

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 11 March 2013

Public Authority: Department for Work & Pensions
Address: Caxton House
4th Floor
6 -12 Tothill Street
London
SW1H 9NA

Decision (including any steps)

1. The complainant has made several information requests which relate to staff guidance and procedures at jobcentres. The public authority has found the requests to be vexatious. The Information Commissioner's decision is that the requests are not vexatious and he requires the public authority to take the following steps to ensure compliance with the legislation.
 - It should issue a fresh response.
2. 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 Information 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.

Background

3. There is relevant information that is already available to the public online. This can be found via the following links:
 - The Decision Makers' Guide ("DMG"):
<http://www.dwp.gov.uk/publications/specialist-guides/decision-makers-guide/>

- The Jobseekers Allowance Regulations 1996:
<http://www.dwp.gov.uk/docs/a11-4001.pdf>
- The Jobseekers Act 1995:
<http://www.dwp.gov.uk/docs/a11-0101.pdf>

Request and response

4. On 16 and 17 August 2012 the complainant made nine individual requests to the public authority; these are appended to this notice in a non-confidential annex.
5. The public authority responded on 17 September 2012 stating that it found all the requests to be vexatious, stating that they were designed to cause annoyance and lacked any serious purpose or value.
6. Following an internal review the public authority maintained the requests were vexatious and stated:

"In reaching this conclusion I have taken into account the volume of requests (9 requests in less than [sic] 36 hours), the intent behind your requests (comments and terms used in your request and your email address suggest an harassment of DWP) and the fact that the DMG and legislation is all recorded information in the public domain and that providing references and explanation of that recorded information is not an FOI matter".

Scope of the case

7. On 15 October 2012 the complainant contacted the Information Commissioner to complain about the way his request for information had been handled. Although his complaint concerns disclosure of information as well as the issue of whether or not the requests are vexatious, as the public authority has only concluded that the requests are vexatious this is the only issue the Information Commissioner can consider in this notice.
8. The Information Commissioner has made some further comments in "Other matters" at the end of this notice which may be of assistance to the complainant.

Reasons for decision

Section 14 – vexatious requests

9. Section 14(1) does not oblige a public authority to comply with a request for information if the request is vexatious.
10. The Information Commissioner has issued guidance to assist in the consideration of what constitutes a vexatious request¹. He will consider arguments put forward in relation to some or all of the following five factors to reach a reasoned conclusion as to whether a reasonable public authority could refuse to comply with the requests on the grounds that they are vexatious:
 - 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 the effect of harassing the public authority or its staff;
 - whether the request has any serious purpose or value;
 - whether the request can otherwise fairly be characterised as obsessive or manifestly unreasonable.
11. It is not necessary for all five factors to be engaged, however these are elements which are commonly encountered and the balance of these factors can be helpful in illustrating the reasons for any decision. Where the request falls under only one or two categories or where the arguments sit within a number of categories but are relatively weak, this will affect the weight to be given to the public authority's claim that section 14 is engaged.
12. The Information Commissioner agrees with the Tribunal that the bar need not be set too high in determining whether to deem a request vexatious. He also agrees with the Tribunal that the term 'vexatious' should be given its ordinary meaning, which is that it 'vexes', ie it causes irritation or annoyance. In relation to section 14(1), the annoyance must be caused by the process of complying with the request.
13. It is of note that the address for correspondence was an email address which included the wording "jobcentre staff are all liars".

¹http://www.ico.gov.uk/for_organisations/freedom_of_information/guide/ref_using_a_request.aspx

14. In its initial refusal notice the public authority has provided the following argument to support its position that the requests are vexatious:

"In considering your request I find that your request could be considered to be harassing DWP or causing distress to staff, is designed to cause annoyance and lacks any serious purpose or value; therefore I find this test met".

15. At internal review it added the following arguments:

"In reaching this conclusion I have taken into account the volume of requests (9 requests in less than 36 hours), the intent behind your requests (comments and terms used in your request and your email address suggest an harassment of DWP) and the fact that the DMG and legislation is all recorded information in the public domain and that providing references and explanation of that recorded information is not an FOI matter".

16. It provided the additional arguments to the Information Commissioner, which will be considered below along with arguments provided by the complainant. The public authority's additional arguments have not been put to the complainant as the Information Commissioner believes that the arguments that he had already provided address the public authority's points sufficiently.
17. The arguments submitted by the public authority can be placed in the first four of the bullet points listed above, two of which have been considered together. The Information Commissioner will consider these in turn.

Would compliance create a significant burden in terms of expense and distraction?

18. The public authority has advised that it considers 9 requests in less than 36 hours to be burdensome. The complainant has countered this by advising the Information Commissioner that he had made separate requests to try and prevent the public authority from applying the cost-limit to a single request, under the belief that it may be considered too time-consuming to deal with as one request. (The Information Commissioner would like to comment here that, as the requests all relate to similar information, it is likely that the public authority could aggregate them which would mean that they could be considered as if they were one request for the purposes of the cost limit.) The complainant also made the observation that if he had made all 9 requests over a month period rather than such a short time that he believes they would not have been categorised as 'high volume'.
19. The public authority has not provided any evidence to suggest that it has dealt with any earlier requests made by the complainant, although it has advised that it received one subsequent request.
20. The Information Commissioner does not consider nine requests for information to such a large public authority to be particularly onerous. He is not satisfied that the public authority has evidenced that compliance with the requests would create a significant burden in terms of expense and distraction.

Is the request designed to cause disruption or annoyance?

Does the request have the effect of harassing the public authority or its staff?

21. The public authority has advised the Information Commissioner that the email address which the complainant used to submit his requests, is: *"insulting, untrue and harmful and clearly intended to be offensive and annoying"*. It also commented that the complainant had:

"... sought to reinforce the prominence of this offensive email address by adding, unnecessarily, the phrase "Please provide by return email (to the address used as the From in this request) the following information".
22. It went on to state that it found comments and terms within the requests to be *"pejorative and threatening"* and provided the examples:

'but that does not discount the possibility of staff who have no ethical imperative to keep health matters confidential, from discussing these with others',

and

'you should note that I have this conversation recorded'.

23. Conversely, the complainant has countered these arguments by advising the Information Commissioner that each request was:

"... polite and succinct, and was not rude, offensive, harassing or could be considered in any way intimidating to any DWP staff member",

and that the requests:

"... stick to the facts and request information the DWP should have readily available".

24. He went on to explain that the email address he used had been a "protest" at the information he had been given by staff from the public authority. He also conceded to the Information Commissioner that using the email address had been a mistake, although he did not see how it could be deemed to cause harassment to staff.
25. The requests are appended to this notice. The Information Commissioner has considered them all and does not agree that any reasonable public authority would find them to be either annoying or to have an harassing effect. Whilst they may be persistent, the complainant is obviously unhappy at some aspect of the public authority's service and this is apparent within the wording of the requests. The Information Commissioner can see no evidence within their wording to support that the requests are intentionally offensive or disruptive.
26. Whilst he gives some merit to the complainant's establishment of an email address which is obviously intended to have some sort of impact because of his dissatisfaction with the public authority, the Information Commissioner is of the opinion that a degree of annoyance or irritation is something which public servants will experience from time to time and can be expected to rise above, unless it approaches levels which will indeed constitute harassment.
27. The Information Commissioner considers that while the public authority may be annoyed or irritated by the complainant's requests, this is a normal part of the role of a public authority dealing with requests. This

is not the same as harassment and the Information Commissioner does not consider that the public authority has provided sufficient arguments to establish an intention to cause disruption, annoyance or harassment from the complainant's requests.

Does the request have any serious purpose or value?

28. The public authority advised the complainant that the DMG and related legislation was already available in the public domain and that the FOIA did not require it to provide more detailed references or explanations. It also advised the Information Commissioner that: "*... much of the content of the requests do not seek recorded information, but instead aim to argue with or question actions linked to his own case*".
29. The Information Commissioner asked the public authority whether all the information which may serve to answer his requests was in the public domain; it advised that it was not. He also asked whether or not any information which was not already available to the complainant would be disclosable under the FOIA and he was advised that:

"Most internal guidance is disclosable under FoI for non-vexatious requests...".

It did also explain that to provide everything it held would be likely to involve disproportionate costs.

30. It could be argued that the request has no serious purpose or value as much of the legislation or guidance that would serve to answer the complainant's requests is already available to him. However, clearly not everything is in the public domain so the Information Commissioner does not accept this reasoning and does not consider that the requests have no serious purpose or value.

The Commissioner's conclusion

31. Having considered the arguments above the Information Commissioner has concluded that the public authority has not demonstrated sufficient reasons to deem the requests to be vexatious. He therefore requires the public authority to issue a fresh response.

Other matters

32. Although they do not form part of this decision notice the Information Commissioner wishes to highlight the following matters.
33. In his complaint the complainant states that he wishes to know which specific paragraphs of which pieces of legislation are being relied on by the public authority and what makes its guidance, and various other details it has required from him, 'lawful'. Whilst the Information Commissioner accepts that there is a lot of legislation which is very lengthy and complex, he would make the point to the complainant that under the terms of the FOIA a public authority is not obliged to respond to a requester's questions or answer their queries; instead, it only has an obligation to provide access to any recorded information actually held (provided it is not exempt). Therefore, if all the available recorded information is held within any legislation / guidance which is provided then a public authority has met its obligations under the FOIA.
34. The public authority has also drawn the Information Commissioner's attention to a further request which has been made by this complainant for all Jobcentre Plus operational guidance. It advised that compliance with this would cause a significant burden. The Information Commissioner notes this position but has not taken this later request into account in this decision notice as it postdates this particular request.
35. The Information Commissioner would also like to comment on the difficulty he experienced trying to contact those staff who dealt with the requests in this case. The public authority's practice of not providing contact names or telephone numbers within its responses makes it very difficult for the appropriate contact to be found. As the Information Commissioner himself found it very difficult he can only assume that this is compounded for members of the public. The public authority advised him that it did not give this information out as it was not obliged to and that to disclose these details would breach the privacy of those non-senior staff involved; it referred to such staff as not being in public-facing roles.
36. The Information Commissioner does not agree with this approach. If such staff are responding to requests made under the FOIA then he considers this to be a public-facing role which is unlikely to attract an expectation of privacy. He further notes that no 'senior' contact was given as an alternative. He considers this to be poor practice.

Right of appeal

37. 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,
Arnhem House,
31, Waterloo Way,
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

38. 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.
39. 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
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Information Commissioner's Office
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SK9 5AF**