

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 21 August 2019

Public Authority: Executive Office (NI)
Address: Castle Buildings
Stormont
Belfast
BT4 3SR

Decision (including any steps ordered)

1. The complainant has requested information from Executive Office (NI).
2. The Commissioner has decided that Executive Office (NI) failed to respond to the request within 20 working days and has therefore breached section 10 of the FOIA.
3. The Commissioner has also decided that Executive Office (NI) correctly relied on section 14(1) (vexatious requests) not to provide the requested information to the complainant.
4. The Commissioner requires the public authority to take no steps to ensure compliance with the legislation.

Request and response

5. On 15 August and 9 September 2017, the complainant wrote to Executive Office (NI) and requested information in the following terms:

15 August 2017: "Over the last ten years, how many NICS staff Annual Performance Appraisal Reports have, following forensic testing, been found to be fraudulent?"

9 September 2017: "Has anything ever been done about the long-standing, well-known, long officially reported bullying problem in NICS? Whistles have been blowing for decades".
6. On 30 August 2018 Executive Office (NI) responded. It refused to provide the requested information. It cited the following exemption:

- Section 14(1) (vexatious)
7. In its letter dated 30 August 2018, the Executive Office (NI) it detailed (replicated below) why it thought the requests were vexatious.

"Burden on the authority

It is difficult to quantify the extent of the correspondence which you have sent or copied to the Department over the years. Our estimate is that it amounts to many thousands of pieces. In June this year, for example, we received 90 emails from you. This amounts to an unreasonable level of contact and requires an unnecessary diversion of resources as staff reviewing your correspondence find it difficult and time-consuming trying to determine the relevance and purpose of your communications, especially as they incorporate unknown acronyms and self-created terminology. Furthermore, the volume and nature of your correspondence has a detrimental effect on the Department's capacity and ability to provide a good service to other members of the public. In our view, the objective of the FOI Act is to serve the public interest as a whole and not to an unreasonable extent the personal interests of an individual, and therefore devoting limited resources to serve one member of the public to the disadvantage of others is unsustainable.

Unreasonable persistence

You have persisted for over a decade in sending or copying to us correspondence on a variety of matters (e.g., 'measurement of organizational effectiveness', 'psychiatric health of mothers and children', 'assisting investigating authorities with lawful enquiries') for which there is little or no discernible purpose or relevance to the work of this department. In particular, you have included in your text references to a NICS 'noting and filing' policy and to a procedure which never existed, and in continuing to write to us on these themes you have chosen to ignore our earlier responses confirming the same.

No obvious intent to obtain information

The Department has been included in the extensive 'To' and 'CC' lists of recipients, who are (or were) employed in a wide variety of public bodies (including the ICO), in the numerous emails you have sent over many years. Your approach does not suggest to us that your desire is to obtain specific information for any particular purpose, as any such purpose is no longer discernible in the volume and content of correspondence which you have sent. While many of the emails you send purport to seek information under the FOI Act, they are speculative in nature and generally fail to specify any form of recorded information which may be relevant to the work of, or be held by, the organization. Therefore, we must conclude that these requests are frivolous.

Personal grudges

The subject of your recent communications appear to concern an employment issue. We note that in many instances you refer to the 'Current Temporary HOCS' (Head of the NI Civil Service), and suggest that he has knowledge of your particular case and history. This indicates to us an unjustified intent to implicate the interim HOCS, in the circumstances of your leaving the civil service although he had no connection with or awareness of your case".

8. Following an internal review the Executive Office (NI) wrote to the complainant on 1 October 2018, it stated that it upheld its original position.

Scope of the case

9. The complainant contacted the Commissioner 31 August 2018 to complain about the way his request for information had been handled. In his complainant he said as follows:

"Unfortunately, as expected, TEO have refused my requests and, as is their wont, go on to make a series of serious, but totally baseless, allegations against me. This is a clear pattern of behaviour that Officially Ostracised Persons are well used to.

TEO allege for instance that I carry personal grudges when in fact I make a specific point on each and every occasion of wishing everybody well and stressing the non-judgemental nature of my Queries.

They claim I harass staff when of course nothing could be further from the truth. Nobody could be more professional, considerate or polite. I am confident that recording of conversations will confirm this. NICS staff are the nicest people in the world, the salt of the earth as I frequently mention. As you may have noticed, I carry my badge of being given a box 4 and sacked for alleged benevolence to staff with pride.

Basically TEO are attempting, as again is their wont, to pin blame for inevitable results of their own strictly enforced Note and File Only Orders/ Communication Bans on me".

10. The substantive issue for the Commissioner to determine is whether Executive Office (NI) correctly relied on section 14(1) of the FOIA not to provide the complainant with the requested information.

Reasons for decision

11. Section 1(1) of the FOIA states that:

Any person making a request for information to a public authority is entitled –

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him.

12. Section 8(1) of the FOIA states:

In this Act any reference to a “request for information” is a reference to such a request which –

(a) is in writing,

(b) states the name of the applicant and an address for correspondence, and

(c) describes the information requested.

13. The Commissioner considers that the request in this matter fulfilled these criteria and therefore constituted a valid request for recorded information under the FOIA.

14. Section 10 of the FOIA states that responses to requests made under the Act must be provided “promptly and in any event not later than the twentieth working day following the date of receipt.”

15. The Commissioner asked Executive Office (NI) why the information requests were made on 15 August and 9 September 2017 but its refusal notice was dated 30 August 2018.

16. Executive Office (NI) explained that it decided to issue a refusal notice on 30 August 2018 because the complainant, in this quite exceptional instance, formally complained to the ICO about not receiving responses to two particular pieces of correspondence, and because the ICO pursued the case.

17. From the evidence presented to the Commissioner in this case, it is clear that, in failing to issue a response to the requests within 20 working days, Executive Office (NI) has breached section 10 of the FOIA.

18. Section 10 of the FOIA states that responses to requests made under the Act must be provided “promptly and in any event not later than the twentieth working day following the date of receipt.”

19. Section 14(1) of the FOIA states that a public authority is not obliged to comply with a request for information if the request is vexatious. There is no public interest test.
20. The term "vexatious" is not defined in the FOIA. The Upper Tribunal (Information Rights) considered in some detail the issue of vexatious requests in the case of the Information Commissioner v Devon CC & Dransfield (GIA/3037/2011). The Tribunal commented that vexatious could be defined as the "manifestly unjustified, inappropriate or improper use of a formal procedure". The Tribunal's definition clearly establishes that the concepts of proportionality and justification are relevant to any consideration of whether a request is vexatious.
21. 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 authority and its staff); (2) the motive of the requester; (3) the value or serious purpose of the request and (4) harassment or distress of and to staff.
22. 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).
23. The Commissioner has identified a number of "indicators" which may be useful in identifying vexatious requests. These are set out in her published guidance on vexatious requests. In brief these consist of, in no particular order: abusive or aggressive language; burden on the authority; personal grudges; unreasonable persistence; unfounded accusations; intransigence; frequent or overlapping requests; deliberate intention to cause annoyance; scattergun approach; disproportionate effort; no obvious intent to obtain information; futile requests; frivolous requests.
24. 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.
25. The Commissioner's guidance suggests that if a request is not patently vexatious the key question the public authority must ask itself is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress. In doing this the Commissioner

considers that a public authority should weigh the impact of the request on it and balance this against the purpose and value of the request.

26. The submissions from Executive Office (NI) to the Commissioner¹ are laid out in paragraphs 27 to 33 below.

Executive Office (NI) Submissions

27. "It is important first to set out the background to this Department's engagement with [the complainant]. Since the Department's inception, as the Office of the First Minister and deputy First Minister (OFMDFM), it has received varying but substantial numbers of emails from [the complainant] on a regular basis, in some cases around 90 in one month. The [complainant] also repeatedly emails other government departments and individuals in the UK on a volume basis: his circulation list has on occasion included over 100 recipients including the Information Commissioner's Office (ICO).
28. His emails have, over time, covered a wide variety of topics within the general subject matter of human resource management but we believe all of them originate in an event concerning the [complainant's] employment which took place some 20 years ago in another government department. This department was not involved in any way in the original issue concerning the complainant nor does it have any responsibility for human resource issues within NICS which are the subject matter of most of his requests. Over many years, [The complainant] has made repeated requests in his communications in which he refers to:
- Note and File Orders
 - Fraudulent Annual Performance Reviews
 - 'Forensic Testing' of Personnel records
 - Records of bullying within the NICS
 - 'Officially Ostracised Persons'
 - Child exploitation and Christmas Sacking Parties
29. Most of the aforementioned terminology has been devised by the complainant and while it can be assumed that these relate to aspects of his original grievance they are, in most cases, not readily

¹ Letter dated 02 April 2019

comprehensible to staff in the Northern Ireland Civil Service (NICS) nor provide a reasonable basis for an information search. Despite the considerable efforts which have previously been made to advise him of our capacities in this regard, the complainant has continued to make repeated requests relating to these issues. In addition, some TEO staff have, over the past year, also received telephone calls from [the complainant] concerning his requests, leaving them uncomfortable and distressed.

30. The response highlighted what the Department considered to be the obsessive nature of [the complainant's] correspondence, and referenced the ICO's aforementioned decision² that upheld the then Department for Regional Development's (DRD) view that the requests it was receiving from [the complainant] were vexatious. It also underlined the fact that while the focus of his requests had shifted from DRD to TEO, his method of communication and themes remained the same and that his emails were continuing to place an unnecessary burden on public resources.
31. The Department's response also explained its application of the Section 45 Code of Practice guidance on vexatious requests, and its view that [the complainant's] requests met each of the factors to be considered. It was concluded that, in virtually all cases, the Department simply did not hold the information requested.
32. [The complainant's] reaction to the Department's original decision suggests to us that he is not prepared to end his email campaign. Following receipt of our original response, [the complainant] has continued to send further emails (up to 20 a day) to the Department's FOI mailbox seeking information on a range of repeated, speculative and undefined topics. He has also continued to contact various members of staff, on multiple occasions, even though we had informed him of our views on the impact of that practice in the refusal notice.
33. We consider that the Department had demonstrated great patience in handling a voluminous amount of correspondence from [the complainant]; correspondence which we believe, most strongly, has become detrimental to our overall provision of a public service; and which by its nature and content is unlikely to achieve any resolution of [the complainant's] original complaint. Its decision to designate [the complainant's] requests as vexatious was not taken lightly but only after balancing our obligations to [the complainant] as a member of the public with the genuine public interest in ending the continued diversion of resources to no obviously beneficial purpose. The Department therefore

² FS50154484

remains of the view that the complainant's requests are vexatious. In the circumstances described above we do not believe that any informal resolution of the complainant's complaint is possible".

34. The Commissioner did invite the complainant to comment on the assertions of the public authority as laid out in paragraph seven above. No comments were received by the Commissioner. However the Commissioner has taken cognisance of the complainant's remarks in his complaint to the Commissioner dated 31 August 2018 and partially laid out in paragraph nine above.
35. The purpose of section 14 of the FOIA is to protect public authorities and their employees in their everyday business. In her guidance, the Commissioner recognises that dealing with unreasonable requests can place a strain on public authorities' resources and get in the way of delivering mainstream services or answering legitimate requests. Furthermore, these requests can also damage the reputation of the legislation itself.
36. The Commissioner accepts that the complainant has subjected the public authority to a large volume of emails (the Commissioner has viewed a representative sample of the same) over a significant number of years. This has placed an unnecessary burden on the Executive Office (NI) and its staff. Furthermore, the Commissioner accepts that the volumes and terminology used by the complainant has resulted in the continued diversion of its resources.
37. Due to their volume, persistence and nature these were, the Commissioner finds on the evidence and submissions before her, unduly problematic and time consuming for Executive Office (NI) to administer and process. Having viewed a sample of the complainant's prior correspondence with the Executive Office (NI) it is apparent to the Commissioner that they were usually replete with baffling and confusing phrases, such as the below example;
 - As follow up, I wondered if we could please have a copy of all papers and records held regarding the formal legal basis for the Traditional, Culturally Defining, fiercely defended and endlessly, at the highest of Levels officially Endorsed, Note and File Only Orders on which NICS has so long depended for controlling promotion opportunity and thus entry to the decision-making Senior Civil Service?
38. Unfortunately, but undoubtedly, the complainant's correspondence of the 15 August and 9 September 2017 is a further episode of the complainant's obsessive and unreasonably persistent behaviour towards the Executive Office (NI). This said behaviour, given its nature and

frequency, had come to be for Executive Office (NI) an undue burden and a disproportionately time consuming exercise to manage.

39. It is in this context that (correctly in the Commissioner's view) Executive Office (NI) placed the complainant's requests of the 15 August and 9 September 2017. Given the previous related history and conduct of the complainant with Executive Office (NI), the Commissioner is satisfied that Executive Office (NI) reliance on section 14(1) was correct.

Right of appeal

40. 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: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

41. 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.

42. 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
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