

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 26 June 2012

Public Authority: Home Office
Address: 2 Marsham Street
London
SW1P 4DF

Decision (including any steps ordered)

The complainant requested information about the handling of a previous information request he had submitted to the Home Office. The previous request had resulted in full disclosure but had also met with a delay of two months which the complainant was dissatisfied with. The Home Office refused to comply with the request in this case on the grounds that it was vexatious. The Information Commissioner's (the Commissioner's) decision is that the Home Office was correct to refuse to comply with the request on the basis that section 14(1) applied.

Request and response

1. On 19 September 2010, the complainant wrote to the Home Office and requested information in the following terms:

"I would like a copy of all records – including internal and external correspondence, with the exception of correspondence to or from me – relating to your handling of my recent FOI request (and associated internal review) in which you took over two months to produce what turned out to be a very small amount of information.

I believe your reference for the request is CR14968, and in case there is any ambiguity the request can be identified from its WhatDoTheyKnow thread..."

2. The Home Office responded on 29 September 2010. It considered the request to be vexatious. The complainant had already made a formal complaint regarding the delay involved in the previous request and therefore the Home Office considered this request lacked serious

purpose or value. The Home Office also stated that its application of section 14(1) was based on the fact that the complainant often submitted requests on similar subjects to the Home Office and then made subsequent requests about the handling of those information requests if they met with delay or information was not disclosed.

3. Following an internal review, the Home Office wrote to the complainant on 28 October 2010. It upheld its original position that the request was vexatious due to the fact that the previous request had resulted in full disclosure and the delay had been dealt with in the relevant internal review and a subsequent complaint to the Commissioner.

Scope of the case

4. The complainant contacted the Commissioner to complain about the way his request for information had been handled. He did not accept that his request lacked '*purpose or value*' and as such disagreed with the application of section 14(1) by the Home Office.
5. The Commissioner, therefore, has investigated whether the Home Office was correct to refuse to comply with the request on the grounds that it is vexatious.

Reasons for decision

6. Section 14(1) of the Freedom of Information Act (FOIA) states that:

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

7. In determining whether a request is vexatious, the Commissioner will generally consider the context and history of a request as well as the strengths and weaknesses of the arguments in relation to some or all of the following factors.
 - Whether the request has any serious purpose or value.
 - Whether compliance would create a significant burden in terms of expense and distraction.
 - Whether the request could otherwise fairly be characterised as obsessive.

- Whether the request is designed to cause disruption or annoyance.
 - Whether the request has the effect of harassing the public authority.
8. The Home Office confirmed that the background and context to the request in this case was a series of requests made by the complainant for financial reports and accounts provided to the Home Office by the Association of Chief Police Officers (ACPO). Specifically, a previous request to the Home Office for ACPO funding information for the years 2006/07 onwards (reference CR14968) had met with delay and the complainant had raised a complaint with the Home Office concerning the timeliness of that response. The Home Office had carried out an internal review for the previous CR14968 request which dealt with the fact that its response had been outside the statutory time limit.
9. Keeping this context and background in mind, the Commissioner has gone on to consider whether any or all of the following criteria apply to the request.

Whether the request has any serious purpose or value

10. The request in this case (reference CR16230) is a meta-request about the handling of the previous request. The complainant has made it clear that he submitted this request with a view to ascertaining the reasons for the late response to the previous request.
11. The Home Office has argued that this motive behind the meta-request for information has rendered the request vexatious in nature as the same outcome, ie obtaining reasons and apologies for the delay in the response to the previous request, had been achieved by the previous complaint and subsequent internal review which the Home Office carried out.
12. Moreover, the Home Office made the point that the complainant had taken his complaint regarding the delay involved in request CR14968 to the Commissioner for investigation and therefore there would be little merit in him pursuing the same issues with the Home Office in tandem.
13. The complainant argued against his request being deemed vexatious and made the point that he is entitled to submit meta-requests. In his complaint to the Commissioner he cited the Information Tribunal case of *the Home Office and Ministry of Justice versus the Information Commissioner* (reference EA 2008/0062). In that case the Tribunal found there was no legal basis for refusing a request based solely on the fact it was a meta-request. As there is no provision in the FOIA to refuse

requests of this kind on this basis, the Tribunal stated that meta-requests should be treated like any other freedom of information request.

14. The Commissioner notes the complainant's arguments with regard to this matter and indeed would agree that meta-requests cannot and should not be refused based solely on the basis that they are requests about other requests. However, the Commissioner considers that the Home Office did not refuse to comply with the CR16230 request based solely on the fact that it was a meta-request. The section 14(1) refusal by the Home Office was, in the main, based on its arguments that the meta-request lacked serious purpose or value as the issues it sought information on had been dealt with.
15. The complainant defended his decision to make requests about the handling of previous information requests stating that he considered there to be a strong public interest in uncovering the FOIA procedural failures of public authorities.
16. The Commissioner believes that the mechanisms already in place to make complaints regarding FOIA procedural failings or customer service issues, such as public authorities' internal complaints processes, applicants' right to apply for a decision from the Commissioner and the subsequent right of appeal at the Information Tribunal, offer opportunities to redress, investigate or take relevant enforcement action regarding any systemic FOIA failures. However, in this case he accepts that to some extent the request still adds value because it seeks access to more detail about how the earlier request was processed than was available within the internal review. It is also likely to provide further insight into how well systems within the public authority are working as well as increasing transparency.

Whether compliance would create a significant burden in terms of expense and distraction

17. The Home Office stated in its refusal, internal review and submissions to the Commissioner that, the fact that the complainant made requests for similar information, then submitted procedural complaints and further meta-requests about the handling of the information requests, was evidence of a pattern of behaviour which had been ongoing throughout the complainant's dealings with the Home Office.
18. This pattern of behaviour imposed a significant burden on the Home Office. It wrote in the internal review to CR16230:

"...responding to [the complainant's] requests on ACPO grant aid reports has generated extensive and detailed correspondence..."

continued correspondence...would impose an unreasonable burden on Home Office resources. The large volume of requests and follow up correspondence received...provides a strong justification...to refuse the request under section 14. The Home Office has spent a significant amount of time in terms of financial and human resources in responding to [the complainant's] requests. Since September 2009, it is estimated that the Home Office has spent over 100 hours dealing with such requests...".

19. The Home Office provided various examples of the frequency and behaviour of the requests and complaints submitted by the complainant. Owing to the length of time the complainant had already been continuing with this pattern of behaviour and the public interest he believed he was acting with, the Home Office asserted that the burden which compliance with the requests would carry was set to continue and indeed increase.
20. Each request itself or even complaint made by the complainant may not have been burdensome for the Home Office to comply with in isolation. Taken together as part of a wider pattern of behaviour, however, the Commissioner considers that the requests formed a type of procedural campaign undertaken by the complainant that in turn created a significant burden on the Home Office.
21. The Commissioner has not been provided with any evidence to suggest that this pattern of behaviour would stop in the near future and in fact the complainant's own arguments regarding the serious nature of his meta-requests suggest that the FOIA procedural campaign will continue for as long as the complainant makes requests for related information to the Home Office.
22. The Commissioner considers that complying with the cycle of information requests followed by complaints and follow-up correspondence and meta-requests on related issues does create a significant burden on the Home Office. Not only would valuable time be spent undertaking such activities but staff across the Home Office would be distracted from their core functions and roles. Ironically, it could even be argued that an adverse effect of the burden of this behaviour is that more delays in responding to fresh information requests, including the complainant's own requests, would occur.

Whether the request could otherwise fairly be characterised as obsessive

23. At no point, either in its refusal and internal review to the complainant or submissions to the Commissioner, did the Home Office rely on this

criterion. The Commissioner, therefore, has not considered this matter in any further detail.

Whether the request has the effect of harassing the public authority

24. The Home Office did not explicitly claim that the request had the effect of harassing staff, and the Commissioner has therefore not considered this factor further.

Whether the request is designed to cause disruption or annoyance

25. The true motives behind requests for information are often hard to prove and, moreover, the FOIA is designed to be applicant and motive blind. The Home Office has argued that, due to its lack of a serious purpose and the burden of its administration, the request was designed to be disruptive or cause annoyance.
26. The Commissioner adheres to a more cautious approach when considering this criterion. He notes that the effect of a cycle of requests and meta-requests may be disruption and annoyance. However, to demonstrate that this is the case requires specific evidence as to the intention of the complainant. Again, he would refer to the Tribunal decision in *Home Office and Ministry of Justice versus the Information Commissioner* that a meta-request cannot be deemed vexatious just by its very nature of being a request about a previous request.
27. There is evidence in this case of what the request is specifically designed to achieve. The complainant stated in defence of his CR16230 request that he is driven to make meta-requests of this nature by a belief that it is in the public interest to uncover and investigate procedural failings of public authorities where compliance with the FOIA has been breached.
28. In the circumstances, the Commissioner does not believe that it has been shown in this case that the complainant had an intention to disrupt the work of the Home Office.

Conclusion

29. The Commissioner is in agreement with the Tribunal decision in *Home Office and Ministry of Justice versus the Information Commissioner* that a meta-request cannot be deemed vexatious just by its very nature of being a request about a previous request. He has therefore considered the Home Office's application of section 14 in direct relation to his guidance and specific criteria on the matter.
30. The Commissioner finds that, when seen in the context of the complainant's history of correspondence with the Home Office, compliance with the request in this case would impose a significant

burden. Whilst he accepts that the request has some serious purpose and value he does not consider this to be significant in this instance. Therefore, having balanced the serious purpose and value against the significant burden the Commissioner has concluded that the request is vexatious and that the Home Office was therefore correct to refuse to comply with it on the basis of section 14(1).

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

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