the right to request information. The Commissioner recognises that having to deal with clearly unreasonable requests can strain an organisation's resources, damage the credibility of the Act and get in the way of answering other requests.
53. He also acknowledges that there is a fine balancing act between protecting a public authority from frivolous applications and the promotion of transparency in the workings of an authority.
54. In considering the circumstances of this case in relation to the five questions set out above, the Commissioner acknowledges that the questions, to a greater or lesser extent, overlap and that the weight accorded to each will depend on the circumstances. He also re-iterates that, in his view, it is not necessary for every factor relevant to vexatious requests to be satisfied in order to refuse a request on the basis of section 14(1).
55. In this case, the Commissioner considers that, viewed in isolation from the considerable volume of correspondence between the complainant

and One North East, the request under consideration here would not necessarily be manifestly unreasonable, without serious purpose or value, or disproportionate. However, in considering whether the complainant's request should be regarded as vexatious, he considers it reasonable and relevant to take into account the wider context in which the request was made.

56. In reaching a decision in this case as to whether the request was unduly burdensome, had the effect of harassing One North East, and lacked any serious purpose or value, the Commissioner has concluded that there are sufficient grounds to uphold the application of section 14(1). He considers that the obsessive nature of the request, when taken in the context of the previous correspondence, and its impact on One North East and its staff is sufficient for the requests to be deemed vexatious.

## **The Decision**

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57. The Commissioner's decision is that One North East dealt with the request for information in accordance with the Act.

## **Steps Required**

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58. The Commissioner requires no steps to be taken.

## Right of Appeal

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59. 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](mailto:informationtribunal@tribunals.gsi.gov.uk).

Website: [www.informationtribunal.gov.uk](http://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 7<sup>th</sup> day of July 2011**

**Signed .....**

**Jon Manners  
Group Manager  
Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**

## Annex A

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The complainant's complete request made on 13 July 2010 is detailed below:

*"This request under the FOI Act is related to project related financial transactions with subsidiary companies and/or "Special Purpose Vehicles" and funding recipients' breach of procurement requirements and "clawback" of grant by ONE North East for the financial years of 2008/09, 2009/10 and 2010/11.*

- (1) Please list all subsidiary companies and/or "Special Purpose Vehicle" companies, ie[sic] companies that are either wholly owned by ONE North East (eg [sic] Enterprise Development North East Ltd) or have a financial tie such as "right of lien over all capital assets" held by ONE North East (eg The Centre of Excellence in Digital Technology and Media Ltd trading as Codeworks).*
- (2) Please list details of any wholly owned subsidiary companies of the list provided in response to (1), eg The Centre of Excellence in Digital Technology and Media Ltd trading as Codeworks owns 100% of the issued share capital of Codeworks Enterprises Ltd.*
- (3) Please list all companies where ONE hold 30% or more issued shares and if the shareholding has been disposed of within the time period requested above please provide date of disposal and details of any financial consideration given in return of shares disposed eg One North East had 40% of issued shares in NEL Management Group Ltd which was disposed of on the 6<sup>th</sup> August 2009 in exchange for £220,000 paid by NF Holdings Ltd.*
- (4) Please list any assets that have been disposed of by a subsidiary company (as provided in response to (1)) and please also provide details of date disposed, how disposal was fairly advertised/promoted, legal entity to whom the assets were transferred together with details of financial consideration given in return for those assets.*
- (5) Please list all ONE North East projects (including business case title, PMS project/reference number, amount of Single Programme funding, amount(s) of other funding, eg ERDF and date of project award) that have been awarded to companies provided in response to (1), (2) or (3) where a tendering process has not taken place.*

- (6) *Please list all projects (including business case title, PMS project/reference number, amount of Single Programme funding, amount(s) of other funding, eg ERDF and date of project award) that have been awarded to companies provided in response to (1), (2) and (3) where a tendering process has taken place.*
- (7) *Please list all projects (including business case title, PMS project/reference number, amount of Single Programme funding, amount(s) of other funding, eg ERDF and date of project award) that have been awarded to companies that have no connection with ONE North East (eg not listed in response to (1), (2) and (3) and where a tendering process has not taken place, eg The Difference Engine/The Cloud Foundry PMS Project Number NE005325 project awarded £336K Single Programme, and £200k investment capital via the Design & Creative Fund managed by EDNE Ltd to the North East Business and Innovation Centre Ltd in October 2009.*

*re: Single Programme & European Funding Procurement Handbook (<http://www.onenortheast.co.uk/page/erdf...>)*

*“Funding recipients should be aware that a breach of procurement requirements is the most common reason for claw back of grant and the procedures must be carefully followed and monitored throughout the project to mitigate the risk of failing to procure correctly. It is therefore important to ensure that the procurement rules as set out in the Funding Allocation Letter (FAL) are strictly adhered to during the delivery of the project for the acquisition of services, supplies and/or Works in the delivery of the project.”*

- (8) *Please provide details of all instances of clawback carried out by ONE North East (including business case title, PMS project/reference number, amount of clawback, legal entity that was subject to the clawback and reason for clawback), eg The Difference Engine/The Cloud Foundry PMS Project Number NE005325, 25% of contract (£134K) from North East Business and Innovation Centre Ltd for “Non respect of sufficient degrees of advertising” as per section 6.5 of Single Programme and European Procurement Handbook (<http://www.whatdotheyknow.com/request/th...>).*
- (9) *Please provide details of all instances of breaches of procurement requirements where ONE North East is aware of the breach and has not pursued clawback. Please provide business case title, PMS project/reference number, potential clawback amount, legal entity that was subject to the breach, reason for the potential*

*clawback and reason for not pursuing the clawback), eg The Difference Engine/The Cloud Foundry PMS project Number NE005325, 25% of contract (£134K) from North East Business and Innovation Centre Ltd for "Non respect of sufficient degree of advertising" as per section 6.5 of Single Programme and European Procurement Handbook (<http://www.whatdotheyknow.com/request/th...>). not pursued due to..."*

## Legal Annex

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### 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 14(2) provides that –**

“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 a previous request and the making of the current request.”