

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 19 July 2011

Public Authority: Cabinet Office
Address: Admiralty Arch
London
SW1A 2WH

Summary

The complainant asked the Cabinet Office to provide him with all records held relating to its handling of a previous freedom of information request dated 22 September 2009 which had resulted in a Decision Notice being issued (*Reference FS50305150*). The public authority issued a refusal notice stating that it was not obliged to comply the request by virtue section 14(1) (vexatious requests) of the Freedom of Information Act. The Cabinet Office did not respond to the Commissioner's request for further arguments in support of its application of section 14(1). The Commissioner has found that the Cabinet Office incorrectly applied section 14(1) to the request. The complaint is upheld and the Cabinet Office is required to confirm or deny whether it holds the information and, if it is held, either to disclose the requested information or else issue a valid refusal notice under section 17 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.

The Request

2. The complainant submitted a request to the Cabinet Office on 27 September 2010, via the *Whatdotheyknow.com* website, for the following information:

"Please send me a copy of all records including internal and external communications relating to your handling of the request that was the subject of the recent ICO decision notice FS50305150 (the original request was dated 22 September 2009 and asked for all documents relating to the compensation of IRA victims by Libya).

Where these records include copies of the actual information that was the subject of the original request, this may be removed if you wish, but please replace it with an indication that the information was present."

3. On 25 October 2010 the Cabinet Office issued a refusal notice citing section 14(1) of the Act for vexatious requests, on the basis that it considered the complainant's request would impose a significant burden on it and that the request lacked any serious purpose or value.
4. The complainant requested an internal review of the Cabinet Office's decision on 25 October 2010, receipt of which was acknowledged by the Cabinet Office on 26 October 2010. However, the Cabinet Office failed to carry out the internal review and to provide the complainant with the internal review result.

The Investigation

Scope of the case

5. On 2 January 2011 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 whether the Cabinet Office had incorrectly applied the exclusion at section 14(1) of the Act, together with the delay in the internal review. The latter is dealt with in the *Other Matters* section of this Notice.

Chronology

6. The Commissioner wrote to the Cabinet Office on 4 February 2011 requesting it to provide the complainant with the outcome of its internal review within ten working days.

7. On the same day, the Commissioner wrote to the complainant asking him to make further contact should he not receive a response to his request for internal review within ten working days.
8. On 24 February 2011 the Cabinet Office spoke to the Commissioner stating that it was aware of the need to conduct the internal review but anticipated further delays. The Commissioner requested that the Cabinet Office kept the complainant informed.
9. The complainant contacted the Commissioner again on 25 February 2011 advising that he had not had any response from the Cabinet Office.
10. Having advised both parties that the complaint had been accepted on 14 March 2011, the Commissioner contacted the Cabinet Office to ascertain whether it had now dealt with the complainant's internal review. The Cabinet Office explained that the internal review outcome was not imminent due to its workload.
11. That same day, the Commissioner wrote to the Cabinet Office seeking additional arguments in support of its application of section 14(1). He stated that he was hopeful that in preparing its response and additional arguments for the Commissioner, this would assist the Cabinet Office in finalising its internal review in respect of this request. The Commissioner also advised the Cabinet Office that, if no response was forthcoming within 20 working days, he would proceed to a Decision Notice, which would be likely not to uphold its application of section 14(1) on the basis that he was not convinced by the arguments put forward by the Cabinet Office thus far.
12. The Cabinet Office failed to provide any response to the Commissioner.

Analysis

Substantive Procedural Requirements

13. The full wording of the sections detailed in this Notice can be found in the Legal Annex.

Exclusion – section 14

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”.

Section 14(1) – vexatious requests

15. Section 14(1) provides that a public authority does not have to comply with a request for information if the request is vexatious. The Commissioner's published guidance¹ explains that the term "vexatious" is intended to have its ordinary meaning and there is no link with legal definitions from other contexts (e.g. vexatious litigants). Deciding whether a request is vexatious is a flexible balancing exercise, taking into account all the circumstances of the case. In line with the Commissioner's guidance, when assessing whether a request is vexatious, the Commissioner considers the following questions.
- 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?
 - Is the request designed to cause annoyance and disruption?
 - Does the request lack any serious purpose or value?
16. It is not necessary for all of the above criteria to be met but, in general, the more criteria that apply, the stronger the case for arguing that a request is vexatious. It is also the case that some arguments will naturally fall under more than one heading. The public authority in this case advised the complainant in its initial response that it would impose a significant burden on officers in its department, and in particular in the area of the department which dealt with the original request cited by the complainant (*Reference FS50305150*). It also considered that the complainant's request lacked any serious purpose or value; however it did not expand any further. The Commissioner does not accept that the request lacked purpose or value and the Cabinet Office has done little to address this point. The Commissioner and the Information Tribunal in *Home Office and Ministry of Justice v Information Commissioner EA/2008/0062* both noted that meta-requests (requests about requests) should not be treated as a special category of requests. Clear and specific evidence would also be required to support a claim that meta-request would impose a significant burden. The Commissioner also notes that the Cabinet Office could have claimed section 12 if the costs of compliance were a significant burden.

1

http://www.ico.gov.uk/~/media/documents/library/Freedom_of_Information/Detailed_specialist_guides/VEXATIOUS_AND_REPEATED_REQUESTS.ashx

17. The Commissioner finds that section 14(1) was incorrectly applied to the request; the arguments supplied by the Cabinet Office when refusing request were not convincing and the Commissioner has not received any further evidence or submissions from the Cabinet Office to support use of the provision.

Procedural Requirements

Section 8 - Requests for information

18. Section 8(1) of the Act states that a request for information should be in writing, bear the name and address of the applicant and describe the information requested. The Commissioner considers that the request in this case can be defined as such and therefore constituted a valid request under the Act for recorded information.
19. The Commissioner holds the view that all communications made in writing to a public authority, including those transmitted by electronic means, may contain or amount to requests for information within the meaning of the Act, and so must be dealt with in accordance with the provisions of the Act. In this case the Commissioner's view is that the Cabinet Office complied with its obligation to provide a freedom of information response to the request within the statutory timescale; however he has outlined his concerns about the lack of an internal review in the Other Matters section of this Notice.

The Decision

20. 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:
 - by providing its initial response within 20 working days the public authority complied with section 10(1) of the Act.
21. However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:
 - Section 14(1) of the Act was incorrectly applied to the request.

Steps Required

22. The Commissioner requires the Cabinet Office to take the following steps to ensure compliance with the Act:

- confirm or deny whether the requested information is held to comply with section 1(1)(a);
 - if information is held, in accordance with its obligations under section 1(1)(b) either provide it, or withhold it by issuing a valid refusal notice under section 17(1) of the Act.
23. The public authority must take the steps required by this notice within 35 calendar days of the date of this notice.

Failure to comply

24. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Other matters

25. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern. Part VI of the section 45 Code of Practice makes it desirable practice that a public authority should have a procedure in place for dealing with complaints about its handling of requests for information, and that the procedure should encourage a prompt determination of the complaint. As he has made clear in his *'Good Practice Guidance No 5'*, the Commissioner considers that these internal reviews should be completed as promptly as possible. While no explicit timescale is laid down by the Act, the Commissioner has decided that a reasonable time for completing an internal review is 20 working days from the date of the request for review. In exceptional circumstances it may be reasonable to take longer but in no case should the time taken exceed 40 working days. The Commissioner is concerned that in this case the internal review has yet to be completed despite the public authority having taken over 160 working days thus far in which to complete the review, despite the publication of his guidance on the matter.

Right of Appeal

26. 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 19th day of July 2011

Signed

Steve Wood
Head of Policy Delivery
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Legal Annex

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."

Request for Information

Section 8(1) provides that –

"In this Act any reference to a "request for information" is a reference to such a request which –

- (a) is in writing,
- (b) states the name of the applicant and an address for correspondence, and
- (c) describes the information requested."

Section 8(2) provides that –

"For the purposes of subsection (1)(a), a request is to be treated as made in writing where the text of the request –

- (a) is transmitted by electronic means,
- (b) is received in legible form, and
- (c) is capable of being used for subsequent reference."

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."

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.”

Refusal of Request

Section 17(1) provides that -

“A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which -

(d) states that fact,

(e) specifies the exemption in question, and

(f) states (if that would not otherwise be apparent) why the exemption applies.”

Section 17(2) states –

“Where–

(g) in relation to any request for information, a public authority is, as respects any information, relying on a claim-

1. that any provision of part II which relates to the duty to confirm or deny and is not specified in section 2(3) is relevant to the request, or

2. that the information is exempt information only by virtue of a provision not specified in section 2(3), and

- (h) at the time when the notice under subsection (1) is given to the applicant, the public authority (or, in a case falling within section 66(3) or (4), the responsible authority) has not yet reached a decision as to the application of subsection (1)(b) or (2)(b) of section 2,

the notice under subsection (1) must indicate that no decision as to the application of that provision has yet been reached and must contain an estimate of the date by which the authority expects that such a decision will have been reached."

Section 17(3) provides that -

"A public authority which, in relation to any request for information, is to any extent relying on a claim that subsection (1)(b) or (2)(b) of section 2 applies must, either in the notice under subsection (1) or in a separate notice given within such time as is reasonable in the circumstances, state the reasons for claiming -

- (i) that, in all the circumstances of the case, the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing whether the authority holds the information, or
- (j) that, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information."

Section 17(4) provides that -

"A public authority is not obliged to make a statement under subsection (1)(c) or (3) if, or to the extent that, the statement would involve the disclosure of information which would itself be exempt information.

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."

Section 17(6) provides that -

"Subsection (5) does not apply where -

- (k) the public authority is relying on a claim that section 14 applies,
- (l) the authority has given the applicant a notice, in relation to a previous request for information, stating that it is relying on such a claim, and

(m) it would in all the circumstances be unreasonable to expect the authority to serve a further notice under subsection (5) in relation to the current request."

Section 17(7) provides that –

"A notice under section (1), (3) or (5) must –

(n) contain particulars of any procedure provided by the public authority for dealing with complaints about the handling of requests for information or state that the authority does not provide such a procedure, and

(o) contain particulars of the right conferred by section 50."