

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 12 December 2011

Public Authority: Ministry of Justice

Address: 102 Petty France
London
SW1H 9AJ

Decision (including any steps ordered)

1. The Ministry of Justice (MOJ) refused to comply with the complainant's information requests on the grounds that they were vexatious. The Information Commissioner's decision is that the MOJ complied with the FOIA by correctly refusing the requests as vexatious.

Request and response

2. On 28 March 2011 the complainant wrote to the MOJ and requested information in the following terms:

"...please treat this letter as making a combined subject access and freedom of information request for all the data held by the MoJ relating to me in my capacity as the legal personal representative of George Kelly deceased and such further information as is held by the Ministry of Justice which is referred to in that material but is not my personal data.....such further information relating to what you now say has been issued by the Assessor are provided including all communications passing between the Ministry of Justice and the Assessor relating to this matter and more generally his appointment for and regarding the assessment of Miscarriage of Justice cases".

3. The MOJ responded on 6 May 2011. It stated that it considered section 14(1) of the FOIA – vexatious requests – applied in this case.
4. Following an internal review the MOJ wrote to the complainant on 14 June 2011. It maintained that the complainant's requests were vexatious.

Scope of the case

On 21 April 2011 the complainant contacted the Commissioner to complain about the refusal of his requests and indicated that he did not agree with the reason given for this refusal.

Reasons for decision

5. Section 14(1) of the FOIA states that a public authority is not obliged to comply with a request that is vexatious. The task for the Commissioner here is, therefore, to decide whether the request made by the complainant was vexatious.
6. The Commissioner's guidance on section 14 of the FOIA sets out five criteria to follow when considering whether a request is vexatious:
 - whether compliance would create a significant burden in terms of expense **and** distraction;
 - whether the request is designed to cause disruption or annoyance;
 - whether the request has the effect of harassing the public authority or its staff;
 - whether the request can otherwise fairly be characterised as obsessive or manifestly unreasonable;
 - whether the request has any serious purpose or value.
7. The Information Commissioner wrote to the MOJ on 22 September 2011 to ask it to explain why it considered the request to be vexatious. The MOJ responded on 20 October 2011. This analysis covers which of the above criteria the request met, taking into account the arguments the MOJ provided in its response.

Would compliance with the requests create a significant burden in terms of expense and distraction?

8. The MOJ has explained that, based on its experiences in dealing with previous information requests from the complainant, it considers dealing with this request would disproportionately divert staff away from their day-to-day roles. The MOJ estimates that one member of its staff will need to dedicate approximately 20% of their time to dealing with the request.
9. The MOJ says that, while it considers each information request it receives on its own merits, the history of its relationship with the complainant is relevant to its refusal in this case. The MOJ considers that, based on this history, the request is likely to generate further correspondence and further requests for information.
10. The MOJ says it has 36 entries on its system relating to requests, internal reviews and complaints from the complainant not including correspondence it has received from the complainant's MP.
11. The Information Commissioner notes that the complainant has contacted the public authority over a number of years and that none of the responses that the complainant has received to his many information requests has caused him to cease making requests. Given these factors, the Information Commissioner accepts that compliance with this request would result in a significant burden upon the public authority in that the pattern of the complainant's previous behaviour indicates that it is likely that the complainant would make further requests based on the responses to this request. This criterion for finding a request vexatious is therefore met.

Was the request designed to cause disruption or annoyance?

12. The MOJ has not argued that the request was designed to disrupt or annoy. The Information Commissioner has therefore not taken this criterion into account.

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

13. The MOJ has provided details of the amount of correspondence as well as measures it has put in place to minimise the burden his requests place upon MOJ officials. However, the MOJ has not explained that it considers that dealing with this request would have the effect of harassing it or its staff. The Information Commissioner therefore considers that this criterion is not met.

Can the requests otherwise fairly be characterised as obsessive or manifestly unreasonable?

14. The MOJ has explained that the history of the request demonstrates the obsessive nature of the subject and the requestor. The MOJ has explained:

"The requestor frequently follows up requests with further similar requests for information and internal reviews of the decisions that the department has made."

15. The Information Commissioner accepts that at times there is a fine line between obsession and persistence but expects that each request should be considered on its own merits. One factor the Information Commissioner considers in deciding whether a request could be characterised as obsessive may be where the requester continues with requests despite being in possession of other independent information on the same issue. In this case the MOJ has explained:

"...these requests do not appear to take into consideration previous answers and revisit the same issues time and again, including in correspondence with policy areas..."

16. The Commissioner is aware of a number of previous requests made by the complainant to the MoJ through other cases that the complainant has brought to the Commissioner's office. Based on this knowledge of these previous requests, the Commissioner considers the above to be an accurate description of the requesting by the complainant. The Information Commissioner considers therefore that this criterion is also met.

Do the requests have any serious purpose or value?

17. The MOJ has explained that it considers these requests to lack serious purpose or value as the information requested has been considered before in previous freedom of information requests. The MOJ has also explained that the complainant acts as a legal representative for the Kelly estate. The MOJ says Home Office Ministers have determined that the complainant has a right to compensation under section 133 of the Criminal Justice Act 1988 (the CJA). The amount of compensation due has not yet been determined and the appointed independent assessor has rejected the complainant's claim to an interim compensation payment. The independent assessor explained however that this may be reconsidered if the complainant could provide further information. The MOJ says the complainant has not pursued the claim since 2008.

18. When deciding whether a request made as part of a series of requests has serious purpose or value the Information Commissioner would look at the pattern of previous requests to consider whether the latest request goes to support the presence or absence of a serious purpose.
19. Where it is clear that the information provided in response to an earlier request serves as the basis for the applicant making a further request this would not, in itself, mean that the subsequent request lacks a serious purpose. Where a subsequent request merely uses different phraseology to ask for the same or similar information the Information Commissioner may decide that the request lacks serious purpose or value.
20. In this case the request makes reference to the MOJ's responses to earlier requests and asks it to disclose any such information that it has not already provided in relation to his representation of George Kelly.
21. It appears from the phrasing of the request that the complainant has not identified any specific information discovered as a result of the earlier requests. The request instead appears to repeat earlier requests and asks that the MOJ provide a more substantial disclosure.
22. As the MOJ has already considered substantially similar requests, the view of the Commissioner is that this request does not have serious value and so finds that this criterion is also met.

Conclusion

23. The Information Commissioner has found that three of the five criteria for establishing whether a request is vexatious were met in this case. On this basis the Commissioner finds that this request was vexatious and, therefore, section 14(1) was cited correctly. The MoJ is not, therefore, required to comply with this request.

Other matters

24. The complainant also made a complaint to the Information Commissioner under section 42 of the Data Protection Act 1998 (the DPA) relating to elements of the request he considered were for personal data relating to him. The Information Commissioner expressed the view that it was likely that the MOJ had complied with the provisions of the DPA with regard to this information request.
25. The complainant had expressed his view that the MOJ's decision to withhold information in response to the request constituted an offence under section 77 of the FOIA. The Information Commissioner does not

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consider there is evidence to justify investigation of a possible section 77 offence.

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,
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

27. 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.
28. 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

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