

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 2 January 2014

Public Authority: Ministry of Justice
Address: 102 Petty France
London
SW1H 9AJ

Decision (including any steps ordered)

1. The complainant has requested information regarding private finance initiatives between the Ministry of Justice ("MOJ") and G4S.
2. The Commissioner's decision is that the request is not vexatious and he requires the MOJ to take the following steps to ensure compliance with the legislation.
 - It should issue a fresh response in accordance with the FOIA.
3. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

4. On 18 May 2013 ,the complainant wrote to the MOJ and requested information in the following terms:

"Please confirm the exact terms of the PFI contracts held between the ministry of justice and G4S, the owner or corporate members the SPV and the value of the contract.

Please confirm whether there is any truth in the rumours being put about by G4S chief executive officer that there are further prison construction programmes being considered using PFI at present and full details of these.

Please release all information pertaining to the recently announced construction of the new house block at HMP Parc another contracted out prison to G4S. Have safeguards been put in place so that when Galliford Try construction come in under the agreed contract value between the contracting authority and G4S or when G4S restructure the finance around the project if it is PFI, that the money will be returned to the public purse and not redistributed to G4S shareholders"

5. The MOJ responded on 7 June 2013. It said as follows;

"I have assessed your request for information, and unfortunately I will not be able to answer it without further clarification. Section 1(3) of the Freedom of Information Act does not oblige us to answer requests where we require further clarification to identify and locate the information requested. We are unable to answer your request unless you provide us with further information".

6. The complainant, on 11 June 2013, replied to the MOJ as follows;

"The request is very clear. It is written in English. IF you don't understand English please give it to someone who does. I will be forwarding this to the information commissioner as your request for clarification is vexatious. "The exact terms of the PFI contract" means exactly that. How much, how long, what terms, now and in the future. I expect you to respond with a full and proper breakdown of the information requested on or before 17.06.2013."

7. The MOJ replied on 9 July 2013 and said as follows;

"I can confirm that the department has considered your request for information; however we consider the request to be vexatious under Section 14(1) of the Act. In this case we consider that the tone and language of your correspondence ... goes beyond that which - as a public authority -our employees should reasonably expect to receive".

8. On 9 July 2013 the complainant asked that the MOJ review its decision.

9. The MOJ undertook the requested review of its decision in which it maintained its original position. The complainant was informed of this on 6 August 2013.

Scope of the case

10. The complainant contacted the Commissioner 7 August 2013 to complain about the way her request for information had been handled.
11. The Commissioner invited the MOJ, on 24 September 2013, to provide him with its submissions on its reliance on section 14 not to meet the information request.
12. The MOJ replied to the Commissioner on 25 October 2013.
13. The MOJ explained that it considered the complainant's remark that "The request is very clear. It is written in English. IF you don't understand English please give it to someone who does. I will be forwarding this to the information commissioner as your request for clarification is vexatious" (sic) was unreasonable in the face of a valid question to her.
14. The application of section 14(1), it went on to say, requires consideration of several indicators within a request. As per the Abusive or Aggressive language indicator contained within the Commissioner's section 14 guidance, it took the complainant's request to go beyond the level of criticism that a public authority or its employees should reasonably expect to receive.
15. The official answering the request also noted that while the MOJ was following due process for this request the complainant threatened to lodge a complaint with the Commissioner's office before she had exhausted all legitimate routes for a review internally. This was seen to be unfair and put the official in a stressful position while attempting to be as helpful as possible. The MOJ was of the view that the complainant's insistence on rapidly progressing to a complaint to the Commissioner's office and not proceeding beyond the clarification meant the MOJ was not given the opportunity to take the response any further.
16. The complainant requested (in an email dated 9 July 2013) an internal review of its decision to treat her clarification response as vexatious. The MOJ explained that the complainant's email also variously described MOJ employees as arrogant; accused them of petulant obfuscation; insinuated corrupt practices and accused them of abusing the FOIA.
17. The MOJ further averred that it had received other correspondence, after 9 July 2013, of this nature from the complainant in which she has adopted a similar tone. In meetings elsewhere with the MOJ the complainant had also included allegations of racism and fraud for which she has not been able to provide any substantive evidence. The MOJ explained that in an attempt to improve the working relationship between the MOJ and the complainant, she had agreed to the

appointment of a Special Point of Contact through which all communications would be channelled. However, within twenty four hours of agreeing to this, her language towards an official and the Special Point of Contact was again abusive and threatening. In light of the continued unacceptable behaviour, the Chief Executive of the National Offender Management Service wrote to the complainant on 23 October 2013 informing her that he had instructed his officials that they should no longer respond to correspondence containing threatening, abusive or offensive language, from her. The Commissioner was provided with copy of that letter.

18. The Commissioner has viewed the correspondence that flowed between the parties regarding the information request of 7 June 2013 and the letter from the MOJ to the complainant dated 23 October referred to above.

Reasons for decision

19. Section 1 of FOIA provides two distinct but related rights of access to information that impose corresponding duties on public authorities. These are:
 - the duty to inform the applicant whether or not requested information is held and, if so,
 - the duty to communicate that information to the applicant.
20. Section 14(1) of FOIA states that section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious. There is no public interest test.
21. In *Information Commissioner vs. Devon County Council & Dransfield* [2012] UKUT 440 (AAC), (28 January 2013) the Upper Tribunal took the view that the ordinary dictionary definition of the word vexatious is only of limited use, because the question of whether a request is vexatious ultimately depends upon the circumstances surrounding that request.
22. In further exploring the role played by circumstances, the Tribunal placed particular emphasis on the issue of whether the request has adequate or proper justification. They also cited two previous section 14(1) decisions where the lack of proportionality in the requester's previous dealings with the authority was deemed to be a relevant consideration by the First Tier Tribunal.
23. After taking these factors into account, the Tribunal concluded that 'vexatious' could be defined as the "...manifestly unjustified,

inappropriate or improper use of a formal procedure' (paragraph 27).
The Commissioner notes and concurs with this definition.

24. The Commissioner first considered whether the original request, and the complainant's clarification of the same, was such for it to be "vexatious" for the purposes of the Act.
25. The MOJ takes particular umbrage with the complainant's remark that "the request is very clear. It is written in English. IF you don't understand English please give it to someone who does. I will be forwarding this to the information commissioner as your request for clarification is vexatious" (sic). This, the MOJ says, was unreasonable in the face of a valid question to her. The particulars of why the MOJ objected to this are given in paragraph 15 above.
26. Whilst the complainant's language may properly be described as terse and rude it is not, in the Commissioner's view, of such magnitude or severity to make the request a vexatious one. Public authorities, of course, routinely deal with members of the public. Whether through frustration, or some other reason, the language used by a member of the public may be "challenging" and less than jovial. There is obviously a boundary of what is or is not acceptable. However, though the language of the complainant is not pleasant it has not crossed that boundary.
27. The Commissioner next considered whether the manner in which the complainant had asked for an internal review of the MOJ's decision to rely on section 14 could be such as to make the request vexatious. The Commissioner's view is that, for the reasons given below, it could not.
28. The Commissioner, and public authorities, may only take into account any evidence it has about the events and correspondence which proceeded or led up to the decision being made providing the decision is made within the statutory time limit for making it.
29. The decision, that the information request was vexatious, was made on 9 July 2013. Any events that occurred after this are to be disregarded in determining whether that decision was correct. Accordingly the Commissioner cannot find that the manner in which the complainant asked the MOJ to review its original decision makes her request for information vexatious.
30. Similarly, evidence (see paragraph 17 above) of how the complainant acted after the MOJ refused the request cannot be used to justify the decision that the request was vexatious. Accordingly the matters referred to by the MOJ (paragraphs 17 above) are not relevant to determine whether it correctly, at the time, deemed the request to be vexatious. Furthermore, following receipt of the MOJ's submission

outlining these matters, the Commissioner sought further clarification as to whether they *all* took place prior to the request. The MOJ was unable to provide a definitive answer on this but did confirm that to the extent that any such interactions or events between it and the complainant pre-dated the request of 18 May, they did not play a part in the decision to find the request vexatious.

31. Due to the matters stated above the Commissioner cannot find that the complainant's information request was a vexatious one. The evidence that he could consider, to determine vexatiousness, was not sufficient for such a finding.

Right of appeal

32. 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: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

33. 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.
34. 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