Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 19 March 2013

Public Authority: The Department for Business Innovation and Skills

Address: 1 Victoria Street
London
SW1H 0ET

Decision (including any steps ordered)

1. The complainant has requested information regarding the settlement of a claim he made against the British Coal Corporation ("BCC") for an accident he had whilst working in a BCC mine in 1991. The Department for Business Innovation and Skills ("DBIS") treated part of this request under the DPA, as it considered that some of the requested information was the personal data of the complainant. It applied section 14(1) of the FOIA to the remainder of the request.

2. The Commissioner's decision is that some of the requested information is the personal data of the complainant and as such this information is exempt from disclosure (under the FOIA) under section 40(1). He has also decided that DBIS has correctly applied section 14(1) to the remainder of the request. He does not require any steps to be taken.

Background

3. The complainant made a claim against the British Coal Corporation ("BCC") for an accident he had whilst working in a BCC mine in 1991. This claim was settled in 1996. The complainant also made a separate claim for respiratory disease (chronic obstructive pulmonary disease or COPD) which was settled in 2006 and for vibration white finger which was settled in 2001.

4. In 1998 the liabilities of BCC were transferred to the Secretary of State for Trade and Industry and were subsequently transferred to the Department for Business, Enterprise and Regulatory Reform ("BERR"). In 2008 the liabilities were transferred to the newly created Department of Energy and Climate Change ("DECC").

5. The complainant has been in correspondence with BERR/DBIS/DECC since 2004 concerning his accident claim. Initially he was concerned with information held by BCC's solicitors and since 2007 his requests have been concerned with the calculation of the compensation payment he received.

6. On 5 April 1996 the out of court settlement figure was agreed to be £50,000. This compensation was to be paid after benefit deductions had been made and paid to the Compensation Recovery Unit ("CRU") at the Department for Work and Pensions ("DWP"). The deductions were the amount that had been paid to the complainant in industrial injury benefits since the accident. The remainder was to be paid to the court for the complainant.

7. Had the £50,000 been awarded on 5 April 1996, the amount to be deducted would have been £30,768.18 and the complainant would have received £19,231.82.

8. However the payment was not made until 11 April 1996. By this later date, the complainant had received a further benefit payment of £157.92. The amount to be deducted for the CRU had therefore risen by £157.92 to £30,926.10.

9. Because of the delay, on 11 April 1996 the final settlement figure of £50,000 plus £157.92 (£50,157.92) was paid. The deduction of £30,926.10 was paid to the CRU. The remainder which went to the complainant therefore remained at £19,231.82.

10. As the amount of total compensation paid on 11 April 1996 rose by the same amount as the deduction to be paid to the CRU (£157.92), the amount left to be paid to the complainant on 11 April was the same as the amount due to be paid on 5 April. The increased settlement payment was therefore in the complainant's favour.

11. The compensation payment certificate (subject to deduction) was calculated for the week up to 5 April 1996 and not subsequently adjusted to the later date of 11 April 1996. It therefore refers to £50,000.

12. The complainant submitted a complaint to an Independent Tribunal and the Upper Tribunal decision also refers to the sum of £50,000.

13. It is this discrepancy between the amount originally agreed (£50,000) and the amount actually paid (£50,157.92) which has been the subject of the complainant's more recent information requests and has led him to submit his current request.

14. The complainant has argued that BERR provided forged documents to the Commissioner during the investigation of a complaint he made under the DPA. This was case reference RFA0204494 and the assessment in that case concluded that it was likely BERR had complied with the DPA (19 February 2009).

15. The assessment was based on correspondence provided to the Commissioner which indicated that the amount the complainant had accepted in compensation was £50,157.92. The assessment explained that it appeared the date of payment was 11 April 1996. However the complainant has argued that the assessment is based on a forged document.

16. He considers that the 'notice of acceptance' letter written by a named solicitor and sent to IRISC, the Department's claims handlers (now Capita) on 15 April 1996 is a forgery. This states that the Department's solicitors advised that the payment into Court was accepted. This refers to *"increased payment into Court to £50,000 less CRU benefits ie. £50,157.92 less CRU of £30,926 on 11 April 1996".*

17. He has argued that the actual notice of acceptance of a payment in Court for the sum of £50,157.92 was dated 22 April 1996. He considers this demonstrates that the letter of 15 April 1996 was a forgery.

18. The complainant has argued that the solicitor involved who worked for the firm representing BERR was dismissed in 2007 for forging documents. The Commissioner has not investigated this allegation.

Request and response

19. On 3 August 2012 the complainant wrote to DBIS and requested information under the FOIA. He referred to a 'notice of acceptance' letter written by a named solicitor and sent to IRISC, the Department's claims handlers (now Capita Insurance Services), on 15 April 1996. He then asked:

> *"(a) Has this letter been altered, forged or mistakenly recorded or similar?*
>
> *(b) What was the full amount in Court on 11 April 1996 with all the parts?*
>
> *(c) What information does the Department hold regarding the dismissal of the named solicitor who worked for* [name redacted]*, the solicitors firm representing the Department?"*

20. DBIS responded on 22 August 2012 and explained that it would respond to part (b) of the request under the DPA.

21. It confirmed that part (c) of the request fell under the FOIA. It then refused to respond to part (c) under section 14(1) of the FOIA as it considered the request to be vexatious.

22. DBIS provided an internal review on 24 August 2012 in which it upheld its application of section 14(1) to part (c) of the request.

23. DBIS did not refer to part (a) of the request in its response to the complainant.

Scope of the case

24. The complainant contacted the Commissioner on 3 September 2012 to complain about the way his request for information had been handled.

25. The complainant has argued that he would like the whole request handled under the FOIA.

26. The Commissioner considers that part (a) of the request is a request for any recorded information held by DBIS which would confirm that the relevant letter may have been altered in any way. DBIS has argued that it is not a request for recorded information but a question which requires a direct answer. However, it explained that should the Commissioner consider it to be interpreted as a request for recorded information, it would consider it to be exempt under section 14(1).

27. Therefore the scope of this case has been to consider whether DBIS was correct to apply section 40(1) of the FOIA to part (b) of the request and respond to it under the DPA; and whether DBIS was correct to apply section 14(1) to parts (a) and (c) of the request.

Reasons for decision

Part (b) of the request: personal data

28. Section 40(1) of the FOIA states that information is absolutely exempt if it amounts to the personal data of the applicant. In this case the Commissioner is satisfied that the amount paid to the claimant in Court is held with reference to him regarding the settlement of his claim. He is therefore the data subject and this is his personal data. It is therefore exempt from disclosure under section 40(1) of the FOIA.

Part (a) and (c) of the request: vexatious

29. Section 14(1) provides that a public authority is not obliged to comply with a request if it is vexatious.

30. The Commissioner's published guidance[1] on section 14(1) provides that the following five factors should be taken into account when considering whether a request can accurately be characterised as vexatious:

- whether the request can otherwise fairly be characterised as obsessive or manifestly unreasonable;
- whether the request has the effect of harassing the public authority or its staff;
- whether compliance would create a significant burden in terms of expense and distraction;
- whether the request is designed to cause disruption or annoyance; and
- whether the request has any serious purpose or value.

31. It is not necessary for all five factors to be engaged, but the Commissioner will reach a decision based on a balance of those factors which are applicable, and any other relevant considerations brought to his attention.

32. The Commissioner has therefore considered arguments put forward by DBIS and the complainant, partly in light of the five tests set out above, but also in light of the Information Tribunal's (the "Tribunal's") view that a consideration of a refusal of a request as vexatious may not necessarily lend itself to an overly structured approach.[2] He has therefore considered these tests 'in the round'.

[1] http://www.ico.gov.uk/upload/documents/library/freedom_of_information/detailed_specialist_guides/vexatious_and_repeated_requests.pdf

[2] *Coggins v the Information Commissioner (EA/2007/0130)*

Could the request fairly be seen as obsessive?

33. The guidance to vexatious requests explains that the wider context and history of a request is important to this question. Relevant factors include the volume and frequency of correspondence, requests for information that has already been seen or a clear intention to reopen issues that have already been debated and considered.

34. DBIS has argued that since 2007 the complainant has sent numerous, virtually identical, Freedom of Information requests to BERR/DECC/DBIS asking for an explanation of how his compensation payment was calculated. It considers that he has been provided with all the information that he originally requested under the FOIA and the DPA. An outline of these requests is provided in the Appendix to this notice.

35. DBIS has argued that, due to the volume, frequency and content of correspondence, it considers this request to be part of a pattern of obsessive behaviour. It has argued that the complainant is using the FOIA to revisit issues which he has raised with DBIS, its predecessor departments and other public authorities over the years.

36. The Commissioner is satisfied that the volume and content of correspondence concerning the complainant's compensation claim indicates this current request is part of a pattern going back eight years and can be described as obsessive.

37. DBIS has also provided the Commissioner with a detailed outline of all the correspondence concerning this issue since March 2004. Whilst the Commissioner has not considered it necessary to include all the correspondence in this notice, he considers this to be further evidence of the obsessive nature of the request.

38. In addition, the guidance states that an obsessive request can most easily be identified when an individual continues with a lengthy series of linked requests even though they have received independent evidence on the issue.

39. This is supported by the findings of the Tribunal in another case[3] where it found that it was the "persistence of the complaints, in the teeth of the findings of independent and external investigations, that makes this request, against that background and context, vexatious."

[3] *Welsh v Information Commissioner EA/2007/0088 (16 April 2008)*

40. DBIS has summarised a number of appeals the complainant has made following the settlement of his claim:

    - An Independent Tribunal Services appeal in 1998 regarding the CRU deductions and a Social Security Appeal Tribunal regarding recovery of benefits under CRU.
    - In December 2004 DBIS's legal advisors informed the complainant they were referring his allegations about the solicitor involved to the Office for Solicitors Supervision.
    - In February 2008, DWP considered a complaint made by the complainant and informed him that it could add no further details to the explanations provided.
    - In July 2010 there was a hearing on the application for leave to appeal before an Upper Tribunal Judge in North Shields. The Judge decided not to accept the application and refused permission to appeal.
    - In October/November 2010, the Parliamentary and Health Service Ombudsman decided not to investigate the complainant's complaint.

41. Taking these factors into account, the Commissioner is satisfied that the complainant is using the FOIA to revisit the subject of the settlement he received and that the current request clearly demonstrates an intention to reopen related issues which have already been considered by other bodies.

42. For the above reasons the Commissioner considers that the request can fairly be seen as obsessive.

Is the request harassing the authority or causing distress to staff?

43. DBIS has argued that the effect of the complainant's correspondence over the years is both harassing and causing distress. The guidance suggests that the request should be viewed in context and that relevant factors could include the volume and frequency of correspondence.

44. DBIS has argued that the letters sent in February 2008 were increasingly abusive to employees of Capita and BERR and made negative personal comments to members of staff. It has sent the Commissioner copies of a number of emails containing threats, allegations and abusive language towards individual members of staff.

45. In order to illustrate the nature of these emails, the Commissioner has referred to several examples in paragraphs 46 to 50 below. These show the kind of abuse the complainant has directed at individuals who work for the organisations involved.

46. In 2006, the complainant wrote to an employee of the Coal Liabilities Unit (the "CLU") and called him a "*cheating lying* [expletive deleted]" and a "*fraudster*". In May 2007 the complainant sent another employee of the CLU emails suggesting that he should not go to jail to protect the solicitor who worked for the Department's legal advisors.

47. In 2008, the complainant called an employee of BERR/DBIS "*a disgrace, a well-trained lapdog*". In 2009 the complainant wrote an email to an employee of the CLU with the words: "*I don't think you will like prison*." In a later email he wrote "*Let's hope you like prison food as you have just confirmed you are a thief and a fraudster. Enjoy the porridge*".

48. In April 2010 the complainant wrote to an individual at Capita saying he had had "*14 years of Capita* [expletive deleted] *and dishonesty and I've just started writing to the papers so* [expletive deleted] *off* [expletive deleted]."

49. In December 2011, in a letter an employee of DBIS, he addressed her as "*the most corrupt, deceiving and disgusting public servant in British history*" and accused her of writing "*gobbledegook*". In another email to DBIS, he referred to her, saying "*Maybe instead of writing to my MP she should take a few hundred Paracetamol with a bottle of wine and do us all a favour*."

50. In November 2012 the complainant informed a former Capita member of staff that he had tracked him down at his home address. He made threatening statements in his emails.

51. There is no doubt that this is unacceptable and abusive behaviour which is extremely distressing and harassing.

Would complying with the request impose a significant burden in terms of expense and distraction?

52. DBIS has argued that it and its predecessor departments have been dealing with the complainant's correspondence relating to this matter since 2004 and that it has already expended a considerable amount of resources into handling his correspondence. It has argued that, taking into account the long history of this case, it seems inevitable that compliance would lead to further correspondence, requests and complaints, thereby imposing a significant and on-going burden.

53. The Tribunal has said "…*that in considering whether a request is vexatious, the number of previous requests and the demands they place on the public authority's time and resources may be a relevant factor*."[4]

54. With respect to another vexatious case, the Tribunal found that a "*significant administrative burden*" was caused by the complainant's correspondence with the public authority, which started in March 2005 and continued until the public authority applied section 14 in May 2007. The complainant's contact with the public authority ran to 20 information requests, 73 letters and 17 postcards. The Tribunal said this contact was "…*long, detailed and overlapping in the sense that he wrote on the same matters to a number of different officers, repeating requests before a response to the preceding one was received….the Tribunal was of the view that dealing with this correspondence would have been a significant distraction from its core functions…*"[5]

55. In this instance the Commissioner is satisfied that the complainant has a history of making repeated requests and complaints to DBIS and its predecessor departments. The correspondence since 2004 is related in that it stems from the claim for compensation. The Commissioner considers that the numerous letters from the complainant to DBIS has involved it in a significant workload which has distracted it from its core functions and placed an unreasonable demand upon its employees.

56. The guidance also states that the wider context to a request can be relevant, i.e. if responding to this request would lead to significant number of further requests it may be classed as imposing a significant burden.

57. DBIS has argued that responding to this request would lead to further correspondence concerning its handling of the complainant's claim. This would seem likely considering the circumstances of this request and given that it would appear the complainant is interested in demonstrating fraud. Past experience clearly suggests that the provision of this information would lead to further correspondence and further burden upon DBIS.

58. It has not been suggested that the request in itself would be burdensome. However the Commissioner considers that it is apparent

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[4] *Gowers v the Information Commissioner & the London Borough of Camden (EA/2007/0114) (para. 70)*

[5] *Coggins v the Information Commissioner (EA/2007/0130) (para. 28)*

that it is one request in a pattern of requests and correspondence which has created a significant workload in the past and is likely to lead to further work.

59. The Commissioner is therefore satisfied that the complainant's correspondence will have placed an unreasonable pressure upon the resources of DBIS and its predecessor departments and that this constitutes a significant burden in terms of expense and distraction.

Is the request designed to cause disruption or annoyance?

60. It is difficult to demonstrate that a requestor's intention is to cause disruption. However DBIS has argued that the volume and abusive nature of the correspondence demonstrates that the request is designed to cause disruption or annoyance.

The Commissioner considers that an abusive email is evidently trying to prompt a response and irritate. However he is unable to conclude that the current request is designed to cause disruption or annoyance. The complainant clearly believes he has a case to argue and his request would appear to be linked to his conviction that DBIS is guilty of misrepresenting the amount of the compensation settlement.

Does the request lack any serious purpose or value?

61. The guidance is clear that the FOIA is not generally concerned with the motives of an applicant. However if a request clearly lacks a serious purpose or value it may support an argument that it is vexatious.

62. The complainant has argued that his request has a serious purpose. He believes the settlement amount was agreed at £50,000 and that this has been misrepresented by DBIS. He has argued that DBIS has provided fraudulent letters to the Information Commissioner's Office with regard to past cases and he considers that the solicitor who worked for the law firm was later sacked for fraud. He wishes to prove his case.

63. DBIS has argued that the complainant has been provided with all the information that he is entitled to under the FOIA and the DPA. It has argued that further requests do not address any issues that have not previously been addressed.

64. The Commissioner understands that the complainant believes there is a serious purpose behind the request. However he does not consider that there is any value in his further pursuit of this matter.

Conclusions

65. In the light of the above arguments, the Commissioner's conclusion is that DBIS was correct to refuse this request as vexatious.

66. As part of an eight year correspondence with DBIS and its predecessors, this case fulfils the Commissioner's criteria for an obsessive request. Whilst the complainant might not intend to cause disruption, the effect of this request is certainly distressing and harassing. In reaching this view the Commissioner has in particular taken into account the clearly unacceptable language used in some of the complainant's correspondence to the organisations referred to in this case. It would also appear that the provision of this information will not be the end of the matter. The request can be seen to be an attempt to continue with an issue which DBIS has already addressed.

67. The Tribunal found that the request in another case was vexatious because it was part of persistent correspondence which had continued for 2 years despite the public authority's disclosures and explanations. It was a continuation of a pattern of behaviour and part of an on-going campaign to pressure the public authority. It was very likely to lead to further correspondence, requests and complaints.[6] All these arguments apply to this case.

[6] *Betts v Information Commissioner EA/2007/0109 (19 May 2008)*

Right of appeal

68. 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

69. 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.

70. 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 .....

Rachael Cragg
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Appendix: Brief outline of requests for information and personal data

2007

i. In 2007 BERR dealt with two requests for information under the FOIA (and DPA) concerning the complainant's accident claim and the records held in relation to the claim for respiratory disease (COPD).

ii. On 15 January 2007 the complainant asked for all records held in relation to the 1991 accident and a copy of the medical records held for the purposes of the COPD claim.

iii. DBIS has explained that on 19 February 2007 the complainant was provided with a disclosure bundle under the DPA. He was provided with a disc containing all his medical records held by the Department's claims handler, Capita. On 28 February 2007 he was provided with a disclosure bundle under the FOIA (for the information that did not fall under the DPA).

iv. The majority of records relating to the medical claim were released although some information was withheld under section 42 and section 40(2) of the FOIA.

v. The complaint to the ICO regarding the outstanding information was considered under the DPA (RFA0201154) and the FOIA (FS50162861).

vi. In September 2007 the complainant requested information on the monies paid into court as part of the settlement of his accident claim.

vii. DBIS has explained that all the documents it holds have been released to the complainant, except where exemptions apply.

2008

viii. A series of similar requests were made by the complainant in thirteen emails sent between 4 February 2008 and 11 February 2008.

ix. On 11 February 2008 he asked for details of all withheld payments into court for the CRU in April 1996. He also required the advice from the relevant solicitor's office dated 15 April 1996 which led it to conclude that "the payment into court is accepted".

x. On 13 February 2008 the complainant was informed that BERR considered his requests to be vexatious. BERR explained that the emails and letters sent up to 11 February 2008 made repeated requests for the same information even though a large amount of it had been provided to him.

xi. DBIS has explained that between 4 February 2008 and 21 May 2008 alone BERR received 53 emails and letters from the complainant. Several of these contain abusive language and contain allegations of misconduct by members of staff.

xii. On 11 April 2008 BERR sent the complainant an internal review response with respect to his request of 11 February 2008. This explained that it was applying section 14(1) to the request. BERR also explained the compensation figures and explained why the two settlement figures of £50,000 and £50,157.92 were different.

2009 and 2010

xiii. DBIS and DECC continued to receive correspondence throughout 2009 and 2010 from the complainant which related to his accident claim.

2011

xiv. DBIS received a further request on 5 December 2011 which repeated the complainant's previous request. DBIS also refused this as vexatious as it was apparent that the request was related to the others. It also required an explanation of how the compensation payment was calculated. This was considered by the Commissioner as case reference FS50427905.

xv. DBIS has explained that it received correspondence from 4 people other than the complainant who shared the same surname.

xvi. He submitted a subject access request (SAR) to DBIS on 13 October 2011. DBIS's response was considered by the Commissioner in his assessment of 26 July 2012 and he concluded it was likely DBIS had complied with the DPA (case reference RFA0427948).

2012

xvii. DBIS has argued that the current request of 3 August 2012 contains requests or accusations which the complainant has made on the same subject matter on an on-going basis over the years. It stems from his coal health compensation claim and how it was handled.

xviii. He has also complained to the Commissioner about DBIS's response to a further SAR he made to DBIS on 4 and 5 September 2012 (case reference RFA0464174). DBIS had refused to comply with the SAR as it considered it was identical or similar to SARs he had made previously and the data requested had not changed in the intervening period. The Commissioner's assessment was provided on 4 March 2013 and concluded that it is likely DBIS had complied with the DPA.