

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date 13 March 2007

Public Authority: Department for Work and Pensions
Address: The Adelphi
2nd Floor
1-11 John Adam Street
London
WC2N 6HT

Summary

The complainant requested information concerning an incident where personal data relating to the complainant had been disclosed by the public authority in error. The public authority refused this request on the grounds that it was vexatious. The Commissioner finds that the request was correctly refused as vexatious. The Commissioner also finds that the request was not responded to within the time limit of 20 working days. This breach does not necessitate remedial action.

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 12 March 2006, the complainant requested the following information:
"...copies of the [name redacted] enquiry and [name redacted] DPO enquiry information."
3. The public authority responded to this request on 11 May 2006, outside the 20 working days time limit. This response stated that the request was refused as it was considered vexatious.

4. The complainant contacted the public authority on 29 May 2006 to object to the refusal of his information request. The public authority has stated that it has no record of receipt of this letter and so an internal review was not carried out.

The Investigation

Scope of the case

5. The complainant contacted the Commissioner on 29 June 2006 to complain about the refusal of his information request.
6. The complainant specified the grounds for his complaint as the failure by the public authority to respond to his request within 20 working days and the refusal of his request as vexatious.
7. The complainant stated that he believes the public authority wishes to withhold from him information that could be used as evidence to substantiate a legal claim made against it.
8. An internal review of the handling of the complainant's request has not been carried out by the public authority. This, in itself, is a source of disagreement between the complainant and the public authority. The complainant states he contacted the public authority to request an internal review. The public authority has stated that it received no such correspondence from the complainant.
9. The Commissioner has not required that the public authority carry out an internal review at this stage. The Commissioner has formed no conclusion as to whether the public authority did or did not receive a letter from the complainant in which he requested an internal review. The Commissioner concludes only that a review at this stage is unlikely to be of practical benefit to either party.

Chronology

10. The Commissioner contacted the public authority on 29 August 2006 to raise the issue of this complaint and to ask for its arguments in support of its stance that the complainant's request is vexatious.
11. The public authority responded to this on 29 September 2006. In its response, the public authority gave its reasoning for refusing the complainant's request as vexatious.
12. Firstly, the public authority gave the background to the request by describing the reasons for a long running dispute between it and the complainant. This dispute stems from a disclosure of the complainant's personal data that the public authority has acknowledged was in contravention of the Data Protection Act 1998 (the "DPA").

13. The public authority stated that it has carried out five separate investigations into the disclosure of the complainant's personal data. These investigations have failed to identify the individual who was responsible for the disclosure, but the public authority accepts responsibility for the disclosure as data controller for the purposes of the DPA.
14. The complainant had previously taken this issue to the Parliamentary Ombudsman. The Parliamentary Ombudsman had twice concluded that the public authority was at fault and that the public authority should make compensatory payments. The public authority, having taken the steps required by the Parliamentary Ombudsman, believed that the issue should have been resolved with the conclusion of the Ombudsman's investigations.
15. The complainant does not accept that the Ombudsman's investigation should represent the conclusion of this matter and continues to pursue his grievance, which has now extended for several years. As the information requested concerns the investigations carried out by the public authority into the disclosure of the complainant's personal data, the public authority considers this information request to be related to the ongoing dispute between it and the complainant.
16. The public authority identified the grounds from the Commissioner's published guidance on vexatious requests that it believed the request made by the complainant fulfilled. Firstly, the public authority stated that it believed that the volume of correspondence it had received from the complainant on the same issue meant that dealing with the complainant represented a significant burden on it. The public authority stated that it had received over 50 letters from the complainant between 22 April 2002 and 6 September 2006. The public authority included in its response a list of correspondence received from the complainant with a summary of the contents of that correspondence.
17. Secondly, the public authority described how much of the correspondence it had received from the complainant could be described as acts of harassment. The public authority outlined correspondence received from the complainant, the tone of which was described as accusatory, offensive, libellous and aggressive.
18. The public authority also informed the Commissioner of the existence of a website authored by the complainant, www.dwpcorruption.co.uk. The public authority believes that the complainant intends this website to harass the public authority to pay him further compensation, with the sum of £15000 currently cited on the website as the figure the complainant believes he should receive.
19. Thirdly, the public authority stated that it believed the complainant has exhibited obsessive and manifestly unreasonable behaviour. It described how it appeared that the complainant regarded the disclosure of his personal data as a malicious act. The public authority indicated that it did not believe the complainant had any reasonable grounds for this belief and maintains that the disclosure was inadvertent.
20. The public authority went on to describe how the disclosure of the complainant's personal data ultimately had no detrimental result. The public authority stated

that, without it being clear why the complainant had shown such persistence in pursuing his grievance over several years and continuing to do so, this behaviour can be characterised as both obsessive and manifestly unreasonable.

21. In order to clarify the grounds of the complaint, the complainant was contacted on 30 November 2006. At this time, the complainant was also asked to confirm whether he had received a response to his correspondence of 29 May 2006, in which he had asked the public authority to carry out an internal review of its handling of his information request.
22. The complainant responded on 4 December 2006. In his response, the complainant clarified that he wished his complaint to relate to his request of 12 March 2006. The complainant also confirmed that he did not receive a response to his 29 May 2006 letter to the public authority.
23. The Commissioner contacted the public authority again on 6 December. In this letter, the public authority was asked to confirm, firstly, that its response of 29 September 2006 provided all the representations that the public authority wished to make with regard to the complainant's information request of 12 March 2006. The public authority confirmed that its response did cover the issue of the information request of 12 March 2006.
24. Secondly, the public authority was also asked to confirm if it had received the complainant's letter of 29 May 2006. The public authority stated that they had no record of receipt of the complainant's letter of 29 May 2006 and an internal review of its handling of the request had not been carried out.

Findings of fact

25. The information request was dated 12 March 2006. The public authority did not respond to this until 11 May 2006.
26. The information request follows a lengthy dispute between the public authority and the complainant concerning a disclosure of personal data that took place in 2002.
27. The information request by the complainant is related to this dispute.
28. The public authority believes that the request of 12 March 2006 is vexatious.
29. The complainant does not accept that his request is vexatious.

Analysis

Section 10

30. The public authority failed to respond to the information request within 20 working days of receipt and, in so doing, breached section 10(1).

Section 14

31. The Commissioner has considered whether the public authority has correctly applied section 14 in refusing the complainant's information request as vexatious. The public authority has summarised its arguments as follows:
- The complainant has previously made a request similar to his request of 12 March 2006.
 - The request is part of a theme that relates to the complainant trying to discover the identity of the individual who made the disclosure.
 - The request has no serious purpose or value.
 - The request is designed to cause disruption or annoyance.
 - The request has the effect of harassing the public authority.
 - The request can otherwise fairly be characterised as obsessive or manifestly unreasonable.
32. The Commissioner has considered each of the above arguments and responds as follows.
- The complainant has previously made a request similar to his request of 12 March 2006.
33. The public authority has argued that a previous request made by the complainant under section 7 of the DPA for information similar to that requested on 12 March 2006 renders this request vexatious. The Commissioner does not agree with this argument. The access to personal data afforded by section 7 of the DPA is an information access regime distinct from that offered by this Act. That a request has been made under the DPA previously does not impact on the right of any person to make a subsequent information request under the Act.
34. Had the public authority believed that this request was a repeat of an information request made under the Act previously, the public authority could have cited section 14(2) and refused this request as repeated. This is not the stance taken by the public authority in this instance and it does not appear to be the case that an information request similar to that made on 12 March 2006 has been made by the complainant previously.
35. The Commissioner is aware of information requests made subsequently by the complainant, on 7 and 8 June 2006 and on 4 October 2006. That these requests were made subsequently to that of 12 March 2006 means that the Commissioner does not accept that the public authority should now take these into account when justifying its stance in relation to the request of 12 March 2006.
- The request is part of a theme that relates to the complainant trying to discover the identity of the individual who made the disclosure.
36. It is clear from the information available to the Commissioner that the information request is related to a long running dispute between the public authority and the complainant. It is also clear that the complainant attaches importance to discovering the identity of the individual responsible for the disclosure of his personal data.

37. It is necessary for the Commissioner to consider whether and how closely this information is related to the complainant's attempts to identify the individual responsible for the disclosure. Based on the Commissioner's understanding of the information requested, knowledge of the ongoing dispute between the complainant and the public authority and, as stated above, awareness of the importance the complainant attaches to identifying the individual responsible, the Commissioner concludes that this request was part of a theme.
38. That a request is part of a theme does not, in itself, designate a request as vexatious. The overall nature and reasonableness of that theme must be taken into account. In this case, the Commissioner notes that this issue has been ongoing between the public authority and complainant for several years and the complainant has been informed many times during this period that the public authority has not definitively identified who was responsible for the disclosure. The public authority has also acknowledged its corporate responsibility for the disclosure as data controller for the purposes of the DPA.
39. In so far as the request can be considered a furtherance of the complainant's attempt to identify the individual responsible for the disclosure of his personal data, the Commissioner agrees that this request is vexatious. The complainant has been informed many times that access to information identifying the individual responsible for the disclosure is not possible. There appear to be no reasonable grounds for the complainant to continue his attempts to access this information.
40. The public authority has also referred to its belief that to disclose information identifying the individual responsible for the disclosure of the complainant's personal data would constitute a contravention of the data protection principles. The Act provides an exemption at section 40(2) for information the disclosure of which would contravene the data protection principles. If the public authority believed that the information requested by the complainant was exempt under section 40(2), the request should have been refused on this basis and not on the basis of vexatiousness.
 - The request has no serious purpose or value.
41. The stance of the public authority here is understood in that it feels that it has gone well beyond what would ordinarily be considered reasonable steps to remedy the disclosure of the complainant's personal data by carrying out five investigations of its own and cooperating in two investigations carried out by the Parliamentary Ombudsman. However, the Commissioner is reluctant to allow any public authority to erode any person's rights under the Act by making assumptions about the seriousness or value of a request.
42. Although this request follows a lengthy period of dispute, which may be considered to have been extended unreasonably by the complainant, it is necessary here for the Commissioner to consider this request in isolation from the overall dispute. When considering the request in isolation, it is clear to the Commissioner that the complainant does consider the request to be both of a serious purpose and to have value.

- The request is designed to cause disruption or annoyance.
43. Similarly to the previous point, it is necessary here for the Commissioner to consider the request in isolation. Although the continuance of the wider dispute by the complainant has undoubtedly caused the public authority disruption and annoyance, this cannot be taken into account when considering whether the information request has caused disruption or annoyance.
44. For the Commissioner to accept this as a valid argument, it must be clear that the request was designed specifically to cause disruption or annoyance. As the Commissioner has recognised that the request does, as least as far as the complainant is concerned, have a serious purpose or value, the Commissioner does not accept that this request is designed specifically to cause disruption or annoyance.
- The request has the effect of harassing the public authority.
45. The complainant has sent a very large volume of correspondence to the public authority. Some of this correspondence has been conducted in an inappropriate fashion, including allegations and threats made in relation to specific employees of the public authority. The Commissioner recognises this and considers it unfortunate that the complainant has chosen to conduct his correspondence in this fashion.
46. The particular correspondence in which the complainant made his information request was not of an inappropriate nature. However, as the Commissioner's guidance on section 14 makes clear, it may be reasonable for the authority to conclude that a particular request represents a continuation of behaviour which it has judged to be vexatious in another context and therefore to refuse the request as being vexatious. In this case, the Commissioner accepts that the complainant's previous behaviour could fairly be considered vexatious and that this request represents a continuation of behaviour previously considered vexatious.
- The request can otherwise fairly be characterised as obsessive or manifestly unreasonable.
47. Where a public authority supports its argument for applying section 14 by citing the overall behaviour of the requester, the Commissioner remains acutely aware of the wording of section 14. This wording makes it clear that it is the request that must be vexatious, not the requester. The public authority has argued that the overall impact of this dispute and of the complainant's behaviour towards the public authority during this dispute support its decision to refuse the request.
48. The Commissioner is sympathetic to the public authority's position here. The Commissioner has noted particularly the representations of the public authority that it has itself carried out five investigations at the complainant's behest and that the Parliamentary Ombudsman has carried out two investigations. The Commissioner also appreciates the position of the public authority in failing to

understand why the complainant continues to pursue this grievance. It is understandable that the public authority believes that this matter has been dealt with thoroughly and should now be considered closed.

49. It is clear that the steps taken by the public authority and the Parliamentary Ombudsman to investigate the circumstances of the disclosure of the complainant's personal data have been thorough. Despite the steps taken to resolve this matter, the complainant does not accept that this matter is closed and wishes to continue his dispute with the public authority. This behaviour and the information request that stems from this could fairly be characterised as obsessive.

- Significant burden

50. When considering whether an information request is vexatious, it is necessary to address whether a significant burden would be imposed on the public authority through the request. Taking into account the representations of the public authority that it has received over 50 letters from the complainant and his legal representatives about the dispute to which the information request is connected, the Commissioner accepts that the request would impose a significant burden.

Conclusion

51. Whilst the Commissioner is aware that section 14 relates to the request rather than the requester, that this request has clearly arisen from the ongoing dispute between the requester and the public authority means that the circumstances of the wider dispute should be taken into account when making this decision.

52. The Commissioner considers that this request is vexatious. This decision is based on the following grounds:

- The request would impose a significant burden.
- The request is part of a theme that relates to the complainant trying to discover the identity of the individual who made the disclosure.
- The request has the effect of harassing the public authority.
- The request can otherwise fairly be characterised as obsessive or manifestly unreasonable.

The Decision

53. Firstly, the Commissioner's decision is that the public authority did not deal with the request for information in accordance with the Act in that it failed to comply with the requirement of section 10(1) to respond to an information request within 20 working days of receipt.

54. Secondly, the Commissioner's decision is that the public authority has applied section 14(1) correctly in that the request could fairly be considered vexatious.

Steps Required

55. Although the Commissioner finds that the public authority failed to comply with section 10(1), this breach does not necessitate remedial action.

Right of Appeal

56. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal
Arnhem House Support Centre
PO Box 6987
Leicester
LE1 6ZX

Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@dca.gsi.gov.uk

57. Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is served.

Dated the 13th day of March 2007

Signed

**Richard Thomas
Information Commissioner**

**Information Commissioner's Office
Wycliffe House
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Wilmslow
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SK9 5AF**