

Freedom of Information Act 2000 (FOIA)

Decision Notice

Date: 14 December 2011

Public Authority: Office of the First Minister and deputy First Minister

Address: Castle Buildings
Stormont Estate
Belfast
BT4 3SR

Decision (including any steps ordered)

1. The complainant requested the objectives set for the permanent secretary in each of the Northern Ireland government departments. The Office of the First Minister and deputy First Minister (OFMDFM) refused to comply with the request, arguing that it was vexatious under section 14(1) of the Act.
2. The Commissioner's decision is that OFMDFM correctly categorised this request as vexatious. Therefore OFMDFM was not obliged to comply with the request.
3. The Commissioner does not require any steps to be taken.

Request and response

4. On 23 June 2011, the complainant requested the following information from OFMDFM:

"The most recent lists of objectives set for each of the permanent secretaries by Bruce Robinson, Head of the Northern Ireland Civil Service, for the permanent secretary's performance appraisal."
5. OFMDFM responded on 14 July 2011. It stated that it was refusing to comply with the request on the grounds that it was vexatious under section 14(1) of the Act.

6. Following an internal review OFMDFM wrote to the complainant on 15 August 2011 to advise that it was upholding its decision to refuse her request.

Scope of the case

7. On 16 August 2011 the complainant contacted the Commissioner to complain about the way her request for information had been handled. The complainant did not agree that her request was vexatious, and asked the Commissioner to investigate.
8. By way of background, the complainant advised the Commissioner that she was acting on behalf of a relative who was employed by one of the Northern Ireland government departments (not OFMDFM). The complainant's relative was involved in an employment dispute with his department, and the complainant approached the then Head of the Northern Ireland Civil Service (HOCS) to ask him to investigate the matter. HOCS is also the Permanent Secretary of OFMDFM, which is why the requests were handled by OFMDFM under the Act.
9. HOCS advised the complainant that each department is a separate employer, so he could not become involved in her relative's dispute. The complainant did not accept this assertion, and maintained that HOCS had responsibility for civil servants in each of the Northern Ireland departments.
10. The complainant also advised the Commissioner that her relative had lodged an application with the Industrial Tribunal. The complainant sought information from HOCS via OFMDFM to assist her relative in this matter.

Reasons for decision

11. Section 14(1) of the Act states that a public authority is not obliged to comply with a request if the request is vexatious. The term vexatious is not defined in the Act, but the Commissioner's published guidance¹

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http://www.ico.gov.uk/for_organisations/guidance_index/~/_media/documents/library/Freedom_of_Information/Detailed_specialist_guides/VEXATIOUS_AND_REPEATED_REQUESTS.ashx

explains that the term 'vexatious' is intended to have its ordinary meaning and there is no link with legal definitions from other contexts (e.g. vexatious litigants). The Commissioner has identified five criteria by which a request may be assessed, and has considered each criterion below.

Is the request designed to cause disruption or annoyance?

12. Whilst the Commissioner accepts that a particular request may have the effect of causing disruption or annoyance, the issue to consider is whether the request was *designed* to have this effect.
13. The Commissioner notes that OFMDFM has not provided evidence to suggest that this was the case, and the complainant maintains that she made the request to obtain information that she required. The Commissioner is therefore minded to accept that the complainant did not aim specifically to cause disruption or annoyance, and this criterion is not relevant to this case.

Does the request lack any serious purpose or value?

14. OFMDFM acknowledged that the complainant's original interest in matters relating to her relative's employment did have a serious purpose in that she was motivated by concern for him. However OFMDFM drew the Commissioner's attention to the Information Tribunal's comment in the case of *Welsh*²:

"...there must be a limit to the number of times public authorities can be required to revisit issues that have already been authoritatively determined simply because some piece of as yet undisclosed information can be identified and requested."

15. OFMDFM expressed the view that the complainant's "protracted correspondence" with HOCS served little purpose in relation to the ongoing Industrial Tribunal case. Therefore OFMDFM concluded that there was no serious purpose in the request itself.
16. The complainant argued that she had made the request so that she could better understand the working relationship between HOCS and the permanent secretary in each of the NI departments. The complainant had previously asked who set objectives for the permanent secretaries, and had been advised that it was the HOCS. Therefore the complainant

² *Welsh v Information Commissioner*, EA/2007/0088, para 26

was of the view that sight of these objectives would further inform her as to how HOCS managed the permanent secretaries' performance. The complainant considered this to be highly relevant to her relative's dispute.

17. However it is not apparent in this case that the issues have been "authoritatively determined". Rather, the Industrial Tribunal has not yet heard the relative's application. Therefore, while the Commissioner accepts the Information Tribunal's comments as cited by OFMDFM, he does not consider them to be of particular assistance in this case. Furthermore – and more generally - the Commissioner does not consider that OFMDFM has demonstrated that the complainant's request had no serious purpose or value.

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

18. OFMDFM did not seek to argue that compliance with the request of 23 June would itself impose a burden on it. Rather, OFMDFM was of the view that compliance with this request would not satisfy the complainant but would result in further requests. OFMDFM argued that a pattern had emerged whereby any response it made was followed by further correspondence from the complainant.
19. OFMDFM provided the Commissioner with copies of seven previous requests made by the complainant between December 2010 and June 2011. All of these requests also related to management arrangements within the Northern Ireland civil service. OFMDFM argued that it had provided the complainant with all of the requested information in each case. However in a number of cases the complainant had then complained about the time taken to respond, even where OFMDFM had met the statutory time for response. In every case the complainant had submitted a fresh request for additional information within a month of receiving a response to the previous request. The Commissioner accepts that this indicates a pattern of one request leading to another. While dealing with individual requests may not themselves be burdensome, each request generates administrative work, and the frequency of requests results in a continuous burden on the authority.
20. OFMDFM also referred to requests submitted by the complainant to other NI departments, and argued that this demonstrated the burden caused by the complainant's requests. However the Commissioner notes that each department is a separate public authority for the purposes of the Act, and the correct test is whether compliance with the complainant's request would impose a burden on OFMDFM rather than any other authority. Therefore the Commissioner does not consider this argument to be relevant to the case in hand.

21. In light of the above the Commissioner accepts OFMDFM's argument that compliance with the request of 23 June would be likely to lead to further requests from the complainant. The Commissioner is of the view that this would create a burden in terms of expense and distraction. The Commissioner is mindful that section 12 of the Act allows public authorities to consider the cost of a request, but he considers that it should be attributed some weight in this case.

Can the request fairly be seen as obsessive?

22. The Commissioner considers that the test to apply here is one of reasonableness. In other words, would a reasonable person describe the request as obsessive? In answering this question, the Commissioner's guidance states that the wider context and history of a request can be important:

"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."

23. OFMDFM argued to the Commissioner that the complainant had demonstrated obsessive behaviour in several ways. As referred to above, OFMDFM explained to the Commissioner that the complainant had requested that HOCS conduct an investigation into her concerns about the department's management of her relative. Although HOCS advised the complainant that she should approach the permanent secretary of the employing department, the complainant continued to insist that HOCS investigate her concerns. OFMDFM maintained that this demonstrated the complainant's refusal to follow established procedures, even though these were explained to her on a number of occasions.
24. OFMDFM also referred the Commissioner to the ongoing claim with the Industrial Tribunal. OFMDFM was of the view that the complainant was using the Act to pursue her own campaign in relation to her relative's dispute, rather than await the outcome of the Industrial Tribunal hearing. OFMDFM argued that compliance with the complainant's previous requests did not satisfy the complainant, but resulted in further correspondence in order to keep the matter "alive".
25. The complainant advised the Commissioner that she wanted to obtain information for the purposes of her relative's dispute. However, as she had been unable to obtain sufficient information through the discovery process and other legal channels, she felt she had been forced to make requests under the Act.

26. As indicated above the Commissioner has considered the complainant's request in the context of what can be considered reasonable. The Commissioner has been provided with copies of the correspondence between the complainant and OFMDFM culminating in the request of 23 June. It appears to the Commissioner that the complainant does not accept HOCS's assertion that employment issues must be pursued with the employing department. Rather, the complainant maintains that HOCS is responsible for all departments, and therefore he should intervene in her relative's dispute. From the correspondence provided it appears likely that the complainant intends to continue submitting requests with the aim of obtaining evidence to support her view.
27. The Commissioner considers it questionable whether any information provided by OFMDFM would satisfy the complainant at this stage, given the history and frequency of correspondence. (In reaching this conclusion the Commissioner has also taken into account the nature of the actual request in this case.) Therefore the Commissioner is of the view that the complainant's request can reasonably be characterised as continuing a pattern of obsessive behaviour.

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

28. This question focuses on the effect the request had on OFMDFM, taking into account the history of correspondence with the complainant. It is important to highlight that whilst the complainant may not have intended to cause harassment or distress, the Commissioner must also consider whether that was in fact the effect it did have. A complainant's reasons for making the request may in themselves be reasonable. However, a request may still be considered to be vexatious because of the effect it has on the public authority and its staff.
29. OFMDFM drew the Commissioner's attention to the frequency and tone of correspondence from the complainant. OFMDFM argued that the complainant was regularly sarcastic and accusatory, and on occasion aggressive. Having considered the correspondence in this case the Commissioner is of the view that it reflects the complainant's dissatisfaction that OFMDFM has not taken the action for which she has hoped. The complaint is, of course, perfectly entitled to express her dissatisfaction on this issue, quite apart from whether it merits any action being taken in response.
30. However, the Commissioner accepts OFMDFM's argument that the frequency and tone of correspondence had the more general effect of harassing OFMDFM as a public authority. The Commissioner has discussed the pattern of requests being made one after the other at paragraph 19 above, and he notes that in between requests the complainant corresponded frequently with OFMDFM. This

correspondence included general comments about OFMDFM's perceived failings, and requests for individuals to take action in relation to the complainant's relative's dispute. In particular the Commissioner accepts that the language and tone of this correspondence had the effect of harassment. The Commissioner would also refer to his own guidance on making reasonable requests³, which suggests that requesters avoid using language which may have the effect of harassing the public authority.

31. The Commissioner accepts that the complainant's language is not always helpful, and could be interpreted as provocative. However, the Commissioner is of the view that civil servants dealing with the public will routinely receive correspondence which may reflect dissatisfaction or frustration, and this will not always be expressed appropriately. The Commissioner does not consider that the correspondence in this case supports OFMDFM's argument that the complainant's language was aggressive, nor does the Commissioner accept that it will have caused actual distress to staff.
32. In light of the above the Commissioner has attached some weight to this criterion in reaching his conclusion. The Commissioner accepts that the complainant's request, in the context of the ongoing correspondence, gave the effect of harassment although he considers that it fell short of causing distress to individual staff.

Conclusion

33. The Commissioner is of the view that OFMDFM has largely acted correctly in the way it assessed the complainant's request of 23 June. The Commissioner notes that this request in isolation does appear entirely reasonable. However, when considered in the context of the history of correspondence with the complainant, the Commissioner considers that it can be characterised as vexatious.
34. The Commissioner accepts that the request continues an established pattern of obsessive behaviour, which has had the effect of harassing OFMDFM. In addition, the Commissioner is of the view that compliance with this latest request would be followed by further requests, rather than serving to satisfy the complainant, which in the context of this case

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http://www.ico.gov.uk/for_the_public/official_information/~/_media/documents/library/Freedom_of_Information/Practical_application/ITS_PUBLIC_INFORMATION_FOI%20CHARTER_FIN_AL.ashx

imposes a significant burden on OFMDFM in terms of expense and distraction. Therefore the Commissioner finds that OFMDFM was not obliged to comply with the request. This is because he considers these factors to be sufficient in the circumstances of this case to render the request as vexatious.

Right of appeal

35. 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

36. 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.
37. 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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