

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 13 September 2017

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

Decision (including any steps ordered)

1. The complainant requested information relating to a specific Council Tax Liability hearing. The Ministry of Justice (MoJ) refused the request under the criteria for section 17(6) of the FOIA (refusal of request).
2. The Commissioner's decision is that the request was vexatious and the MoJ was entitled to apply section 14(1) of the FOIA (vexatious request) to refuse the request. She also considers that the MoJ was not obliged to issue a refusal notice in respect of the request, in accordance with section 17(6) of the FOIA.
3. The Commissioner requires no steps to be taken as a result of this decision.

Request and response

4. On 1 December 2016 the complainant wrote to the MoJ via the 'whatdotheyknow' website and made the following request for information¹:

"Dear Her Majesty's Courts and the Tribunals Service, please provide from your records, the full transcript of the Council Tax Liability Hearing, Powys County Council v [name redacted], held at Merthyr Tydfil Magistrates Court on 1st December 2016.

¹ https://www.whatdotheyknow.com/request/court_record_request

Please also provide from your records, the names of; the Magistrates; the Clerk to the Magistrates; and the name of the man or woman who swore the complaint".

5. The MoJ did not respond to the request.

Scope of the case

6. The complainant contacted the Commissioner on 26 February 2017 to complain that he had not received a response to his request despite him reminding the MoJ that a response was outstanding.
7. In correspondence with the Commissioner, the MoJ explained that it considered the request to be vexatious within the meaning of section 14 of the FOIA. It also confirmed that it had previously informed the complainant that any further requests which are in some way attributed to his ongoing grievance relating to council tax matters would be deemed vexatious and would not be responded to.
8. Having been advised by the Commissioner the reason why the MoJ had not responded to his request, the complainant disputed that the request was vexatious.
9. The analysis below considers whether the request was vexatious within the meaning of section 14(1) of the FOIA, and if so, whether the MoJ was entitled by section 17(6) of the FOIA not to issue a refusal notice.

Reasons for decision

Section 14 vexatious request

10. Section 14(1) of the FOIA states that section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious. The section is not subject to a public interest test.
11. The term 'vexatious' is not defined in the FOIA. The Upper Tribunal considered the issue of vexatious requests in the case of the *Information Commissioner v Devon CC & Dransfield*. The Tribunal commented that vexatious could be defined as the "*manifestly unjustified, inappropriate or improper use of a formal procedure*". The Tribunal's definition clearly establishes that the concepts of proportionality and justification are relevant to any consideration of whether a request is vexatious.
12. In the Dransfield case, the Upper Tribunal also found it instructive to assess the question of whether a request is truly vexatious by considering four broad issues: (1) the burden imposed by the request

(on the public authority and its staff), (2) the motive of the requester, (3) the value or serious purpose of the request and (4) harassment or distress of and to staff.

13. The Upper Tribunal did, however, also caution that these considerations were not meant to be exhaustive. Rather, it stressed the:

"...importance of adopting a holistic and broad approach to the determination of whether a request is vexatious or not, emphasising the attributes of manifest unreasonableness, irresponsibility and, especially where there is a previous course of dealings, the lack of proportionality that typically characterise vexatious requests" (paragraph 45).

14. The Commissioner has published guidance on dealing with vexatious requests². That guidance includes a number of indicators that may apply in the case of a vexatious request. The fact that a request contains one or more of these indicators will not necessarily mean that it must be vexatious. All the circumstances of the case will need to be considered in reaching a judgement as to whether a request is vexatious.

15. As discussed in the Commissioner's guidance, the relevant consideration is whether the request itself is vexatious, rather than the individual submitting it. A public authority can also consider the context of the request and the history of its relationship with the requester when this is relevant. The Commissioner's guidance states:

"The context and history in which a request is made will often be a major factor in determining whether the request is vexatious, and the public authority will need to consider the wider circumstances surrounding the request before making a decision as to whether section 14(1) applies".

16. Sometimes it will be obvious when a request is vexatious, but sometimes it may not. In that respect, the Commissioner's guidance states:

"In cases where the issue is not clear-cut, the key question to ask is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress".

² <https://ico.org.uk/media/for-organisations/documents/1198/dealing-with-vexatious-requests.pdf>

The complainant's view

17. The complainant told the Commissioner:

"I take issue with the use of exemptions by the Ministry of Justice, particularly in the matter of vexation....I do not comprehend or understand, how it can be vexatious to require an explanation of complex and convoluted procedures of governments or their agencies.

I urge you to review the scope of the exemptions, so that misuse can be avoided in the future, and that Public Bodies discharge their obligations to the Nolan Principles in a less corrupt manner".

18. He explained that he considered a 'universal sanction' had been applied to his request.

The MoJ's view

19. In correspondence with the Commissioner, the MoJ confirmed that the request for information in this case had been considered and was refused under the criteria for section 17(6).

20. In support of its position, the MoJ explained that the complainant was notified on 6 June 2016 that following previous section 14(1) responses the MoJ would no longer respond to FOI requests which are in some way attributed to his ongoing grievance in respect of Council Tax, Liability Orders, Criminal and Civil Procedure Rules and the Authority of Legal Advisors.

21. The complainant continued to submit FOIA requests to the MoJ, on the themes identified in the above notice, including the request in this case.

22. The MoJ told the Commissioner that it had refused the request as it was deemed to fall under the topic of Council Tax Liability Hearings (CTLHs) in which the complainant had received the section 17(6) notice.

23. With reference to the indicators in her guidance, the MoJ considered the request in this case was vexatious for the following reason:

- Personal grudge

24. In its correspondence with the Commissioner, the MoJ explained that it considered that the complainant had a personal grudge against the department. In support of that view, it provided evidence of other requests for information on the topic of CTLHs, from the same complainant.

25. In support of its refusal to respond to the request in this case, the MoJ evidenced that, when it issued the section 17(6) notice on 16 June 2016, it told the complainant:

"Any responses either under the FOIA or under official correspondence are met with confrontation, derision and abuse...

You accuse the courts and its officials of unsubstantiated wrongdoing and the frequency of your requests in respect of the individuals' concerned makes your requests a burden for the Department to handle. It is evident that you have an ongoing complaint in respect of matters in the courts and the Department has a responsibility to protect its staff, stakeholders and resources from abuse and will take steps under available legislations, such as the FOIA, to do so".

26. That notice was issued in response to three other requests for information from the same complainant – requests dated 1 March 2016, 4 April 2016 and 10 May 2016.

27. In that respect, the Commissioner notes that the MoJ previously told the complainant:

"... I consider that there is no response the Department can reasonably give in respect of any of the matters you raise (in respect of Council Tax, Liability Orders, Criminal and Civil Procedure Rules and the Authority of Legal Advisors) that will be the end of the matter..."

28. The MoJ provided the Commissioner with evidence that consideration was made in respect of those common themes and the continued application of section 17(6) in this case.

The Commissioner's view

29. The Commissioner acknowledges that there are many different reasons why a request may be vexatious, as reflected in her guidance. There are no prescriptive 'rules', although there are generally typical characteristics and circumstances that assist in making a judgement about whether a request is vexatious. A request does not necessarily have to be about the same issue as previous correspondence to be classed as vexatious, but equally, the request may be connected to others by a broad or narrow theme that relates them. A commonly identified feature of vexatious requests is that they can emanate from some sense of grievance or alleged wrong-doing on the part of the authority.

30. As the Upper Tribunal in *Information Commissioner vs Devon County Council & Dransfield* [2012] UKUT 440 (AAC), (28 January 2013) observed:

"There is...no magic formula – all the circumstances need to be considered in reaching what is ultimately a value judgement as to whether the request in issue is vexatious in the sense of being a disproportionate, manifestly unjustified, inappropriate or improper use of FOIA".

31. In her guidance on dealing with vexatious requests, the Commissioner recognises that the FOIA was designed to give individuals a greater right of access to official information with the intention of making public bodies more transparent and accountable.
32. While most people exercise this right responsibly, she acknowledges that a few may misuse or abuse the FOIA by submitting requests which are intended to be annoying or disruptive or which have a disproportionate impact on a public authority.
33. The Commissioner does, however, recognise that public authorities must keep in mind that meeting their underlying commitment to transparency and openness may involve absorbing a certain level of disruption and annoyance.

Was the request vexatious?

34. The Commissioner considered both the MoJ's arguments and the complainant's position regarding the information request in this case.
35. As in many cases which give rise to the question of whether a request is vexatious, the evidence in the present case showed a history of previous and subsequent information requests. Clearly in this case, the MoJ considers that the context and history strengthens its argument that the request is vexatious.
36. The Commissioner recognises that the complainant has his reasons for pursuing information from the MoJ: the complainant is clearly not satisfied with how the MoJ conducts itself.
37. The Commissioner recognises that an authority should be mindful to take into account the extent to which oversights on its own part might have contributed to a request being generated.
38. If the problems which an authority faces in dealing with a request have, to some degree, resulted from deficiencies in its handling of previous enquiries by the same requester, then this will weaken the argument that the request, or its impact upon the public authority, is disproportionate or unjustified.

39. The Commissioner also recognises that a request which would not normally be regarded as vexatious in isolation may assume that quality once considered in context. In that respect, her guidance states:

"An example of this would be where an individual is placing a significant strain on an authority's resources by submitting a long and frequent series of requests, and the most recent request, although not obviously vexatious in itself, is contributing to that aggregated burden".

40. Furthermore, when considering whether or not a request is vexatious, the Commissioner accepts that the requester's past pattern of behaviour may also be a relevant consideration.
41. In this case, the context and history of the request suggested to the Commissioner that a response to this request was likely to lead to further communications and more requests for other information on related matters from the complainant, with a further consequential burden on MoJ staff.
42. The purpose of section 14 of the FOIA is to protect public authorities and their employees from unreasonable demands in their everyday business. In her guidance, the Commissioner recognises that dealing with unreasonable requests can place a strain on public authorities' resources and get in the way of delivering mainstream services or answering legitimate requests. Furthermore, these requests can also damage the reputation of the legislation itself.
43. On the basis of the evidence provided, and taking into account the findings of the Upper Tribunal in Dransfield that an holistic and broad approach should be taken in respect of section 14(1), the Commissioner was satisfied that the request was a manifestly unjustified and improper use of the FOIA such as to be vexatious for the purpose of section 14(1).
44. Accordingly, she was satisfied that the MoJ was entitled to apply section 14(1) of the FOIA.

Section 17 – refusal of request

45. Section 17(6) of the FOIA allows a public authority to refuse to issue refusal notice in instances when:
- (a) the public authority is relying on a claim that section 14 applies,*
 - (b) the authority has given the applicant a notice, in relation to a previous request for information, stating that it is relying on such a claim, and*

(c) it would in all the circumstances be unreasonable to expect the authority to serve a further notice under subsection (5) in relation to the current request.

46. The Commissioner will usually only consider it unreasonable to expect a public authority to issue a further notice when it has previously warned the requester that it will not respond to any further vexatious requests on the same or similar topics.
47. In this case, the MoJ provided evidence that, on 6 June 2016, it had issued a refusal notice citing section 14(1) (vexatious request). In that correspondence, with reference to section 17(6) of the FOIA, it also told the complainant that further requests on, or relating to, his ongoing grievance in respect of Council Tax, Liability Orders, Criminal and Civil Procedure Rules and the Authority of Legal Advisers would not be responded to.
48. During the course of the Commissioner's investigation, the MoJ confirmed that it was satisfied that that section 17(6) notice still applies in respect of this case and therefore that it was not required to issue a refusal notice.
49. Taking account of all the above the Commissioner has decided that it was reasonable for the MoJ to apply section 17(6) to this request. She is satisfied that the subject matter of the request in this case met the criteria specified in the section 17(6) notice.
50. The Commissioner accepts that the MoJ has given the complainant adequate warning that future requests for information in respect of such matters would not be responded to and so it was not obliged to issue a further notice for this subject matter.

Right of appeal

51. 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: 0870 739 5836
Email: GRC@hmcts.gsi.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

52. 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.

53. 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

Jon Manners
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