

Freedom of Information Act 2000 ('FOIA')

Decision notice

Date: 26 November 2013

Public Authority: Department for Work & Pensions
Address: Caxton House
Tothill Street
London
SW1H 9NA

Decision (including any steps ordered)

1. The complainant has requested the number of Incapacity Benefit and Employment and Support Allowance claimants who have died in 2012. The Department for Work and Pensions (DWP) refused the request as vexatious under section 14(1) of the FOIA. The Commissioner's decision is that the DWP has correctly applied the vexatious provision at section 14(1) of the FOIA. He does not require any steps to be taken.

Request and response

2. On 25 June 2013, the complainant sent the following request to the DWP:
'Please provide the number of Incapacity Benefit and Employment and Support Allowance claimants who have died in 2012. Please break that figure down into the following categories:
 - a) *Those who are in the assessment phase*
 - b) *Those who were found fit for work*
 - c) *Those who were placed in the work-related activity group*
 - d) *Those who were placed in the support group*
 - e) *Those who have an appeal pending*

I am aware that the Department for Work and Pensions came under criticism last year because it did not follow up on the conditions of people who had been found fit for work and signed off the benefit. It is to be hoped that this has been rectified and follow-up checks have been carried out. If this is the case, please provide details of:

f) Former ESA/IB claimants who have died after being put onto Jobseekers' Allowance

g) Former ISA/IB claimants who were taken off benefit but put onto no other means of support, and the number of these who have died.'

3. The DWP responded on 8 July 2013 and refused to provide the requested information citing section 14(1). An internal review was provided on 17 September 2013 which maintained the original position.

Scope of the case

4. The complainant contacted the Commissioner on 18 September 2013 to complain about the way his request for information had been handled. He disputed that his request was vexatious.
5. The Commissioner has considered whether the DWP is entitled to rely on the vexatious provision at section 14(1) of the FOIA.

Reasons for decision

6. 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. There is no public interest test.
7. The term 'vexatious' is not defined in the legislation. In *Information Commissioner v Devon County Council & Dransfield*¹ the Upper Tribunal took the view that the ordinary dictionary definition of the word vexatious is only of limited use, because the question of whether a request is vexatious ultimately depends upon the circumstances surrounding that request. The Tribunal concluded that 'vexatious' could be defined as the "...manifestly unjustified, inappropriate or improper use of a formal procedure" (paragraph 27). The decision clearly

¹ UKUT 440 (AAC) (28 January 2013)

establishes that the concepts of 'proportionality' and 'justification' are central to any consideration of whether a request is vexatious.

8. 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).

9. The Commissioner has identified a number of "indicators" which may be useful in identifying vexatious requests. These are set out in his published guidance on vexatious requests². The fact that a request contains one or more of these indicators will not necessarily mean that it must be vexatious. All the circumstances of a case will need to be considered in reaching a judgement as to whether a request is vexatious.

Detrimental impact on the public authority - Campaigns

10. The DWP explained to the Commissioner that on 25 June 2013 they received eleven identical FOI requests and in the following days another thirteen identical requests. They claim that this was the direct response to an on-line blog written by the complainant on 25 June 2013.
11. In the on-line blog, the complainant gave details of his request and appeared to encourage others to do the same: "*I strongly urge you to do the same. **There is strength in numbers***". (The emphasis is the original author's.)

² http://www.ico.org.uk/~/media/documents/library/Freedom_of_Information/Detailed_specialist_guides/dealing-with-vexatious-requests.ashx

12. On 25 June 2013 the complainant was asked on his on-line blog '*is it okay to copy and paste your FOI request to send it to DWP?*' and he answered '*Sure, just make sure they know you're making it in your own name*'.

13. Another complainant [redacted name A] to the Commissioner on this same issue (see case reference FS50508417) added the following to the on-line blog on 26 June 2013:

'This is a MUST READ blog post . [redacted name of complainant] exposes the utter callousness of DWP ministers and their attitude to legitimate requests for information...Please read this and follow [redacted name of complainant]'s example, as I am about to do, by sending your own FOI. Read the post for details. If we swamp the DWP with requests they surely must respond. PLEASE SHARE THIS AS WIDELY AS YOU CAN.'

14. On 29 June 2013 the complainant added to his on-line blog: '***If you believe this cause is just, go thou and do likewise***' (the emphasis is the original author's)

15. The DWP believes that several different requesters were acting in concert as part of a campaign to disrupt their organisation. '*The stated aim in this instance is that "there is strength in numbers" and "If you believe this cause is just, go thou and do likewise". The level of vitriol in the comment ... and the encouragement to "swamp" the department to make us respond is further evidence of the desire to create a "campaign" effect for all the requests received.'*

16. The DWP believes that '*the intent in this instance was deliberately designed to irritate or harass the Department and/or to disrupt its business*' and therefore this was a vexatious request.

17. When writing to the Commissioner, the complainant argued that the original DWP release in 2012 '*created significant worry*' when it revealed the number of claimants who had died in 2011 and mentioned another '*researcher into the behaviour of the DWP towards claimants, [redacted name B][who], contacted the DWP late in 2012 to ask if an update to the 'ad hoc' release would be published. He was forced to wait until mid-2013 for a response, which was negative.'*

18. The complainant referred to the ICO's guidance that it is '*important to bear in mind that sometimes a large number of individuals will independently ask for information on the same subject because an issue is of media or local interest. Public authorities should therefore ensure that they have ruled this explanation out before arriving at the*

conclusion that the requesters are acting in concert or as part of a campaign' (paragraph 92). He claimed that his on-line blog was read up to '100,000 times a month' and therefore if his name was mentioned in other requests it did not constitute a campaign but that 'the issue is of interest to the public'.

19. The complainant also argued that dealing with the requests would not cause a 'disproportionate and unjustified level of disruption, irritation or distress' as the DWP have stated in their reply to his response that the 'Department is therefore looking at this issue with a view to seeing what statistics could be produced on a regular basis.'
20. The DWP argue that 'the nature of the actual request is not the issue here. It is merely how these requests were instigated and orchestrated which led to them being treated as vexatious...these requests are vexatious when viewed in context. Given the wider context and history, the requests were clearly part of a concerted campaign designed to harass and disrupt.'
21. When determining if the complainants can be seen as acting in concert for the purposes of determining if the request is vexatious, the Commissioner defers to his guidance on this³. His guidance suggests that there must be some tangible evidence to substantiate the claim of a link between requests, for example that the requests are similar, the requesters copy each other into requests, the pattern of requests is unusual or frequent, or the group has a website which references a campaign against the public authority.
22. The Commissioner has considered this point very carefully as he is conscious of the fact that accepting that requesters are acting in concert will add much greater validity to the claims that the request in this case is vexatious. In this case, there were twenty four identical requests which were sent to the DWP in a short space of time and the Commissioner has seen three identical complaints from the individuals that the DWP believes are acting in concert.
23. However, the most significant factor is that the complainant runs an on-line blog in which the main focus is the DWP and their 'cover-up' on the number of Incapacity Benefit and Employment and Support Allowance claimants who have died in 2012. The twenty four identical

³ Paragraphs 86-92

http://www.ico.org.uk/for_organisations/guidance_index/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/dealing-with-vexatious-requests.ashx

requests were sent to the DWP in the few days after the complainant published his FOIA request on his on-line blog on 25 June 2013. Given that this issue was raised in a previous request at the end of 2012 (see above paragraph 17), it is apparent that the wording of the complainant's on-line blog on 25 June 2013 prompted the numerous requests on this issue at the end of June 2013.

24. Taking this into account the Commissioner has determined that there is sufficient evidence to link the requesters together and to accept they are acting in concert. The Commissioner has gone on to consider whether the requesters are acting in concert to obtain information about a genuine underlying issue or to engage in a campaign of disruption under the headings below. He has focused on whether the aggregated impact of dealing with the requests would cause a disproportionate and unjustified level of disruption, irritation or distress.

Is the request vexatious?

Burden

25. The DWP has provided details of all the requests for information it has received on this subject in June 2013 and the Commissioner notes that there have been twenty four requests made by the complainant and others to the DWP, some of which have been the subject of complaints to the Commissioner.
26. The DWP argues that as a *'very large customer facing Department delivering a range of significant welfare reforms and often deals with sensitive public policies that can quickly become high profile at various times'* campaigns can lead to a severe burden on *'already stretched resources'*.
27. The Commissioner accepts that when considered in the wider context, twenty four requests on one topic in a few days could impose a burden in terms of time and resources, distracting the DWP from its main functions.

Motive

28. The DWP considers that the requests are now intended to pursue a campaign of harassment: *'the stated aim in this instance is that "there is strength in numbers" and "If you believe this cause is just, go thou and do likewise". The level of vitriol in the comment from (redacted name) and the encouragement to "swamp" the department to make us respond'*.

29. The Commissioner accepts that the purpose of the requests may have gone beyond the point of simply obtaining the information requested and may now be intended to disrupt the main functions of the DWP.

Value or serious purpose

30. The DWP accepts that the complainant considers there is a serious purpose to his requests. In the internal review responses the DWP stated that *"although we do not intend to update the previous ad-hoc publication, we are looking at this topic more widely and hope to reach a conclusion in the near future."* But the DWP argued that the *'intent in this instance was deliberately designed to irritate or harass the Department and/or to disrupt its business'* and *'could lead to more such campaigns in future if people wrongly believed that the nature of a response to a request could be affected by the sheer volumes of similar requests received'*.
31. The Commissioner accepts that the complainant and the other requesters have a serious purpose but given the aggregated impact of dealing with these requests as a whole there is evidence of improper use of the formal procedure to request information under FOIA.

Harassment or distress

32. The DWP argues that it is reasonable to view the requests as part of an obsessive campaign of harassment against it and its officers. In support of this the DWP has pointed to the blog set up by the complainant. The DWP considers this to be indicative of obsessive and harassing behaviour.
33. The Commissioner is aware that there is a lot of strong feeling from the complainant on the issues raised in his request, as there is from the other requesters, but the disparaging remarks and language used in the blog cannot be overlooked and does demonstrate a level of harassment against the DWP.

Conclusion on section 14(1)

34. Having taken all the circumstances into account the Commissioner is minded to accept the request is vexatious when seen in the context of all of the correspondence with the public authority, the complainant's position and the findings of the Upper Tribunal in Dransfield that a holistic and broad approach should be taken. The Commissioner recognises there is strong evidence to suggest that the requests can be considered as a whole and that taken together the pattern, frequency and nature of the correspondence would be likely to be categorised as vexatious.

35. Accordingly, the Commissioner's decision is that the DWP has correctly applied the vexatious provision at section 14(1) of the FOIA.

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

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