

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 10 April 2017

Public Authority: Ministry of Justice
Address: 102 Petty France
London
SW1H 9AJ

Decision (including any steps ordered)

1. The complainant made a series of requests to the Ministry of Justice (MoJ) in which he requested information relating to the MoJ's processes for handling correspondence and information relating to its responsibilities under the Data Protection Act (DPA).
2. The MoJ relied on sections 12(1) (cost of compliance) and 14(1) (vexatious request) of the FOIA to refuse to provide the requested information.
3. The Commissioner has investigated the MoJ's application of section 14(1).
4. The Commissioner's decision is that the complainant's requests are vexatious and therefore the MoJ was entitled to refuse them in reliance on section 14(1) of the FOIA. She also found that, by failing to respond to the requests within 20 working days of receipt, the MoJ breached sections 1(1) and 10(1) of the FOIA (time for compliance).
5. The Commissioner does not require the MoJ to take any steps as a result of this decision.

Request and response

6. On 8 February 2016, the complainant wrote to the MoJ and requested information under the FOIA relating to risk assessment and duty of care policies and procedures. For the purposes of this decision notice (DN), that will be known as Request 1. Full details of Request 1 can be found in the annex to this DN.

7. On 11 February 2016, the complainant wrote to the MoJ and requested information under the FOIA relating to the MoJ, the DPA, cheques, statements, fraud and fraud prevention. For the purposes of this DN, that will be known as Request 2. Full details of Request 2 can be found in the annex to this DN.
8. On 12 February 2016, the complainant wrote to the MoJ and requested information under the FOIA relating to its handling of subject access requests. For the purposes of this DN, that will be known as Request 3. Full details of Request 3 can be found in the annex to this DN.
9. The complainant also sent the MoJ two further pieces of correspondence requesting information - on 9 February 2016 and 10 February 2016.
10. The MoJ responded on 16 March 2016. It referred to having received five letters from the complainant in which he asked for information. The MoJ explained that it had aggregated the five requests in accordance with section 12(4) of the FOIA. It confirmed that it held the requested information but refused to provide it citing section 12(1) of the FOIA (cost of compliance).
11. The complainant requested an internal review of the MoJ's handling of three of his requests for information – Requests 1, 2 and 3.
12. Following the Commissioner's intervention, the MoJ sent him the outcome of its internal review on 29 June 2016. It maintained its position regarding section 12 of the FOIA and additionally cited section 14(1) (vexatious request).

Scope of the case

13. Following earlier correspondence, the complainant provided the Commissioner with the relevant documentation on 27 September 2016 to complain about the way three of his requests for information - Requests 1, 2 and 3 - had been handled.
14. In lengthy and detailed correspondence, he explained the course of events that lead to him making his FOIA requests to the MoJ and the nature of his complaint.
15. One aspect that he complained about was the dates cited by the MoJ as the dates on which his various items of correspondence were received. He disputed that they were the dates on which his correspondence was actually received.
16. He also considered that he should be provided with the information within the scope of the three requests that are the subject of this DN.

17. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the FOIA.
18. The complainant raised other issues that are not addressed in this DN because they are not requirements of Part 1 of the FOIA.
19. The Commissioner wrote to the MoJ setting out the scope of her investigation in relation to its handling of the three requests for information.
20. She invited the MoJ to revisit its handling of the three requests - dated 8 February 2016, 11 February 2016 and 12 February 2016.
21. During the course of the Commissioner's investigation, the MoJ acknowledged that the focus of her investigation was those three requests. It confirmed its application of sections 12 and 14 to those requests.
22. The analysis below considers the MoJ's application of section 14 of the FOIA to the requested information. The Commissioner has also considered the timeliness with which the MoJ handled the requests.

Reasons for decision

Section 14 - vexatious request

23. Section 14(1) of the 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.
24. 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*¹. 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.

¹ <http://administrativeappeals.decisions.tribunals.gov.uk//Aspx/view.aspx?id=3680>

25. 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.

26. 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).

27. The Commissioner has published guidance on vexatious requests². That guidance includes a number of indicators that may apply in the case of a vexatious request.

28. As discussed in the Commissioner's guidance, the relevant consideration is whether the request itself is vexatious, rather than the individual submitting it. A public authority can also consider the context of the request and the history of its relationship with the requester when this is relevant.

29. Sometimes it will be obvious when requests are vexatious, but sometimes it may not. In that respect, the Commissioner's guidance states:

"In cases where the issue is not clear-cut, the key question to ask is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress".

The MoJ's position

30. With reference to the Commissioner's guidance, the MoJ told the complainant that it considered that the following indicators are met:

- Burden on the authority

² <https://ico.org.uk/media/for-organisations/documents/1198/dealing-with-vexatious-requests.pdf>

- Frequent or overlapping requests
- Personal grudges
- Unfounded accusations

31. Describing his correspondence as '*particularly burdensome to deal with*', the MoJ told the complainant:

"...your letters include extensive preamble which is confusing and often is unclear about the scope of the information you are seeking.

...You evidently have an issue with the Department's management of FOI and DPA practices which not [sic] response from the department can usefully resolve".

32. In its submission to the Commissioner the MoJ confirmed its view about which of the indicators it considers are met. For example, the MoJ told her:

"It is the department's position that [the complainant]'s correspondence places an unreasonable burden on the resources of the MoJ".

33. In respect of wider context and history, the MoJ argued that the complainant had submitted "*a steady flow of requests over a two year period all relating to similar themes, the FOIA, the DPA, the ICO and litigation on these matters*".

34. In support of that view, the MoJ provided the Commissioner with a timeline detailing those requests, further explaining that the complainant's letters:

"...vary in length, and are frequently between 4 and 9 pages in length".

35. Acknowledging that the complainant's letters "*are generally polite in content*", the MoJ nevertheless told the Commissioner:

"Such correspondence places an unreasonable burden on the resources of the department particularly as it is often difficult to identify what [the complainant] is actually seeking in his correspondence, or at least what he is trying to achieve".

36. The MoJ told the Commissioner that it had previously provided the complainant with "*numerous responses*":

"...in particular a number of which have been costs refusals, and he has not changed the frequency, style or scope of his correspondence with the department".

37. With respect to the unfounded accusations criteria, the MoJ explained that the complainant's letters:

".. contain accusations that MoJ civil servants and Ministers (past and present) are acting in a fraudulent or inappropriate way".

38. With respect to its view that the personal grudge criteria is also met, the MoJ told the Commissioner that while it is not clear who in particular the complainant is unhappy with, the frequency of his requests and the accusations therein *"suggest there is an underlying issue"*. However, it told the Commissioner that the MoJ considers that the FOIA *"is not the correct route of redress for these matters"*.

The complainant's position

39. In his various items of correspondence with the Commissioner, the complainant explained his grounds for making, and the course of events that led to him making, his requests to the MoJ.
40. For example, with respect to his request for information dated 8 February 2016, he told the Commissioner:

"... As the Ministry of Justice and/or its staff members appear quite happy to use or abuse their position for their own, their colleagues, their department's, the Ministry of Justices and/or another or others advantage or gain and having done so then further use or abuse their position Then it did not and does not seem unreasonable that a Government Department especially the Ministry of Justice would have something, a policy or procedure for assessing the risk and determining detriment to, or impact on member's of the public's health and wellbeing as a result and/or consequence of the Ministry and or its staff members actions and indeed inactions".

41. Similarly, he described matters relating to the MoJ's requirements for identification when making a subject access request and the MoJ's failure to respond in a timely manner to such requests:

"All of which I hope both explains and justifies why I resorted, or more accurately was left to resort to submitting my 11 February 2016 FOIA to the Ministry of Justice".

42. Regarding the MoJ's application of section 14 he told the Commissioner:

"In response to and rebuttal of the MofJ's accusation of my requests being vexatious I wish to record my FoIAs were and have effectively been goaded by the own MofJ's actions [sic] ...Furthermore, the fact I have tried to explain the events that have brought about my FoIA (the alleged preamble) is I see being used by the MofJ against me".

43. With reference to the MoJ's internal review correspondence which referred to him having an issue with the Department's practices which no response can usefully resolve, he told the Commissioner:

"In response to that accusation I am clearly not going to deny that there were, are and remain a number of issues, and more importantly concerns, that I have with the MoJ's DPA and FOI practices..."

The Commissioner's view

44. The Commissioner acknowledges that there are many different reasons why a request may be vexatious, as reflected in her guidance. There are no prescriptive 'rules', although there are generally typical characteristics and circumstances that assist in making a judgement about whether a request is vexatious. A request does not necessarily have to be about the same issue as previous correspondence to be classed as vexatious, but equally, the request may be connected to others by a broad or narrow theme that relates them. A commonly identified feature of vexatious requests is that they can emanate from some sense of grievance or alleged wrong-doing on the part of the authority.
45. The Commissioner's guidance emphasises that proportionality is the key consideration for a public authority when deciding whether to refuse a request as vexatious. The public authority must essentially consider whether the value of a request outweighs the impact that the request would have on the public authority's resources in responding to it.
46. The Commissioner considers that public authorities must bear in mind that meeting their responsibilities under the FOIA – their underlying commitment to transparency and openness - may involve absorbing a certain level of disruption and annoyance. However, if a request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress then this will be a strong indicator that it is vexatious. Aspects that can be considered in relation to this include the purpose and value of the information requested, and the burden upon the public authority's resources.

Are the requests vexatious?

47. As in many cases which give rise to the question of whether a request is vexatious, the evidence in the present case showed a history of previous information requests and various encounters between the parties.
48. The Commissioner recognised that the requests under consideration took place in the context of other requests and correspondence including relating to the complainant's making of, and the MoJ's handling of, subject access request(s).

49. Clearly in this case, the MoJ considers that the context and history strengthens their argument that the requests are vexatious.
50. The Commissioner noted the MoJ's representations in relation to its previous dealings with the complainant. In this case, the MoJ had been able to demonstrate that it has engaged with the complainant's correspondence over a number of years. The Commissioner was prepared to accept that, cumulatively, the MoJ had spent a significant amount of time and resources in dealing with the complainant's information requests, in addition to separate complaints and other correspondence and contacts from the complainant.
51. In her guidance on dealing with vexatious requests, the Commissioner recognises that the FOIA was designed to give individuals a greater right of access to official information with the intention of making public bodies more transparent and accountable.
52. While most people exercise this right responsibly, she acknowledges that a few may misuse or abuse the FOIA by submitting requests which are intended to be annoying or disruptive or which have a disproportionate impact on a public authority.
53. The Commissioner also 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.
54. Having considered the arguments put forward both by the complainant and the MoJ, the Commissioner recognised that the complainant had his reasons for pursuing information from the MoJ. She also accepted that the complainant is not satisfied with the operation of the MoJ and how it conducts itself.
55. The Commissioner is mindful that, if the problems which a public authority faces in dealing with a request have, to some degree, resulted from deficiencies in its handling of previous enquiries by the same requester, then this will weaken the argument that the request, or its impact upon the public authority, is disproportionate or unjustified.
56. However, she also noted that the complainant submitted frequent correspondence about the same issue or sent in new requests before the public authority had had an opportunity to address their earlier enquiries. The number and frequency of these requests cannot be overlooked.
57. In the circumstances of this case, and on the basis of the evidence provided, the Commissioner considered that it is reasonable to conclude that the complainant will continue to submit requests, and/or maintain

contact about the subject matter regardless of any response provided to the requests in question. The disruption to the MoJ resulting from any continuing correspondence would be disproportionate. The Commissioner was therefore satisfied that, in the context of the MoJ's previous and ongoing dealings with the complainant, compliance with the requests would result in a disproportionate burden on its resources.

58. In view of the above, the Commissioner's decision is that the complainant's requests of 8 February 2016, 11 February 2016 and 12 February 2016 are vexatious. She finds that the MoJ was entitled to rely on section 14(1) of the FOIA.
59. Since the Commissioner's decision is that section 14 of the FOIA can be applied to the requests, she has not gone on to consider the MoJ's application of section 12.

Section 1, section 10

60. Section 1(1) of FOIA states that upon receipt of a request a public authority must confirm or deny whether information is held, and if that information is held it must be communicated to the requester.
61. Section 10(1) of FOIA states that public authorities must comply with section 1(1) within 20 working days of receipt of the request.
62. During the Commissioner's investigation, the MoJ acknowledged that its original response to the complainant contained an error in respect of the dates received. It also accepted that:

"While the 12 February requests were aggregated with the 16 February requests which had a statutory deadline of 16 March (the date the letter was issued from the MoJ) the Department accepts it should have taken the earliest date of the aggregated requests as the date for response. The department therefore accepts it failed to comply with section 10 (1) of the Act issuing the response three days after the statutory deadline".
63. The Commissioner found that the MoJ breached sections 1(1) and 10(1) of the FOIA by failing to respond to the requests within 20 working days of receipt.

Right of appeal

64. 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: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

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

65. 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.
66. 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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