

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 5 July 2021

Public Authority: Development Bank Wales

Address: info@developmentbank.wales

Decision (including any steps ordered)

1. The complainant requested information regarding the possible deletion of information following an FOI request (Freedom of Information) or SAR (Subject Access Request). Development Bank Wales refused the request relying on section 14(1) (vexatious request) of the FOIA. The Commissioner's decision is that Development Bank Wales was entitled to rely on section 14(1) to refuse the request. The Commissioner does not require the public authority to take any steps.

Request and response

2. On 6 March 2019, the complainant wrote to Development Bank Wales (DBW) and requested the following information:

"(a) Can you please advise whether, following the receipt of a Freedom of Information (FOI) request or a Subject Access Request (SAR), senior staff members and/or Management of the Development Bank have ever deleted emails and/or other information which may be pertinent and relevant to these requests;

(b) Can you please advise whether...senior staff members and/or Management of the Development Bank have ever instructed staff to delete emails and/or other information which may be pertinent and relevant to these requests;

(c) In particular for item 2 above, can you please advise whether staff in the IT department have ever been given a direct instruction by senior staff members and/or Management of the Development Bank to permanently delete emails following the receipt of an FOI request or SAR;

(d) Can you please advise whether the Development Bank operate a policy where staff are authorised by Management to actively undermine and damage third party suppliers and professional service providers with other businesses with whom they deal.

If not, and staff are found to have undertaken such actions, can you please outline the disciplinary procedure and potential sanctions that would follow for that employee as a consequence.

(e) Can you please provide me with the Code of Conduct that the Development Bank is expected to comply with as a publicly funded organisation;”

3. DBW responded on 9 April 2019. It stated that it was refusing the request under section 14(1) of the FOIA as it considered it could correctly be classified as vexatious.

4. Following an internal review DBW wrote to the complainant on 3 September 2019. It confirmed the following:

“Further to your request that the Development Bank of Wales review the exemption applied to your request, I can advise that the review has been completed and the exemption upheld.”

5. The complainant contacted DBW on the same date disputing that he had requested DBW review the exemption applied to his request, and asking that DBW undertakes an internal review and confirmed in writing on DBW headed paper whether or not its IT department has at any time been asked to permanently delete information following the receipt of a SAR.

6. DBW do not appear to have responded to this request.

Scope of the case

7. The complainant contacted the Commissioner on 18 December 2019 and 9 February 2020 to complain about the way his request for information had been handled. He provided background to his request.

8. The complainant confirmed to the Commissioner that he has never sought to connect his FOI requests with his grievance against DBW staff members because there is no connection.

9. He has also argued that in terms of DBW’s comments regarding unreasonable persistence, he has had no choice but to go back to DBW as he believes it is only providing partial responses to his requests for information.

10. Finally, he considers that the use of section 14(1) appears to be a method employed by DBW to avoid scrutiny and transparency in regard to how they conduct themselves and provide assurance they are working to their remit to support local businesses.
11. The scope of the following analysis is to consider whether DBW was entitled to rely on section 14(1) FOIA to refuse the complainant's request for information.

Reasons for decision

Section 14(1) – vexatious request

12. Under section 14(1) of the FOIA a public authority is not obliged to comply with a request for information if the request is vexatious.
13. The term 'vexatious' is not defined in the FOIA, but the Commissioner has identified a number of key 'indicators' which may be useful in identifying vexatious requests. These are set out in her published guidance, but in short, they include:
 - Abusive or aggressive language.
 - Burden on the authority – the guidance allows for public authorities to claim redaction as part of the burden.
 - Personal grudges
 - Unreasonable persistence
 - Unfounded accusations
 - Intransigence
 - Frequent or overlapping requests.
 - Deliberate intention to cause annoyance.
14. The fact that a request contains one or more of these indicators will not necessarily mean that it must be vexatious, and the list itself is not exhaustive with the public authority at liberty to include other indicators it considers relevant. Ultimately, all the circumstances of the case will need to be considered in reaching a judgement as to whether a request is vexatious.
15. The Commissioner's guidance goes on to suggest that, if a request is not patently vexatious, the key question the public authority must ask itself is whether the request is likely to cause a disproportionate or unjustified

level of disruption, irritation or distress. In doing this the Commissioner considers that the public authority should weigh the impact of complying with the request against its purpose and value.

16. Where relevant, public authorities may also take into account wider factors such as the background and history of the request, and DBW considers it relevant in this case.
17. DBW has informed the Commissioner that it is a subsidiary of the Welsh Government with its primary function to invest in, and lend money to SME's (Small to Medium size Enterprises) in Wales.
18. DBW has stated that the complainant is known to it in connection with a number of investee companies, and in some instances this is as an employee of a company which has received investment. Latterly, DBW has informed the Commissioner that the complainant has established a company providing outsourced and interim Financial Director services and is also known to DBW in this context.

Frequent or overlapping requests / Unreasonable persistence

19. According to DBW, since June 2018, the complainant has submitted approximately 40 requests for information across more than 70 letters and emails. DBW has stated that the complainant submits overlapping requests before it has responded to a previous one and that even when the information has been provided, they are varied or re-submitted. DBW also considers the complainant's line of questioning vexatious.
20. The Commissioner can confirm that there do appear to be 70 pieces of correspondence from the complainant. However, over 20 of these appear to be either duplicates, chasers, cover emails attaching letters, requests for internal reviews or clarifications. The remainder include 14 FOIA requests, one SAR, three grievance letters and associated correspondence.
21. The Commissioner has considered the requests in detail, and notes that prior to this request, the complainant had submitted 13 FOI requests over a six month period, with 12 of these submitted over the four months from June to October 2018. She also notes that six were submitted within a four week period from 19 June to 16 July 2018, before DBW could conceivably have had a chance to respond to any of them. The Commissioner is also mindful that many of the requests were multipart, adding to the burden on the authority.
22. Most of the requests, although not directly relevant to the complainant's grievances, appear to be in connection with the complainant's perception of failings on the part of DBW.

23. The requests themselves, and/or the emails attaching them are frequently sarcastic and indicative of a level of antipathy towards DBW. The Commissioner has reproduced a selection by way of example below;
- (i) *"It is particularly comforting to know that DBW has a comprehensive policy in place in the very unlikely event that one of its employees is alleged to have taken a bribe."*
 - (ii) *"Neither have I commenced any legal action so far; if memory serves, I've only sent in several grievances alleging that, based on information you provided, your staff have allegedly used a false and malicious reference to damage my reputation, allegedly appear to have threatened my clients and allegedly sought to cause me significant financial loss. Is that enough allegedly's? ..."*
 - (iii) *"I would be super grateful to the point of euphoric if you could please confirm in writing that you have received this letter"*

Personal grudges

24. DBW has argued that the complainant has a personal grudge against certain members of its staff which he has made clear from the early stages of his correspondence.
25. Correspondence between both parties appears to have started in June 2018 mainly in the form of FOIA requests and in September 2018, the complainant first made reference to a potential grievance regarding an individual employee.
26. DBW has further stated that the complainant was encouraged to summarise the specifics of the issue to enable the matter to be allocated to an investigating officer.
27. In addition to the FOI requests, the complainant submitted a SAR in October 2019, the response of which in January 2019 prompted the complainant to submit three grievances in February 2019. DBW has provided evidence that the three grievances were investigated, but not upheld. DBW has further informed the Commissioner that although the complainant had the right to appeal their conclusions, he chose not to. It has added that the complainant wrote back to say he was not unhappy but amused, (although the Commissioner has not seen evidence of this) and subsequently confirmed he would not appeal for the reasons outlined in his letter. This DBW considers is not only
28. evidence of his personal grievance but his intention to cause disruption and annoyance.

29. According to DBW, the complainant has also made multiple attempts to contact individuals including via LinkedIn, adding that some of the correspondence has threatened to report individuals to professional bodies or to raise further grievances.
30. The Commissioner was further informed that the emails have proved distressing to the individuals concerned even though at face value, the comments may seem innocuous. However, DBW stated that the persistence with which the grievances have been pursued, as well as the escalation of complaints once formal avenues have been exhausted, has meant that it has given regard to its duty to protect its employees.
31. DBW also states that the complainant has on a number of occasions confirmed that his lines of questioning are related to his grievance, although the Commissioner has not seen evidence of this other than in respect of this request.
32. DBW has also referred to the complainant threatening to report two individuals to the Disciplinary Committee of the ICAEW (Institute of Chartered Accountants in England and Wales) to escalate his grievances.

Deliberate intention to cause annoyance

33. The Commissioner was informed that in DBW's view, the complainant's requests are a deliberate attempt to cause annoyance. The Commissioner notes the following reference in an email the complainant sent to one of DBW's customers dated 18 January 2019 informing the individual that:

"Just by way of information I'm engaged in a minor bit of fun with DBW which has recently caused me to issue a Subject Access Request of all information they have on me, and two emails are attached which appear to concern..."

34. DBW considers that the targeting of DBW customers and threats to cause disruption in the business community to damage DBW's reputation can be seen as vexatious.

The complainant's position

35. The complainant's position was outlined earlier in this notice under the heading of "Scope of the case". By way of a reminder, he has argued that his requests are not linked to his grievance and believes they should be an opportunity for DBW to demonstrate the support it is

36. providing to the local business community. He has further argued that if 'vexatious' is replaced with 'potentially embarrassing for DBW and its staff' then this might identify the real reason for the refusal.
37. Having considered the letter in which the complainant confirmed he would not appeal the outcome of his grievances, the Commissioner notes this was because he stated he was not satisfied with the quality of the investigation and did not consider an appeal would alter either its outcome or his perception of it.

The Commissioner's conclusion

38. The Commissioner has considered the arguments and evidence put forward by both parties and it is clear that there is an increasing level of animosity between them. However, it is beyond the Commissioner's remit to investigate or comment on this, but it is her duty to form a judgement regarding whether the complainant's request can legitimately be refused on the basis that it is vexatious.
39. Regardless of the veracity of the outcome of the complainant's grievances, the Commissioner has placed little weight on DBW's argument that the complainant's decision not to appeal the decision is further evidence of him wishing to cause disruption and annoyance, as she considers that if this had been his objective, he would have been more likely to appeal.
40. Neither has the Commissioner placed significant weight on DBW's description of the complainant's comments that he would report certain DBW employees to the ICAEW as threats, as she considers that informing individuals of the intention to escalate a grievance to the professional body of which they are members may be a valid course of action.
41. The Commissioner is also mindful that accountability and transparency of public authorities is at the heart of the FOIA and that a public authorities must be open to the disclosure of information which could be potentially embarrassing.
42. However, the Commissioner notes that the complainant has submitted a large number of requests for information over a relatively short period of time, many of which are multipart, with some appearing to be a rewording of previous requests, and considers that this will result in a significant burden on DBW's resources.
43. The Commissioner also acknowledges that whilst there is no evidence to link the majority of the complainant's requests to his grievance, this particular request is clearly linked.

44. The Commissioner is also mindful that the complainant has adopted a sarcastic and at times supercilious tone in his correspondence, and that the complainant himself in correspondence to a third party, referred to his dealings with DBW as a "minor bit of fun".
45. Having regard to all the facts of this case therefore, the Commissioner considers that her decision is finely balanced, but has concluded that the request above can correctly be viewed as resulting in a disproportionate and unjustified level of disruption, irritation or distress to DBW, and be categorised as vexatious. DBW was therefore entitled to refuse the request on the basis of section 14(1) of the FOIA.

Right of appeal

46. 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: 0203 936 8963
Fax: 0870 739 5836
Email: grc@justice.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

47. 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.

48. 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

**Catherine Dickenson
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