

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 31 January 2011

Public Authority: Treasury Solicitor's Office
Address: One Kemble Street
London
WC2B 4TS

Summary

The complainant requested information relating to a subject access request submitted to the Treasury Solicitor's Office (TSol) which was not deemed to be his personal data. TSol responded citing a refusal under section 14(1) of the Act (vexatious request). The Commissioner has investigated and concluded that the public authority was entitled to refuse the request under section 14(1).

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.

The Request

2. On 2 July 2009 the complainant contacted TSol to request the following information:

"Freedom of Information Request

4. Some of my personal data my be recorded in documentation and electronic records that contain information that is not considered to be my personal data and I shall be grateful if the balance of the material

in such records can be provided to me under the Freedom of Information Act so that I have the complete recorded information. This should make the provision of information easier for you.

Other relevant information/matters including Freedom of Information Request (beyond material containing my personal data).

5. As discussed with [named individual] I am happy to seek to refine my request – there are certain personnel at the Treasury Solicitor's office who have been involved with most of the matters of concern to me including [named individual] (and his office) [named individual] (with whom I have probably now had the most contact) and [named individual] and will hold much of the information that I am seeking...

6. I shall be grateful if you will let me know which matters involving me (or my clients by reference to me) are formally recorded as being matters in which the Treasury Solicitor has been instructed to act...

7. ...I am interested in receiving the information relating to the handling of matters by [named individual] (including the communications to [named individual] regarding locating the e-mail – if it was not retained by [named individual] – as [named individual] alleged and was not amongst the papers in which the Treasury Solicitor was instructed it can not be regarded as being something to which legal professional privilege attaches.

8. In order for information to be intelligible for me I would like to know about the e-mail retention policy of the Treasury Solicitor and the processes and procedures followed with regard to gathering information in response to requests for information as I understand that some or all of my matters may be subject to 'special' review/handling (on the basis that they may be sensitive, high profile, etc) procedures I would appreciate details of which matters are so classified together with the guidance relating to this sort of classification and handling arrangements.

9. I am concerned to have the information relating to the death of my late wife and all subsequent consequential activities by me and others provided to me. I shall be grateful for material relating to matters raised with [named individual] (and subsequently with [named individual]) relating to my late wife concerning material held by the Ministry of Justice; the communications passing between the Treasury Solicitor and the Ministry of Justice relating to such matters: the internal handling of such issues by the Treasury Solicitor and the Ministry of Justice relating to such matters: the internal handling of such issues by the Treasury Solicitor (such as when [named individual]

and [named individual] met to discuss matters) can now be provided to me...

10. I have outstanding matters relating to the Treasury Solicitor including complaints and the resolution/handling of such issues (primarily being handled by [named individual]) and I would like the information relating to such matters...".

3. On 1 October 2009 TSol provided a substantive response to the complainant in which it refused to disclose the information under the provisions set out in section 14(1) of the Act.
4. On 6 October 2009 the complainant requested an internal review of TSol's decision.
5. On 4 November 2009 TSol wrote to the complainant with details of the internal review it had carried out. The internal review upheld the original decision to withhold the information under section 14(1) of the Act.

The Investigation

Scope of the case

6. 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 the application of section 14(1) to his request.

Chronology

7. On 6 August 2010 the Commissioner wrote to TSol asking it to provide him with evidence in support of the application of section 14(1).
8. On 8 September 2010 the Commissioner received TSol's response.
9. On 10 November 2010 the Commissioner requested further clarification from TSol regarding the application of section 14(1).
10. On 29 November 2010 TSol provided the Commissioner with a substantive response.

Analysis

Substantive Procedural Matters

11. The full wording of all the sections included in this Notice can be found in the Legal Annex.

Section 14(1)

12. Under section 14(1), a public authority does not have to comply with a request for information if the request is vexatious. There is no public interest test.
13. The term “vexatious” is not defined further in the Act. The Commissioner notes, however, that it is the request rather than the requester which must be vexatious.
14. The Commissioner issued revised guidance entitled “*Vexatious or repeated requests*” in December 2008 as a tool to assist in the consideration of when a request can be treated as vexatious. The guidance sets out key questions for public authorities to consider when determining if a request is vexatious which are set out below.
 - Could the request be fairly characterised as obsessive or manifestly unreasonable?
 - Does the request have the effect of harassing the public authority or its staff?
 - Would complying with the request create a significant burden in terms of expense and distraction?
 - Is the request designed to cause disruption or annoyance?
 - Does the request lack serious purpose or value?
15. The guidance indicates that an affirmative response to all of the questions is not necessary for a request to be deemed vexatious. However, it states that to judge a request as vexatious a public authority should usually be able to make persuasive arguments under more than one of the above headings.
16. Accordingly, the Commissioner has considered whether TSol has provided sufficient arguments in support of any of the criteria above in its application of section 14(1) in this particular case.
17. The Commissioner notes that the Information Tribunal in *Hossack v Department for Work and Pensions* (EA/2007/0024) stated, at paragraph 11, that the threshold for finding a request vexatious need

not be set too high as the consequences are much less serious than the finding of vexatious conduct in other legal contexts.

18. In *David Gowers v Information Commissioner* (EA/2007/0114, paragraph 27) the Information Tribunal noted that when considering section 14:

"The proper inquiry must be as to the likely effect of the request on a reasonable public authority. In other words, the standard to be applied is an objective one".

19. In considering whether or not a request is vexatious, the Commissioner considers it appropriate to take into account the context and history of a request in addition to the request itself in relation to one or more of the five factors listed above.

Could the request be fairly characterised as obsessive or manifestly unreasonable?

20. In the Commissioner's view, the test to apply here is one of reasonableness. In other words, would a reasonable person describe the request as obsessive or manifestly unreasonable? In answering this question, the Commissioner's view is that the wider context and history of a request is important as it is unlikely that a one-off request could be obsessive.

21. The Commissioner's published guidance states:

"A request may not be vexatious in isolation, but when considered in context (for example if it is the latest in a long series of overlapping requests or other correspondence) it may form part of a wider pattern of behaviour that makes it vexatious".

22. Although TSol did not make direct reference to this specific criterion in its correspondence with the complainant, the information made available to the ICO provided sufficient grounds for the Commissioner to consider this factor. TSol provided examples of a pattern of behaviour where the complainant submitted requests under the Act or the Data Protection Act (the DPA) and many of the requests subsequently generated a complaint to the public authority, often when the requests had not been determined. It stated: *"at the time of the request with which we are presently concerned he had made 20 FOI/DPA requests. In a period of less than 2 months in 2008 he had complained on 11 occasions".*

23. TSol also explained that the complainant had made a subject access request previously and then subsequently submitted a request for all related information under the Act to catch everything else surrounding the same issue, a situation similar to this request. The complainant was also known to revisit requests for information which the public authority had already dealt with. TSol told the Commissioner:

"his complaints to the ICO regarding the 2007 SAR [subject access request] and FOI request are dealt with by the ICO under [stated references]. A considerable amount of information was supplied and the ICO have the full copies showing what was withheld. Therefore [the complainant] already to some extent holds the information he has requested."

24. Finally, TSol identified a pattern of behaviour it categorised as "fishing expeditions" where the complainant would make unspecific requests in order to identify new avenues of enquiry. TSol told the Commissioner,

"The requests in paragraphs 4 and 6 are plainly fishing expeditions... this is part of a pattern of behaviour by [the complainant] to generate work on FOIA requests, without any clear purpose, except to find further information on which to base complaints or requests for information."

25. In considering the question of reasonableness in the context of whether or not a request is vexatious, the Commissioner considers it will be easier to identify these requests when there has been frequent previous contact with the requester or the request forms part of a pattern, for instance when the same individual submits successive requests for information. Although these requests may not be repeated in the sense that they are requests for the same information, taken together they may form evidence of a pattern of obsessive requests so that an authority may reasonably regard the most recent as vexatious.
26. The Commissioner accepts that there is often a fine line between obsession and persistence and each case must be considered on its own facts. In this case, taking into account the context and background to the request, the Commissioner considers that the request can fairly be seen as obsessive.

Does the request have the effect of harassing the public authority or its staff?

27. The Commissioner acknowledges that there will often be an element of overlap between various vexatious criteria. For instance, where a request is considered obsessive, it may be the case that it will have the

effect of harassing a public authority. Whilst the complainant may not have intended to cause distress, the Commissioner must consider whether this was the effect. This is an objective test, based on whether a reasonable person would be likely to regard the request as harassing or distressing.

28. TSol stated in a letter to the Commissioner that it had *“received a large volume of correspondence from [the complainant] over recent years...”*. It described this correspondence as being a *“significant burden and distraction”* and in support of this argument provided the Commissioner with a table of examples of the frequency and subject matter of the correspondence. For instance, in January 2008 TSol received four separate requests for information under the Act, some concerning related issues, including a request for an internal review and a new information request on the same day. A request received at the end of the month was also a follow up request to one received at the beginning.
29. The Commissioner is mindful of the fact that the question at issue in relation to this element is not whether or not the complainant intended to harass or cause distress, but the effect of the requests on the public authority. TSol did not provide specific evidence or reasoning to either the Commissioner or complainant regarding this criterion. However, having taken account of the circumstances of this case, the Commissioner considers the requests can reasonably be considered as having the effect of harassing the public authority and its staff.

Would complying with the requests impose a significant burden in terms of expense or distraction?

30. The Act was enacted to assist people in seeking access to recorded information held by public authorities. However, it was not the intention of the Act to distract public authorities unreasonably from their other duties or for public money to be spent unproductively.
31. When considering if this factor applies, the Commissioner would expect a public authority to be able to show that complying with the request would cause a significant burden in terms of both costs and diverting staff away from their core functions.
32. TSol provided the Commissioner with its arguments that section 14(1) applied to the request, rather than section 12(1) (concerning costs). The public authority made the point that vexatious was a better definition of the burden on its resources and staff. In connection with paragraph 6 TSol stated:

"this aspect of the request may have engaged the costs limit but it is difficult to see how we might have advised [the complainant] to narrow his request without engaging with his fishing exercise and encouraging a large number of further requests".

33. TSol made the Commissioner aware, as previously detailed in this Notice, that a considerable amount of the requested information had already been disclosed to the complainant as a result of previous requests. Paragraph 7 and in particular paragraph 4 of the request had previously been dealt with. TSol wrote to the Commissioner regarding paragraph 4 stating:

"...compliance with the request in paragraph four would still require us to consider all of the information in any file in which [the complainant's] personal data happens to appear since 2007 and to consider whether an exemption might apply to it...this would be a very significant burden in terms of expense and distraction and would have no apparent purpose or value."

34. The Commissioner has considered the burden that complying with the request would impose on the public authority along with the cumulative effect of this request in the context of the previous activity. Having done so, he accepts TSol's argument that the burden placed on the public authority would be of a vexatious nature, being one of distraction from its core functions rather than simply exceeding the appropriate cost limits (with which section 12(1) is concerned).

Is the request designed to cause disruption or annoyance?

35. As discussed in the Commissioner's published guidance, this factor relates to a requester's intention and can therefore be difficult to prove. The Commissioner is mindful of the fact that under the Act the purpose behind any request is not a relevant factor. However, in examining the intent of the requester the Commissioner is considering the effect of complying with the request rather than questioning why they want the information.
36. In the Information Tribunal case of *Coggins v The Information Commissioner* (EA/2007/0130), the Tribunal found that a "significant administrative burden" was caused by the complainant's correspondence to the public authority that started in March 2005 and continued until the authority's application of section 14(1) in May 2007. Similarly, in this case the public authority has responded to the complainant's correspondence over a sustained period dating back to 2007.

37. In its refusal notice TSol told the complainant that it believes that the request is *“designed to cause disruption and annoyance without any real purpose”*. In correspondence with the Commissioner the public authority provided examples to illustrate this assertion. TSol highlighted paragraph 8 of the request:

“It is difficult to see what purpose this part of the request might have except to elicit information on which further FOIA requests can be based. In particular, information disclosed to [the complainant] has always been disclosed in an intelligible form and we can see no reason why information about TSol’s e-mail retention policy or its internal procedures would assist [the complainant] to understand the information communicated to him... [The complainant] has had voluminous information communicated to him and yet this request gives no example or particulars of the information that he considers unintelligible or that he would find intelligible if he received this information. This aspect of the request is designed to cause disruption without any real purpose and we consider that it can rightly be characterized as vexatious in this context...”

38. The Commissioner understands the reasoning behind TSol’s argument that this request could be said to be designed to cause disruption and annoyance. Against the background of previous requests and related correspondence, coupled with TSol’s argument regarding the lack of purpose or value of the request itself, it has taken the view that the request was designed to disrupt or annoy the public authority.
39. However, the Commissioner does not believe that TSol has demonstrated that the complainant intended to cause such disruption and annoyance. As a consequence, he has not attributed any weight to this factor in his assessment of whether the request was vexatious.

Does the request lack any serious purpose or value?

40. Whether a request has value is not of significance given that the Act is not concerned with the motives of an applicant, but rather in promoting transparency for its own sake. However, the Commissioner acknowledges that should any authority be able to show that a request has no value or purpose, this may help bolster the application of section 14(1) when taken together with other supporting factors.
41. In his request to TSol for an internal review, the complainant said:

“I am concerned as to the way I am being treated – to suggest that there is no real purpose in the request is clearly wrong – see for example points 7 and 9 of my letter of 02.07.2009 relating to

substantive issues of immense concern. It seems to me that the intention is to conceal information of significance. Why is it contended that requesting such information is vexatious?"

42. In its correspondence with the Commissioner, TSol provided arguments as to why it considered the request lacked serious purpose or value. With regard to paragraph 7 TSol explained that the information had already been the subject of the complainant's request of 14 November 2007. It said of paragraphs 9 and 10 that they appeared *"to ask for information about his own complaints to both TSol and MoJ [Ministry of Justice] which are ongoing"*. TSol drew the Commissioner's attention to the Tribunal decision in *Coggins v ICO*, again stating that the view that:

"dealing with repetitious requests and attempts to repeatedly re-open the same issues could be found to be vexatious appears to apply here. It is also impossible to see what serious purpose or value there might be in the information requested before [the complainant's] complaints have been determined...".

43. Although the public authority has put forward evidence that the request lacks serious purpose or value, as with the previous factor the Commissioner does not believe that this claim has been demonstrated in this case.

Is the request vexatious?

44. Section 14 of the FOIA is intended to protect public authorities from those who might abuse the right to request information. The Commissioner recognises that having to deal with clearly unreasonable requests can strain an organisation's resources, damage the credibility of the Act and get in the way of answering other requests.
45. He also acknowledges that there is a fine balancing act between protecting a public authority from frivolous applications and the promotion of transparency in the workings of an authority.
46. In considering the circumstances of this case in relation to the five questions set out above, the Commissioner acknowledges that the questions, to a greater or lesser extent, overlap and that the weight accorded to each will depend on the circumstances. He also reiterates that, in his view, it is not necessary for every factor relevant to vexatious requests to be satisfied in order to refuse a request on the basis of section 14(1).

47. In this case the Commissioner considers that there are sufficient grounds to uphold the application of section 14(1). He considers that the obsessive nature of the request, when taken in the context of the previous correspondence, and its impact and burden on the public authority and its staff is sufficient for the request to be deemed vexatious.

Procedural Requirements

Section 17 Refusal of request

48. Section 17(5) provides that:

"A public authority which, in relation to any request for information, is relying on a claim that section 12 or 14 applies must, within the time for complying with section 1(1), give the applicant a notice stating that fact."

49. Section 10(1) of the Act provides that:

"Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt."

50. In this case, the request was made on 2 July 2009 but TSol did not respond until 1 October 2009. The Commissioner therefore considers TSol to be in breach of section 17(5) of the Act in that it did not respond to the request for information within 20 working days following the date of receipt.

The Decision

51. The Commissioner's decision is that the public authority dealt with the following elements of the request in accordance with the requirements of the Act:

- *it was entitled to apply section 14(1).*

However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:

- *it breached section 17(5) by failing to provide a response to the request within the statutory timescale.*

Steps Required

52. The Commissioner requires no steps to be taken.

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

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.

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 31st day of January 2011

Signed

**Jon Manners
Group Manager
Information Commissioner's Office
Wycliffe House
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Wilmslow
Cheshire
SK9 5AF**

Legal Annex

Section 14 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."