

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 20 October 2009

Public Authority: The Information Commissioner's Office (ICO)
Address: Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Summary

The complainant made a request for information containing a number of questions for the ICO to respond to under the Act. This was the ninth request for information that had been received from this complainant. The ICO informed the complainant that it found that the request was vexatious and that the public authority did not therefore need to comply with the request in this case because section 14(1) applied. The Commissioner finds that ICO has applied section 14(1) correctly in this case and that it is not required to take any further steps in respect of this complaint.

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.
2. To enhance the clarity of this Decision Notice, the Commissioner has elected to refer to himself in the role of investigating this case as the Commissioner and to refer to the public authority in this case as the ICO.

The Request

3. On 23 September 2008 the complainant made an information request to the ICO. It was worded in the following way [the Commissioner has added the numbers in square brackets so that parts of the request can be referenced in this notice]:

'Re: FOI/1062

Regarding above and your letter of 22nd September 2008, can you deliver up to me the document from the EU which states that you do not have to comply with European Directive 95/46/EC that made you write your letter. I am still waiting and you can not prove you have exemption to this very day [1].

*Secondly which document will you be giving to me advising the ICO is exempt from the FOI in not answering the FOI within 20 days contrary to what Parliament intended as having copyright and has already received Royal ascent (sic *Assent) having passed 2 houses? [2]*

*Can you show me the document that states that the DPA 1998 was not introduced as (sic *a) result of the European Directive 95/46/EC. [3]*

Can you show me the document that states the DPA 1998 does not legally follow the Directive EC/95/46? [4]

Can you show me the legislation you refer to in the 5th paragraph of your letter where your para starts with 'Question 8, which requires you to legally apply the legislation you refer to? [5]

*Can you show me of (*sic) the legal document that renders you exempt from investigating a DPA complaint that you are compelled to reply to by law and which does not qualify (sic *for) an exemption. [6]*

Which legal documents will you provide relating to exempting the ICO from investigating racist conduct alleged where there are outstanding complaints not completed? [7]

*By the way, can you show me the document that allows Mr Thomas not to comply under the Queens royal ascent (sic *assent) making statute within Parliament in which he reports directly, in not exercising his functions contrary to the DPA and the FOI. Statutory to be done is compliance and not discretionary. [8]*

Your responses never had any legal bearing to influence or effect your decisions preceding where the responses are not legally complaint in responses to legally enforceable doctrine. Show me documents of how your responses are legally compliant in consistency. [9]

So where does that leave you... in a flight of fancy in the most novel of aspects. [10]

*Therefore your letter of 'vexatious' requests is contrary to law in which your responses do not comply with (sic *the) law therefore to get you to accept compliance of the law, where you do not comply you will receive continual request to the applications of the law until you stop acting illegally and unlawful (sic *unlawfully). That means you must confirm, support and deny any exemption you have in answering any of my letters that comply with requests under the law that you have failed to answer. Therefore following on provide me with the*

documents that you hold where you have failed to respond to any outstanding matter which I have complained about. [11]

*Tell me who are you going to cry to now about 'vexatious' when you cant (sic *can't) even follow the FOI, DPA, the RRA and SDA. Let us now begin an investigation into the responses that you have not given under the content of the letter about my complaints that you have failed to respond to and to which you have received repeated letters and until such time as you will comply with the law. [12]*

*I don't care (sic *about) your 'racists' warnings about 'vexatious'. You need to wise up and face up (sic *to) this racism (Mr Thomas) where is the questionnaire response to each individual questions to the RR65 and SO74 ?????????? [13] So tell me how that complies with the law and tell (sic *me) how not complying with the law is complying with the law. [14]*

*Your letter is (sic *a) load of bull and I am not interested in any of your nonsense not to comply with the law, you must comply just like everybody else.*

I am waiting for my answers you racist hypocrites.

*By the way, can you show me the document that allows Mr Thomas not to comply under the Queens (sic *Queen's) royal ascent (sic *assent) making statute within Parliament in which he reports directly, in not exercising his functions contrary to the RRA and the SDA. Statutory to be done is compliance mandatory and not discretionary. [15]*

I look forward to hearing from you. What victimisation does a person receive when they send Statutory questionnaires under the RRA and the SDA. Please list the potential and actual victimisation upon return.' [16]

4. On 3 October 2008 the ICO provided a response to this request for information. It informed the complainant that it felt that the majority of the request was questions and comments about the work of the Commissioner and that it was under no duty to answer those parts of the request under the Act. It informed the complainant that where she had requested information that it may hold it was refusing to provide the information under section 14(1) of the Act.

It provided the following reasons why it felt section 14(1) applied:

- It had received thirteen requests for information from the complainant over the last twelve months that all follow the same theme.
- It had used significant resource to answer all the previous requests for information and despite its attempts to assist the complainant to refine her requests, the requests had continued to be made in the same format and along the same theme.
- In its opinion it felt that the specific request is vexatious because to provide information would be repetitive and of no value.

5. On 10 November 2008 the complainant requested the public authority to conduct an internal review into its handling of the request. She also submitted the following five arguments:
 1. In her opinion applying section 14(1) did not mean that the public authority was not required to confirm whether relevant information was held by it.
 2. In her opinion the requests did have real value. She was holding the ICO to account for its non compliance with various pieces of legislation.
 3. In her opinion the response to the request was because it was her that was making it.
 4. The Commissioner had failed to comply with its guidance for cases that were on the borderline and should have done more to assist her.
 5. That she felt it was possible that the relevant information had changed from her previous requests and therefore she was establishing the current position and the requests were not repeated.
6. On 25 November 2008 the ICO provided a response to this request for an internal review. It informed her that the internal review was upholding the original decision. It told the complainant:

'Whilst your comments do not fall within FOIA in relation to questions where a public authority holds recorded information that will answer a question then that is covered, however, where recorded information is not held the Act does not require questions to be answered generally'.
7. The Commissioner believes that this paragraph lacks clarity and has chosen to comment about it in the Other Matters section at paragraph 51 of this notice.
8. It also informed the complainant that it had carried out a flexible balancing act taking into account all the circumstances of the case. It said that it had considered the context and history of the request and the following factors:
 - Can 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?
 - Is the request designed to cause disruption or annoyance?
 - Does the request lack any serious purpose or value?
9. It said that it did not feel that the request was designed to cause disruption or annoyance and that it did not think that the request lacked any serious purpose or value. However it said that the first three factors bullet points were relevant in this case.

10. It said that it had considered the context of the request and noted that it comes at the end of a series of requests. It said that the requests had mainly come in the form of questions and are mainly linked to the same or similar themes. It indicated that between 14 April 2008 and 18 June 2008 there were 9 requests with each request being made up of between ten and twenty six questions.
11. When considering whether the request would create a significant burden, the ICO commented that its normal policy was wherever possible to deal with requests irrespective of whether doing so would exceed the fees limit. While the ICO was not relying on the additional burden from this approach, it did feel that the sheer volume and frequency and nature of the requests had placed a significant burden on the ICO. It commented that while there was always a right to an internal review, the request came almost immediately and it seemed that there may not have been enough time to consider the contents of the response which had taken considerable time to compile.
12. It indicated that given the volume, frequency and nature of the requests and correspondence, similarity of themes and the fact that the responses were met with a request for review the day after receipt of the response, along often with a further set of questions, it believed that this request was obsessive.
13. It also indicated that it also felt that the request was harassing the ICO and was causing distress to staff. It said that it felt the Internal Compliance team had gone to great lengths to deal with the requests and questions and also had moved to help redefine the questions to get the particular information which was wanted. It has also tried to respond to those questions where it had no recorded information. Despite this it indicated that a request for internal review would normally be immediate. It pointed to one occasion to evidence the harassing of the staff, when requests were made on 19, 21, 22 and 23 May 2008. It said in the circumstances there was more clear evidence in the harassing of the staff by the continuing to submit linked and sometimes repeated requests before the team had time to respond to previous ones. In addition it felt that the some of the language used was likely to be upsetting and that it felt that some of the comments about staff were incorrect and likely to be offensive.

The Investigation

Scope of the case

14. On 31 December 2008 the complainant contacted the Commissioner to complain about the way her request for information had been handled. The complainant made detailed submissions and within these submissions asked the Commissioner to consider the following points:
 - That the ICO had on a number of occasions asked her to refine her requests for information and that the 'burden' was created by her following those instructions.

- That she felt that section 14(1) cannot be invoked as the ICO has never issued fees notices in relation to this request or those previously.
 - That the ICO had provided a response on 27 May 2008, 30 May 2008 and 16 June 2008 without finding the requests vexatious.
 - She indicated that the FOIA does not have a requirement that only a limited number of questions can be asked at one time.
 - That her approach to chasing responses to previous questions was reasonable in the circumstances.
 - That there was no clear evidence of harassing the ICO's staff in this case.
 - That the approach taken to her requests did not accord with the Commissioner's guidelines on vexatious requests.
 - That she felt that the public authority has a duty to confirm or deny whether it has the information under section 1(1) in all cases.
 - That she believed all the questions that have been submitted are valuable.
15. The complainant also raised other issues that are not addressed in this Notice because they are not requirements of Part 1 of the Act.
16. The scope of this case is to determine whether the ICO were correct to apply section 14(1) to the request for information dated 23 September 2008.
17. On 2 May 2009 the complainant appeared to accept that this was the scope of this investigation.

Chronology

18. On 21 April 2009 the Commissioner wrote to the complainant. In this letter he firstly emphasised that this was an unusual circumstance of the Commissioner being under a duty to investigate himself and that the case officer has had no previous role in dealing with this request for information. Secondly he attempted to set the scope and lastly invited the complainant to make further arguments alongside her letter dated 31 December 2008. He also indicated that the internal review was intended to be a full merits review of the initial decision and therefore further evidence can be considered and provided. Further information about his position on this issue can be found in the other matters section of this notice.
19. On 30 April 2009 the Commissioner wrote to the ICO. In this letter he asked for the ICO to provide more evidence that its section 14(1) approach was correct. He asked to be provided with copies of the all the relevant documentation. He asked to be provided with a breakdown of the burden that has been generated by responding to this request and previous ones. He asked the public authority to take into account the times that it had invited the complainant to refine the request and whether it felt that its approach had led to the burden becoming

significant. He asked the public authority to provide evidence that the request was obsessive and finally invited the public authority to present evidence that the request was harassing the public authority or causing distress to the staff.

20. The Commissioner received a series of letters from the complainant on 27 April 2009, 2 May 2009, 14 May 2009 and 16 May 2009 about the nature of this investigation. He responded to these letters on 30 April 2009, 11 May 2009, 18 May 2009 and 21 May 2009.
21. On 20 May 2009 the Commissioner received a response to his questions from the ICO. He also received a copy of all the previous correspondence that was referred to in its arguments.
22. On 21 May 2009 the Commissioner wrote to the complainant to offer a chance to make final arguments as a decision would be finalised. As of the date of this notice, he has not received any additional arguments.

Findings of fact

23. There have been nine requests for information received by the ICO from the complainant between 14 April 2009 and 23 September 2009. The response and the internal review referred to thirteen requests, but the ICO only provided the Commissioner with nine different requests and this decision is based on those nine.

The requests were received on:

- 14 April 2008.
- 27 April 2008
- 3 May 2008.
- 5 May 2008.
- 19 May 2008.
- 26 May 2008.
- 22 June 2008.
- 24 June 2008.
- 23 September 2008 (date of this request).

Analysis

24. Section 14(1) is an exclusion that provides that –

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

For clarity this means that should section 14(1) apply then the public authority is not required to confirm or deny whether recorded information is held. This is because it is only section 1(1)(a) that imposes this obligation and this section

says that section 1 does not apply when section 14(1) is correctly applied. Additionally there is no requirement for any public authority to issue a fees notice prior to applying section 14(1).

25. When assessing vexatiousness the Commissioner adopts the view of the Information Tribunal (the 'Tribunal') decision in *Ahilathirunayagam v Information Commissioner's Office* (EA/2006/0070) (paragraph 32); that it must be given its ordinary meaning so would be likely to cause distress or irritation. The enquiry is based on objective standards. This has been reaffirmed by the Tribunal in *Gowers v Information Tribunal and London Camden Borough Council* (EA/2007/0114) (paragraph 27).
26. The Commissioner has recently revised Awareness Guidance 22 as a tool to assist in the consideration of what constitutes a vexatious request. This guidance explains that for a request to be deemed vexatious the Commissioner will consider the context and history of the request as well as the strengths and weaknesses of both parties' arguments in relation to some or all of the following five factors to reach a reasoned conclusion as to whether a reasonable public authority could refuse to comply with the request on the grounds that it is vexatious:
- (1) whether compliance would create a significant burden in terms of expense or distraction;
 - (2) whether the request is designed to cause disruption or annoyance;
 - (3) whether the request has the effect of harassing the public authority or its staff;
 - (4) whether the request can otherwise fairly be characterised as obsessive; and
 - (5) whether the request has any serious purpose or value.
27. When considering the ICO's reliance upon section 14(1), the Commissioner has had regard to the Information Tribunal's decision in *Mr J Welsh -v- the Information Commissioner* (EA/ 2007/0088). In that case, the Tribunal spoke of the consequences of determining a request vexatious. It pointed out that these are not as serious as those of finding vexatious conduct in other contexts and therefore the threshold for vexatious requests need not be set too high.
28. The ICO have indicated in its arguments to the Commissioner that they believe conditions (1), (3) and (4) are satisfied by this request and this led it to the conclusion that this request was vexatious. The Commissioner has looked at each of these factors in turn.

Does the request constitute a significant burden in terms of expense or distraction?

29. In the case of *Welsh v the Information Commissioner* mentioned above, the Tribunal stated that:

'...in most cases, the vexatious nature of a request will only emerge after considering the request in its context and background. As part of that context, the identity of the requester and past dealings with the public authority can be taken into account' (paragraph 21 of its decision).

30. The Tribunal in the case of *Gowers v the Information Commissioner* mentioned above, emphasised that previous requests received may be a relevant factor:

'...that in considering whether a request is vexatious, the number of previous requests and the demands they place on the public authority's time and resources may be a relevant factor' (paragraph 70 of its decision).

31. The Commissioner has therefore taken into account the complainant's previous interaction with the ICO when making a determination of whether the request represents a significant burden to a public authority. This means that even if the request appears reasonable in isolation, it may be vexatious if it demonstrates a continuation of behaviour which is obsessive and/or represents a significant burden when considered collectively.
32. Between 14 April 2009 and 23 September 2009 the complainant made 9 requests for information. Each request consisted of between 15 and 26 separate requests for information. A great deal of the ICO's time was spent dealing with these requests and with complainant's associated correspondence. The ICO did not record how much time has been spent but it has informed the Commissioner that it believes it did work beyond the section 12 limit on at least two occasions to be helpful to the complainant. This amounts to a substantial expenditure of public money in terms of the salaries of the staff. The hours spent dealing with the requests and the resulting distraction from the ICO's core business purpose demonstrates that there was a significant burden in terms of both expense and distraction.
33. The complainant has argued that the Act provides no limit to the number of questions that can be asked and additionally that her approach to chasing responses was reasonable in the circumstances. The Commissioner has considered the evolution of the request and notes that there is evidence of occasions where the complainant has not waited twenty working days for an answer to an initial request and made the same request again regardless. The Commissioner does not feel that this approach was reasonable in the circumstances. The Commissioner has considered the reasoning in the Tribunal decision of *Coggins v Information Commissioner* [EA/2007/0130] about what constitutes *'a significant administrative burden'* and is satisfied that the overlapping requests in this case if dealt with without utilising section 14(1) would have contributed to a *'significant distraction from its core functions'* (paragraph 27 of its decision).
34. The Commissioner has also considered in this determination the approach of the Information Tribunal in *Betts v The Information Commissioner* (EA/2007/0109), where indicated that it would be reasonable for the public authority to consider its past dealings with the complainant, particularly in relation to its experience of

answering one request which would likely lead to still further requests. This had the effect of perpetuating the requests and adding to the burden placed on the authority's resources. The Tribunal said:

'...it may have been a simple matter to send the information requested in January 2007, experience showed that this was extremely likely to lead to further correspondence, further requests and in all likelihood complaints against individual officers. It was a reasonable conclusion for the Council to reach that compliance with this request would most likely entail a significant burden in terms of resources.'

35. The Commissioner has examined the pattern of the requests and believes that this was what was happening in this case.
36. The complainant has also argued that the ICO had contributed to the burden by telling her to reword her requests in order to obtain relevant recorded information. The Commissioner has considered this argument. The Commissioner believes that the ICO was acting in accordance with the Act in seeking clarification under section 1(3) of the Act in order to identify the information sought. He is satisfied that this approach was reasonable in the circumstances. The complainant in responding to the request for clarification on 20 June 2009 restated the original request saying that she wanted the document held by the ICO that contained answers to her questions.
37. Assessing all the circumstances of the case the Commissioner has found that the particular request constituted a significant burden to the ICO. This is because objectively this request does impose a significant burden in terms of expense and distraction for the reasons outlined above. He therefore find in favour of the ICO on this factor. The Commissioner finds that this is a significant factor in favour of applying section 14(1).

Did the request have the effect of harassing the public authority or its staff?

38. The complainant contends that there are no occasions of any of her requests harassing the public authority or its staff and there is no evidence that this was ever the case.
39. The ICO indicated that a single point of contact was used after receiving the fourth request for information, as it was necessary to deal with the volume of requests in the most effective way.
40. The ICO indicated to the Commissioner that the language contained in this request for information contained a number of allegations of racism and also implied sex discrimination.
41. The ICO pointed out that the letter was signed off '*I am waiting for my answers you racist hypocrites*'. While this letter was not addressed to any particular person, the ICO claim that it was clear that the letter was to be passed to the single contact point from the previous responses. That single contact point at the

ICO has indicated that they find the accusation and the language inappropriate, unnecessary and offensive.

42. The Commissioner believes that the language in the request does have the effect of harassing the ICO. He therefore find in favour of the ICO on this factor. However he does note that the language was mostly cordial until this request for information.

Can the request be characterised as obsessive?

43. The ICO indicated in its internal review that given the volume, frequency and nature of the requests and correspondence, similarity of themes and the fact that the responses were met with a request for review the day after receipt of the response, along often with a further set of questions, it believed that this request was obsessive.
44. During his investigation the Commissioner invited the ICO to expand on its arguments in relation to this factor. The ICO indicated that it felt that the requests followed a similar theme, mainly concerning the work of it and the interpretation of the Data Protection Act 1998 applying the Act to very specific circumstances.
45. The Commissioner has considered the correspondence and notes that there are a number of examples where a response has been provided to a specific question and the complainant has repeated the same question again because she was dissatisfied with the answer provided. The Commissioner believes that looking at the request that at least elements [3], [4] and [6] fall into this category. The Commissioner believes that the persistent submission of similar requests in circumstances where it is clear that the ICO have made attempts to comply and regardless of the response received is obsessive. He therefore believes the ICO was correct in characterising this request as obsessive and finds in favour of the ICO on this factor.
46. When considering whether the request is obsessive the Commissioner's approach is also to consider whether the information request can also be seen to be manifestly unreasonable. He believes that when the request is viewed in conjunction with the evidence of the significant burden created and its harassing tone that it is also manifestly unreasonable.

Could a reasonable public authority refuse to comply with the request on the grounds that it is vexatious?

47. On the basis of the circumstances of this case, the Commissioner finds that a reasonable public authority would find the complainant's request of 23 September 2008 vexatious. In arriving at this decision, the Commissioner has had regard to the Information Tribunal's decision in *Mr J Welsh -v- the Information Commissioner* [EA/ 2007/0088], where the Tribunal commented that the threshold for vexatious requests need not be set too high. He notes that it is not necessary for every factor to be made out from his guidance. Indeed it is likely that in many circumstances only one factor may be enough to make a reasonable public authority find the request vexatious. In this case he has found that three factors

are satisfied in this case. The Commissioner's decision in this case therefore rests on the complainant's request causing a significant burden, while having the effect of harassing the ICO's staff and being obsessive.

The Decision

48. The Commissioner's decision is that the public authority dealt with the request for information in accordance with the Act.

Steps Required

49. The Commissioner requires no steps to be taken.

Other matters

50. The complainant specifically made a complaint about the internal review process in that it considered additional factors from the initial response and therefore could not be seen to be a review of the response itself. The Commissioner believes that this argument is based on a misunderstanding of the process. The internal review is meant to provide a mechanism for the public authority to consider its decision afresh. It is therefore a full merits review of the original decision. Paragraph 39 of the section 45 Code of Practice indicates that a public authority should reconsider its handling of the request both on procedural terms and in terms of the decision that it has made. Therefore it is always possible for the same exemption to be found to apply and for different arguments provided for the reason why. This shows that the ICO has in this case has actively reconsidered its handling of the request.
51. The Commissioner wishes to emphasise that any written question put to a public authority is technically an FOI request. If the request being framed as a question means that the public authority is unsure which piece of recorded information is sought by the complainant, they should seek to clarify this via s. 1(3) which may invoke their duties under s.16. However, the Act does not require public bodies to create information in response to questions.

Right of Appeal

52. 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@tribunals.gsi.gov.uk.
Website: www.informationtribunal.gov.uk

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.

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 20th day of October 2009

Signed

**Steve Wood
Assistant Commissioner**

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

Legal Annex

Section 1

General right of access to information held by public authorities

Section 1 of the Act provides that:

- (1) Any person making a request for information to a public authority is entitled—
 - (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
 - (b) if that is the case, to have that information communicated to him.
- (2) Subsection (1) has effect subject to the following provisions of this section and to the provisions of sections 2, 9, 12 and 14.
- (3) Where a public authority—
 - (a) reasonably requires further information in order to identify and locate the information requested, and
 - (b) has informed the applicant of that requirement,the authority is not obliged to comply with subsection (1) unless it is supplied with that further information.

Section 14

Vexatious or repeated requests

Section 14 of the Act provides that:

- (1) Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious.
- (2) Where a public authority has previously complied with a request for information which was made by any person, it is not obliged to comply with a subsequent identical or substantially similar request from that person unless a reasonable interval has elapsed between compliance with the previous request and the making of the current request.