

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 13 December 2010

Public Authority: Cabinet Office
Address: Admiralty Arch
North Entrance
The Mall
London
SW1A 2WH

Summary

The complainant previously requested information from the Cabinet Office about records of meetings and telephone calls between the then Prime Minister Tony Blair and Rupert Murdoch. The Commissioner issued a Decision Notice requiring the disclosure of the majority of the information. The complainant then complained that further information must be held. The Cabinet Office stated that all information had been provided that it was required to provide. The complainant then made a further request for any information which had been generated as a consequence of his first request. The Cabinet Office responded stating that the request was vexatious under section 14 of the Act. The Commissioner's decision is that the request was not vexatious and that the Cabinet Office was not able to apply section 14 to the request. The Commissioner also notes that the information which was requested may include personal data relating to the complainant. The Cabinet Office should have considered this information for disclosure under section 7 of the Data Protection Act 1998. The Commissioner has therefore decided to carry out a separate data protection assessment relating to this.

The Commissioner's Role

1. 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 Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

Background

2. The complainant's request follows on from a request for information made in 2005 which the Commissioner investigated and found in favour of the complainant. His decision in that case is outlined in Decision Notice FS50153967. The Cabinet Office initially claimed that responding to the complainant's request would breach section 12 of the Act as it would cost in excess of £600 to respond. It subsequently withdrew its reliance on this claim. The Commissioner eventually issued an Information Notice to obtain copies of the withheld information, which he found to consist of 2 pieces of correspondence. The Commissioner's decision on that complaint was that almost all of the information should be disclosed.
3. After the Cabinet Office had disclosed the information the complainant wrote to it, and to the Commissioner highlighting that the Cabinet Office's records had indicated that there had been far more meetings and telephone calls between Mr Blair and Mr Murdoch than the information he had received recorded. He stated that he therefore believed that further information must be held relating to these other discussions.
4. The Cabinet Office then wrote to the Commissioner providing its assurances that all of the information it held had been provided and that the Decision Notice had been fully complied with. It also wrote to the complainant stating that that no further information was held. The Commissioner subsequently wrote to the complainant stating that his view was that the Cabinet Office had provided all of the information and had complied with the Decision Notice.
5. The complainant subsequently wrote back stating that he would accept that the Cabinet Office had now complied with the Notice but that he would contact the Commissioner again regarding the request being considered in this Notice if he did not receive a satisfactory response.

The Request

6. Following the above, on 27 October 2008 the complainant wrote to the Cabinet Office requesting to see:

"all the letters, emails & notes of other kinds of exchanges, whether emanating from within the machinery of government or

from persons outside it, which have been generated as a consequence of my request to see all the exchanges between Blair and Murdoch”.

The Cabinet Office replied, in a letter of 25 November 2008 stating that it considered his request vexatious and that it would not comply.

7. The complainant requested that the Cabinet Office reviewed his request on 27 November 2008. However the Cabinet Office did not initially respond to that request. The complainant therefore made a complaint to the Information Commissioner on 16 January 2009. The Commissioner then wrote to the Cabinet Office reminding it of its obligation to respond to the request.
8. The Cabinet Office responded to the complainant on 28 January 2009 stating that the request was refused on the grounds that it was vexatious.

The Investigation

Scope of the case

9. On 28 January 2009 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider whether his request was vexatious. Regrettably, due to the volume of complaints at the Commissioner’s office, the investigation into the complaint did not commence until June 2010.

Chronology

10. On 11 June 2010 the Commissioner wrote to the Cabinet Office to state that the case had now been allocated for investigation and asking for comments.
11. The Cabinet Office provided a substantive response on 27 July 2010. It provided a list of some of the information which had been withheld, together with further arguments in support of its position.
12. On 23 August 2010 the Commissioner wrote to the Cabinet Office asking for further arguments in support of its position.
13. On 26 August 2010 the Cabinet Office responded. It stated that the arguments it had submitted were, in its view sufficient to engage the

exemption in section 14. It added that responding to the request would be likely to require work over the appropriate costs limit if section 14 were not applicable. However, it did not go on to actually apply the provisions of section 12 of the Act.

Analysis

Exemptions

Section 14

14. The Cabinet Office claims that the information is exempt under section 14 of the Act. Section 14 is provided in the legal annex to this Decision Notice. It provides an exception to an authority's duty to respond to a request where the request is vexatious.
15. The term 'vexatious' is not defined within the Act. However in his Awareness Guidance no. 22 'Vexatious and repeated requests' published 3 December 2008 - the Commissioner finds that the following questions can aid a decision as to whether a request is vexatious or not:
 - Could the request fairly be seen as obsessive?
 - Is the request harassing the authority or distressing to staff?
 - Would complying with the request impose a significant burden in terms of expense and distraction?
 - Is the request designed to cause disruption or annoyance?
 - Does the request lack any serious purpose or value?
16. The Commissioner has taken into account these criteria when considering the application of section 14 to the request by the Cabinet Office. It is important to note however that the ultimate decision on this case is based upon all of the circumstances of the case rather than simply a bald application of the criteria considered herein. He also points out that many of the arguments which are considered within the different criteria below are also equally applicable and relevant to the other criteria.
17. When determining whether a request should be deemed vexatious, the Commissioner is mindful that the history and context of the issue will be considered, along with one or more of the above factors. In certain cases, a request may not be vexatious when looked at in isolation but when considered in context it may form a wider pattern of behaviour that makes it vexatious. Nevertheless, the Commissioner recognises

that it is the request and not the requestor that must be vexatious in order for the exception to apply.

Is the request obsessive?

18. The Commissioner is not generally able to consider the purpose or motive of a complainant when considering the authorities response to a request. However where a request is deemed to be vexatious evidence to prove or disprove that it is vexatious may be garnered from the stated purposes or the arguments put forward by the complainant to counter the claim that the request is vexatious.
19. The Commissioner considers that meta-requests (requests about how previous requests were dealt with) should not of themselves be considered to be vexatious as a norm, but should be treated the same as any other requests. However where an authority does claim that the request is vexatious the Commissioner will look at the circumstances and the history surrounding the case in order to make his decision. He may also infer from the surrounding circumstances evidence of a complainant's wish to reopen a complaint and he will consider that accordingly.
20. In his Awareness Guidance on the subject of vexatious requests, the Commissioner acknowledges that obsessive requests are usually a very strong indicator that a request is vexatious. When trying to establish whether a request may be considered obsessive, the Commissioner's guidance states that:

"Relevant factors could include the volume and frequency of correspondence, requests for information the requester has already seen, or a clear intention to use the request to reopen issues that have already been opened and debated."
21. The Cabinet Office states that it considers the request to be obsessive in that the complainant's first request for information was responded to after the Commissioner's intervention, and the complainant received virtually all of the information which he had asked for in that request. The Commissioner however recognises that the complainant is not asking for the same information in this case. His request is a meta-request for information generated as a result of his previous request. The Commissioner considers this weakens the Cabinet Office's argument in this respect.
22. The Commissioner has also received information from the complainant indicating his reasons for making the further request. He argues that it

he should be allowed access to this information in order to be able to understand

“Whether the internal & external correspondence generated by my original request might allow any inferences to be drawn about undisclosed exchanges, including the questions of their perceived political sensitivity, the light they might throw on the relationship between Blair and Murdoch, and the consequences of that relationship for government policy.

Further aims are to glean information about any policies and procedures which have been put in place within the Cabinet Office to block or at least seriously impede perfectly legitimate FoI requests, and to establish if possible by whom such practices have been authorised.”

23. The stated purpose of the complainant therefore appears to be an attempt to obtain evidence of further information which was wrongly withheld in response to his previous request. The Commissioner notes that the problems which the complainant had with the Cabinet Office with his previous request are likely to have led to him forming an opinion that information was being withheld from both the Commissioner and from him.
24. The complainant's second statement indicates that a disclosure of correspondence between the Cabinet Office and others generated as a result of his previous request might highlight information which the parties discussed and decided was too politically sensitive to disclose. He states that this would provide wider evidence that the relationship was such that Mr Murdoch's office was able to influence the decisions of the Cabinet Office.
25. The complainant's other stated purpose was to try to uncover any deliberate policy to impede requests which had been put in place at the Cabinet Office.
26. The Commissioner accepts that at times there is a thin line between obsession and persistence. Although each case is determined on its own facts the Commissioner considers that an obsessive request can be most easily identified where a complainant continues with the request(s) despite being in possession of other independent evidence on the same issue. As the Information Tribunal in the case of Rigby v Information Commissioner (EA/2009/0103) stated,

“ongoing requests, after the underlying complaint has been investigated [by independent regulators], [go] beyond the

reasonable pursuit of information, and indeed beyond persistence”.

27. The complainant previously informed the Commissioner that it was his belief that not all of the information which the Cabinet Office held was provided to him. The Commissioner responded at that time stating that during the previous investigation he had assured himself of the information which the Cabinet Office held. He therefore stated that he was satisfied that the Cabinet Office had complied with the Decision Notice in this case.
28. This followed him issuing an Information Notice to the Cabinet Office to obtain relevant information on 19 December 2007 and issuing a Decision Notice requiring, for the most part, that the information which was held, and which was within the scope of the request, should be disclosed.
29. The request therefore follows on from the complainant’s prior correspondence with both the authority and the Commissioner stating that he did not believe that the Cabinet Office had provided all of the information to him. The Cabinet Office viewed this second request as the complainant’s way of extending and/or reopening his complaint.
30. The Commissioner also believes that that was the intention of the complainant, and his subsequent letter of complaint to the Commissioner outlining his motives behind making the request would appear to justify that conclusion.
31. However the Commissioner has considered the evidence put forward by the complainant for doing this. He notes in particular the issues which the Commissioner found in his previous Decision Notice together with the discrepancies the complainant raised which are outlined in paragraph 3 above. His view is that these circumstances would raise concerns with the complainant that further information might be being withheld.
32. The Commissioner’s view is therefore that the complainant is not being obsessive by making this further request. He is being persistent because the evidence he has before him leads him to believe that the Cabinet Office may hold additional information.

Did the request have the effect of harassing the authority?

33. The Commissioner has considered the arguments put forward by the Cabinet Office in this respect. The language of the initial request was polite and not aggressive, albeit within a letter complaining about

information which he believed had not been supplied in response to his initial request. He does not therefore believe that the language used in the request would harass the authority in any way.

34. The Commissioner's view is therefore that the request could not be considered to be harassing the authority in this instance.

Would responding to the request have imposed a significant burden in terms of the expense and distraction on the authority?

35. The Cabinet Office argues that due to the significant amount of time it took for the previous request to be resolved a great deal of correspondence was created during that period. It has provided the Commissioner with a list of documents that stretches over 5 pages of A4 paper which it states falls within the scope of the request. However it adds that this is not likely to be all of the information involved, but is simply the information which could be identified relatively easily because it was held on one file. The Cabinet Office argues that as the previous complaint was ongoing for a number of years there is likely to be more information in other files which it has not yet identified. It argues that locating that information would be likely to take up a significant amount of time for Cabinet Office and Number 10 staff. Finally it argues that as it has already addressed the main issues behind the previous request, ordering further searches would serve no value or purpose.
36. The Cabinet Office added that it was willing to allow the Commissioner to provide the list to the complainant in order to alleviate his fears that information was being withheld from his previous request. It stated that it believes that supplying this to him may resolve his complaint. The Commissioner has not done this. This approach was previously taken by the Cabinet Office in response to the complainant's first request, and was subsequently refused by the complainant. The Cabinet Office may provide this list to the complainant and the Commissioner would welcome this. He does not consider this to be a means of resolving this case, but recognises that constructive dialogue between a public authority and a complainant can often lead to narrowing the issues between them.
37. The Cabinet Office also made the suggestion that if the Commissioner were to find that that request was not vexatious then it may need to consider claiming that responding to the request would exceed the appropriate limit provided by section 12. It did not actually go so far as to apply section 12, however. The Commissioner notes that his decision as regards the complainant's rights under the Data Protection

Act (outlined below) may require the authority to carry out some of this work in any event.

Was the request intended to cause disruption or annoyance?

38. The Commissioner does not consider that the request was intended to cause either disruption or annoyance. The complainant considers that he did not receive all of the information that he had asked for in response to his first request, and this second request was his way of seeking evidence that that was the case.

Did the request have no value or purpose?

39. The Cabinet Office has questioned the value of the request given that the vast majority of the information which the complainant requested in his previous request was subsequently provided to him in response to the Commissioner's Decision Notice. However the Commissioner notes that the complainant provided evidence to the Cabinet Office which identifies differences between the correspondence and meetings listed between Mr Murdoch and Mr Blair on the Cabinet Office website and the information which the complainant received in response to his request.
40. The Information Tribunal in *Coggins v Information Commissioner EA/2007/0130* said at paragraph 20: "*...the Tribunal could imagine circumstances in which a request might be said to create a significant burden and indeed have the effect of harassing the public authority and yet, given its serious and proper purpose ought not to be deemed vexatious...*". Thus in that case, despite the request having the potential to cause a significant burden and be obsessive, the Tribunal considered whether the request had a serious purpose which may mean that despite the other findings it ought not to be deemed vexatious.
41. In that case the Tribunal said that the complainant was driven by a genuine desire to uncover a fraud, and had found potential evidence to that effect. The Tribunal felt that his agenda "*...amounted to a serious and proper purpose...*" (para 22). However the Tribunal also said that "*...there came a point when the Appellant should have let the matter drop...there had been three independent enquiries...in the Tribunal's view it [the complainant] was not justified in the circumstances to persist with his campaign....*" (para 25).
42. The Commissioner notes the complainant's stated purpose of uncovering any procedures put in place to block or impede freedom of information requests. Given the delays which occurred with his

previous case together with the evidence he has presented regarding the meetings which are not referred to in the information he has received the Commissioner believes that there is therefore both a value and a proper purpose behind the complainant's request.

Conclusion

43. The Commissioner has considered the evidence put forward by the complainant. He notes the complainant's belief that the Cabinet Office withheld information from him and the concerns which are the basis for him forming a view that the Cabinet Office had been, at the least, obstructive to his previous request. The Commissioner therefore acknowledges his reasons for making a further request.
44. He further notes the request would not harass the authority, that it was not obsessive, and that it was not intended to cause annoyance or disruption. He notes the argument submitted by the Cabinet Office the request would require significant work in order to respond to it. The Commissioner's view is, however, that the Cabinet Office has not developed this argument, and in any event the work involved in responding would not of itself be sufficient to justify it applying section 14.
45. The Commissioner's decision is therefore that the Cabinet Office was not able to apply section 14 to the request and is not discharged from complying with it on the grounds that it is vexatious.

The Decision

46. The Commissioner's decision is that the public authority did not deal with the request in accordance with the requirements of the Act.
 - The Cabinet Office was not correct to apply section 14 to the information in question.

Steps Required

47. The Commissioner requires the public authority to take the following steps to ensure compliance with the Act:

- The Commissioner requires the authority to consider the request for information under section 1 of the Act.

48. The public authority must take the steps required by this notice within 35 calendar days of the date of this notice.

Failure to comply

49. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Other matters

50. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern.

Personal data relating to the complainant

51. In this case the complainant's request is a 'meta- request'; a request for information about a request. The request which is being asked about is a previous request made by the complainant, and the request is for all information generated as a result of that request. As this is the case the Commissioner notes that some of the information falling within the scope of that request would be the personal data of the complainant. Indeed the list of documents the Cabinet Office provided to the Commissioner shows that a substantial amount of that information would be likely to be personal data relating to the complainant.

52. The Commissioner considers that this request to the Cabinet Office would in part comprises a subject access request as required under section 7 of the Data Protection Act 1998. The Cabinet Office should have recognised this and responded accordingly. The Commissioner has therefore considered the complaint to him partly as a request for assessment and he has made a separate assessment on the data protection aspects of the Cabinet Office's response. He will provide his assessment separately to both parties on a private basis.

Right of Appeal

53. 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,
Arnhem House,
31, Waterloo Way,
LEICESTER,
LE1 8DJ

Tel: 0845 600 0877
Fax: 0116 249 4253

Email: informationtribunal@tribunals.gsi.gov.uk.
Website: www.informationtribunal.gov.uk

54. 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.
55. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this Decision Notice is sent.

Dated the 13th day of December 2010

Signed

**Graham Smith
Deputy Commissioner**

**Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Legal Annex

Vexatious or Repeated Requests

Section 14(1) provides that –

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

Section 14(2) provides that –

“Where a public authority has previously complied with a request for information which was made by any person, it is not obliged to comply with a subsequent identical or substantially similar request from that person unless a reasonable interval has elapsed between compliance with a previous request and the making of the current request.”

Personal information.

Section 40(1) provides that –

“Any information to which a request for information relates is exempt information if it constitutes personal data of which the applicant is the data subject.”