

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 28 August 2012

Public Authority: Department for Environment, Food and Rural Affairs (DEFRA)

Address: Nobel House
17 Smith Square
London
SW1P 3JR

Decision (including any steps ordered)

1. The complainant has requested information about awards made under the current Regional Development Programme for England (RDPE) funding scheme in Lincolnshire, Nottinghamshire and Leicestershire.
2. DEFRA refused to comply with the request relying on section 14(1) of the FOIA. The Commissioner's decision is that DEFRA has incorrectly applied section 14(1) of the FOIA.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation:
 - If information is held and no exemption from section 1(1)(a) is claimed, disclose the information or issue a refusal notice compliant with section 17(1) citing a Part II exemption from the section 1(1)(b) duty.
4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 17 November 2011, the complainant wrote to DEFRA and requested the following information:

"Details of awards made under the current RDPE and former ERDP funding schemes (including Leader funded activity) covering Lincolnshire, Nottinghamshire and Leicestershire."

6. DEFRA responded on 12 December 2012. It stated that this request, and another request made on the same day for details of funding allocated to a specific business, was vexatious under section 14(1).
7. Following an internal review DEFRA wrote to the complainant on 27 February 2012. It upheld its original position.

Scope of the case

8. The complainant contacted the Commissioner to complain about the way his request for information had been handled and the decision of DEFRA to declare his recent requests vexatious.
9. The Commissioner will consider whether DEFRA was correct to apply section 14(1) in this case.

Background

10. DEFRA took responsibility for certain aspects of the RDPE from England's Regional Development Agencies on 1 July 2011. These changes resulted in DEFRA holding RDPE (and England Rural Development Programme (ERDP)) information including information previously held by the East Midlands Development Agency (EMDA).
11. DEFRA has stated that previous requests made to EMDA on the subject of ERDP funding awards had been declared vexatious. DEFRA considers that although ERDP information is now held by DEFRA following the winding down of EMDA, as the request made to DEFRA is on the same subject as those declared vexatious by EMDA, DEFRA was able to consider this decision when declaring the complainant's most recent request as vexatious.

Reasons for decision

12. 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.

13. The Commissioner considers that the key questions for public authorities to consider when determining if a request is vexatious are:
- (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.
14. In this case DEFRA has argued that compliance with the request would create a significant burden, the request can be characterised as obsessive, has the effect of harassing the public authority or its staff and has no serious purpose or value. The Commissioner has therefore considered these points when making his decision.

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

15. The Commissioner recognises that this is a consideration of more than just costs. EMDA was able to ascertain that compliance with the requests would divert resources away from its core functions, particularly at a time when EMDA was in the process of winding down. This is not the case for DEFRA but the number of previous requests and the demand they place on a public authority's time and resources can be a relevant factor if it can be sufficiently demonstrated.
16. The Commissioner notes that DEFRA has considered the previous requests made to EMDA when deciding if the most recent request was vexatious. When EMDA issued its refusal notice under section 14(1) of the FOIA it stated that the decision had been based on the complainant having previously made 12 freedom of information requests over 12 months as well as sending over 100 hundred emails on the same subject which EMDA considered to be obsessive and burdensome.
17. The Commissioner accepts that DEFRA is entitled to consider the previous correspondence and requests made to EMDA. However, the Commissioner raised concerns with DEFRA about the amount of time that had elapsed since EMDA determined the complainant's last request was vexatious (31 May 2011) and the request which is the subject of this investigation was made to DEFRA (17 November 2011).

18. DEFRA has argued that whilst there was a gap of nearly six months between the last requests made to EMDA and DEFRA the complainant did submit a large amount of correspondence during this period of time, exhausting the complaints process and meeting with officials to discuss his concerns. In addition to this DEFRA has estimated that over the last 12 months it has had to devote several days a month to dealing with requests and correspondence from the complainant.
19. Another point considered by the Commissioner is that responding to this request in isolation would appear, although straightforward, to require DEFRA to search through a lot of information and take considerable time. Whilst this is an argument more often used when determining if the request would exceed the cost limit, the Commissioner accepts it has some weight here as it adds to the argument that responding to the request would be burdensome on the public authority.
20. The Commissioner does accept that the volume of correspondence from the complainant and the most recent request has created a significant burden on DEFRA.

Whether the request is designed to cause disruption or annoyance

21. DEFRA has not argued that the complainant's request is designed to cause disruption or annoyance and the Commissioner has found no evidence of this.

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

22. EMDA argued that the requests made to it were made to obtain information to discredit EMDA and that as well as the requests received under the FOIA, other correspondence sent outside the FOIA contained allegations of wrongdoing and caused distress to staff.
23. DEFRA has stated that the correspondence it has received from the complainant regarding ERDP/RDPE funding awards has continued along similar themes as the correspondence sent to EMDA: allegations of fraud, financial irregularities, corruption and allegations directed at specific senior officials.
24. The Commissioner considers that although some of the correspondence may have contained allegations of wrongdoing by the public authorities this is not sufficient to demonstrate that the requests had the effect of harassing DEFRA or its staff. Whilst there is a substantial volume of correspondence, the Commissioner notes the absence of any hostile or abusive language based on the examples provide by DEFRA. He also does not consider the request simply seeks to reopen issues that have

been fully debated, nor does it appear to have been used as a means of arguing with or haranguing DEFRA.

25. It is the Commissioner's view that the complainant has requested additional information to further his understanding of issues that are of considerable concern to him.

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

26. The Commissioner's view is that there is a thin line between obsessions and persistence but that obsessive requests are often identified by requests which continue to be made even once other evidence on the same issue has already been provided. The request which was refused by DEFRA under section 14(1) was on the subject of funding awards in a particular area and the Commissioner raised concerns with DEFRA as to whether this request could be characterised as obsessive when it was unclear that the complainant had requested this, or similar information, before.
27. DEFRA responded and explained that the complainant had made a request to EMDA on 6 January 2011 for all applications funded by the RDPE programme in the East Midlands. DEFRA explained it considers the request which is the subject of this notice duplicates some of this information although it would cover information created after the date of the January request.
28. DEFRA explained that this request, the volume of other correspondence received from the complainant on the subject of ERDP/RDPE awards and the previous correspondence dating back to 2010 the complainant had with EMDA, indicates a continuing pattern of obsessive behaviour.
29. In support of this DEFRA has explained that the complainant's requests and correspondence have all been on the subject of the decision making process behind the awarding of funding under the ERDP and RDPE schemes and the awards that have been granted. The complainant has also exhausted the internal complaints process within DEFRA following his correspondence on this subject.
30. The Commissioner acknowledges that the requests to DEFRA and the EMDA as well as his correspondence demonstrate his determination to access a large amount of information on the administration of ERDP and RDPE funding awards. As stated above, the Commissioner's view is that there is a fine line between persistence and obsession and obsessive requests are most often identified when an applicant continues to make requests despite being in possession of substantial information on the

subject already. The Commissioner has carefully considered the request in this case and the context in which it was made.

31. The request undoubtedly demonstrates persistence and tenacity on the part of the complainant, when considered in the context of his previous correspondence. However, in the Commissioner's view, at this point, it falls short of being obsessive. Whilst DEFRA has been able to evidence that the complainant has corresponded on the subject of funding awards and the administration of the ERDP and RDPE schemes over the course of several years the Commissioner has taken in to account the Information Tribunal's comments (EA/2001/0082 & 0083) that *"it is inevitable, in some circumstances, information disclosed in response to one request will generate a further request, designed to pursue a particular aspect of the matter in which the request is interested ... The request was not one that was so similar the first request that section 14(2) could have been invoked by the Authority and it was sufficiently distinct from the other requests that we have identified that it may not fairly be characterised as the simple re-working of earlier requests"*.
32. Taking into account the comments above the Commissioner's view is that the request demonstrates persistence but does not necessarily demonstrate a continuing pattern of obsessive behaviour. It is difficult to say with any certainty, given the previous correspondence on this issue following other responses to requests, that if DEFRA were to respond to this request no further requests on this subject would be made in the future. However, as the Tribunal noted there is some inevitability to this and this does not demonstrate, on its own, that a request is obsessive or manifestly unreasonable.

Whether the request has any serious purpose or value

33. The Tribunal has previously found that where subjects are driven by a genuine desire to obtain information on a particular subject then they are not likely to be unreasonable requests. However, the Tribunal has also recognised there should be a point where a complainant lets the matter drop. In this case the request does not appear to be exactly the same as previous requests although it is on a similar theme. The purpose of the request is to expose the process by which, and the decisions regarding, the allocation of funding to equestrian centres.
34. Although information on this subject has previously been provided this request is not for the same information again and the complainant has also demonstrated to the Commissioner that the Parliamentary and Health Service Ombudsman (PHSO) still have an active inquiry regarding this issue, supporting the argument that the request does have a serious purpose or value.

35. The Commissioner has looked at the pattern of previous requests to consider whether the latest request supports the presence of a serious purpose.
36. In this case, a number of requests have been made and correspondence sent and it seems that the response to one request, whilst not immediately resulting in another request, leads to further correspondence being sent and further requests at later dates. Although the requests were seemingly asking different questions it is DEFRA's contention that the most recent request would result in the provision of similar information to that already provided.
37. However, DEFRA has acknowledged that the request is broader ranging than previous requests and where there is a duplication the most recent request would require the provision of information which has been created since the previous request, several months before.
38. The Commissioner has therefore concluded that the initial requests for information on this subject matter may have had serious purpose or value; and as the most recent request would be likely to result in the provision of further information that has not already been provided, the request does have some serious purpose or value.

Conclusion

39. In the Commissioner's view the requests impose a significant burden on DEFRA when seen in the context of the ongoing correspondence between the parties. However he does not consider that they are manifestly unreasonable, obsessive or that they have no serious purpose or value as set out above.
40. The Commissioner's decision has found that whilst the requests impose a significant burden, this is outweighed by the serious purpose and value of the requests and therefore it would be wrong to find the requests vexatious.
41. Therefore the Commissioner has concluded that DEFRA did not correctly apply section 14(1) to the request set out in paragraph 3 of this notice.

Right of appeal

42. 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

43. 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.
44. 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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