

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 15 July 2019

**Public Authority:** Department for the Economy

**Address:** Netherleigh  
Massey Avenue  
Belfast  
BT4 2JP

#### **Decision (including any steps ordered)**

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1. The complainant has requested information from the Department for the Economy ('DFE') in relation to the winding up of a named company. The DFE applied section 14(1) of the FOIA to the complainant's request.
2. The Commissioner's decision is that the DFE has incorrectly relied upon section 14(1) of the FOIA in relation to the complainant's request.
3. Therefore the Commissioner requires the DFE to take the following steps:-
  - Issue a fresh response without reliance on section 14(1)
4. The DFE 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 pursuant to section 54 of the Act and may be dealt with as a contempt of court.

## Request and response

5. The complainant on 15 May 2018 made the following request for information to the DFE:-

"As you can see from the attached letter I was informed by Mr McCormick that the winding up of CBL was completed on 16th June 2015 and the company was dissolved on 20th September 2015.

I have been contacted by the person who did the audit whilst the company was operating; he was a partner in WS Watson. He was enquiring about the allocation of assets to the registered creditors.

Hence I.....ask that your organization provides me with a copy of the disbursement by email.

Should that not be possible please inform me how I might get a copy."

5. The DFE responded to the complainant's request on 17 May 2018, stating that it should be submitted direct by an auditor to the Insolvency Service.
6. Following several pieces of correspondence between the complainant and the DFE, the DFE wrote to the complainant on 6 June 2018 stating that his request was vexatious. The complainant sought an internal review of that decision, the result of which was provided to him on 9 July 2018 and upheld the decision that his request was vexatious.

## Scope of the case

7. The complainant contacted the Commissioner on 16 July 2018 to complain about the way his request for information had been handled.
8. The Commissioner wrote to the DFE seeking its detailed submissions on 26 March 2019. The DFE responded to the Commissioner on 26 April 2019, providing its submissions as to its application of section 14(1) of the FOIA to the complainant's request. The Commissioner has considered the DFE's handling of the complainant's request.

## Reasons for decision

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### Section 14(1) – vexatious requests

9. Section 14(1) of the FOIA states that a public authority is not obliged to comply with a request if the request is vexatious. The term 'vexatious' is not itself defined in the legislation, but in *Information Commissioner v Devon County Council & Dransfield*<sup>1</sup> the Upper Tribunal commented *that*:

*'The purpose of section 14 must be to protect the resources (in the broadest sense of that word) of the public authority from being squandered on disproportionate use of FOIA'.*

10. The Upper Tribunal concluded that 'vexatious' could be defined as the: *'Manifestly unjustified, inappropriate or improper use of a formal procedure'*.
11. The *Dransfield* definition establishes that the concepts of proportionality and justification are relevant to any consideration of whether a request is vexatious.
12. *Dransfield* also considered 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. It explained that these considerations were not meant to be exhaustive and also explained 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 characterises vexatious requests."* (paragraph 45).
13. The Commissioner has published guidance on dealing with vexatious requests, which includes a number of indicators that may apply in the case of a vexatious request. However, even if a request contains one or more of these indicators it will not necessarily mean that it must be vexatious.

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<sup>1</sup> [2012] UKUT 440 (AAC)

14. When considering the application of section 14(1), a public authority can consider the context of the request and the history of its relationship with the requester, as the guidance explains: *"The context and history in which a request is made will often be a major factor in determining whether the request is vexatious, and the public authority will need to consider the wider circumstances surrounding the request before making a decision as to whether section 14(1) applies"*.
15. However, the Commissioner is also keen to stress that in every case, it is the request itself that is vexatious and not the person making it.
16. In some cases it will be obvious when a request is vexatious but in others it may not. 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 DFE's position**

17. In submissions to the Commissioner, the DFE provided details as to the background to the request submitted by the complainant and his history with the DFE and the Insolvency Service, which is detailed in this Notice.
18. The complainant sought information about a company called CAM Benchmarking Ltd, which was wound up by the High Court in December 2008 upon the petition of Invest NI and the Official Receiver was liquidator. The Official Receiver is based in the DFE's Insolvency Service. Throughout the liquidation process there was copious correspondence between Invest NI, the Insolvency Service, the DFE (then the DETI) and the complainant.
19. Due to this protracted correspondence, the DETI deemed a FOI request submitted by the complainant in May 2010 to be vexatious and the decision was upheld following internal review in July 2010. Following a complaint by the complainant to the Commissioner, this decision was also upheld in a Decision Notice by the Commissioner in December 2011.
20. The DFE has informed the Commissioner that, while it did not receive a further FOI request from the complainant until 2016, the DFE continued to correspond with him about issues regarding Invest NI and the Insolvency Service. In August 2016 the DFE received a FOI request from the complainant for information surrounding cases heard by the Tribunal Judge who had been involved in his Industrial Tribunal

claims. The Office of the Industrial Tribunal and Fair Employment Tribunal falls under the remit of the DFE and the request was answered in full.

21. The complainant wrote to the DFE's Permanent Secretary in December 2016 about a complaint regarding Invest NI. Subsequent emails included specific comments on the Insolvency Service's involvement in the winding up of the company CAM Benchmarking Ltd. The outcome was that both the DFE and Invest NI concluded that there was nothing new in the information presented which had not been investigated in previous years.
22. The Permanent Secretary replied to the complainant on 31 March 2017 providing him with details of the winding up of CAM Benchmarking and the dividend paid to Invest NI. The Permanent Secretary ended this letter by advising that the DFE did not intend to communicate further with him about any of these matters as they were all now considered closed.
23. There had been no change to this decision when the complainant made his FOI request of 15 May 2018. The complainant advised that he wanted this information because he had been contacted by a former auditor of the company, and the Insolvency Service replied by advising that in line with insolvency legislation the auditor should contact it directly. The complainant replied that he would ask the auditor to do so but that he would like to see the information himself.
24. The DFE deemed this request to be vexatious under Section 14(1) of the FOIA because it was seeking to reopen a line of correspondence concerning CAM Benchmarking Ltd, which had already been comprehensively addressed and about which the DFE's Permanent Secretary had advised the complainant that all matters were considered closed.
25. In his request for an internal review the complainant advised that the reason for his request was also to allow him to determine how much another named company was paid when CAM Benchmarking was wound down.
26. The decision to treat the complainant's request as vexatious was upheld following this internal review, which recognised that the request of 15<sup>th</sup> May 2018 was not likely to cause a disproportionate or unjustified level of disruption, irritation or distress when taken in isolation, but that the application of Section 14(1) was applicable in light of the Permanent Secretary's decision of 31 March 2017 and the complainant's previous correspondence with the DFE. The DFE stated that there would be a detrimental impact caused by responding to the

request, as it would weaken the Permanent Secretary's decision and open the DFE up to further requests from the complainant about matters which are considered closed.

27. The DFE has informed the Commissioner that there continues to be no change to the Permanent Secretary's advice to the complainant of 31 March 2017 that the DFE did not intend to communicate further with him about any of the matters surrounding CAM Benchmarking as they were all now considered closed. The DFE further stated that the complainant is not entitled under insolvency legislation to the information he requested and that he is aware of other means by which he could obtain the information, e.g. ask the auditor involved to contact the Insolvency Service (as he had been advised). Nevertheless, the DFE advised him in correspondence that requesting the information under the FOIA was the most appropriate way forward, so treated his request as a request under the FOIA.

### **The complainant's position**

28. The complainant states that he requires the information relating to the distribution of assets to CAM Benchmarking Ltd's creditors, in order to provide this to an auditor who has been seeking the information. He also states that he would like to see the information for himself in order to allow him to determine how much a specific named company was paid when CAM Benchmarking Ltd. was wound down. He states that the Permanent Secretary's response to him of 31 March 2017 prompted further queries on his part regarding the dividend paid to Invest NI and the further distribution of assets, so therefore he is not seeking information he has previously sought and, as far as he is concerned, matters regarding the winding up of CAM Benchmarking Ltd are not closed.

### **The Commissioner's position**

29. As in many cases which give rise to the question of whether a request is vexatious, the evidence in the current case shows a history of previous and subsequent information requests. Clearly in this case, the DFE considers that the context and history strengthens its argument that the request is vexatious.
30. The Commissioner notes that the complainant feels personally aggrieved about the issues at the centre of his requests, which are clearly a personal, rather than a wider public, interest.
31. The Commissioner has carefully considered both the DFE's arguments and the complainant's position regarding the information requested in this case. The Commissioner has carefully reviewed all the

information and evidence presented to her by both parties and notes that the DFE has responded to all the complainant's previous requests (other than that which was found to be vexatious in 2010) and provided him with information in relation to them.

32. The Commissioner notes that the complainant made frequent requests to the DFE (previously DETI) prior to those being found to be vexatious in 2010. The complainant does not appear to have made frequent requests since that, although the Commissioner appreciates the DFE has been in constant correspondence with him regarding other issues. The Commissioner notes that the complainant was responded to in full in 2016 when he made requests under the FOIA and that this is his first request for information to the DFE since the Permanent Secretary's letter of 31 March 2017.
33. While the Commissioner accepts the context and history of the complainant's requests, she cannot see that this latest request, which was made a year after the Permanent Secretary's letter and seems to have been prompted by the response the complainant received to his last request, causes any significant burden on the DFE or indeed any unjustified level of disruption, irritation or distress. It appears to be a straightforward request and to have serious purpose and value. There is also no indication that this specific information has been requested previously.
34. The Commissioner accepts that the DFE understandably does not wish to weaken the decision of the Permanent Secretary or to open itself up to further requests regarding the same issues, however she does not consider that this alone justifies the DFE's application of section 14(1) to the complainant's request. The Commissioner therefore considers that the DFE has incorrectly applied section 14(1) of the FOIA to the complainant's request.

## Right of appeal

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

36. 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.
37. 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 .....**

**Deirdre Collins**

**Senior Case Officer**

**Information Commissioner's Office**

**Wycliffe House**

**Water Lane**

**Wilmslow**

**Cheshire**

**SK9 5AF**