

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 27 September 2012

Public Authority: The Home Office
Address: 2 Marsham Street
London
SW1P 4DF

Decision (including any steps ordered)

1. The complainant has requested from the Identity and Passport Service (IPS) of the Home Office information about passport applications, complaints handling and complaints made about IPS to PHSO (Parliamentary and Health Service Ombudsman).
2. The Commissioner's decision is that the Home Office incorrectly applied section 14(1) of the Freedom of Information Act (the Act) to the complainant's request.
3. The complainant has now received responses to both the request of 14 November 2011 and the clarification of 12 December 2011, due to the intervention of the Commissioner.
4. The Commissioner does not require the Home Office to take any steps to ensure compliance with the legislation.

Request and response

5. On 14 November 2011, the complainant wrote to IPS and requested information in the following terms:

"1) Please provide a copy of:

- the current index of the operational IPS policy guide (an operational manual used in processing passport applications)*
- the current index of the operational IPS procedure guide (an operational manual used in processing passport applications)*

2) Please provide a full copy of the following sections of the operational IPS policy guide as published internally:

- the section titled "Complaints Handling Policy"
- the section titled "Complaints Handling Procedure"
- the section titled "abbreviations to be used when case noting"

3) Please provide a list of all past findings or documentation showing all past findings, in cases that have involved the IPS being investigated by the Parliamentary Commissioner for Administration."

6. The organisation referred to as "the Parliamentary Commissioner for Administration" means the PHSO for both the complainant and the Home Office.
7. IPS responded on 12 December 2011. It disclosed the information for item 1). For item 2) it provided a link for the document which is both the Complaints Handling Policy & Complaints Handling Procedure, but did not explain to the complainant that they were the same document. IPS also stated the section titled "abbreviations..." was not held. For item 3), IPS asked the complainant to clarify his request.
8. The complainant responded on the same day, and queried the response for item 2), as all three sections could be seen in the disclosed indices of item 1). The complainant also clarified the request for item 3) as follows:

"I require:
 - any document showing a list of findings (created by IPS staff) with any confidential personal information redacted; and
 - any document which formed the basis for the Complaints Handling and Compensation Policy's own list of "lessons that need to borne in mind" on page 8; and
 - any management documentation or management information circulated to management showing any past findings in cases that have involved the IPS being investigated by the Parliamentary Commissioner for Administration or lessons to be learned with confidential information redacted."
9. This clarification was treated as a new request by IPS. Before a response was issued the complainant submitted two further requests to IPS. A joint response was issued to all three requests on 23 December 2011, in which IPS stated it considered the requests vexatious under section 14(1) of the Act.
10. An internal review was carried out by the Home Office, who wrote to the complainant on 26 January 2012. It referred to all three requests

mentioned in the refusal notice of 23 December 2011 and upheld the original decision.

Scope of the case

11. The Commissioner considers the scope of the case to be whether IPS was correct to consider the clarification of 12 December 2011 rendered the request to be vexatious.
12. The scope does not include the two other requests that were included in the joint refusal notice and internal review.

Reasons for decision

13. Section 14(1) of the Act states that:

“Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious.”

14. The Commissioner has published guidance which outlines how to identify vexatious requests. The guidance recommends considering the following questions:
 - Can 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 in terms of expense and distraction?
 - Is the request designed to cause disruption or annoyance?
 - Does the request lack any serious purpose or value?
15. During the course of the Commissioner’s investigation IPS amended their stance and stated that they were only relying on items 1, 3 & 4 to support the section 14(1) refusal. Therefore the Commissioner will restrict his decision to these items.
16. Recent decisions from the Information Tribunal have established that this guidance should not be used as an exhaustive checklist, as it is possible for one factor to be so extreme that it alone can justify the use

of section 14(1). However it should be noted that the Tribunal considers the guidance “helpful”¹ and it remains a useful guide for public authorities to determine whether a request is vexatious.

17. When determining whether a request is vexatious, the Commissioner will consider the context and history of the request. In certain circumstances the request itself will not be vexatious but can be considered so when placed in a wider context.

Can the request fairly be seen as obsessive?

18. The complainant has a grievance with IPS and has made a complaint to PHSO, which at the time of the request had not been resolved.
19. In the Home Office’s internal review, they cited the case of Dransfield v Information Commissioner (EA/2011/0079) because they consider that the complainant was using requests to pursue his grievance.
20. However, the grievance in the Dransfield case had already been investigated, and was being pursued through the Act as a way of trying to make the public authority revisit the issue. This is not the case here, and so the comparison is not correct.
21. Instead the Commissioner considers that the complainant is pursuing information to aid him in his complaint against IPS, and is using the Act to obtain information that is not available to him by other means.
22. The Commissioner also notes that IPS invited the complainant to make a clarification of item 3) of the request, so it is not appropriate to consider it obsessive because he was responding to their offer.

Would complying with the request impose a significant burden in terms of expense and distraction?

23. In the Home Office’s internal review they argued that they have received a number of requests which “have consisted of a large number of questions per request and in some instances the requests have been for detailed information”.
24. Over a 22 month period, the complainant submitted 7 distinct requests to IPS, which contain a total of 62 questions. The Commissioner notes that of the questions put to IPS, approximately 4 of these were answered with a request for clarification; 12 were refused under section

¹ Information Commissioner v Jbol Ltd, EA/2011/0238

12; 2 were refused under other exemptions and 17 were either not held or referred to a previous answer.

25. Further, IPS informed the Commissioner that between 2010 -11 they handled a total of 298 FOI requests. The complainant's 7 requests are not a substantial proportion of this total so the Commissioner does not consider them to be a significant burden on the resource of IPS.
26. Therefore the Commissioner does not consider the amount of work created by the complainant's requests as being burdensome to the point of being vexatious.

Is the request designed to cause disruption or annoyance?

27. In the internal review the Home Office stated:

"Whilst the subject of the requests relate to [the complainant's] complaint [to PHSO] the information requested is unlikely to be of value to him in the complaint process. The number and subject of the requests suggest that they are intended to cause disruption and annoyance to the department."

28. Aside from the volume of requests, the Home Office has not been able to produce any evidence to support the suggestion that the requests were designed with the purpose of disrupting or annoying IPS. The volume of requests has previously been addressed by the Commissioner and this does not make the request vexatious.

29. In response to a question from the Commissioner the Home Office stated:

"The IPS team felt that providing the information [to the complainant's requests] would interfere with the investigations being conducted by the Ombudsman."

30. The Home Office has not been able to produce any evidence to support why IPS "felt" that the requests were designed with the purpose of disrupting the PHSO's investigation.

31. The Commissioner also notes that the conduct of the complainant has been reasonable throughout the process, especially when taken into consideration that IPS stated they did not hold information which was clearly listed in their own policy index, and which IPS now confirm they do hold.

Summary

32. Having reviewed the context behind the request and the attributes of the request itself, the Commissioner's decision is that the request is not vexatious and that IPS were incorrect to refuse the request under section 14(1) of the Act.

Procedural Requirements

33. During the course of the Commissioner's investigation, the Home Office submitted the document titled 'Abbreviations to be used in case noting' which was requested on 14 November 2011.
34. The complainant had been informed by IPS that the document was not held, and as no exemption was applied to justify why it was not released IPS were in breach of section 1(1)(a) & 1(1)(b) of the Act.
35. As the Home Office did not disclose this document within the statutory time period for a response, there are breaches of section 10 for failing to confirm they held the document within 20 working days and failing to communicate the document within 20 working days. The Home Office has now disclosed this document.

Right of appeal

36. 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

37. 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.
38. 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

**Gerrard Tracey
Principal Adviser
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**