

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 8 November 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 made a request to the Insolvency Service (the 'Service') for information relating to bankruptcies. Owing to the context and history of the request, the Service determined that it should be deemed vexatious for the purposes of section 14(1) of the Freedom of Information Act 2000. The Commissioner has investigated and has found that the Service was entitled to rely on section 14(1). The Service is therefore not required to take any steps in this matter.

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. In 2006, the complainant was declared bankrupt on a creditors' petition. In granting the bankruptcy, the Court decided that the complainant owed money to above the minimum bankruptcy level of £750.

3. Since then, the complainant has criticised the role of the Court, the Official Receiver and the Insolvency Service (the 'Service') in this action. Particularly, the complainant has suggested that the steps taken against him, and the alleged failure of the various parties to support him, have violated a principal human right.
4. In addition, the complainant has questioned whether the decision to grant the bankruptcy order was in itself proportional and claimed that the bankruptcy level of £750 is an inadequate minimum threshold.

The Request

5. The Commissioner notes that under the Act the Service is not a public authority itself but is actually an executive agency of the Department for Business, Innovation and Skills (BIS). Therefore, the public authority in this case is BIS and not the Service. However, for the sake of clarity, this Decision Notice refers to the Service as if it were the public authority.
6. On 20 February 2010 the complainant submitted the following information request to the Insolvency Service:

"Please let me know, how many individuals have been made Bankrupt under the Insolvency Act 1986 and for which years?"

I also need to know for each year, how many applications were made by 'creditors' who were owed £750, or more?"

Of that number, how many applications were granted? How many of those were issued without a hearing at which the person bankrupted was allowed a defence of solvency? Or, to put it another way, how many people who were able to pay their debts were still forced into bankruptcy by the Courts on such applications? Surely this violates human rights?"

In April 2008 the Local Government Ombudsman (J White, when dealing with a complaint about Wolverhampton Council), also pointed out, quite rightly, that 'The dire and punitive consequences of bankruptcy, involving a multiplication of the original debt many times over, and frequently incurring the loss of the debtor's home), must be a factor to be taken into account.'" Although he blamed the Council for pursuing this man, it was the Court and the Official Receiver or the Insolvency Service which also failed to take this into account.

Given that the Insolvency Services' own Manual states that 'proportionality' which is what the above was speaking about, is a relevant consideration, what has the Insolvency Service or the Minister responsible for you, done about such cases?

Did the man in the case above get his annulment and if so when? Has every other person declared bankrupt in similar cases been informed that they too will receive annulments? If not why not?

Isn't this a right under the law? Under Article 7 of the Universal Declaration – 'All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal discrimination in violation of this Declaration and against any incitement to such discrimination.'

I assume this appears somewhere in the European Convention and the Human Rights Act, therefore if the Insolvency Service knows that this man, who was entitled to it, has had any annulment of his Bankruptcy, then if it fails to do anything to ensure others don't get one, they must be guilty of discrimination. Wouldn't you agree?

What is the Insolvency's Service's instruction to its staff on this, or on how to address such issues since 2008?"

7. The Service issued a refusal notice on 12 March 2010. This stated that it was refusing to comply with the request pursuant to the exclusion contained at section 14(1) of the Act. As part of its response, the Service included an annex which recorded a history of its communications with the complainant.
8. On the same day, the complainant requested that the Service review its refusal. In correspondence dated 8 April 2010, the Service informed the complainant that it had upheld its original decision to refuse the request under section 14(1) of the Act.

The Investigation

Scope of the case

9. On 13 April 2010 the complainant contacted the Commissioner to complain about the Service's decision to refuse his request under section 14(1) of the Act.

10. The complainant has also objected to the Service's refusal to issue its response to the whatdotheyknow.com website – the domain from which the request was submitted – on the basis that to do so could breach the Data Protection Act 1998. Instead, the Service emailed its response to the complainant's personal email address.
11. The Commissioner, however, is not aware of any suggestion that the complainant was unable to access the responses provided by the Service. As the steps taken by the Service would not therefore seem to materially affect the case, and indeed might be deemed sensible on this occasion given the authority's concerns, the Commissioner has not considered it necessary to comment further on this issue in the body of the Notice.
12. Accordingly, the Commissioner's decision only relates to the application of section 14(1) by the Service.

Chronology

13. In correspondence of 9 July 2010, the Commissioner asked the Service to demonstrate in greater detail why section 14(1) of the Act would apply, making reference to his published guidance on this issue (Awareness Guidance No. 22 'Vexatious or repeated requests').
14. The Service responded on 6 August 2010. To support its position that the request was vexatious, the Service provided a snapshot of the communications exchanged between the parties. It also explained in greater depth how the request met the various criteria included in the Commissioner's guidance for determining vexatiousness.

Analysis

Substantive Procedural Matters

15. In deciding this case, the Commissioner has taken into account the submissions of both the public authority and the complainant. Full extracts of the relevant legislation considered in the case can also be found in the Legal Annex attached to this notice.
16. As part of its response to the Commissioner, the Service has indicated that there may be grounds for considering that section 14(2) would apply to certain elements of the request. This exclusion holds that a public authority is not obliged to comply with a request where a substantially similar request has previously been dealt with.

17. However, the Service has confirmed that it is only seeking to rely on section 14(1) in refusing the request. The Commissioner has therefore judged the merit of its position on this basis alone and has not gone on to consider whether section 14(2) may also be engaged.

Section 14(1) – vexatious request

18. Section 14(1) provides that a public authority does not have a duty to comply with a request where it may be considered vexatious. As a general principle the Commissioner considers that this section of the Act is meant to serve as protection to public authorities against those who may abuse the right to seek information.
19. The Commissioner understands that determining whether a request is vexatious is essentially a balancing exercise. When weighing up this issue, and in keeping with the structure of previous decisions concerned with the application of section 14(1), the Commissioner has considered the following questions instructive:
- Could the request fairly be seen as obsessive or manifestly unreasonable?
 - Is the request harassing the authority or causing distress to staff?
 - Would complying with the request impose a significant burden in terms of expense and distraction?
 - Is the request designed to cause disruption or annoyance?
 - Does the request lack any serious purpose or value?
20. In establishing which, if any, of these factors apply, the Commissioner will consider the history and context of the request. In certain cases, a request may not be vexatious in isolation but when considered in context it may form a wider pattern of behaviour that makes it vexatious. The Commissioner recognises, however, that it is the request and not the requester that must be vexatious for the exclusion to be engaged.
21. The Commissioner has also had regard to the Information Tribunal's decision in *Mr MJ Hossack v the Information Commissioner (EA/2007/0024)*. In that case, the Tribunal spoke of the consequences of deeming a request vexatious. It accepted 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.

Could the request fairly be seen as obsessive or manifestly unreasonable?

22. An obsessive request or a request that is manifestly unreasonable is often a strong indication of vexatiousness. Contributory factors can include the volume and frequency of correspondence and whether there is a clear intention to use the request to reopen issues that have already been debated.
23. To counter the Service's claim that his request should be seen as obsessive, the complainant has offered the following arguments:
 - That the detrimental effect of being declared bankrupt means that he will have a greater interest in the processes and areas of law associated with making someone bankrupt. This has particular resonance given the complainant's strong criticism of the Court's decision to grant the bankruptcy order.
 - That, in any event, the Service has erroneously conflated the issues around the complainant being declared bankrupt and his arising complaints and the information request in question which seeks to obtain 'national' data which may serve to inform the public.
24. The Commissioner has no doubt that the process of being declared bankrupt, particularly when that bankruptcy is contested, will be distressing. To this extent, there would appear to be a legitimate expectation that an individual subject to such action will have a serious, and probably heightened, interest in the mechanisms involved in making someone bankrupt.
25. The Commissioner would also consider that the relatively complex legal systems in this area may mean that a layman will require significant guidance, which could result in a series of enquiries being made. To refer to the Commissioner's vexatious guidance:

"...a request will not automatically be vexatious simply because it is made in the context of a dispute or forms part of a series of requests. There may be genuine reasons for this. For example, a series of successive linked requests may be necessary where disclosures are unclear or raise further questions that the requester could not have foreseen. Similarly, in the context of a dispute, a request may be a reasonable way to obtain new information not otherwise available to the individual."
26. However, the Commissioner is mindful that there must be a limit to such dialogue. Following the complainant's bankruptcy in late 2006, he has been in regular contact with the Service about this issue. Although

the communications have not, for the most part, strictly taken the form of information requests, they nevertheless require the Service to locate information or comment on specific matters relating to bankruptcies.

27. In addition, the Commissioner understands that the complainant has written to his MP on 7 occasions about the bankruptcy procedures in place in England and Wales. These complaints have been referred to the Minister responsible for the Service and, ultimately, been fielded by officials in the Service in order to ensure that a suitable response can be provided.
28. When considering the volume of correspondence that has passed between the parties, the Commissioner is not persuaded by the complainant's argument that the history of communications relating to his own bankruptcy should be separated from the request being considered here; whether requested information can be considered of public interest does not in itself preclude the possibility that a request can be vexatious.
29. In this instance, the Commissioner has no doubt that the request in question forms part of the complainant's ongoing campaign against being declared bankrupt. This, the Commissioner considers, is evidenced in the wording of the request itself. For example, the complainant invites the Service to admit to its own culpabilities in an area, namely the issue of annulments, which feeds directly into one strand of his own complaint:

"...therefore if the Insolvency Service knows that this man, who was entitled to it, has had an annulment of his Bankruptcy, then if it fails to do anything to ensure others don't get one, then they must be guilty of discrimination. Wouldn't you agree?"
30. The request also returns to the incompatibility of the bankruptcy legislation and the Human Rights Act (HRA), which is a recurrent theme of the complainant's correspondence with the Service. The Commissioner is satisfied that, to quote the Service, the complainant has *"been advised on several occasions that [in the view of the Service] the Insolvency Act is not incompatible with the Human Rights Act, that the Bankruptcy level is under consideration, and that the matters he raises related to his bankruptcy can only be dealt with through the Courts."*
31. The Commissioner further understands that, in light of the complainant's obvious disagreement with the role of the Service in his bankruptcy and its views on the compatibility of the Insolvency Act and the HRA, his concerns have been dealt with at every level of the

- Service's complaints procedure. This included the referral of the complainant to a Regional Director at the Service.
32. In accordance with the Service's complaints procedure, the Director notified the complainant that, in the event that he remained dissatisfied, he would be entitled to raise the matter with the Adjudicator's Office. The Director also noted that any alleged breach of the HRA could only be addressed through the courts.
 33. The Commissioner is not aware of any evidence to suggest that the complainant has pursued either course of action. However, irrespective of whether the complainant has chosen to do so, it is clear that despite being offered the opportunity for redress through a third-party, the complainant has continued to contact the Service in order to advance his own investigation.
 34. To echo the Commissioner's findings in FS50234985, involving Blackpool, Fylde and Wyre Hospitals NHS Trust, 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 stepped over this line by using the Act to force the Trust to visit an issue that it has already considered; an issue that can be looked at by an objective body."*
 35. Similarly, this point has also been addressed by the Information Tribunal in *Michael Jacobs v the Information Commissioner (EA/2010/0041)*. In setting out its understanding of vexatiousness, the Tribunal commented that:

"The similarity with previous requests or correspondence will have particular relevance if the information request under consideration appears to have been principally intended to reprise an earlier debate with the public authority, especially one on which the public authority has already provided as complete response as may reasonably be expected."
 36. What is more, the Commissioner believes that the history and context of the request instil little confidence that compliance would not simply have led to further correspondence on the same subject.
 37. Bearing these considerations in mind, the Commissioner believes there is a cogent case for deeming the request obsessive.

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

38. The Commissioner acknowledges that there will often be an element of overlap between the 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. This is an objective test, based on whether a reasonable person would be likely to regard the request as distressing or harassing.
39. The Commissioner has taken into account the likelihood that a response ending the ongoing exchange of correspondence could ever realistically be provided. In addition, the Commissioner has considered some of the provocative comments aimed at staff within the Service, For example, in an email of 9 July 2007 to the Regional Director, the complainant counselled that:
- "I have an unqualified right to a 'fair and impartial hearing' and by any definition I still haven't had one, so if the Admin Court doesn't quash these orders I have a right to go to the European Court of Human Rights, so you should not be enforcing this order. To do so is no better than the Nazis 'following orders'."*
40. The Commissioner appreciates the emotive terms would likely be the result of frustration. The Commissioner would also be keen not to over-emphasise the antagonistic nature of the complainant's contact with the Service. As the Tribunal noted in *Jacobs*, *"Particular care must be taken when assessing the tone of correspondence in the broader context..."*
41. However, given the length of time that the Service has been dealing with this issue – which essentially refers back to the complainant's own bankruptcy – the Commissioner believes it reasonable to conclude that the effect of the request would be to harass the public authority or its staff.
42. When coming to this determination, the Commissioner has again returned to the Information Tribunal's decision in *Jacobs* for guidance. In particular, the Commissioner has considered the following point made by the Tribunal to be applicable to the case presented here:
- "The terms in which the information request is expressed may be a particularly relevant factor to take into account. For example the language used may reinforce the suspicion that, by reason of its similarity with earlier requests or debates...it is simply to reopen or continue an earlier dispute. We found that in this case the language*

used in the Request betrayed the Appellant's intention, which was not really to obtain information but to trap the public authority into making an admission that the Appellant felt would be to his advantage in some other context, or to embarrass the Insolvency Service in some other way."

43. While the Commissioner does not believe there is sufficient evidence to suggest that the complainant is not serious in seeking information, he finds that, by making the request, the complainant has also demonstrated his wish to embarrass the Service by highlighting alleged flaws in its decision-making.
44. In making this finding, the Commissioner understands that a public authority should not be over-protected, and should expect to be exposed to *"an element of robust and persistent questioning, sometimes articulated in fairly critical tones"* (Jacobs). Nevertheless, the Commissioner considers that, bearing in mind the history of the request, it is fair to deem this factor as weighing in favour of the application of section 14(1).

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

45. When considering this factor, the Commissioner endorses the approach taken by the Information Tribunal in *Mr J Welsh v the Information Commissioner (EA/2007/0088)*. In this case, the Tribunal considered that whether a request constitutes a significant burden is:

"...not just a question of financial resources but also includes issues of diversion and distraction from other work..."

46. In the Information Tribunal case of *RH Coggins v the Information Commissioner (EA/2007/0130)*, the Tribunal found that a *"significant administrative burden"* was caused by the complainant's correspondence with the public authority that started in March 2005 and continued until the authority's application of section 14(1) in May 2007. Similarly, the Service has had to deal with the complainant's correspondence over a sustained period.
47. Leading on from the decision in *Coggins*, it may be noted that while complying with a specific request may not be resource-intensive when considered in isolation, a request may nevertheless be perceived as imposing a significant burden when taking into account the history of the request and the probability that compliance would lead to further queries or correspondence.

48. In this sense, the Commissioner considers that the request would likely impose a significant burden on the Service. However, as the Service has not specifically addressed this factor, the Commissioner has not felt that this factor has warranted further examination.

Was the request designed to cause disruption or annoyance?

49. To refer to the Commissioner's published guidance:

"As this factor relates to the requester's intention, it can be difficult to prove. Cases where this is a strong argument are therefore likely to be rare. However, if a requester explicitly states that they want to cause maximum inconvenience, the request will almost certainly be vexatious."

50. To support its position that the request was designed to cause disruption and annoyance, the Service has pointed to the level and nature of the complainant's contact with the authority:

"On every occasion that the Service responded to [the complainant] addressing the [complaints/requests], he responds by raising further arguments and disputes information has been given. Within these responses he offers opinion and speculation in an apparent effort to engage in debate about matters which The Service has no authority to comment on or power to change."

51. Although he has borne in mind the Service's arguments, the Commissioner has not been presented with any evidence that illustrates that the disruption or annoyance caused was intended. Therefore, in the absence of proof demonstrating that the request was designed to disrupt, the Commissioner is not convinced that this factor would support any claim of vexatiousness.

Does the request lack any serious purpose or value?

52. The Commissioner acknowledges that the Act is not concerned with the motives of an applicant, but in promoting transparency for its own sake. Nevertheless, if a public authority can demonstrate that a request lacks any serious purpose or value, this may help reinforce its application of section 14(1).
53. In this instance, the Commissioner has no doubt that the complainant was, and continues to be, driven by a genuine desire to expose flaws in the way that the bankruptcy legislation operated, specifically in regards to his own case.

54. However, the Commissioner is mindful of the Information Tribunal's decision in *Coggins*. The Tribunal observed that, although the kernel of the appellant's agenda had a serious and proper purpose, there "*came a point when the Appellant should have let the matter drop...in the Tribunal's view [the appellant] was not justified in the circumstances to persist with his campaign...*"
55. The Commissioner considers that, to a greater extent, the serious purpose or value that the complainant originally had in contacting the Service has been undermined by the length of time over which his communications have taken place. The Commissioner has also considered that the Service has informed the complainant that, ultimately, his grievances cannot be resolved by the authority. Instead, the complainant has been instructed that the matters he raises can only be addressed in court or, where a particular complaint is being made against the Service, the Adjudicator's Office.
56. Yet, the Commissioner recognises the fundamental point that, even where an applicant pursues an issue in what can be considered an excessive or inappropriate manner, this does not necessarily equate to a request submitted by the applicant as lacking serious purpose. The Commissioner has concluded, however, that the serious purpose the request does hold has been undermined by other factors, particularly the obsessive nature of the request.

Conclusion

57. On the basis of the circumstances of the case, the Commissioner has determined that a reasonable public authority would find the complainant's request of 20 February 2010 vexatious.
58. The Commissioner is prepared to accept that the complainant has genuine, and understandable, concerns about the systems overseeing the granting of bankruptcies. As the Information Tribunal stated in *Jacobs*:
- "The pursuit of information on a trivial matter may justify much less persistence and vigorous persuasion, before it may properly be characterised as vexatious, than would be the case where the underlying subject matter is of great significance."*
59. However, the Commissioner considers that the complainant pursued his agenda to an unreasonable extent. In particular, owing to the nature and volume of the complainant's communications with the Service, there is sufficient evidence to support the Service's claim that

the pattern of the correspondence was obsessive which, in turn, led to the harassment of the public authority.

The Decision

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

Steps Required

61. The Commissioner requires no steps to be taken.

Right of Appeal

62. 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,
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 sent.

Dated the 8th day of November 2010

Signed

**Pamela Clements
Group Manager, Complaints Resolution**

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

Legal Annex

S.1 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.”

S.14 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.”