

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: **15 March 2012**

Public Authority: **Department of Finance and Personnel, Northern Ireland**

Address: **Rathgael House
Balloo Road
Bangor
Co Down
BT19 7NA**

Decision (including any steps ordered)

1. The complainant requested information relating to the number of employment tribunal claims brought against Northern Ireland civil service departments from 2000 onwards, defended as well as undefended. The Information Commissioner's decision is that the Department of Finance and Personnel for Northern Ireland (DFPNI) was incorrect to claim a reliance on section 14 of FOIA. The Information Commissioner therefore requires DFPNI to either disclose the information or issue a valid refusal notice citing a valid exemption in accordance with FOIA.
2. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

3. On 17 August 2011, the complainant wrote by email to DFPNI and requested the following information:

"I would like to know how many employment tribunal claims brought against any department within the Northern Ireland civil Service from year 2000 onwards have not been defended".

4. Within an hour of making that request the complainant made a further request by email as follows:

"I would like to know how many employment tribunal claims brought against any part and against any Department within the Northern Ireland Civil Service from the year 2000 onwards have been defended".

5. Having received the two similar requests within a short space of time, DFPNI allocated individual reference numbers to them but dealt with both simultaneously.
6. On 26 September 2011 DFPNI wrote to the complainant and told her that it would not respond to her requests as it determined that the requests were vexatious in accordance with section 14 of FOIA.
7. Following an internal review on 19 October 2011 DFPNI wrote to the complainant and stated that it remained of the opinion that the requests were correctly refused on the grounds of section 14 of the FOIA.

Scope of the case

8. The complainant contacted the Information Commissioner to complain about the way both of her requests for information had been handled.
9. The Information Commissioner decided that as both requests had been dealt with by DFPNI simultaneously that he would also deal with both requests together.
10. The Information Commissioner requested additional information from DFPNI on its handling of the requests and asked it to consider his published guidance on section 14(1) of FOIA in providing its response.
11. The scope of the Information Commissioners' investigation is therefore to consider whether DFPNI correctly categorised the request as vexatious in accordance with section 14(1) of FOIA.

Reasons for decision

12. Section 14(1) of FOIA states that a public authority is not obliged to comply with a request if the request is vexatious. The term vexatious is not defined in the Act, but the Information Commissioner's published guidance explains that 'vexatious' is meant to have its ordinary meaning and there is no link to the legal definitions in other contexts such as 'vexatious litigants'. The Information Commissioner has identified five criteria (identified below) against which a request can be assessed to determine whether it is vexatious.
13. In determining whether a request is vexatious or not, the Commissioner will consider the context and history of the request to reach a reasoned conclusion based on the strength or weakness of both parties' arguments in relation to some or all of the five factors.

Background

14. DFPNI provided the Commissioner with general background information to put the requests into context. It told him that in the period from 25 October 2010 to 17 June 2011 it had received a number of requests from the complainant. Of these, some had been dealt with as normal course of business, but 19 had been dealt with as requests for information under FOIA and two as requests under the Data Protection Act. It told the Information Commissioner that the requests mainly related to personnel management matters.
15. The complainant advised the Information Commissioner that she was acting on behalf of a relative who was employed by one of the Northern Ireland government departments and had been involved in an employment dispute with his department. The complainant provided the Information Commissioner with additional detail of the context and background to the requests. Having noted the sensitive nature of that information the Information Commissioner will not describe or disclose the specific details or features of the background information within this notice.

Is the request designed to cause disruption or annoyance?

16. Whilst the Information Commissioner accepts that a single request may have the effect of causing disruption or annoyance the issue to consider is whether the request was *designed* to have that effect. In this respect the information Commissioner considers that the distress or annoyance must be caused by the process of *complying* with the request.
17. DFPNI told the Information Commissioner that the requests and related correspondence were on the same subject matter and whilst it could not

comment on whether the requests were designed to cause annoyance it argued that this is the effect the requests had. It referred the Information Commissioner to its arguments that the request was causing harassment and distress to its staff and in particular one specific exchange of correspondence with the Department Solicitors Office (DSO).

18. Having studied the content of the file and the supporting evidence provided by DFPNI, and the background, context and subject matter of the request, the Information Commissioner is not satisfied that there is any real evidence to support the argument that the complainant intended to cause disruption and annoyance to DFPNI and its staff. Accordingly, he does not attribute any weight to this argument.

Does the request lack any serious purpose or value?

19. The Information Commissioner in considering this point will take into account any arguments that have been put forward by the complainant that their request does have a serious purpose or value. If he considers that the request does have a serious purpose or value this will then be weighed against the other points before determining whether the request is vexatious. Therefore, just because a request may have a serious purpose or value does not automatically mean that it is not vexatious.
20. DFPNI told the Information Commissioner that it was difficult to see how the requests carried any purpose or value as it did not understand how the requests would assist in the furtherance of any issue involving the relative on whose behalf the complainant acts. However, the Information Commissioner also notes that by its own admission DFPNI did consider that it would require further clarification of the wording 'defended' in the requests which on further exploration may have enlightened it on the purpose or value of the requests.
21. The Information Commissioner has carefully considered the wording of the requests within the context and background of previous requests and correspondence as well as the supporting information provided by DFPNI. He has carefully considered the accepted point that the complainant is acting on behalf of a relative in industrial tribunals and claims. Without going into the personal details of the complainant's relative and the actual detail of the reasons provided for making the requests, the Information Commissioner does not accept DFPNI's arguments that the requests could not be considered as having a serious purpose and value. He has therefore accorded this argument no weight.

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

22. In determining whether a request would impose a significant burden in terms of expense or distraction it involves more than a consideration of just the cost of compliance. A public authority should also consider whether responding would divert or distract its staff from their usual work. Where the only concern relates to the cost of complying with the request then a public authority should cite section 12. To engage section 14 the Information Commissioner expects the public authority to show that complying with the request would cause a *significant* burden in terms of costs and also diverting staff away from their core functions.
23. DFPNI told the Information Commissioner that it had received a volume of correspondence from the complainant including freedom of information requests and subject access requests on or relating to the same subject. It also told the Information Commissioner that, in respect of the requests covered by this notice, it had considered that it could provide some of the requested information but that staff would be involved in carrying out a time-consuming, manual search of records. It also told the Information Commissioner that responding to relatively simple requests still imposed a significant burden and that previous responses had led to a series of further requests and complaints.
24. In support of its argument DFPNI provided the Information Commissioner with details of correspondence it had received from the complainant as well as referring to an internal email where it was commented that the term 'defended' in the requests would require additional clarification with the complainant if the request were to be considered.
25. The Information Commissioner, having inspected the supporting evidence, does not attribute any weight to DFPNI's argument that complying with the request has the effect of causing a *significant* burden in terms of expense and distraction of its staff. He considers that the arguments put forward by DFPNI do not in fact demonstrate that the alleged time-consuming searches of manual records would impose a significant burden in terms of both expense and distraction.

Can the request fairly be seen as obsessive?

26. In considering whether the request can fairly be seen as obsessive the Information Commissioner applies a test of reasonableness. For example, would a reasonable person be able to describe the request as obsessive? In answering this question the Information Commissioner considers that the wider context and background of the request is important. The Information Commissioner might not accept that a

request is vexatious in isolation but when studied in the context of a series of overlapping requests or correspondence it may form part of a pattern of behaviour that could be defined as vexatious.

27. DFPNI told the Information Commissioner that the requests were the latest in a pattern of successive requests all relating to the work of its staff and the industrial tribunals and claims involving the complainant's relative. It argued that the volume and frequency of requests received provided supporting evidence that there was a pattern of obsessive and therefore vexatious behaviour.
28. The Information Commissioner notes that DFPNI states that 19 requests had been made over a period of eight months. However, given the context of the requests, he does not accept that on their own the number of requests necessarily mean that the requests are obsessive. Although the requests are broadly related to her relative's situation, and there are quite a number, the complainant's previous requests all appear to be on separate aspects of that situation and reasonable in the circumstances. Without referring specifically to the background and context in which the requests were made, the Information Commissioner is satisfied that any reasonable person would agree that the requests are not obsessive.

Is the request harassing the authority or causing distress to staff?

29. The point to consider here is the effect that the request has on the public authority or its staff. It may be the case that a request was not designed to harass or cause distress but this may nevertheless be the actual effect the request has. The complainant may believe his or her request to be reasonable but has not taken into account that the effect of the request may be to harass or cause distress.
30. DFPNI provided the Information Commissioner with its arguments that the request was causing harassment to its staff. It said that this was because of the high volume and frequency and tone of the correspondence and the fixation on the subject matter which it argued centred around named members of staff. It argued that this resulted in disruption to staff and diversion of resources and that this caused annoyance and distress to staff.
31. DFPNI argued that a reasonable person would regard the complainant's requests as harassing or distressing based on the volume of previous correspondence and the unreasonable fixation on named members of staff and mingling of requests with accusations and complaints. It provided evidence of an exchange of emails between the complainant and the Departmental Solicitors Office's (DSO) staff which, although not specifically about the requests covered by this notice, has been provided

by DFPNI to support its arguments that the requests are part of an attempt to harass the authority or cause distress to its staff. In noting two separate exchanges of correspondence between a member of staff and the complainant it argued that this demonstrated the harassing nature and tone of the complainant in responding to what it believed were reasonable responses from members of DSO staff. As additional evidence it also referred to an incident where the complainant firmly insisted she did not receive a letter from a named member of staff but later realised the letter was sent under cover of another member of staff's email and for which she apologised.

32. The Information Commissioner has carefully considered the correspondence referred to in the previous paragraph and without going into the specific detail of the contents, he does not accept DFPNI's arguments. Whilst the tone of that correspondence could be considered to be firm and opinionated about the funding and practices of Northern Ireland Civil Service departments, he does not accept that making such a statement is obviously intended to harass or cause distress to staff. Having noted the views expressed it is the Information Commissioner's view that the tone could not reasonably be considered to be harassing or distressing as it is not directed specifically at individual members of staff. He also notes that the response from the member of DSO staff threatening legal action against the complainant could equally be considered to be harassing if DFPNI's arguments about 'tone' were to be accepted.
33. In respect of the incident with the confusion and dispute over the receipt by email of a letter, the Information Commissioner understands that such mistakes can genuinely occur in such circumstances. He notes that the complainant apologised when she realised her mistake. In his view, this incident does not in itself add weight to DFPNI's stance that the requests had the effect of harassing it or causing distress to its staff.
34. The Information Commissioner, based on the evidence and DFPNI's arguments, is therefore not satisfied that sufficient weight can be attributed to the argument that the requests have the effect of harassing DFPNI or causing distress to its staff. In making this determination he has taken into account the background and context of the subject matter as referred to in this notice.

Conclusion

35. Having assessed the handling of the request in line with his published guidance and the five separate criteria, and considering the content of the information he has inspected, the Information Commissioner is not satisfied that the request is vexatious in accordance with section 14(1)

of FOIA. Accordingly, DFPNI incorrectly categorised the request as vexatious.

Right of appeal

36. 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,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

37. 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.
38. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

Jon Manners
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