

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 28 March 2011

Public Authority: Legal Services Commission
Address: 4 Abbey Orchard Street
London
SW1P 2BS

Summary

The complainant requested information regarding the Chief Executive of the Legal Services Commission ('the LSC'), the Magee review and his report. The LSC responded by providing some information in the normal course of business and refusing to provide further information on the grounds that the request was vexatious and therefore excluded under section 14(1) of the Freedom of Information Act 2000 ('the FOIA'). The Commissioner has investigated and finds that the LSC correctly applied 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.

The Request

2. On 22 April 2010 the complainant made the following request for information to the Legal Services Commission ('the LSC') addressed specifically to the Chief Executive:

"1. Please can you advise us as to whether you are still an employee of the Ministry of Justice ('MoJ') and are on secondment from the MoJ or whether your employment by the MoJ has ceased?

2. If you are still an employee of the MoJ what measures have been taken or otherwise exist to ensure that you do not have access to and

matters are not referred to you which may involve claims against the MoJ – including and more generally the procedures regarding section 20 of the Access to Justice Act 1999.

3. Please can you arrange for us to be provided under the Freedom of Information Act with the recorded information held by the LSC regarding:

(a) the Magee review and his report including the MoJ announcement of the abolition of the LSC/move to Agency status;

(b) the resignation of [a named person]; and

(c) your appointment as Chief Executive."

3. On 26 May 2010 the LSC responded providing information on the first and second points of the request. The LSC relied on the exclusion found in section 14(1) to refuse to provide the information requested in point 3a,b and c. However the complainant was directed to a website which contained information relevant to point 3a of the request already in the public domain.
4. On 20 July 2010 the complainant wrote to the LSC expressing his dissatisfaction in respect of its response. He asked further questions and requested an internal review. The complainant stated: "The information sought is, as you well know, above that already in the public domain and that is why it has been requested."
5. On 20 August 2010 LSC provided its internal review which stated that it was satisfied that the provisions of the FOIA had been complied with and therefore that s14(1) had been appropriately applied. It stated that the information relating to the Magee review and its move to agency status [point 3(a)] is already in the public domain and available on the MoJ website and relied on the exemption found in section 21 to refuse to provide further information. The LSC also considered that elements of the request "could be considered vexatious" but it would provide "further background information" appertaining to the request. This further information was provided to the complainant along with the outcome of the internal review.

The Investigation

Scope of the Case

6. On 25 May 2010 the complainant contacted the Commissioner to complain that he had not received a response to his request for information.
7. On 19 July 2010 the Commissioner wrote to the complainant explaining that he should exhaust the LSC's internal review procedure before providing his office with the required documentation.
8. On 3 September 2010 the complainant contacted the Commissioner again to complain about the way his request for information had been handled and requested that a Decision Notice is issued.
9. The LSC has explained to the Commissioner that in responding to the complainant's request it provided the information requested in points 1 and 2 as part of the normal course of business. The Commissioner considers that any request for information is a request under the FOIA, however, he notes that the complainant specifically asked for only the third point of his request to be considered as an FOIA request. In considering the continuous dialogue between the two parties the Commissioner understands that it is not unusual for the LSC to deal with the first two points outside of the FOIA. The Commissioner therefore focused on the third part of the request for recorded information which attracted the application of section 14.
10. The complainant also raised other issues that are not addressed in this Notice because they are not requirements of Part 1 of the Act.

Chronology

11. On 10 December 2010 the Commissioner asked the LSC to provide any information it wished him to consider with regards to its application of section 14 (1) and section 21.
12. On 12 January 2011 the LSC provided a response to the Commissioner followed by a further response on 9 February 2011.
13. On 15 February 2011 the Commissioner requested further specific information from the LSC.
14. On 22 February 2011 the LSC replied but did not provide the information requested by the Commissioner on 15 February 2011.

15. On 24 February 2011 the Commissioner wrote again to the LSC requesting clarification and a full justification of its application of any provision of the Act it determined applicable in this case.
16. On 9 March 2011 the LSC provided the Commissioner with its reasoning in application of section 14(1).

Analysis

Substantive Procedural Matters

Exclusion

Section 14(1) – Vexatious Request

17. 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.
18. Deciding whether a request is vexatious is essentially a balancing exercise and, in weighing up this issue, the Commissioner has considered the following factors:
 - Could the request fairly be seen as obsessive?
 - Is the request harassing the authority or distressing 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?
19. 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.

Could the request fairly be seen as obsessive?

20. An obsessive request 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.

21. The LSC provided the Commissioner with a spreadsheet indicating the FOIA requests made by the complainant during 2010. The seventeen requests detailed there form only part of the correspondence between the two parties. In addition the LSC has provided documentation of over 200 instances of 'other' correspondence recorded since 2000 with over 80 instances in 2010. The Commissioner agrees that the correspondence is considerable (even when not taking into account correspondence which post-dates the request in this case) and the tone of some of the correspondence can be considered to be haranguing.
22. The Commissioner is of the opinion that the request was made by the complainant with the intention to pursue his appraisal of the LSC's performance to which he refers in his request for an internal review:

"As you will be well aware the performance of the LSC has been a matter of considerable concern and we refer you to the uncorrected evidence of the Justice Select Committee of 10.03.2010;"
23. The complainant's request for an internal review lists numerous speculative questions in respect of the information provided as normal course of business, to demonstrate his dissatisfaction with the information given. This approach taken by the complainant is indicative of his general approach of a continuous dialogue with the LSC through which he introduces further associated matters in the developing correspondence.
24. In considering the above the Commissioner finds that this factor is supportive of the LSC's application of section 14(1).

Is the request harassing the authority or distressing to staff?

25. The Commissioner's guidance on this factor also refers to the volume and frequency of correspondence as being relevant issues alongside the use of hostile, abusive or offensive language and mingling requests with accusations and complaints.
26. The LSC explained to the Commissioner that it has discerned a pattern of behaviour by the complainant regarding his references to members of the LSC's staff; such that a member of staff named in a communication becomes the focus of further correspondence which is personal and causes distress to the staff member due to its "accusatory nature".
27. The Commissioner is aware of the history of the complainant's history of correspondence commenting on the LSC's former Chief Executives and his questioning of the current Chief Executive appears to be following the same pattern. The complainant has also attempted to institute criminal proceedings against the previous Chief Executive and disciplinary proceedings against three senior LSC lawyers. The

Commissioner cannot comment specifically on these matters however, he acknowledges that the LSC and its staff would interpret this as harassing behaviour resulting in distress and concern regarding contact with the complainant. The LSC has informed the Commissioner that it has communicated its concern regarding the effect of the complainant's behaviour on its staff by letter to the complainant from 2007 to date but this has not led to any moderation in his behaviour.

28. The LSC explained to the Commissioner that it had restricted the complainant's communication access to correspondence by post at the time of the request, due to the "disturbing nature" of his previous correspondence. The LSC has not provided specific examples of the "disturbing" correspondence, however, in considering the correspondence provided by the complainant the Commissioner notes the censorious and, in his view, its derogatory tone.
29. The Commissioner is satisfied that this factor supports the LSC's application of section 14(1).

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

30. The Commissioner has already referenced the volume of correspondence between the two parties. The Commissioner is aware that the LSC considered the application of section 12 [Cost of Compliance] with respect to point 3 (a) of the request. However, in relying on section 14(1) the LSC did not go on to provide the Commissioner with any further breakdown in support of relying on section 12 or the presumed burden it would create. Because the LSC has not relied on section 12 of the Act, the Commissioner does not require an estimate of the costs of complying with the request.
31. In considering whether this individual request imposed a significant burden the Commissioner is minded to refer to the Tribunal decision in *Mr G Betts v Information Commissioner (EA/2007/0109)* which concluded that although there was nothing vexatious in the content of the specific request itself there had been a dispute between the public authority and the requester which had resulted in ongoing FOIA requests and persistent correspondence over two years. Although the latest request was not vexatious in isolation, the Tribunal considered that it was vexatious when viewed in context. It was a continuation of a pattern of behaviour and part of an ongoing campaign to pressure the public authority. The request on its own may have been simple, but experience showed it was very likely to lead to further correspondence, requests and complaints. Given the wider context and history, the Tribunal concluded that the request was harassing, likely to impose a significant burden, and obsessive. The Commissioner's opinion is that there is an

analogy here with this case. He has concluded that the FOIA requests, numerous other requests for information, other correspondence and complaints together form a significant burden.

32. Therefore the Commissioner's opinion is that this factor also supports the LSC's application of section 14(1).

Is the request designed to cause disruption or annoyance?

33. This question necessitates evidence to demonstrate it was the specific intention of the complainant to cause annoyance and disruption.
34. The Commissioner was not persuaded that he was presented with any evidence or argument demonstrating that it was the complainant's specific intention to cause annoyance or disruption. The Commissioner accepts that the complainant's request may have caused disruption and annoyance to the LSC against the background established above and the specific nature of the request. However, in the absence of evidence that this was the intention of the complainant, the Commissioner finds that this factor does not support the LSC's application of section 14(1).

Does the request lack any serious purpose or value?

35. The LSC has not considered this factor in support of its application of section 14(1). It considered that the request was made with the intention to harass because the nature of the request concerning the current Chief Executive is of the same as previous requests and correspondence about the Chief Executive incumbent at the time of those requests.
36. The Commissioner has insufficient evidence to determine whether or not the complainant has a serious purpose in this request. It forms part of his on-going matters with the LSC. The complainant has stated that the appointment of a Chief Executive is:

"... a matter of significant concern and public interest"

37. The Commissioner is minded to accept that there is some serious purpose attached to the request and therefore the Commissioner finds that this factor does not support the LSC's application of section 14(1).

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

38. The Commissioner considers that, on the basis of the circumstances of this case, the LSC is justified in relying on three of the five factors

described above to support its application of section 14(1) and refuse to comply with the request. The Commissioner accepts that the LSC has provided sufficient grounds within those factors to support its application of section 14(1).

Section 21

39. Notwithstanding its position that section 14(1) applied to the request, the LSC provided information, referred to as "background information", with respect to points 3b and c. It also relied on the exemption found in section 21 to refuse point 3a of the request.
40. The LSC initially responded to point 3(a) of the complainant's request by providing him with two website addresses and relied on section 21, 'Information accessible by other means', in its internal review.
41. However, in view of the LSC's application of section 14(1) to parts 3(a), (b) and (c) of the request and the Commissioner's finding on this, the Commissioner has not proceeded to consider whether its application of section 21 was correct or otherwise.

Procedural Requirements

Section 17

42. In this case the twentieth working day after receipt of the request was 24 May 2010. The LSC response dated 26 May 2010 was two days late and therefore in breach of section 17(5).

The Decision

43. The Commissioner's decision is that the public authority dealt with the following element of the request in accordance with the Act:
 - The application of section 14(1).
44. However, the Commissioner has also decided that the following element of the request was not dealt with in accordance with the Act:
 - The LSC breached section 17(5) because it failed to rely on section 14(1) within 20 working days of the request.

Steps Required

45. The Commissioner requires no steps to be taken.

Other matters

46. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters:
47. The Commissioner has considered the LSC's correspondence with the complainant and has concluded that it has not been clear or specific in explaining its decision in respect of the request. The Commissioner notes the Tribunal's comments in *McIntyre v IC & MoD* [EA/2007/0068]:
- ".....the Act encourages or rather requires that an internal review must be requested before the Commissioner investigates a complaint under section 50. Parliament clearly intended that a public authority should have the opportunity to review its refusal notice and if it got it wrong to be able to correct that decision before a complaint is made."
48. In this case the LSC at the internal review stage still maintained that parts of the request were vexatious without providing an appropriate explanation yet went on to provide the information it had deemed to comprise the vexatious elements of the initial request. The LSC explained to the Commissioner that it had "...used its discretion and provided the information anyway,...trying to prevent a more time-consuming dispute from developing." The Commissioner can understand why this approach was taken. However, there is no obligation to do so if the request can be correctly deemed to be vexatious.
49. However, the LSC considered that it had provided the Commissioner with a "suitable level of information" in its justification for relying on section 14(1) in response to the Commissioner's initial request. The Commissioner was not satisfied by this response, however, eventually an appropriate response was provided.

Right of Appeal

50. 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

51. 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.

52. 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 28th day of March 2011

Signed

**Alexander Ganotis
Group Manager – Complaints Resolution
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Wycliffe House
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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."

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."

Exemption where cost of compliance exceeds appropriate limit

Section 12(1) provides that –

"Section 1(1) does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit."

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"

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."

Information Accessible by other Means

Section 21(1) provides that –

“Information which is reasonably accessible to the applicant otherwise than under section 1 is exempt information.”