

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 10 September 2012

Public Authority: Cabinet Office
Address: 70 Whitehall
London
SW1A 2AS

Decision (including any steps ordered)

1. The complainant wrote to the Cabinet Office ("the CO") and addressed his FOIA requests to the Minister for Cabinet Office. His first request (8 January 2011) concerned the responsibilities of the CO and his second request (18 March 2011) asked for details of the training received by the Parliamentary Counsel staff on the Big Society.
2. The CO relied on section 14 (Vexatious requests) to refuse to provide the requested information.
3. The Information Commissioner's decision is that the CO appropriately applied section 14 of the FOIA in both cases.
4. However, the Commissioner finds the CO in breach of section 17(5) in not responding to the complainant's requests within 20 working days of the requests.
5. The Commissioner requires no steps to be taken.

Background

6. The complainant has demonstrated to the Commissioner his keen interest in the operation of Government Departments and the FOIA. He explained his pleasure at David Cameron's assurance that: "the best ideas come from the ground up, not the top down". The complainant went on to explain:

"Indeed I was particularly pleased because, over many years, whenever I have offered Departments helpful suggestions for improving their procedures, they have never given these any weight!"

7. The complainant has written to the Minister for the Cabinet Office amongst others with "a number of Freedom of Information requests and recommendations regarding the widespread adoption of the Prime Minister's philosophy". The substantive requests in the two cases which are covered by this decision notice form part of this concern and can be covered by one decision notice.

Request and response

8. On 8 January 2011 the complainant made the following request for information:

"I would therefore appreciate details of:

(a) The specific responsibilities of Cabinet office

(b) The title of the Department with responsibility for co-ordinating the matters to which I have referred. [For reference, the full text of the letter containing this request is in the Annex at the end of this decision notice.]

(c) Any recorded reasons why the repeated queries I have addressed to the Cabinet Office were not referred to that Department."

9. On 18 March 2011 the complainant made the following request:

"I would appreciate:

(a) Brief details of the training Counsel staff have received on Big Society.

(b) Confirmation that a single new Act will be printed.

(c) If not, the reasons."

10. The CO did not respond specifically to either of these requests.
11. The complainant sent several letters chasing responses to his letters and including further requests which are not the subject of this decision notice.

12. The complainant contacted the Commissioner on 14 October 2011 to inform him that he had not received responses to several of his requests for information including the two requests detailed above.
13. The Commissioner responded advising the complainant to contact the CO again requesting it to review the handling of his requests. The complainant wrote to the Commissioner again on 23 November 2011 enclosing some of his correspondence with various ministers and senior CO staff. The complainant asked the Commissioner to "take urgent action to ensure that I am given meaningful answers to the very important questions I have raised".
14. The Commissioner wrote to the CO on 7 December 2011, 13 January 2012 and again on 23 January 2012 asking it to respond to the requests for information. No response was forthcoming.
15. On 29 February 2012 the Commissioner wrote to the CO reminding it again of its duty in accordance with section 1(1) of the FOIA and asked it to respond to the complainant within 20 working days, by 28 March 2012.
16. On 25 April 2012 the CO responded to the complainant refusing to provide the information in both requests because it had deemed the requests to be vexatious as determined by section 14 of the FOIA.
17. On 3 May 2012 the Commissioner wrote to the CO asking it to confirm whether it wished to have the opportunity to review its decision.
18. On 9 May 2012 the CO confirmed verbally to the Commissioner that it did not wish to carry out an internal review as its decision would remain unchanged.

Scope of the case

19. The Commissioner wrote to the CO on 9 May 2012 requesting submissions in support of its position by 7 June 2012.
20. On 23 July 2012 the CO provided its arguments in support of its decision to determine the complainant's requests in both cases to be vexatious.
21. The Commissioner considers that the scope of this case is to examine the CO's arguments for refusing the complainant's requests as vexatious.

Reasons for decision

Section 14(1)

22. Section 14(1) provides the following:

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

23. Guidance on the Commissioner's approach to vexatious requests can be found on the Commissioner's website and for ease of reference, at the following links:

http://www.ico.gov.uk/for_organisations/freedom_of_information/information_request/reasons_to_refuse.aspx

<http://www.ico.gov.uk/foikb/FOIPolicySectionsRegs.htm>

24. As explained in the guidance, the Commissioner's general approach is to consider the argument and evidence that the public authority is able to provide in response to the following questions:

Could the request fairly be seen as obsessive?

Is the request harassing the authority or causing distress 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?

25. It will not be necessary for all of the above criteria to apply but in general, the more that apply, the stronger the case will be for a vexatious request. The Commissioner is able to take into account the history and context of the request when determining whether a request is vexatious. It will often be the case that a request for information only reveals its vexatious quality when put into context.

26. In its submission the CO stressed to the Commissioner that in determining the requests to be vexatious it was relying on; "the fact that they form part of a pattern of behaviour stretching back over two decades".

27. The CO also stressed its agreement with the First-tier Tribunal in a recent case¹ when it stated:

“an approach which tests the request by simply checking how many of the five ‘boxes’ are ‘ticked’ is not appropriate. It is necessary to look at all the surrounding facts and apply them to the question whether the request is vexatious”.

28. The Commissioner notes this view and as stated in paragraph 25 will make his determination in consideration of the facts surrounding the requests. However, the Commissioner will set out below the points he considers to be germane in accordance with his guidance before arriving at a conclusion based on an overall assessment of the facts of the case.

Could the requests fairly be seen as obsessive?

29. The volume and frequency of correspondence are important indicators of an obsessive pattern of requests. The CO explained that there has been a long history of similar requests from the complainant over the past twenty years, with 177 letters received in the past year. The CO interprets this pattern as a ‘campaign’ with one letter following on from the previous one.

30. The Commissioner notes that the complainant has previously acknowledged to him the volume of correspondence he creates and has stated in correspondence that:

“In 2008 my own MP advised me that he could no longer cope with the volume of correspondence I was sending him!”

31. The nature and extent of the complainant’s correspondence with the CO preceding the requests in these cases suggests an obsessive approach. The examples of correspondence provided by the CO demonstrate how the complainant repeatedly returns to the same matters. The complainant made multiple requests concerning the CO’s handling of suggestions from the general public on the operation of Government from June 2010 to the date of the requests in this notice. In a letter to the Prime Minister in July 2010 the complainant explained that he was:

¹ IPCC v IC, EA/2011/02222

"...greatly encouraged by your recent personal encouragement to members of the public to offer suggestions for saving money, at this time of economic crisis."

32. The Commissioner considers that the complainant has perhaps taken the Prime Minister's invitation a little too literally and as a result has offered his opinion and suggestions on such a regular basis that the CO, and other Government departments, are unable to fulfil his expectations of engagement as the complainant appears to desire a constant dialogue. The Commissioner therefore concludes that the complainant's unrealistic expectations - in respect of the time available for CO staff to enter into discursive correspondence - have fuelled his constant communications.
33. Although the Commissioner has determined that the requests are obsessive, he also deliberated over the effect on the complainant of the CO's responses. Its responses have not satisfied the complainant and resulted in further correspondence becoming progressively more antagonistic. The CO has responded to some requests and not to others and has on some occasions provided a more detailed response than on other occasions. The complainant has described some responses as 'terse' which he has clearly found to be disappointing and irritating. He wrote on 15 March 2011:

"Present unhappy position:

In recent years I have offered a large range of proposals to major Departments for improving their procedures, yet invariably the response has been negative!"

34. The CO explained to the Commissioner that the complainant had corresponded with the CO for many years before the FOIA was enacted. During those years the complainant had been "classified as a vexatious correspondent" which resulted in his correspondence being recorded but no response issued. Subsequently after the FOIA was given royal assent the complainant sought information by making formal requests. Some parts of the CO continued with the earlier method of dealing with the complainant's correspondence whilst other parts answered in accordance with the FOIA. This inconsistency has resulted in a confused and complex relationship between the complainant and the CO.

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

35. The Commissioner would like to highlight that when considering this part of the criteria, he is not concerned with what the complainant's intention may have been. It is not unusual for a request to be deemed vexatious even though the complainant genuinely believes that the request and contextual behaviour was entirely justified. Instead, the Commissioner is concerned with the *effect* that the request would have had on any reasonable public authority.
36. There is often a significant overlap between the reasons why a request can fairly be seen as obsessive and the reasons why it may have had the effect of harassing the authority. The CO told the Commissioner that the complainant's constant, detailed and voluminous correspondence often raising the same issues over and over again, had had the effect of harassing its officers for years.
37. The CO went on to explain that the complainant 'targets' individual members of staff with both letters and telephone calls some of which contain derogatory and abusive remarks. The CO provided the Commissioner with examples of the comments regarding named members of staff:

Letter dated 11 July 2011 headed INCOMPETENT STAFF IN THE CABINET OFFICE

Regarding named person 1;

"(g) That I therefore intended to ask you, as Head OF THE Home Civil service, to consider whether he is a fit person to hold this important post."

Regarding named person 2;

"It is evident from his lack of personal initiative that he is failing to support Nick Hurd adequately in his important responsibilities towards the general public.

I must therefore also ask you to consider whether he is a fit person to continue to hold this post."

Letter dated 3 August 2011 headed SERIOUS INCOMPETENCE WITHIN THE CABINET OFFICE

"I am amazed to learn that my letter of 11 July, which contains damning evidence of serious inefficiency at the very heart of Government, has not yet been brought to your attention – after more than THREE WEEKS!

...(b) Let me know what action you will take in respect of named person 1 and named person 2, who are plainly not up to the responsibilities of their present posts."

Note written on CO letter of 5 September 2011:

"Do you employ a parrot in Cabinet Office?!"

This is a totally useless reply!"

38. The Commissioner notes that the complainant's correspondence frequently states his opinion of the operation of the CO and the incompetence of staff handling his correspondence. He repeatedly requests responses to his criticisms in addition to further responses to his FOIA requests along with additional FOIA requests following on. During the Commissioner's investigation the complainant telephoned the CO and as a result wrote again to the CO, on 13 June 2012, reiterating his opinion:

"(a) – (d) are very serious criticisms of the way Cabinet Office has dealt with my perfectly reasonable letters, and even though they are not specific questions, I would expect the Cabinet Office to respond to them. Indeed if you on behalf of the Cabinet Office attempt to use the FOI Act as a shield to ignore these criticisms, this is an even more damning criticism of the competence of the Cabinet Office!

I therefore formally request details of any internal Cabinet Office Rules or Guidelines on how they should respond to criticisms or recommendations from members of the public which fall outside the scope of the FOI Act."

39. The Commissioner notes that the complainant appears to confuse his general correspondence with his FOIA requests. He is undoubtedly frustrated by the CO handling of his correspondence in general (as referenced above in paragraphs 33 and 34). However, in his persistence for a dialogue with the CO he exacerbates the distress and harassment experienced by the CO and its staff.

40. The Commissioner acknowledges the complainant's dissatisfaction with the inconsistent consideration of the responses provided by the CO; however, he is also cognisant of the First-tier Tribunal's endorsement of his decision notice FS50381386² which stated:

"Both the FOIA and the EIR give the public unprecedented rights to access recorded information held by public authorities. In exercising those rights, members of the public must be responsible. It was not the intention of the legislation that compliance with requests would impede disproportionately and unfairly on the many other important duties that public authorities have to carry out,"

41. The Commissioner has concluded that the complainant's constant correspondence with the CO – and the nature of it – can cumulatively be categorised as irresponsible behaviour, the volume of which created a sizeable burden to be added to its other duties.
42. Considering the volume of contact over a long period of time, the repetitive nature of the correspondence and indications that the complainant would persist in making further complaints and requests without generating a productive outcome, the Commissioner is satisfied that the complainant's requests in the two cases covered by this decision notice, when seen in context, can reasonably be seen as harassing to the CO staff.

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

43. The Commissioner accepts that the large volume of correspondence, as detailed in paragraph 29, received from the complainant imposes a significant burden on the CO. The CO explained that it considers dealing with the complainant's letters alone imposes a burden in terms of expense and distraction; however the telephone calls received from the complainant, some lasting for over an hour, impose an additional burden on the time taken in corresponding with the complainant. Long-serving members of staff have witnessed this pattern of behaviour for approximately 20 years.
44. The Commissioner considers that compliance with the requests in isolation may not have been too burdensome, as is often the case; however, when taken in context the Commissioner is satisfied that the requests formed part of a collective burden borne by the CO over a

² EA/2011/0302, EA/2012/0059 & 0060

number of years resulting in substantial expense and distraction from other duties.

Is the request designed to cause disruption or annoyance?

45. The CO acknowledges that proof of the intention to cause disruption or annoyance is difficult to 'prove'. It nevertheless considered that disruption and annoyance did result from the requests:

"It can reasonably be inferred from the character and content of his letters that he intends to cause both the disruption and annoyance that his correspondence does in fact cause."

46. The Commissioner was not persuaded by any evidence from the CO that this was the motivation or intention behind the requests. A proportion of the complainant's correspondence about his requests can reasonably be argued to be due to the nature of some of the CO's responses which in some instances have been quite dismissive. The Commissioner therefore considers that this criterion does not apply.

Does the request lack any serious purpose or value?

47. The CO explained to the Commissioner that it considered that the complainant had a preoccupation with the concept that:

"the best ideas come from people at the bottom and so the Government should make special arrangements to ensure that they are taken up and implemented."

48. The CO accepts that people 'outside' a system can bring insights lost on those 'inside' the system and as such may perform a civic duty. However it considers that the complainant's primary motive cannot be this civic duty as:

"If it were, he would surely not repeatedly seek information that is publically available or could fairly be construed as general knowledge."

49. The complainant has written to the Commissioner expressing his dismay at the lack of engagement from the CO in respect of his suggestions. The Commissioner considers that the complainant has his own serious purpose in making his suggestions and corresponding with the CO; however the numerous requests resulting from this interaction often appear to have no serious purpose or value. In weighing the arguments put forward by both parties the Commissioner finds that the complainant's requests as detailed in paragraphs 8 and 9 cannot be considered to be FOIA requests with a serious purpose.

50. Both the CO and the Commissioner in his decision notice FS50426549 have explained to the complainant the determination of a request for information as a request for recorded information not for reasons, opinions or confirmations which could be more properly addressed under the normal course of business. The complainant's purpose in his requests appears to be to exert his influence on matters of Government rather than to obtain information.

Conclusion

51. The First-tier Tribunal has commented that consideration of a request as vexatious may not necessarily lend itself to an overly structured approach and has provided its opinion that it will be obvious from an examination of the facts of the case if the request is vexatious. The Commissioner acknowledges this position and in addition to his analysis of the five factors set out above, considers that the requests are clearly vexatious when set against the long history of correspondence between the two parties.

Section 17(5)

52. Section 10(1) provides the following:

"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."

Section 17(5) provides the following:

"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."

53. The CO did not respond to the complainant's requests until after the intervention of the Commissioner. The refusal notices were provided over a year from the time of the requests. The CO relied on the information outlined in paragraph 34 to explain to the Commissioner why no response had been forthcoming. Although the Commissioner accepts the explanation set out in paragraph 34 as being relevant for the purposes of the section 14(1) consideration, he in no way endorses this reasoning as an adequate justification for a delayed response under the FOIA. He therefore finds the CO in breach of section 17(5).

Right of appeal

54. 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

55. 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.
56. 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

Alexander Ganotis
Group Manager – Complaints Resolution

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

Annex

Full content of the complainant's letter of 8 January 2011.

"DISREGARD BY GOVERNMENT DEPARTMENTS OF CONSTRUCTIVE SUGGESTIONS AND CRITICISM FROM MEMBERS OF THE PUBLIC"

I am deeply disappointed in the second part of Cabinet Office reply of 20 December Ref: FOI308799 to my letter of 22 November.

Obviously there is a need for uniform procedures to be followed in all Civil Service Departments in common matters such as handling correspondence and dealing with constructive complaints and suggestions from the public – and I have always assumed that Cabinet Office was responsible for co-ordinating these procedures.

I therefore addressed my letter of 22 November to you and in it I drew particular attention to the fact that in recent years I had offered major departments numerous recommendations for improving their procedures, yet almost invariably these had been disregarded without any clear explanation. I also enclosed evidence that Cabinet Office was itself seriously at fault!

Amazingly however I received the following extraordinarily terse response to my question about what advice you offered to departments and public authorities on how they should respond to recommendations from the public:

'the Cabinet Office does not hold this information.'

This totally unhelpful reply completely bears out the very complaint that I have made!!

It also follows earlier representations I made to the Cabinet Office about appalling delays of six weeks in the handling of incoming correspondence in the Foreign and Commonwealth Office, the Ministry of Justice and the Prime Minister's Office – copies of my letters of 25 March 2010 and 28 September 2010 enclosed. I have been given no information on what action – if any – has been taken!

Freedom of Information request: I would therefore appreciate details of:

- (a) The specific responsibilities of Cabinet office
- (b) The title of the Department with responsibility for co-ordinating the matters to which I have referred.
- (c) Any recorded reasons why the repeated queries I have addressed to the Cabinet Office were not referred to that Department.

The Aims of 'Big Society'

In introducing this 'new era of people power' the Prime Minister stated:

"We know that the best ideas come from the ground and not from the top."

Surely therefore the Government should always consider positively any constructive suggestions or criticisms that can only be implemented with their approval?!"