

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 29 June 2011

Public Authority: Legal Services Commission
Address: 4 Abbey Orchard Street
London
SW1P 2BS

Summary

The complainant requested that the public authority provide him with the information it held about the training of three of its employees. The public authority provided information it held; however the complainant, believing that it held more asked for a review. The outcome of the review was that the public authority revised its original position and relied instead on section 14(1), that the request was vexatious, as its basis for not complying with the information request. The Commissioner found that section 14(1) was engaged but that a procedural breach had occurred.

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 Legal Services Commission ("public authority") runs the legal aid scheme in England and Wales.

Section 19 of the Access to Justice Act 2000 provides as follows

- (1) The Commission may not fund as part of the Community Legal Service or Criminal Defence Service services relating to any law other than that of England and Wales, unless any such law is relevant for determining any issue relating to the law of England and Wales.

3. The Commissioner has already found (see Decision Notice FS 50314387¹, annexed hereto) that a later request for information from the complainant to the public authority was vexatious for the purposes of section 14 (1). However this case, as with each case is decided on its own merits and circumstances.

The Request

4. On 8 January 2010 the complainant wrote to the public authority naming three of its employees. As to these three employees he requested information regarding their training in the following areas:
 - (a) Equality and Diversity Matters
 - (b) Freedom of Information and subject access requests
 - (c) The scope of LSC funding (the section 19 issue).
5. In a letter dated 2 February 2010 the public authority confirmed it held the information requested. The public authority listed various training modules and courses related to equality and diversity matters. The public authority then stated that the three named employees had completed the said modules and attended the courses. The public authority provided a copy of the training records for the three named employees and also provided a copy of training material.
6. The complainant, by way of a letter dated 4 February 2010, refuted the public authority's suggestion that it had provided the requested information to him and asked it to review his decision.
7. In a letter dated the 8 March 2010 the public authority informed the complainant that the review constituted a fresh consideration of his request. In relation to the training activities undertaken by the three named employees it considered that the criteria under section 14(1) were satisfied and therefore it would not communicate the requested information to him.

¹ http://www.ico.gov.uk/~media/documents/decisionnotices/2011/fs_50314387.ashx

The Investigation

Scope of the case

8. On 13 July 2010 the complainant contacted the Commissioner to complain about the way his request for information had been handled.

Chronology

9. The Commissioner wrote to the public authority on the 18th November 2010 seeking clarification of its reliance on section 14(1).
10. The public authority provided its reply in a letter dated 22 December 2010. It stated that the complainant's information request of 8 January 2010 was merely one act in his history of obsessive behaviour towards them. The complainant, it alleges, sends the public authority many FOI requests and other various communications. The complainant's behaviour is such that his telephone and email communications had been barred. In support of its assertions the public authority provided the Commissioner with a breakdown of 16 information requests made by him to it in the period 2009 -2010.
11. The public authority also stated that the complainant's behaviour amounted to harassment of its staff. The public authority explaining that the complainant would habitually target staff, in his communications, once he became aware of their names. His behaviour gave rise to such concerns that the public authority has had to warn, to no avail, the complainant about his future behaviour.
12. The public authority stated that whilst complying with this request on its own would not necessarily create a significant burden it would do if it was seen as one of numerous requests. The public authority also said that in replying to this one request it would likely lead to further requests for information from the complainant.
13. In correspondence dated the 28 March 2011 the Commissioner explained that as the information requested by the complainant appears to be the personal data of the three named individuals the Commissioner may have to consider the applicability of section 40 of the Act. Accordingly the public authority was provided with an opportunity to answer the Commissioner's queries about the applicability of section 40. In a reply dated 28 March 2011 the public authority informed the Commissioner that given it had released some of the requested information, the seniority of the three named individuals and the type of information requested it did not seek to rely on the exemption provided by section 40(2). The public authority went on to maintain its reliance on section 14(1) and referred the

Commissioner to the evidence and arguments it had placed before him for consideration in FS 50314387.

Analysis

Substantive Procedural Matters

Exclusion

14. Section 14(1) provides that a public authority does not have a duty to comply with a request where it may be considered vexatious. As a general principle, the Commissioner considers that this section of the Act is meant to serve as protection to public authorities against those who may abuse the right to seek information.

The Commissioner's Approach

15. The Commissioner will consider the context and history of a request to assess whether the request would fall into some or all of the following categories. It is not a requirement for all categories to be relevant to a request. However, where the request falls under only one or two categories or where the arguments sit within a number of categories but are relatively weak, this will affect the weight to be given to the public authority's claim that section 14 is engaged:
- 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. As referred to above (paragraphs 3 and 13) the Commissioner has already considered the above matters in case FS 50314387 which involved the same parties. He found that after reviewing the evidence and considering the arguments that the complainant's request of the 22 April 2010 was a vexatious one for the purposes of section 14(1) of the Act. The public authority has said the evidence and arguments considered in that Decision Notice are equally applicable in this matter. Whilst the Commissioner is not bound by his own decision he is of course conscious of the similarity between the cases and the duality of evidence and arguments between the cases.

17. The Commissioner notes that in FS 50314387 the information request was made on 22 April 2010 and thus post dates the information request here which is January 2010. However there are no relevant acts or omissions between those dates that causes the Commissioner to differentiate his analysis of the complainant's behaviour prior to the 8 January 2011 as found in FS 50314387. The information requested is different but, in the context of this section 14 analysis, the Commissioner similarly finds (as he did in FS 50314387) that the request is not necessarily without value.
18. The Commissioner finds that his recent analysis of the complainant's dealings with the public authority, as laid out in FS 50314387 remains valid and correct for the purposes of this decision notice. The Commissioner has considered distinguishing factors but none are such that he can come to a differing conclusion between the two. The Commissioner therefore finds that the public authority was justified in relying on three of the five factors described above to support its application of section 14(1). The factors are that the request can fairly be seen as obsessive, the request harasses the authority and that complying with the request would impose a significant burden in terms of expense and distraction on the public authority. For these reasons the Commissioner concludes that the information request made on the 8 January 2010 was a vexatious one for the purposes of section 14(1) and consequently the public authority was not obliged to comply with it.

Procedural requirements

Section 17

19. Section 17(5) of the Act requires that a public authority relying on a claim that a request is vexatious must, within the time for complying with section 1(1) (i.e. within 20 working days of receiving the request), give the applicant a notice stating that fact. The public authority provided the requisite notice on the 3 February 2011 and thus outside the statutory period and thereby breached section 17 (5).

Decision

20. The Commissioner's decision is that the public authority dealt with the request for information in accordance with the Act, save for the procedural breach outlined below.
 - In failing to provide a timely response it breached section 17(5).

Right of Appeal

21. 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: 0300 1234504

Fax: 0116 249 4253

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

Website: www.informationtribunal.gov.uk

22. 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.
23. 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 29th day of June 2011

Signed

**Gerrard Tracey
Principal Policy Adviser
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Legal Annex

General Right of Access

Section 1(1) provides that -

"Any person making a request for information to a public authority is entitled –

- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
- (b) if that is the case, to have that information communicated to him."

Section 2(3) provides that –

"For the purposes of this section, the following provisions of Part II (and no others) are to be regarded as conferring absolute exemption –

- (a) section 21
- (b) section 23
- (c) section 32
- (d) section 34
- (e) section 36 so far as relating to information held by the House of Commons or the House of Lords
- (f) in section 40 –
 - (i) subsection (1), and
 - (ii) subsection (2) so far as relating to cases where the first condition referred to in that subsection is satisfied by virtue of subsection (3)(a)(i) or (b) of that section,
 - (iii) section 41, and
 - (iv) section 44"

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”