

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 22 February 2011

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

Summary

The complainant submitted four separate requests to the Department for International Development (DFID) each seeking approximately 50 particular documents held by DFID. DFID initially disclosed some documents in response to request 1 but withheld the remaining information on the basis of a number of exemptions. At internal review DFID refused request 1 on the basis of section 14(1) of the Act on the basis that it was vexatious. At this stage DFID also refused requests 2 to 4 on the same basis. The complainant contacted the Commissioner following the application of section 14(1). Following discussions between the DFID and the Commissioner, DFID has withdrawn its reliance on section 14(1) as a basis to refuse all four requests. In light of this decision, this notice simply orders DFID to comply with the requirements of section 1(1)(b) for requests 2 to 4. (The Commissioner will issue a separate notice which addresses DFID's handling of request 1.)

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 four requests to the Department for International Development (DFID) on the following dates: 28 August 2009, 29 September 2009, 10 November 2009 and 18 December 2009. Each request asked for 50 specific documents which the

- complainant identified by both their title and their reference number on DFID's electronic document records management system.
3. On 21 January 2010 DFID explained that it was continuing to process the four requests, including public interests test considerations, and in terms of requests 1 and 2 hoped to have this process complete within one month. DFID explained that it would inform him of the outcome of its considerations of requests 3 and 4 as soon as they were complete.
 4. On 19 February 2010 DFID provided the complainant with a substantive response to his first request, i.e. the one dated 28 August 2009. As part of this response DFID disclosed 8 documents, albeit with certain redactions, and withheld the remaining documents on the basis of the exemptions contained at sections 27(1)(a) to (d); 35(1)(a); 38(1)(a) and (b); 40(2) and 43(2) of the Act.
 5. The complainant contacted DFID on 23 March 2010 and asked for an internal review of the decision to rely on these exemptions to be carried out. The complainant included detailed submissions to support his position that the exemptions had been misapplied.
 6. On the same day, but in a separate piece of correspondence, the complainant submitted an 'internal review request' in relation to DFID's extension of the public interest test in relation to the remaining three requests.
 7. DFID contacted the complainant again on 30 April 2010 and explained that it had conducted an 'internal review' into the handling of all four requests and concluded that all of them were vexatious and thus were being refused on the basis of section 14(1) of the Act.

The Investigation

Scope of the case

8. The complainant contacted the Commissioner on 12 May 2010 in order to complain about DFID's handling of his requests. The complainant argued that DFID was incorrect to refuse his four requests on the basis that they were vexatious.
9. As out below, by the time this Notice is being issued DFID has withdrawn its reliance on section 14(1) of the Act as a basis to refuse all four of the complainant's requests. The scope of the complaint has therefore shifted at the point this Notice is being issued. There are now two outstanding points of complaint: firstly, the application of the Part II exemptions to refuse request 1 (as detailed in the refusal notice

dated 19 February 2009) and secondly, DFID's need to fulfil requests 2 to 4 now that it is now longer relying on section 14(1) to refuse them. The Commissioner is considering the first aspect of this complaint under reference number FS50312175 and will issue a separate Notice detailing his findings in due course. This present Notice is limited to addressing DFID's handling of requests 2 to 4.

Chronology

10. The Commissioner contacted DFID on 16 December 2010 and explained that his preliminary view was that section 14(1) did not provide a basis to refuse the four requests and provided detailed reasoning to support his view. The Commissioner explained to DFID that if it agreed with this view then he would issue a decision notice which solely addressed the Part II exemptions cited by DFID as a basis to refuse the complainant's first request. The Commissioner would then expect DFID to process requests 2 to 4, i.e. disclose the requested information or issue refusal notice compliant with section 17 of the Act. The Commissioner explained that if DFID wished to maintain its reliance on section 14(1) as a basis to refuse requests 1 to 4 then he would simply issue a decision notice which addressed the application of this section to all four requests.
11. The Commissioner received a response from DFID on 18 January 2011. In this response DFID confirmed that having considered the Commissioner's comments on its application of section 14(1) it had decided to withdraw its reliance on this section. DFID also confirmed that it was content with the way in which the Commissioner suggested this complaint could be progressed. However, with regard to processing requests 2 to 4 it was likely to take DFID in the region of 31 person days to process each request and DFID's small freedom of information team did not currently have the staff or financial resources to undertake this work while still meeting statutory deadlines on other casework. It would therefore need to bid for and train additional staff in order to comply with these requests. DFID emphasised that it would obviously do its best to respond to the requests as quickly as possible but asked for the Commissioner's and complainant's patience whilst it undertook this process.

Analysis

Procedural Requirements

12. Section 1(1) of the Act states 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.'

13. Section 10(1) of the Act states 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.'

14. Section 17(1) of Act explains that a public authority must issue a refusal notice stating the exemptions which it is relying on within the time for compliance with section 10(1).

15. As is clear from the details set out in 'The Request' section above, DFID has in fact already provided the complainant with a response to requests 2 to 4. That is to say its letter of 30 April 2010 in which it confirmed that it held the information requested, and thus complied with the requirements of section 1(1)(a) but refused to comply with the duty contained at section 1(1)(b) because of the effect of section 14(1).

16. However, as is clear from the details set out in 'The Chronology' section above, DFID has now rescinded its reliance on section 14(1). In addition it has not relied on any other provision of the Act to refuse disclosure of the information falling within the scope of requests 2 to 4. Therefore DFID needs to comply with the requirements of section 1(1)(b) – i.e. disclose the requested information or issue a refusal notice complaint with requirements of section 17(1).

17. The Commissioner acknowledges that DFID has explained that it is now in the process of complying with the requirements of 1(1)(b) for requests 2 to 4 and has noted the comments that DFID has made with regard to the practicalities, and indeed the timescales, of fulfilling these requests. However, despite the particular circumstances of this case, the Commissioner is conscious of his duty as the regulator of Act and particularly the responsibility placed upon him to ensure that public authorities respond to requests in a timely manner. Therefore, he considers it appropriate to issue this Notice which formally orders DFID to ensure that it processes requests 2 to 4 within the timescale indicated in the Steps section below.

The Decision

18. The Commissioner's decision is that the public authority has not fulfilled its duty contained at section 1(1)(b) of the Act in respect of the requests he submitted to DFID on 29 September 2009, 10 November 2009 and 18 December 2009.

Steps Required

19. The Commissioner requires the public authority to take the following steps to ensure compliance with the Act:
- Provide the complainant with a response to the requests submitted on 29 September 2009 (DFID reference F2009-234), 10 November 2009 (DFID reference F2009-276) and 18 December 2009 (DFID reference F2009-317) in line with the duty contained at section 1(1)(b) of the Act.
 - If DFID considers any of this requested information to be exempt from disclosure under the Act it should issue the complainant with a refusal notice which complies with the requirements of section 17(1).
20. The public authority must take the steps required by this notice within 35 calendar days of the date of this notice.

Failure to comply

21. 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.

Right of Appeal

22. 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

23. 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.
24. 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 22nd day of February 2011

Signed

**Alexander Ganotis
Group Manager – Complaints Resolution**

**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."

Effect of Exemptions

Section 2(2) provides that –

"In respect of any information which is exempt information by virtue of any provision of Part II, section 1(1)(b) does not apply if or to the extent that –

- (a) the information is exempt information by virtue of a provision conferring absolute exemption, or
- (b) in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information"

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"

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 -

- (a) states that fact,
- (b) specifies the exemption in question, and
- (c) states (if that would not otherwise be apparent) why the exemption applies."

International Relations

Section 27(1) provides that –

"Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice-

- (a) relations between the United Kingdom and any other State,
- (b) relations between the United Kingdom and any international organisation or international court,
- (c) the interests of the United Kingdom abroad, or
- (d) the promotion or protection by the United Kingdom of its interests abroad."

Personal information

Section 40(2) provides that –

"Any information to which a request for information relates is also exempt information if-

- (a) it constitutes personal data which do not fall within subsection (1), and
- (b) either the first or the second condition below is satisfied."

Section 40(3) provides that –

"The first condition is-

- (a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of "data" in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under this Act would contravene-
 - (i) any of the data protection principles, or
 - (ii) section 10 of that Act (right to prevent processing likely to cause damage or distress), and
- (b) in any other case, that the disclosure of the information to a member of the public otherwise than under this Act would contravene any of the data protection principles if the exemptions in section 33A(1) of the Data Protection Act 1998 (which relate to manual data held by public authorities) were disregarded."

Commercial interests

Section 43(2) provides that –

"Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it)."