

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 13 March 2012

Public Authority: Department for Employment & Learning
Northern Ireland

Address: 39-49 Adelaide Street
Belfast
BT2 8FD

Decision (including any steps ordered)

1. The complainant has requested a number of pieces of information relating to the Office of Industrial Tribunals and the Fair Employment Tribunal (OITFET). The Department for Employment & Learning Northern Ireland (DEL) refused to comply with the requests relying upon section 14 of the Freedom of Information Act 2000 (FOIA).
2. The Commissioner's decision is that DEL has correctly applied section 14(1) FOIA.
3. The Commissioner requires no steps to be taken.

Request and response

4. Between 18 July 2011 and 8 August 2011, the complainant wrote to DEL and requested information in the following terms:
 - I would like to know how the panel members are selected and the names of the people who select them. It may be that you do not have this information and the Department of Employment and Learning does have it. If you do not have this information then please always transfer my request to whoever does hold this information.
 - I would like all the details and everything associated with the cost benefit analysis for the employment appeals tribunal system. I would like to know the date when the employment appeals tribunal system was delayed by the Northern Ireland Civil Service/Department of Employment and Learning under the

auspices of a cost benefit analysis. If OITFET do not have this information then please transfer this foi request to someone in the Department who does have this information.

Maybe the Northern Ireland Civil Service/Department of Employment and Learning needs to be reminded that it is the people of Northern Ireland/Ulster who publicly fund the Northern Ireland Civil Service Departments including OITFET. And, it is these same people who as claimants have the expensive cost of appealing to the court of appeal whilst the Northern Ireland Civil Service Departments including the Department of Employment and Learning continually waste publicly funded money defending line managers and hr employees who break the law.

The Northern Ireland Civil Service/Department of Employment and Learning need to be reminded too, that they are the ones delaying the transfer of OITFET to the Department of Justice because they won't agree the budget transfer figure with the Department of Justice. The transfer was due to be completed by April 2011. This makes me wonder as to who is really running Northern Ireland/Ulster.

- I would like everything including all figures to do with the past, present and ongoing negotiations between the Department for Employment and Learning and the Department of Justice regarding the transfer of ITFET to the Department of Justice.
- I would like everything, handwritten and typed, all communications, emails, letters, telephone calls, meeting notes, meeting minutes, etc., etc., between Alan Shannon and Eileen McBride and between Aideen McGinley and Eileen McBride.
- From April 2007 onwards the total number of tribunal applications related to employment, total number of these settled, withdrawn, decisions allowed for claimant and decisions allowed for respondent.
- From the 929 complaints heard and determined in 2009/2010 the total number of these that settled, withdrew, decisions allowed for respondent and decisions allowed for claimant.
- From the date ITFET started onwards, the total number of tribunal applications from employees where the respondent was the Department for/of Employment and Learning and whatever the predecessor names were for this department. From this total number of tribunal applications I need to know the total number of tribunal applications settled, withdrew, dismissed, decisions

allowed for the claimant and decisions allowed for the respondent.

- A copy of the job description developed by DEL which outlined the duties of the Chairman Part Time ITFET along with a copy of the terms and conditions for this role. I have been informed that this information will be held by the Department for Employment and Learning so please transfer this request to the person who holds this information.
 - A copy of the job description developed by DEL which outlined the duties of the President ITFET along with a copy of the terms and conditions for this role. I have been informed that this information will be held by the Department for Employment and Learning so please transfer this request to the person who holds this information.
5. DEL responded on 11 August 2011. It stated that the requests were vexatious under section 14(1) FOIA.
 6. Following an internal review DEL wrote to the complainant on 8 September 2011. It upheld its original decision.

Scope of the case

7. The complainant contacted the Commissioner to complain about the way his requests for information had been handled.
8. The Commissioner will consider whether DEL was correct to apply section 14(1) in this case.

Reasons for decision

9. Section 14(1) of FOIA states that, section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious.
10. The Commissioner considers that the key questions for public authorities to consider when determining if a request is vexatious are set out below:
 - i) whether compliance would create a significant burden in terms of expense and distraction
 - ii) whether the request is designed to cause disruption or annoyance

- iii) whether the request has the effect of harassing the public authority or its staff
- iv) whether the request can otherwise fairly be characterised as obsessive or manifestly unreasonable
- v) whether the request has any serious purpose or value

Whether compliance would create a significant burden in terms of expense and distraction

11. DEL has explained that it took account of the wider context and history to the requests and whether complying would distract or divert staff from their usual work. It said that the complainant made a total of 44 FOIA requests between 7 February 2011 and 8 August 2011 (including the 9 FOIA requests relevant to this Notice). It said that the high volume, frequency and overlapping nature of the complainant's correspondence had already placed a significant burden in relation to distraction of staff from other duties. It also said that a number of Members of the Legislative Assembly (MLAs) wrote to DEL in response to emails sent to them by the complainant, all requiring a Ministerial response. It said that complying with the further 9 FOIA requests would have resulted in staff spending more time away from their day to day duties.
12. It went on to explain that it did not consider that responding to the latest requests would be likely to satisfy the complainant. It explained that an example of this is when the complainant had been previously advised that information she had requested was not held, the complainant issued a response to the Secretary of OITFET. DEL said that the Secretary's reply then generated an immediate further FOIA request dated 23 May 2011.
13. It also said that in relation to a previous FOIA request made on 23 June 2011 for information on the same subject matter, the Department had issued a fees notice to the complainant which estimated that the cost of processing the request would have been £13,400.
14. DEL also provided the Commissioner with evidence that previous requests on the same subject matter, leading up to the requests relevant in this case, were regularly repeated with slightly different wording.
15. The Commissioner considers that the complainant has made a large number of requests over the period 7 February 2011 to 8 August 2011 including the nine requests to which DEL applied section 14(1) FOIA and which are being considered in this Notice. The Commissioner considers

that in relation to the other 35 requests, DEL applied section 14(2) to one of these requests as it was repeated, otherwise it responded to all of the other requests by either providing the requested information, confirming it was not held or applying an exemption to withhold the information. The Commissioner considers that responding to these requests did create a significant burden due to the number of requests made, the fact that responding to the requests often lead to further requests being made, and that requests were often repeated with slight rewording demonstrates this.

Whether the request is designed to cause disruption or annoyance

16. It said that it is not clear to DEL that the requests submitted by the complainant are designed to cause disruption or annoyance.
17. Upon this basis the Commissioner does not consider that the request was designed to cause disruption or annoyance.

Whether the request has the effect of harassing the public authority or its staff

18. DEL explained that on 28 July 2011 the complainant submitted an FOIA request relating to a 'cost benefit analysis for the employment appeals tribunal system'. This request included a series of derogatory comments about DEL and a suggestion that DEL HR staff had broken the law.
19. DEL explained that the frequency of the correspondence along with the number of staff the same correspondence was sent to and the allegations contained with certain correspondence, had the effect of harassing DEL and its staff.
20. The Commissioner considers that although some requests may have contained allegations, and may have been sent to a number of members of staff, this is not sufficient to demonstrate that the requests had the effect of harassing DEL or its staff.

Whether the request can otherwise fairly be characterised as obsessive or manifestly unreasonable

21. From 7 February 2011 to 8 August 2011 the complainant made 44 separate FOIA requests to DEL. DEL explained that almost all of the requests related directly or indirectly to OITFET. DEL considers that the volume, frequency and nature of the complainant's requests about OITFET indicate a continuing pattern of obsessive behaviour.

22. DEL said that on some dates more than one FOIA request was submitted and of particular note on 12 May 2011 a total of four requests were received in one day.
23. DEL explained that a number of the requests had already been asked but were worded in a slightly different way.
24. It went on to explain that many of the FOI requests were also mixed with complaints.
25. DEL explained that it was of the view that responding to the latest requests would be unlikely to satisfy the complainant. It said that it had come to this conclusion on the basis that the complainant had not been satisfied with the responses that it had provided to the previous 35 FOIA requests made. It again reiterated that given the history of this correspondence with DEL, any response provided would be likely to result in further requests being made.
26. The Commissioner considers that the complainant has made a number of FOIA requests from the period 7 February 2011 to 8 August 2011. He considers that the requests were all based around the same subject matter and that DEL responded to all but one of the other 35 FOIA requests (it applied section 14(2) FOIA to this one request). DEL has provided the Commissioner with evidence that responding to previous requests has led to further requests being made.
27. DEL provided the Commissioner with further background evidence surrounding the FOIA requests which is contained in the Confidential Annex to this Notice. DEL took this background information into account in concluding that the FOIA requests relevant to this Notice were obsessive or manifestly unreasonable.
28. The Commissioner considers that the large volume of requests, in relation to which responding often led to further requests being made, and that the requests are often repeated with slight rewording demonstrates that they could be fairly categorised as obsessive or manifestly unreasonable.

Whether the request has any serious purpose or value

29. DEL did not suggest that the request did not have serious purpose or value and therefore the Commissioner has not considered this factor any further in reaching his decision.

Conclusion

30. The Commissioner considers that in this case there is strong evidence that compliance would create a significant burden in terms of expense

and distraction and that the request can otherwise fairly be characterised as obsessive or manifestly unreasonable. Therefore he has concluded that DEL was correct to apply section 14(1) to the 9 FOIA requests set out at paragraph 4 of this Notice.

Right of appeal

31. 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

32. 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.
33. 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

Pamela Clements
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