Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 28 May 2012

Public Authority: Ministry of Defence
Address: Main Building
Whitehall
London
SW1A 2HB

Decision (including any steps ordered)

1. The complainant requested information about legal costs paid by the Ministry of Defence (MOD) to named solicitors with regard to personal injury claims linked to the Porton Down volunteers. The complainant contacted the Information Commissioner (the Commissioner) after he did not receive a response from the MOD. The MOD explained to the Commissioner that the complainant's previous request concerning Porton Down had been deemed vexatious and a refusal under section 17(5) of the FOIA had been issued. The Commissioner's decision is that the MOD correctly applied section 14(1) to the previous request and correctly relied upon section 17(6) when not responding to further related correspondence. The Commissioner does not require the MOD to take any further remedial steps.

Request and response

2. On 19 January 2012, the complainant wrote to the MOD and requested information in the following terms:

> *"This FOI request relates to the payment in legal costs to* [named solicitors] *the amount of which is stated in your letter dated 23 Feb 2011.*
>
> *(Q1) On what date was the payment/s made to* [named solicitors]*?*
>
> *(2) Who sanctioned the payment, and by what method was the money transferred to* [named solicitors]*?*

(3) Has there ever been any payment/s of this kind made to any other law firm since this time?".

3. The MOD has not responded to the complainant.

Scope of the case

4. The complainant contacted the Commissioner to complain about the fact that a response to his request had not been provided by the MOD. In answer to the Commissioner's initial enquiries, the MOD confirmed that a previous request dated 28 March 2011 for related legal costs information had been refused as vexatious under section 14(1). The MOD confirmed that it had notified the complainant that any further correspondence on the same subject of Porton Down would go unanswered in accordance with section 17(6). Therefore, the request in this case was not responded to.

5. The Commissioner considers the scope of the case to be whether the application of section 14(1) to the March 2011 request and subsequent refusal under 17(6) of this request was compliant with the FOIA legislation.

Reasons for decision

6. Section 14(1) of the FOIA states that:

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

7. In determining whether a request is vexatious, the Commissioner will generally consider the context and history of a request as well as the strengths and weaknesses of the arguments, in particular regarding some or all of the following factors.

- Whether the request could otherwise fairly be characterised as obsessive.
- Whether the request has the effect of harassing the public authority.
- 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 any serious purpose or value.

Whether the request could otherwise fairly be characterised as obsessive

8. In correspondence to the Commissioner, the MOD pointed to the number and intensity of the complainant's enquiries as evidence that his requests were obsessive in nature. The MOD provided a table logging all 53 of the complainant's requests on the Porton Down subject since the FOIA was enacted in 2005. The MOD only provided details of his freedom of information requests but made the Commissioner aware that there had been voluminous correspondence over the years: for example, Parliamentary correspondence, correspondence regarding injury claims, subject access requests made under the Data Protection Act 1998 (the DPA) and other email communications.

9. Even more of a concern was the fact that the MOD said the complainant had attempted to contact MOD employees via the Facebook social networking site. The Commissioner considers that this crosses the boundaries of reasonable behaviour and is a clear example of the obsessive nature of the complainant's correspondence.

Whether the request has the effect of harassing the public authority

10. The MOD informed the Commissioner that over a period of seven years the complainant's communications had gradually become *'more abusive and defamatory'* and in the case of one employee racially offensive. The MOD stated that its staff often felt harassed as those who were trying to assist the complainant were personally abused in the process.

11. The MOD explained that the incident with Facebook had added to the distress caused to its employees as it was an unwarranted intrusion into their privacy.

12. The MOD also explained that the complainant had been rude and abusive to Defence Science and Technology Laboratory (DSTL) staff during several telephone conversations. This had led to the complainant being asked to only contact the organisation via email, letter or fax. The Commissioner considers that the behaviour displayed by the complainant as described by the MOD had caused its staff to feel harassed.

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

13. In terms of this criterion, the MOD explained to the Commissioner that the complainant was only interested in information about the Porton Down volunteers, and that as a result of this his requests were very narrow in scope and focussed on very similar information. This had placed an unreasonable burden upon a small number of officials at the MOD who would otherwise have been dealing with other areas of access to information or carrying out other core defence business functions.

14. Not only did the complainant's requests put a strain on its overstretched resources but the MOD informed the Commissioner that it considered the requests took valuable resources away from other applicants. It argued:

> *"...it is against the wider public interest for* [the complainant] *to be permitted to consume such a high volume of the Department's FOI resource capacity over so many years for a purpose which, based on the information located, is disproportionate to any benefits he might gain from making these requests".*

The Commissioner recognises that this strain on resources would be the overall effect of the complainant's requests and accepts that this factor carries some weight.

Whether the request is designed to cause disruption or annoyance

15. It is clear to both the MOD and the Commissioner that the complainant feels he is fighting a just cause. He has been in more or less continuous correspondence with the MOD on the same issue for the past seven years posing hundreds of questions and making numerous information requests. The MOD recognises that the complainant thinks it should be held to account for his experiences at Porton Down and is driven by this desire to put certain wrongs right.

16. However, the complainant's requests have been shown to have caused the MOD annoyance and disruption even if this was not his actual intention. The MOD suggested that the complainant appears to have lost sight of the purpose of the FOIA and the general principles of access to public information in the public interest which it embodies. The MOD explained to the Commissioner that the *"disruption and annoyance occurs in going over the same issues with him time and time again".*

17. Whilst the Commissioner does acknowledge the MOD's concerns, however, he does not consider that it has demonstrated that the complainant intended to cause disruption and annoyance to the MOD's staff and functions. He has therefore given this factor no weight.

Whether the request has any serious purpose or value

18. The MOD explained that the complainant had been provided with all the information pertaining to his time as a Porton Down volunteer and that *"…with hindsight he has probably been in possession of it all prior to the introduction of FOI requests in 2005".*

19. The MOD explained that the last date for submission of any additional claims regarding the Porton Down volunteers had now passed and all claims which the MOD had dealt with had now been settled. In light of this, the Commissioner considers that the complainant's continued correspondence on this and related matters increasingly lacked any kind of serious value.

Conclusion

20. The Commissioner considers that the MOD has provided sufficient evidence under four of his criteria in support of its application of section 14(1). Therefore, he finds that the fact the MOD did not respond to the complainant's request of 19 January 2012 was compliant with the FOIA.

Right of appeal

21. 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

22. 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.

23. 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 ……

Jon Manners
Group Manager
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