

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 09 February 2010

Public Authority: The Insolvency Service (an executive agency of the Department for Business, Innovation and Skills)

Address: 21 Bloomsbury Street
London
WC1B 3QW

Summary

The complainant requested 'precise and detailed information' in respect of a number of issues relating to legal procedures and the responsibilities of an appointed Trustee in Bankruptcy. On receipt of the request the authority initially responded by stating it was a repeated request and refused to answer it on the basis of section 14(2) of the Act but then changed this to a refusal under section 14(1) of the Act (vexatious request). The Commissioner, on balance, considers that the public authority was correct to refuse the request under section 14(1).

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.

Background

2. The Commissioner notes that under the Act the Insolvency Service is not a public authority itself, but is actually an executive agency of the Department for Business, Innovation and Skills. Therefore, the public authority in this case is actually the Department, not the Insolvency Service. However, for the sake of clarity, this Decision Notice refers to the Insolvency Service as if it were the public authority.

3. The complainant originally requested the information from the Department for Constitutional Affairs (DCA) on 11 October 2006.
4. On 7 November 2006 the DCA advised the complainant that 'it is not clear from your email what specific information you are seeking ...but your request would appear to be more about the provisions of the Insolvency Act 1968 in relation to Trustees in Bankruptcy. The rules and legislation underpinning all of this are the responsibility of the Insolvency Service. You may wish to write to them.'
5. Following intervention of the Commissioner the complainant directed his request to the Insolvency Service.
6. The complainant has corresponded on this matter with the Insolvency Service and other bodies including the office of Alistair Darling, who was at that time the Secretary of State for the Department of Trade & Industry, since July 2006.

The Request

7. The complainant wrote to the Insolvency Service on 10 December 2007 with the following request:

"I would list the points as follows on which precise and detailed information is sought:

 - 1): Investigating a legal action against another party for responsibility for the incurring of a debt that the bankrupt had previously requested to be settled from funds in hand, but due to wrongful retaining of funds belonging to the bankrupt instead lead to a far greater claim of debt being incurred as a consequence.
 - 2): Responsibilities to reject an invalid claim in respect of a false creditor where there is clear evidence on record of various discrepancies in accounting and duplicate payments and overcharged fees.
 - 3): As an appointed officer of the court, although a private firm of accountants the basis of appointment by the Official Receiver on condition of acceptance or rules of the court Details of the Rules of the Court relating to such an appointment.
 - 4): Responsibilities to act fairly and impartially in dealing with false creditors and in presenting a true financial report to the Court concerning all matters relating to the alleged debt."
8. The complainant had previously contacted the Commissioner on 14 November 2007 to seek assistance in receiving a reply. The Commissioner therefore contacted the Insolvency Service on 15 January 2008 and asked it to respond to the complainant.

9. On 16 January 2008 the Insolvency Service advised the Commissioner that 'following protracted exchanges with [the complainant] a decision was taken in January 2007 that further correspondence would not be answered unless they raised new matters. [The complainant] was notified of this decision by letter dated 30 January 2007.'
10. The Commissioner advised the Insolvency Service on 16 January 2008 that under the Act the Insolvency Service is under an obligation to issue a proper refusal notice to any request made under the Act.
11. The Insolvency Service issued a refusal notice on 18 January 2008 stating 'the Insolvency Service is not obliged to comply with requests which are considered vexatious or repeated.' The Insolvency Service referred to both section 14(1) and 14(2) but simply cited section 14 as the reason for refusal.
12. The Commissioner took the decision that he would not ask the complainant to go back to the public authority and request an internal review. The complainant and the public authority had been in correspondence for two years on the matter and the public authority was adamant that it had supplied all the information it held on the matter.
13. The Commissioner instead corresponded directly with the public authority in an effort to establish precisely what exemption was being used and why. On 1 September 2009 the Insolvency Service contacted the complainant and the Commissioner to advise that it had further considered the request and it issued a further refusal notice relating to the request, this time citing section 14(1) alone.

The Investigation

Scope of the case

14. On 24 January 2008 the complainant contacted the Commissioner to complain about the way his request for information had been handled.
15. The Commissioner has investigated the use of both sections 14(1) and 14(2) of the Act. The Insolvency Service originally refused the request under section 14(2) of the Act but latterly sought to withhold the information using section 14(1).

Chronology

16. The Commissioner wrote to the Insolvency Service on 9 June 2009 to clarify its use of sections 14(1) and sections 14(2) of the Act.
17. The Insolvency Service responded on 29 June 2009 stating that it was relying on section 14(2) of the Act to refuse the request. It advised that its earlier letter dated 18 January 2008 to the complainant had a clear intention to engage section 14(2) of the Act when it stated 'your request dated 10 December 2007 is therefore refused under section 14 and all future requests for the same or substantially

similar information will not be acknowledged.' The Insolvency Service admitted that the refusal should contain the relevant sub-section but advised that its omission from this sentence was a typographical error. The Insolvency Service did not refer to section 14(1) in this letter.

18. The Commissioner wrote to the Insolvency Service on 25 August 2009 acknowledging its letter of 29 June 2009 and his receipt of a great deal of correspondence, both to and from the complainant. This included a list of some 26 questions raised by the complainant. The Commissioner accepted that the authority might feel that it had provided all it could in respect of the matter in hand but explained that in order to rely on section 14(2) it must be able to show that it had responded to an identical or substantially similar request and a reasonable interval had not elapsed between the requests. It is insufficient to state that it had already answered all questions previously put to it. The Commissioner asked the Insolvency Service to provide a copy of the 'identical or substantially similar request' to compare with the request in question.
19. On 1 September 2009 the Insolvency Service contacted the complainant and the Commissioner to advise that it had further considered the request and it issued a further notice relating to the request.
20. After further reviewing the details of correspondence, the Insolvency Service considered that the current request was manifestly unreasonable and therefore vexatious in nature. The request was therefore refused under section 14(1).

Analysis

Substantive Procedural Matters

Section 14(2)

21. Section 14(2) provides that 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.
22. The Commissioner accepts that the Insolvency Service has engaged in lengthy correspondence with the complainant concerning legal procedures and the responsibilities of appointed Trustees in Bankruptcy but in this case the public authority cannot identify an 'identical' or 'substantially similar' request from the complainant to which it previously responded. The Commissioner's view is therefore that the information was incorrectly refused under section 14(2) of the Act.

Section 14(1)

23. Section 14(1) provides that public authorities do not have to comply with vexatious requests. In deciding whether the complainant's request is vexatious the Commissioner must consider the following questions as set out in his published guidance entitled 'Vexatious and Repeated Requests'¹:
- a. Could the request fairly be seen as obsessive?
 - b. Did the request harass the public authority or cause distress to staff?
 - c. Would compliance with the request impose a significant burden in terms of expense and distraction?
 - d. Were the requests designed to cause disruption or annoyance?
 - e. Did the request lack any serious purpose or value?

Could the requests fairly be seen as obsessive?

24. The Commissioner's published guidance states:
"A request may not be vexatious in isolation, but when considered in context (for example if it is the latest in a long series of overlapping requests or other correspondence) it may form part of a wider pattern of behaviour that makes it vexatious."
25. The Commissioner understands that the complainant feels that he, and his family, have suffered great hardship and is sympathetic to their plight. The complainant has stated that he has had to sell his house to pay for legal fees in relation to the case which prompted the making of this request, and has, at some point in the past, allegedly been threatened with imprisonment. The Commissioner notes that although the complainant makes reference to this in his correspondence with the Commissioner he does not suggest that the Insolvency Service is to blame; rather it is the complainant's view that it has failed to act correctly in policing the activities of other bodies such as, in this case, the Association of Chartered Certified Accountants.
26. It is noted that the complainant has tried to pursue his complaints via a number of avenues and yet despite this, it is ultimately the Insolvency Service that has been asked to respond to these complaints. The Commissioner can see that this has caused frustration on both the part of the complainant and the public authority. The Commissioner must, however, look at this request in the context of the Act alone.
27. The Commissioner accepts that there is a fine line between persistence and a request being obsessive or manifestly unreasonable. In this instance, the Commissioner believes that the complainant has overstepped this line by using the Act to force the public body to visit an issue that it has already considered. This in itself led the public authority to consider, in the first instance, the exemption at section 14(2).

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http://www.ico.gov.uk/upload/documents/library/freedom_of_information/detailed_specialist_guides/awareness_guidance_22_vexatious_and_repeated_requests_final.pdf

28. The Insolvency Service has provided the Commissioner with copies of correspondence dating back to July 2006. The complainant has written to the public authority at regular intervals in relation to the same and related issues, sometimes several times in one month; as an illustration of this the Insolvency Service has provided copies of correspondence from the complainant dated:
- 4 September 2006
 - 12 September 2006
 - 14 September 2006
 - 18 September 2006
 - 30 September 2006
29. As well as the frequency of the contact the Commissioner notes that over the period of time in question the complainant's correspondence has been voluminous. The evidence also shows that the complainant asked a great number of separate questions prior to the public authority's decision to refuse to correspond with him and it would appear that prior to this decision the public authority responded to all enquiries and attempted to fully answer the questions raised.
30. On balance the Commissioner finds that the level of correspondence could objectively be viewed as excessive and obsessive.

Does the request have the effect of harassing the public authority or causing distress to staff?

31. The Commissioner acknowledges that there will often be an element of overlap between various vexatious criteria. For instance, where a request is considered obsessive, it may be the case that it will have the effect of harassing a public authority. Whilst the complainant may not have intended to cause distress, the Commissioner must consider whether this was the effect. This is an objective test, based on whether a reasonable person would be likely to regard the request as harassing or distressing.
32. On the whole, and certainly during the initial stages of contact, the complainant uses measured, reasonable and professional language. However, as his attempts to gain more information became frustrated his language began to become more confrontational. The complainant made comments about the public authority's "feeble and pathetic excuses" and stated that they were not acting in a "just and honourable manner". He further stated that there was a "basic lack of common decency and honesty" in the professional bodies involved, including the Insolvency Service.
33. In a letter to Mr Alistair Darling MP, the complainant referred to a letter sent by the Deputy Section Head of the Insolvency Practitioner Team, part of the Insolvency Service, and describes it as "total nonsense" containing "not a single element of truth". He suggests that the Insolvency Service has "resorted to tactics of falsehood together with deliberate perversion of the basis of established law".

34. The Commissioner appreciates that the emotive terms used are likely the result of frustration borne out of a failure to succeed in obtaining what the complainant believes to be justice. The Commissioner notes that the complainant believes that the claim that his requests are now vexatious is an 'audacity and further mockery of the law' in comparison to 'abuses' to which he has been subjected over a considerable period of time.
35. The Commissioner can see no evidence to suggest that the public body has acted in any way other than professional and courteous in its dealings with the complainant. Given the length of time that the Insolvency Service has been dealing with this matter and the nature of the enquiries the Commissioner believes it is reasonable to conclude that the effect of the request would be to harass the public authority and its staff.

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

36. The Act was enacted to assist people in seeking access to recorded information held by public authorities. However it was not the intention of the Act to distract public authorities unreasonably from their other duties or for public money to be spent unproductively.
37. When considering if this factor applies, the Commissioner would expect a public authority to be able to show that complying with the request would cause a significant burden in terms of both costs and diverting staff away from their core functions.
38. In the Information Tribunal Case of *Coggins v The Information Commissioner* (EA/2007/0130), the Tribunal found that a "significant administrative burden" was caused by the complainant's correspondence to the public authority that started in March 2005 and continued until the authority's application of section 14(1) in May 2007. Similarly, in this case the Insolvency Service has responded to the complainant's correspondence over a sustained period dating back to 2006.
39. The Tribunal in the Coggins case made the following statement which can equally be applied to this case; the correspondence was "long, detailed and overlapping in the sense that he wrote on the same matters to a number of different officers, repeating requests...the Tribunal was of the view that dealing with this correspondence would have been a significant distraction from its core functions".
40. The complainant has demonstrated that when he is unhappy with any response received from a public authority he will continue to correspond in an effort to sway the public authority to respond in a manner more to his liking. It must therefore be accepted that although the public authority 'may' be able to provide a response to the complainant on this one issue, it would seem reasonable for the Insolvency Service to consider that compliance would lead to further correspondence, thereby imposing a significant burden.

Was the request designed to cause disruption or annoyance?

41. As discussed in the Commissioner's published guidance, this factor relates to a requester's intention and can therefore be difficult to prove. The Commissioner is mindful of the fact that under the Act the purpose behind any request is not a relevant factor. However, in examining the intent of the requester the Commissioner is considering the effect of complying with the request rather than questioning why he wants the information.
42. The public authority has not suggested that the request was 'intended' to cause disruption and annoyance. The Commissioner has not been presented with any evidence to suggest that this factor needs to be considered in this particular case.

Does the request lack any serious purpose or value?

43. By itself, whether a request has value is not of significance given that the Act is not concerned with the motives of an applicant, but in promoting transparency for its own sake. However, the Commissioner acknowledges that should any authority be able to show that a request has no value or purpose, this may help bolster the application of section 14(1) when taken together with other supporting factors.
44. The public authority has not presented any argument to suggest that the request is trivial. Indeed both the Insolvency Service and the Commissioner recognise that the matters surrounding the request are important to the complainant and as such the Commissioner does not feel that this factor needs further examination in this case.
45. The Commissioner has also considered the request in the light of the following comments of the Information Tribunal in *Coggins*; "...the Tribunal could imagine circumstances in which a request might be said to create a significant burden and indeed have the effect of harassing the public authority and yet, given its serious and proper purpose ought not to be deemed vexatious..."

Was the request vexatious?

46. In this case there was no evidence presented to the Commissioner to suggest that the wider significance of the request is of such importance that despite the request possibly being vexatious in nature it should still be complied with and not be considered vexatious within the meaning of the Act.
47. The Commissioner recognises that there is a fine balancing act between protecting a public authority from frivolous applications and the promotion of the transparency in the workings of an authority.
48. The Commissioner has considered all the evidence presented, including the history and context of the request. The Commissioner accepts that the complainant had genuine concerns about the Insolvency Service's actions but it is also clear from the evidence that the complainant pursued his concerns to an unreasonable extent. The Commissioner believes that the level of correspondence was obsessive leading to the harassment of the public

authority's staff. It is therefore fair to state that this particular request can be deemed as vexatious.

49. The Commissioner considers that the obsessive nature of the request, when taken in the context of the previous correspondence, and its impact on the public authority and its staff is sufficient for the request to be deemed as vexatious.

Procedural requirements

50. The complainant submitted his request on 10 December 2007 but the Insolvency Service did not issue a refusal notice until 18 January 2008. Section 17(5) of the Act provides that when a public authority is relying on a claim that section 14 applies it must give the applicant a notice stating that fact within 20 working days. As the notice relying on section 14 was issued outside of 20 working days, the Insolvency Service therefore breached section 17(5) of the Act.

The Decision

51. The Commissioner's decision is that the public authority dealt with the following element of the request in accordance with the requirements of the Act:

- Withholding the information using section 14(1) of the Act.

However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:

- Withholding the information using section 14(2) of the Act, and
- Breaching section 17(5) of the Act.

Steps Required

52. The Commissioner requires no steps to be taken.

Other Matters

53. Although it does not form part of this Decision Notice the Commissioner wishes to highlight the following matter of concern:

The Commissioner feels that the public authority should be clearer when citing section 14 as a refusal that it also specifies on which of its subsections it is relying.

Right of Appeal

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

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
Arnhem House,
31, Waterloo Way,
LEICESTER,
LE1 8DJ

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 9th day of February 2010

Signed

**Anne Jones
Assistant Commissioner**

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

Legal Annex

General Right of Access

Section 1(1) provides that -

“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.”

Section 1(2) provides that -

“Subsection (1) has the effect subject to the following provisions of this section and to the provisions of sections 2, 9, 12 and 14.”

Section 1(3) provides that –

“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 1(4) provides that –

“The information –

(a) in respect of which the applicant is to be informed under subsection (1)(a), or

(b) which is to be communicated under subsection (1)(b),

is the information in question held at the time when the request is received, except that account may be taken of any amendment or deletion made between that time and the time when the information is to be communicated under subsection (1)(b), being an amendment or deletion that would have been made regardless of the receipt of the request.”

Section 1(5) provides that –

“A public authority is to be taken to have complied with subsection (1)(a) in relation to any information if it has communicated the information to the applicant in accordance with subsection (1)(b).”

Section 1(6) provides that –

“In this Act, the duty of a public authority to comply with subsection (1)(a) is referred to as “the duty to confirm or deny”.”

Time for Compliance

Section 10(1) provides that –

“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.”

Vexatious or Repeated Requests

Section 14(1) provides that –

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

Section 14(2) provides that –

“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 a previous request and the making of the current request.”

Refusal of Request

Section 17(5) provides that –

“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.”