

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 30 September 2011

Public Authority: Home Office
Address: Seacole Building
2 Marsham Street
London
SW1P 4DF

Decision (including any steps ordered)

1. The complainant has requested information relating to funding the Home Office has provided to the Association of Chief Police Officers (ACPO) for the years 2009 and 2010. This request was refused under section 14(1) as the request was considered vexatious.
2. The Commissioner's decision is that the request was not vexatious and so the public authority has unreasonably withheld the information the complainant requested.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation:
 - disclose the information to the complainant in accordance with section 1 of FOIA; or
 - provide valid alternative reasons why it will not disclose this information.
4. 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 Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 3 November 2010 the complainant wrote to the Home Office and requested information in the following terms:

"Please supply a list of all funding given to ACPO for the financial year 2009/10. A similar table to http://www.publications.parliament.uk/pa/cm200809/cmhansrd/cm090721/corrtext/90721c0001.htm#column_10MC would be a sufficient level of detail for this element of the request. In relation to each item of funding, please supply a copy of any contracts or other agreements or documents detailing precisely what the funding is for. If retrieving all of this information would breach the cost limit, then please do this for as many of the items of funding as you can within the limit, starting with the highest amount, then the next highest and so on."

6. The Home Office responded on 22 December 2010. It stated that the information which the complainant had requested was exempt under section 43 of the FOIA (commercial interests). The Home Office said it would extend the 20 working days response time to consider the public interest test and would respond fully by 28 January 2011.
7. As the Home Office's response to the request was delayed the complainant requested an internal review. Following the internal review the Home Office wrote to the complainant on 17 January 2011. It stated that it was now refusing the request under section 14(1) of the FOIA (vexatious requests).

Scope of the case

8. The complainant contacted the Commissioner to complain about the way his request for information had been handled.
9. The complainant has complained that the Home Office did not issue a refusal notice explaining that the information was exempt under section 14(1) of the FOIA. The complainant considers that section 14(1) does not apply.

Reasons for decision

10. Section 14 of the FOIA states a public authority is not obliged to comply with a request for information if the request is vexatious. The Commissioner considers the following five factors should be taken into

account when considering whether a request can be accurately characterised as vexatious.

- i. Whether compliance would create a significant burden in terms of expense and distraction.
 - ii. Whether the request is designed to cause disruption or annoyance.
 - iii. Whether the request has the effect of harassing the public authority or its staff.
 - iv. Whether the request can otherwise fairly be characterised as obsessive or manifestly unreasonable.
 - v. Whether the request has any serious purpose or value.
11. The Commissioner wrote to the Home Office asking it to consider these five factors and how they applied in this case. In making his decision the Commissioner has considered the Home Office's representations as well as those of the complainant. The issue here is whether the *request*, rather than the *requester*, is vexatious. However, the wider context of the dealings between the public authority and the complainant may also be relevant.
- Would the requests impose a significant burden in terms of expense and distraction?*
12. The Home Office has explained that it does not consider the four or five related requests the complainant made within a 20-month period to have, in themselves, caused a significant burden. It considered that the burden came from the fact that the complainant tends to question every response and pursue every avenue of complaint. The Home Office also made the point that the complainant's request for an internal review based on the time the Home Office took to deal with the request had the effect of creating extra work.
13. The complainant has explained that the Home Office has consistently failed to comply with his requests in a timely manner and that he has often only received a full response following a request for an internal review.
14. The Commissioner's view is that the Home Office's repeated failure to deal with the complainant's requests in a timely manner caused the additional correspondence to which it refers. It is therefore not reasonable to state that the complainant imposed a significant burden of expense and distraction. It appears that most of this correspondence – in particular requests for internal reviews based on timeliness – would

not have existed had the Home Office responded to the complainant's requests within 20 working days. In any event, the Commissioner does not accept that the complainant, in requesting internal reviews, thereby made his requests vexatious and so finds that this criterion is not met.

Were the requests designed to cause disruption or annoyance?

15. The Home Office has acknowledged that the request was not intentionally designed to cause disruption or annoyance, but it has argued that the complainant's requests do have that result.
16. This criterion concerns requests that were purposefully intended to disrupt or annoy. That the requests in question may inadvertently have this result is not relevant here and so this criterion is not met.

Would the requests have the effect of harassing the public authority or its staff?

17. The Home Office has explained that it does not think the complainant intended to annoy, but has referred to ICO guidance which explains public authorities should consider the effect of the request opposed to the intention. The Home Office has explained that its staff have, at various times, felt harassed by the volume of correspondence from the complainant about his requests on ACPO funding, the amount of work this generates and (on occasion) the feeling that it is relentless.
18. In the Commissioner's view the requests the complainant has made did not, in themselves, cause the Home Office any harassment. The Home Office considers that the complainant's requests caused considerable work for its staff by him sending additional correspondence following the requests, but it appears that most of the correspondence came about because the Home Office failed to deal with the complainant's requests in the timescale allowed by the FOIA.

Can the requests otherwise fairly be characterised as obsessive or manifestly unreasonable?

19. The Home Office has argued that, while the complainant's requests do not suggest he is obsessive, his tendency to pursue every avenue of complaint and the fact he often responds to the Home Office on the same day that he receives its correspondence suggests an approach which borders on the obsessive.
20. The Commissioner's view is that the complainant's requests should not be characterised as obsessive and that it is his right to utilise avenues of complaint about the requests he makes. The Commissioner considers the complainant's tendency to respond to the Home Office on the day he receives its correspondence is not unusual for email correspondence, and that this does not render the request as obsessive. As most of the

correspondence referred to by the Home Office related to its own delays in responding to freedom of information requests, the Commissioner does not consider this correspondence, or for that matter the request, was obsessive or unreasonable.

Do the requests have any serious purpose or value?

21. The Home Office says it would not argue that the complainant's requests lack purpose or value, with the possible exception of one 'meta request'. The Home Office does argue, however, that many of the complainant's requests for internal reviews or other correspondence about his requests do lack such a purpose where the Home Office would have nothing to add to previous responses.
22. The Commissioner's view is that, as the Home Office has not argued that the complainant's freedom of information requests lack purpose or value, this aspect of the criteria is not met. The Commissioner notes the Home Office's argument that the complainant's requests for internal reviews lack purpose or value. The Commissioner also considers that most of the correspondence the Home Office is concerned about would not have occurred had the Home Office dealt with the complainant's requests appropriately and within the timescale which the FOIA allows.

Conclusion

23. The Home Office argues that the complainant's requests have met at least two of the Commissioner's criteria for establishing vexatious requests in full. The Home Office says that the complainant's requests also partially met two of the remaining three criteria. In each case, however, the Home Office has claimed the criteria was met on the basis of additional correspondence beyond the complainant's requests – including requests for internal reviews.
24. The Commissioner accepts that, where an individual makes an unreasonably large number of requests, or continues to pursue requests with the same public authority over an unreasonably lengthy period of time, with the result that responding to these requests can become a drain on the public authority's resources, it might well be legitimate to refuse these requests as vexatious.
25. However, the Commissioner does not consider four or five related requests within a 20-month period is an unreasonably large number. While the Home Office has made considerable representations about the additional work it has undertaken following the complainant's requests, most of this work was incurred as a result of the way the Home Office handled the requests. That being the case, the Commissioner does not consider it appropriate to lend significant weight to these representations when deciding whether this request could adequately be characterised as vexatious.

26. The Commissioner's conclusion is that this request was not vexatious and the Home Office should not therefore have refused it under section 14(1) of the FOIA.
27. The Commissioner also notes that the Home Office appears to have consistently failed to respond to information requests from the complainant within 20 working days of receipt. Whilst an extension to the time limit is available in order to consider the public interest, the view of the Commissioner is that this provision should be used rarely and that extensions should be for a maximum of a further 20 working days. Extensions are also only permissible in the following circumstance:
- where a qualified exemption has been applied (this must be done within the 20 working day time limit); **and**
 - where the extension is necessary for consideration of the balance of the public interest.

No extension beyond 20 working days is available in any other circumstance, including where a request is refused as vexatious under section 14(1). The Home Office should ensure that extensions are used rarely and only where the FOIA permits.

Other matters

As covered above, the Home Office carried out internal reviews into delays in responding to the complainant prior to having responded with a substantive refusal notice. In addition to the finding above (that the fact that the complainant requested these reviews does not render his requests vexatious), the Commissioner would also note that the Home Office should consider whether carrying out internal reviews, prior to having issued a substantive refusal, is an appropriate use of its resources. For example, it may have been more appropriate for it to, , have diverted the resources used in carrying out these reviews into providing a speedier response, and to have addressed the delay as a customer service complaint.

Right of appeal

28. 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

29. 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.
30. 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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