

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 26 March 2013

Public Authority: Department for Environment, Food and Rural Affairs

Address: Nobel House
17 Smith Square
London
SW1P 3JR

Decision (including any steps ordered)

1. The complainant made a number of requests, on two separate dates, to the Department for Environment, Food and Rural Affairs (Defra) relating to an existing dispute with the department. Defra has refused these requests under section 14(1) (vexatious request) of FOIA. The Commissioner considers that Defra was correct to rely on section 14(1) and does not therefore require Defra to take any steps as a result of this notice.

Request and response

2. On 26 February 2012 and 11 May 2012 the complainant wrote to Defra with a series of information requests. The wording of the requests is reproduced in the annex (A) attached to this notice.
3. In response to the first set of requests (26 February 2012), Defra informed the complainant on 23 March 2012 that these had been dealt with under the provisions of the Data Protection Act 1998 (DPA) – withholding the requested information under paragraph 10 of schedule 7. However, following further correspondence with the complainant, Defra advised the complainant on 2 April 2012 that it had revisited the requests and had decided that FOIA was in fact the appropriate access-regime. Under these provisions, Defra considered that the requests were vexatious for the purposes of section 14(1) of FOIA. Furthermore, in accordance with section 17(6) of FOIA, Defra pointed out that it was not obliged to acknowledge receipt of, or otherwise respond to, any future requests from the complainant on the same subject matter.

4. On receipt of the second series of requests (11 May 2012), Defra wrote to the complainant on 25 May 2012 and referred him back to its letter of 2 April 2012, mentioned above. This reiterated the application of section 14(1) to requests on the particular subject matter and the claim that, under section 17(6), Defra was not obliged to respond to future requests about this same issue. Accordingly, Defra made clear that it would not reply to any further correspondence along those lines.

Scope of the case

5. The complainant contacted the Commissioner on 20 September 2012 to complain about the way his requests for information had been handled.
6. In making his complaint, the complainant was not certain that Defra had in fact claimed that the requests of 11 May 2012 were vexatious. Consequently and regardless of any decision made on the application of section 14 to his earlier requests, the complainant expressed his preference for the Commissioner to require Defra to issue a new response clearly setting out its position.
7. However, during the course of his investigation, Defra has confirmed that it is seeking to rely on section 14(1) in regard to both sets of requests. In the circumstances, the Commissioner has found it appropriate to consider the application in full as part of this notice.

Reasons for decision

Section 14(1) – vexatious request

8. Section 14(1) allows that a public authority is not obliged to comply with a request if the request is vexatious.
9. The legislation itself does not describe what is meant by vexatiousness. However, its interpretation has helpfully been considered by the Upper Tribunal in the recent case *The Information Commissioner and Devon County Council vs Mr Alan Dransfield* (GIA/3037/2011)¹. The Upper Tribunal decision, which is binding on the Commissioner, found that the term vexatious “in section 14 carries its ordinary, natural meaning

¹ <http://www.osspsc.gov.uk/judgmentfiles/j3680/GIA%203037%202011-01.doc>

within the particular statutory context of FOIA" (paragraph 24). The Tribunal also agreed with an earlier First Tier Tribunal in the case of *Lee vs Information Commissioner and King's College Cambridge* (EA/2012/0015, 0049 and 0085) which observed that the term implies a "manifestly unjustified, inappropriate or improper use of a formal procedure" (paragraph 27).

10. In the Dransfield case, the Upper Tribunal also found it instructive to assess the question of whether a request is truly vexatious by considering four broad issues: (1) the burden imposed by the request (on the public and its staff); (2) the motive of the requester; (3) the value or serious purpose of the request; and (4) and harassment or distress of and to staff. The Upper Tribunal did, however, also caution that these considerations were not meant to be exhaustive. Rather, it stressed the "importance of adopting a holistic and broad approach to the determination of whether a request is vexatious or not, emphasising the attributes of manifest unreasonableness, irresponsibility and, especially where there is a previous course of dealings, the lack of proportionality that typically characterise vexatious requests" (paragraph 45).
11. In this case it is evident that there is a long and unhappy history to a dispute of a professional nature between the complainant and Defra. This has manifested itself in a number of complaints being made about Defra and its staff and the commencement of formal proceedings concerning the treatment of the complainant. The Commissioner has not felt it necessary to refer in detail to the basis and development of the dispute here, save to say that both the complainant and Defra have provided summaries of the relevant events.
12. Defra has argued that the communications with the complainant arising from the dispute have imposed a significant burden and demonstrate an obsession with events surrounding the dispute. It has also claimed that the effect of these communications has been to harass staff at the authority.
13. The same arguments for the application of section 14(1) have been advanced for each of the requests made on the two separate dates. This is on the basis that all of the requests represent an extension of the dispute and should be treated accordingly. The first step for the Commissioner is therefore to establish whether Defra was correct to state that the requests relate to the same underlying issue. If not, it is less likely that a particular request could be considered vexatious for the reasons argued by Defra.
14. On the part of the complainant, there has not been any suggestion that the requests should be seen other than in the light of the dispute; quite the opposite in fact. Similarly, the Commissioner is satisfied that all of

the requests seek information that the complainant considers will help his position by casting doubt on the credibility of the other parties to the dispute. The Commissioner has therefore considered the overall impression and strength of Defra's arguments in respect of the requests, albeit bearing in mind that any evidence should reflect the circumstances as they stood at the time a particular request was made. In doing so, the Commissioner has also had regard to the value, purpose and motive of the requests.

15. It is recognised, not least by the aforementioned Upper Tribunal, that the vexatious nature of a request may only become apparent when the history and context of a request are considered. The effect of this is that the identity of the applicant may have a bearing on the application of section 14(1), unlike other provisions in FOIA which are in general applicant-blind. Specifically, the Upper Tribunal accepted that the previous course of dealings between an applicant and a public authority will be a relevant consideration, with the "number, breadth, pattern and duration of previous requests" (paragraph 29) potentially being telling factors.
16. To support its view that the requests are burdensome, Defra has outlined the level of communications it has had with the complainant about the dispute, as well as providing a chronology of the dispute itself, including its various strands. It advised that in a fourteenth month period (8 December 2008 to 1 February 2010) the complainant made 17 separate applications for information. This amounted to 83 questions in total, with one request alone accounting for 18 questions. During the same period, the Commissioner also understands that the complainant sent more than 100 emails to other Defra staff concerning the adoption of a particular system that was ultimately the root of the dispute.
17. The above was followed by a further 30 emails to Defra and other departments and to former Defra staff between 22 August 2011 and 16 March 2012. In this was an email that Defra highlighted in its response of 2 April 2012 to the complainant as evidence of a deliberate attempt to circumvent normal processes for handling FOIA requests – the complainant having sent the email to all 31 recipients of a separate communication, which he had sight of as a result of a disclosure to an earlier information request.
18. Defra has asked the Commissioner to consider the significant burden that dealing with these communications has placed on its resources. Furthermore, it contends that another effect of these communications has been to harass staff at the department because of the serious allegations that were frequently made against staff involved with the dispute. The combination of these factors can, in the view of Defra, be properly described as obsessive.

19. In his decision on FS50449944², involving Imperial College, the Commissioner noted his awareness that on occasion there will be a thin line between obsession and persistence. He continued by stating that a clear sign of obsessiveness, as opposed to persistence, will be where a complainant continues with a request despite being in possession of other independent evidence on the same issue. The volume of correspondence, he acknowledged, can also be a sign of vexatiousness. In terms of burden, it was recognised that it was not just a question of financial resources but can include the extent of the diversion and distraction from other work.
20. The Commissioner has no doubt that the amount of correspondence chronicled by Defra is considerable. However, offsetting this is the Commissioner's knowledge of the seriousness of the dispute and its protracted and involved nature, the potential importance of the issues that the complainant is still seeking to pursue and what the complainant considers is the Defra's obstructive attitude in dealing with him. The grouping of these factors, as can be read from the complainant's submissions, is in his view more than adequate justification for the direction and volume of his correspondence. In short, it may be properly argued in certain circumstances that sustained correspondence with a public authority is not indicative of vexatious behaviour but is rather a reflection of the gravity and complexity of the subject matter.
21. The complainant also considers that, in relation to his requests of 11 May 2012, an additional mitigating factor is the advice that had previously been given to him by the Information Commissioner. This arose from events arising from a separate complaint, which after some delay led to the issuing of a decision notice under the case reference FS50465049 (18 February 2012)³. This notice itself, at paragraph 10, outlined the background to the investigation of the complaint:
22. *The complainant originally contacted the Commissioner on 11 November 2009 to complain about the way his request for information had been handled. The original complaint was closed on 1 October 2010 following the complainant's confirmation that he was withdrawing his complaint on the basis of the Commissioner's preliminary assessment that section 12 was applied appropriately and that on the balance of probabilities it*

² http://www.ico.gov.uk/~media/documents/decisionnotices/2013/fs_50449944.ashx

³ http://www.ico.gov.uk/~media/documents/decisionnotices/2013/fs_50465049.ashx

was unlikely that the requested information was still held. The complainant then wrote to the Commissioner on 28 February 2012 requesting that the complaint be reconsidered as he had been provided with information on both 18 November 2010, under Employment Tribunal disclosure obligations, and 13 January 2012, under the FOIA, which showed that the officer who provided the internal review response was a party to an email conversation which fell within the scope of the request and therefore DEFRA's response was correctly incorrect at that time. He alleged that DEFRA was clearly hiding behind procedural and technical aspects of the FOIA in order to cover up information it expressly knew existed and could easily be retrieved.

23. Before a decision was made to reconsider the complaint in light of the evidence provided, the Information Commissioner advised that the best course of action would be to resubmit his request to Defra. The complainant acted on this advice but because he was now in possession of the primary documents, the request, as he put it, was "reformulated [...] as one for information about the *handling* of the original request in 2009." In effect then, the Commissioner understands the complainant's view to be that his requests of 11 May 2012 should not be seen as a continuation of the dispute but rather an extension of the request that should have been dealt with by Defra some time previously. Accordingly, it would be unfair for the complainant to be penalised for this delay.
24. Leading on from these points, the Commissioner has no doubt that the complainant has grave misgivings about the way he has been treated in relation to the dispute. Similarly, he accepts that the complainant feels there are a number of critical issues that have not been resolved and therefore require further attention. The complainant has acknowledged that not all of the requested information will have a 'direct' bearing on these issues but nevertheless considers that disclosure will give a fuller picture of events – 'indirect' relevance still having relevance.
25. When these points are considered together with the nature of the dispute itself and the advice given by the Information Commissioner in connection with the issues dealt with under reference FS50465049, there are undoubtedly grounds for finding that section 14(1) was misapplied. Furthermore, while there may not be any specific public interest in the requested information – relating, as it does, to a particular individual – it is fair to say that there will be a wider public benefit in ensuring that a public authority can be held to account for its actions. This will only add to the case for disclosure. It is therefore for the Commissioner to decide whether these factors are strong enough to outweigh the arguments in favour of the exclusion. In the Commissioner's judgement, they are not.
26. In forming this view, the Commissioner accepts that the complainant's original requests had a serious purpose. However, he considers that the

justification for making the requests in question has largely been lost because of the number, breadth, pattern and duration of his previous requests and correspondence to Defra on the same subject. A critical issue in this case is that the issues at the heart of the dispute have not only been looked at as part of Defra's own internal processes but have also been the subject of formal proceedings.

27. It is clear that the complainant doubts the integrity of Defra's actions in these proceedings, which he hopes will be exposed by the further disclosure of information and potentially open the door to further action. The Commissioner is also aware that the complainant considers the requested material to have an effect on other concerns he has raised. However, the Commissioner feels there must be a limit to such enquiries. Yes, the idea enshrined in FOIA is to allow members of the public to scrutinise the actions of a public authority but, no, this does not mean that a member of the public necessarily has a right to monopolise the resources of a public authority on a given issue.
28. In this case, the Commissioner considers that the complainant has crossed over the line between persistence and obsessiveness by forcing Defra to repeatedly visit an issue that it has already considered; an issue that can be, and has been, looked at by objective body. Where further issues require further examination, these should be taken up with and left to the relevant body that can take action rather than through an investigation carried out by the complainant under the guise of FOIA.
29. Returning to the findings of the Upper Tribunal in *Dransfield*, and its view that a holistic and broad approach should be taken in respect of section 14(1), the Commissioner has decided that Defra was correct to deem the requests vexatious.

Right of appeal

30. 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

31. 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.
32. 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

Rachael Cragg
Group Manager – Complaints Resolution
Information Commissioner’s Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Annex A – schedule of requests

Request date	Terms of request
26 Feb '12	<p>I now require the release under the FOIA and/or the DPA of copies of any communications between</p> <p>(i) any person(s) acting on behalf of Defra in connection with the preparation of instructions to [named individual] in November 2010 on the one hand and any person(s) acting as Defra's legal representative during the same period; and</p> <p>(ii) between any legal and/or HR staff and/or other staff with Defra during the same period; and</p> <p>(iii) any related notes, manuscript annotations, meeting notes, telephone attendance notes, previous drafts (including any "track changes" notes) and/or any other relevant material including but not limited to the document entitled "[named document]" said to have been attached to the email from [named individual] to [named individuals] at 1347 on 3 December 2009</p> <p>In relation to:</p> <p>(i) the redaction of the document entitled "[named document]" and/or "[named document]" attached to the email from [named individual] to [named individual] timed at 1251 on 4 December 2009, the redacted version of which was sent to me by [named individual] on 17 November 2010, and the unredacted version of which was sent to me on 13 January 2012;</p> <p>(ii) the drafting of the document "Respondent's List of Redactions within Additional Disclosure" sent to me by [named individual] by email at 1727 on 25 November 2010.</p>
11 May '12	<p>Accordingly, please provide the following information under the FOIA:</p>

(i) is the [named individual] who carried out the RFI 2911 review (see her letter dated 23 October 2009 and subsequent correspondence) the same as the "[named individual]" who was a copy recipient of the 22 February 2008 emails? If so, why did she not declare that she had taken part in the Renew process during February 2008?

(ii) in any event, what papers were looked at before [named individual] wrote her letter dated 23 October 2009 and with whom did she discuss the case before committing herself to writing?

(iii) what discussions if any took place between [named individual] and others before she wrote her letter to me dated 13 November 2009?

(iv) what discussions, if any, took place between the recipients of my 16 November 2009 email to [named individual] and others on the one hand and [named individual] and/or [named individual] and/or [named individual]?

(v) did [named individual] discuss the matter with [named individual] before writing his email to me of 1530 17 November 2009, referring to his discussion with [named individual]?

(vi) generally, please provide me with any information that might help to understand the discrepancy between [named individual]'s categorical denial that the documents were in existence and the fact that they turned out to exist after all. In particular, to the extent that there is any documentary audit trail in relation to the papers that were looked at and/or the discussions that took place, please provide me with copies of the relevant papers.

(vii) does the relevant [named individual] still work for Defra?

(viii) if not, when did she leave?

(ix) where is she now? (I appreciate that this may be subject to confidentiality under the Data Protection Act but if you able to make contact with her I invite you to ask her to release of this information to me.)