

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 6 December 2011

Public Authority: Department for Communities and Local Government

Address: Eland House
Bressenden Place
London
SW1E 5DU

Decision (including any steps ordered)

1. The complainant asked the Department for Communities and Local Government ("DCLG") to provide all the information it had either received or sent relating to an ongoing complaint that he had raised. The DCLG refused to provide the information on the basis that it considered that the request was vexatious.
2. The Commissioner's decision is that DCLG did not demonstrate to the Commissioner that the request had been correctly refused.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - It should respond to the request by writing directly to the complainant. It should either provide the information it holds or provide a valid refusal notice relying on an exemption or exclusion under the Freedom of Information Act 2000 ("the FOIA") other than the vexatious exclusion.
 - DCLG should redact any information that would identify the complainant, such as his name, as this information will be the complainant's own personal data and it cannot be publicly disclosed under the FOIA.
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 FOIA and may be dealt with as a contempt of court.

Request and response

5. Further to ongoing correspondence relating to a background complaint, on 29 November 2010, the complainant requested information from the DCLG in the following terms:

"As it is obvious that you are refusing to answer my questions, I now wish to take the matter up through different channels. To do this I will need access to your case file. So please take this as a formal request, via the FOI Act, for copies of everything you have either received or sent, which refer in any way to my complaint".

6. On 24 December 2010, DCLG replied. It said that it was not obliged to comply with the request as it considered that it was vexatious in accordance with section 14(1) of the Freedom of Information Act 2000 ("the FOIA").
7. The complainant requested an internal review on 8 January 2011.
8. DCLG completed its internal review on 7 February 2011. It said that it wished to maintain its position that the request was vexatious.

Scope of the case

9. The complainant contacted the Commissioner to complain about the way his request for information had been handled. He asked the Commissioner to consider whether the council had correctly determined that his request was vexatious.
10. During the Commissioner's investigation, the Commissioner considered that some of the withheld information would actually represent the complainant's own personal data. As the requester's personal data is exempt from public disclosure under the FOIA, the Commissioner assessed that matter separately.

Reasons for decision

11. Section 1(1) provides a general right of access to recorded information that is held by public authorities. Section 14(1) of the FOIA states the following:

"Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious".

12. Guidance on vexatious requests is available on the Commissioner's

website at www.ico.gov.uk and for ease of reference, at the following links:

http://www.ico.gov.uk/for_organisations/freedom_of_information/information_request/reasons_to_refuse.aspx

<http://www.ico.gov.uk/foikb/SectionsRegulations/FOIPolicySection14.htm>

13. As explained in the guidance, when considering if a request for information is vexatious, the Commissioner will consider the argument and evidence that the public authority is able to provide in relation to the following questions:

- Could the request fairly be seen as obsessive?
- Is the request harassing the authority or causing distress to staff?
- Would complying with the request impose a significant burden in terms of expense and distraction?
- Is the request designed to cause disruption or annoyance?
- Does the request lack any serious purpose or value?

14. It will not be necessary for all of the above criteria to apply but in general, the more that apply, the stronger the case for a vexatious request will be. The Commissioner is able to take into account the history and context of the request.

15. DCLG's initial refusal did not explain why it had considered that this particular request was vexatious. In the internal review however, DCLG did attempt to explain why it had reached this decision. It said the following:

"...I have reviewed the very considerable amount of previous correspondence and activity in relation to this issue of Quidos EPCs [Energy Performance Certificates]. My overwhelming impression from that review is that the Department has taken very seriously the issues you raised, has initiated and carried out through [sic] actions in conjunction with Quidos, Landmark and BRE Scotland; that you have been kept well informed at all stages of this process; and that in the latter stages have been asked to provide further evidence to support the claims you continue to make, but have failed to do so...in that context I cannot see that providing your case file would serve any serious purpose or value, that it would impose a significant burden to no end, and that the repetitious tone of your emails borders on the obsessive".

16. As the Commissioner was not satisfied that the above limited explanation was sufficient to enable him to find that the request was vexatious, the Commissioner wrote to DCLG and asked it to provide further supporting evidence and argument including copies of relevant correspondence. The Commissioner also expressed doubt about whether DCLG had correctly determined that this particular request was vexatious. The Commissioner made the following comments:

"...I note that the request appears to be the first time that the complainant has asked for a complete copy of the "case file" to help him to understand the actions taken in relation to his complaint. It is common for public authorities to comply with an initial request such as this in order to be transparent about what it has done and to enable the complainant to consider taking the matter to other organisations (the complainant has indicated in his request that this is what he wants to do in this case). Vexatious behaviour more commonly arises in the form of a pattern of unreasonable requests comprising of more than one. This does not mean that it is not then open to the public authority to consider the use of section 14 if it considers that any future requests for information are vexatious. If this is the first time that the complainant has asked for the complete "case file", I would encourage DCLG to consider carefully whether, on this occasion, it is willing to provide this. If not, it will need to justify that position fully to the Commissioner".

17. DCLG failed to provide the information requested by the Commissioner within the timescale set, despite being allowed additional time. DCLG cited staff resource problems and the volume of correspondence as the reason why it had not responded. The Commissioner explained that he expects public authorities to have adequate resources in place to deal with requests for information and any subsequent complaint to the Commissioner in a timely manner. He also pointed out that by the time a complaint is made to the Commissioner a public authority has already had two opportunities to consider the request in its initial response and its internal review. A public authority should be ready by this stage to account for the decision that it has made. The Commissioner's general approach is to permit one more opportunity to justify a refusal to provide information before making a decision. DCLG did not indicate specifically when it would be able to respond. When the Commissioner wrote to set out his intention to issue a decision notice on 26 October 2011 that would not find it favour of DCLG's position without any further additional arguments or evidence, DCLG submitted arguments on 7 November 2011 and asked the Commissioner to take these into account. They are summarised below.

Could the request fairly be seen as obsessive?

18. DCLG indicated that the complainant had raised a background complaint about Energy Performance Certificates produced in error. It said that there had been "extensive investigations" and it had explained what action it took to correct those errors that were identified but the complainant was not satisfied with the response. DCLG said that the complainant had continued to raise issues even though he cannot provide any of his own evidence to substantiate the claims he is making. DCLG said that it had informed the complainant on several occasions that the matter is closed until any new evidence is provided.
19. DCLG said that there had been no fewer than 42 emails from the complainant to DCLG on the issue above within the period from 10 June 2009 to 20 December 2010. It said that it was also aware that the complainant has contacted the "Quidos Accreditation Scheme" and the "EPC testing and approval team". It said that there had been in excess of 150 emails between DCLG, BRE Scotland (the organisation contracted to test and approve the EPC software), Landmark (the Register Operator), Quidos (the complainant's former accreditation scheme) and PS Energy (the provider of EPC software used by Quidos Assessors) on this issue as a result of trying to deal with the complainant's issues.
20. DCLG mentioned that it had also received four information requests.

Is the request harassing the authority or causing distress?

21. DCLG pointed to the same issues raised above and it also said that the complainant had made several unsubstantiated allegations calling into question the integrity of DCLG and the software development and testing team, the most recent of which are:
 - (1) The test criteria to investigate the issue were altered by BRE Scotland to favour the Quidos/Handheld System software
 - (2) The complainant has claimed "...by an unofficial source that DCLG were advising those involved to let the matter quietly fade away". He has also claimed that [a particular officer's] recent attitude has confirmed that is correct.

Would complying with the request impose a significant burden?

22. DCLG pointed again to the volume of correspondence described above and it said that it estimated that one particular staff member had spent at least 60 hours over an eighteen month period trying to deal with correspondence generated by the complainant's complaint. It said that it would have taken up even more of the time of other organisations.

23. DCLG also pointed to the time it would take to make redactions of the documents requested if it were to consider their release and the time it would take to convert them into PDF documents.

Is the request designed to cause disruption or annoyance?

24. DCLG essentially reiterated the arguments already made above in support of this element of the criteria being met.

Does the request lack any serious purpose or value?

25. DCLG said that it believes that the complainant has made the request in the hope that it will bring to light some issue that has been "missed". DCLG said that if the complainant produces evidence that show further investigation is warranted, it will reconsider but to date no such evidence has been provided. In this context, DCLG said that it cannot see how providing the complainant with the full case file would serve any serious purpose or value.

Was the request vexatious?

26. Having carefully considered the above, the Commissioner decided that DCLG had not sufficiently demonstrated that the request was vexatious.
27. The Commissioner notes that despite being asked, DCLG provided no supporting evidence of the correspondence that it had with the complainant. It referred briefly to four requests for information being made prior to this one but copies of those were not provided and what information they covered was not outlined.
28. The Commissioner would like to highlight that although it is true that the context of a request will often be an important factor in determining whether the request is vexatious, any supporting arguments made should always focus on how the request in question is vexatious rather than the complainant. It appears that there has been a significant amount of correspondence from the complainant on this issue, which in turn has generated correspondence with other bodies. However, it was not clear to the Commissioner how the request represented an unreasonable attempt to access information about how those issues had been dealt with, perhaps with a view to having the matter independently reviewed or simply gaining a more detailed understanding of the actions taken. In the Commissioner's view, DCLG did not make a strong case for refusing the complainant access to the information at the time of his request for these purposes.
29. As well as the above, the Commissioner considered that DCLG's evidence that the request had the effect of harassing its staff and was designed to cause disruption or annoyance was not persuasive. It is

not uncommon for members of the public to make unsubstantiated allegations and a reasonably robust public official would be able to deal with that aspect of a complaint. No objective evidence was made available to demonstrate that it had been the complainant's intention to cause disruption or annoyance.

30. In view of the Commissioner's significant doubts over whether the request actually was vexatious and the lack of sufficiently detailed engagement from DCLG over the relevant issues, the Commissioner decided to find in favour of the complainant on this occasion and conclude that DCLG had not demonstrated that the request was vexatious.

Right of appeal

31. 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
32. 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.
33. 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

Andrew White
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