

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 6 July 2016

**Public Authority:** Department for International Development  
**Address:** 22 Whitehall  
London  
SW1A 2EG

#### Decision (including any steps ordered)

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1. The complainant has requested information on a named individual's role in Iraq.
2. The Commissioner's decision is that the Department for International Development ('DfID') has appropriately applied section 14(1).
3. The Commissioner does not require the public authority to take any steps to ensure compliance with the legislation.

#### Request and response

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4. On 21 July 2015 the complainant wrote to DfID and requested information in the following terms:  
  
"1) What Ministerial approval was given for the embedding of Emma Sky with US troops in Iraq?  
2) What was the legislative basis for UK DfID to pay Sky's salary as 'POLAD' to a US General?  
3) Why were UK Prime Minister Blair and UK Foreign Secretary Miliband kept "out of the loop"?  
[see: 'The Unravelling' page 197 for Sky's account of her first and only meeting with Tony Blair who expressed surprise at her status - and page 281 for a similar reaction from David Miliband]  
4) How do UK DfID or FCO reconcile Sky's role in Iraq with British Council's 'charitable' status?  
5) Why was the US State Department apparently unaware of Sky's role as an "embedded Brit"?"

[see: 'The Unravelling' (page 313) for Sky's description of her dispute with the US Ambassador]

In respect of Sky's role on the earlier UK DfID/BC 'PAID' project in West Bank and Gaza I would remind HMG that I am still waiting for explanation of her 'gross misconduct' in that BC/DfID role in attempting to remove appointed personnel within days of our deployment and proposing 'an additional post of Director of the Administrative Improvement Unit' ('at Ministerial level') as financial inducement to a named PNA Minister - behind the back of PNA Ministry of Finance - for a project she herself subsequently admitted was 'non-existent'."

5. DfID responded on 14 August 2015. It stated that it considered the request to be vexatious under section 14(1) FOIA and consequently it would not comply with the request.
6. Following an internal review DfID wrote to the complainant on 12 October 2015 upholding its decision to apply section 14(1) to the request.

### **Scope of the case**

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7. The complainant contacted the Commissioner on 12 October 2015 to complain about the way his request for information had been handled. The complainant stated:  
  
"Order a full enquiry please."
8. The Commissioner considers that the scope of his investigation is to determine whether the exemption at section 14(1) has been appropriately applied to the request.

### **Reasons for decision**

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9. Section 14 FOIA provides that a public authority is not obliged to comply with an information request that is vexatious.
10. The Upper Tribunal in *Information Commissioner and Devon County Council vs Mr Alan Dransfield* (GIA/3037/2011) emphasised the importance of adopting a holistic approach to the determination of whether or not a request is vexatious.
11. The judgement proposed four broad issues that public authorities should have regard to when considering whether FOI requests are vexatious:

- (i) the burden of meeting the request;
- (ii) the motive of the requester;
- (iii) the value or serious purpose of requests; and
- (iv) any harassment or distress caused.

The judgment agreed with an earlier First-tier Tribunal decision in *Lee vs Information Commissioner and King's College Cambridge* (EA/2012/0015, 0049 and 0085) that vexation implies an unjustified, inappropriate or improper use of a formal procedure.

12. The Commissioner's guidance on vexatious requests suggests that the key question a public authority must ask itself is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress. Where this is not clear, the Commissioner considers that public authorities should weigh the impact on the authority and balance this against the purpose and value of the request. In addition, where relevant, public authorities also need to take into account wider factors such as the background and history of the request.
13. DfID provided the Commissioner with a considerable volume of correspondence from the complainant from 2002 to date concerning affairs in the West Bank and Gaza frequently focussing on the individual named in the request. DfID explained that the complainant began to raise concerns with DfID following the British Council's failure to renew his contract. He raised concerns regarding the British Council's management of a DfID funded project [the Public Administration and Institutional Development Project (PAID) in the Occupied Palestinian Territories (OPT)] including allegations that funds were misappropriated by named British Council staff, questioning DfID's management of the contract with the British Council and various aspects of the DfID programme in the OPT.
14. DfID explained to the Commissioner that it does not hold a formal log of correspondence with the complainant. DfID acknowledges that it would have been sensible to have created such a log as correspondence was sent to such a wide array of staff over so many years. DfID advised that it would be extremely difficult if not practically impossible to now trawl through its records to try to retrospectively catalogue the correspondence, notwithstanding that earlier records have been destroyed in accordance with DfID's records and management policy.
15. DfID explained to the Commissioner that in terms of formal FOIA requests, the request in this case is only the fourth such request made by the complainant. The first request in September 2006, along with a

subject access request, provided all the information held by DfID on the PAID project, subject to limited redactions for third party personal data, and the complainant's personal information. Subsequent requests in November 2009 and January 2012 were deemed to be vexatious.

16. In this case the Commissioner considers that the burden of responding to the specific request does not appear onerous in isolation. The total number of FOIA requests is not significant; however, the request must be considered as part of the total burden created by the complainant's correspondence over many years. The request here comprises questions arising from the content of the book "The Unravelling". The book relates to Iraq and the author's experience there. Although the request concerns Iraq, rather than matters in OPT, the focus of the request is the book's author. This named individual is a significant, common theme in the complainant's correspondence with DfID. In the final paragraph of the request the complainant relates the request to his previous correspondence.
17. Following his request the complainant wrote to the Deputy Head of Private Sector Department at DfID on 4 September 2015, forwarding his emails to various other addresses. The subject line stated:

"Matters Outstanding: Emma Sky and Mike Hardy's 'skyjacking' of UK DfID/British Council Public Administration Project in Palestine in 2000"

The complainant attached his email to the Sunday Times Scottish Letters which included his comments:

" 'The Unravelling' may be a ripping yarn – but it raises as many questions as it answers; and glosses over Sky's previous role at British Council which formed the basis of my own 'whistle-blower' complaints when she challenged me in Gaza in 2000."
18. Consequently, considering the complainant's own linking of Ms Sky's book to his concerns over a period of 16 years, the Commissioner is satisfied that the request falls within the context of the complainant's ongoing concerns dating back to 2000.
19. DfID explained to the Commissioner that these concerns and allegations (initially reported to the British Council in February 2000) were taken very seriously and thorough investigations were carried out at the time. However, no evidence was found to support the assertions.
20. The complainant does not accept that a legitimate, thorough investigation was conducted. He reiterated his opinions in an email to

the Deputy Head of Private Sector Department at DfID on 5 September 2015:

"The evidence brought to British Council and UK DfID attention was compelling, corroborated and well-documented – yet UK DfID officials at every turn lean over backwards to privilege the dishonest account given by the crooked British Council people we had nailed in Gaza and who the record shows were moving Heaven and Earth along with friends in DfID to close down any inquiries."

In the same email the complainant writes:

"And when as 'the Gaza Whistleblower' I try again to get the matter investigated and yet another concerned Privy Councillor takes the case up on my behalf, the same formulaic responses come back – originating from those in British Council named in my 'Protected Disclosures' in Gaza and then mediated by their Facebook friends in UK DfID and the Oxford mafia resulting in this very dismissive response sent by Labour UK DfID Parliamentary Under Secretary of State Mike Foster MP on 14 July 2009 to Rt Hon Jim Murphy MP:

'Dear Jim,

.....However, in this case [the complainant's] allegations have already been fully investigated and found to be groundless. A letter was sent to [the complainant] from DfID on 12 January 2007, stating that DfID considered the matter closed, and this remains the case."

21. DfID explained to the Commissioner that the emails received by one or more DfID staff numbered thousands over the 16 year period with 2006/7 being a particularly active period. Many emails have been deleted in accordance with DfID's records management policy although hundreds remain from 2006 to date. Notwithstanding DfID's finding in 2007 the complainant has persisted in his allegations and overwhelmed DfID with correspondence seeking to prolong and widen his issues with DfID and the British Council.
22. DfID explained to the Commissioner that the letter sent in 2007 from the Head of Department to the complainant explained that his allegations had been fully investigated and found to have no substance, the matter was considered to be closed and no further correspondence would be forthcoming. DfID nevertheless established measures to protect the complainant's statutory rights under the access to information legislation.
23. The restriction instigated by DfID did not result in any change of behaviour from the complainant in respect of the volume of contacts

with DfID. DfID explained to the Commissioner that it considered that the complainant has:

"...completely exhausted our procedures as regards the issues he has been raising for the last 16 years."

24. In his correspondence with various Government departments the complainant acknowledges that he has received information disclosed as a result of FOIA and DPA subject access requests. Some of this information, in his view, contains defamatory comments about him which has angered the complainant and has been frequently quoted in further correspondence.
25. The Commissioner notes that in an email to DfID, dated 26 May 2015, the complainant references his email dating back to 15 June 2006 and states:

"I am now very, very angry ...."

The complainant appears to have maintained his anger regarding the events taking place 16 years ago. The Commissioner acknowledges the complainant's view that these events have severely impacted on his personal and working life.

26. DfID also advised the Commissioner that the complainant became a regular contributor to the DfID Blog. However his comments were regularly rejected because of their:

"offensive language, abusive statements, personal attacks, party political statements and off-topic comments."

27. The Commissioner notes that the complainant appears to take the opportunity to comment about his grievances with DfID online and in social media. For example, on the BBC Newsnight's blog and DfID's graduate scheme blog the complainant has introduced out of context negative comments regarding DfID and the British Council.
28. DfID advised the Commissioner that several members of DfID staff have been distressed by the complainant's correspondence which they found harassing. DfID provided evidence of the nature of personal attacks on individual members of staff:

"I see that this was one of the first Ministerial answers you were asked to prepare ..... your reliance on a single source (named individual) who was named in my Protected Disclosures in Gaza seems to have

been the problem, along with Oxford arrogance in facing up to your mistake?"

"Emma Sky and her British Council accomplice (named individual), she was later put in charge of a massive budget in Kirkuk in Iraq as Governance Co-ordinator seconded by the UK despite having no obvious qualifications apart from a smattering of Arabic, Hebrew, an Oxford accent and a bullying manner."

Such attacks were not limited to correspondence but also appear on social media.

29. The Commissioner understands that the complainant considers there to be clear evidence of wrongdoing and corruption which in his view has inexplicably resulted in no action being taken against the individuals concerned.
30. The Commissioner accepts that the complainant's correspondence and requests initially may have had a serious purpose and value. However, the request in this case comprises questions about one of the individuals whom he holds responsible for detrimental personal outcomes resulting from his time in OPT. His motive appears to be to try to demonstrate impropriety on the part of that individual and as a consequence to revisit his personal grievances.
31. The Commissioner's view is that the complainant is unlikely to reach a point where he considers his concerns to have been resolved as a result of his communications, and consequently it is likely that he will continue to pursue matters by contacting DfID and others. On the basis of the complainant's correspondence, in the Commissioner's opinion it is unlikely that the complainant will be satisfied, or consider the matters closed, at any point without a full government inquiry.
32. The Commissioner is unable to provide a view on whether action should or should not have resulted from the information provided by the complainant to DfID and other government departments. The Commissioner's consideration must focus on DfID's determination that the complainant's request, as set out in paragraph 4, is vexatious and to consider whether there has been an improper use of the FOIA which warrants this determination. Although this request concerns matters pertaining to the named individual's involvement in Iraq, therefore differing in substance to the majority of previous correspondence, the named individual is the common thread which links all the correspondence to the same theme. In this context the Commissioner is satisfied that the request forms part of a pattern of unreasonably persistent correspondence with the public authority and is likely to result

in a disproportionate and unjustified level of disruption and irritation. He does not accept that the FOIA was enacted to facilitate persistent and unproductive correspondence in this manner.

33. Consequently the Commissioner has concluded that the complainant's request is vexatious. DfID is therefore not obliged to comply with the request.

## Right of appeal

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34. 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 123 4504

Fax: 0870 739 5836

Email: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

35. 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.
36. 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** .....

**Alexander Ganotis**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**