

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 7 November 2012

Public Authority: Civil Service Commissioner
Address: G/8
1 Horse Guards Road
London
SW1A 2HQ

Decision (including any steps ordered)

1. The complainant has requested information from the Civil Service Commissioner (CSC) about sackings of civil servants who have raised complaints to CSC, as well as information about CSC's failings in handling complaints. CSC refused the request on the grounds that it was vexatious.
2. The Commissioner's decision is that CSC was correct to find the request vexatious.
3. The Commissioner does not require any action to be taken.

Request and response

4. On 6 April 2012, the complainant wrote to CSC and requested information in the following terms:

"In your report " The Civil Service Code A Guide To Bringing A Complaint to The Civil Service Commission' a copy of which can be found on your webpage, you state:

*"The Civil Service Code is clear that you should not suffer a detriment as a consequence of raising a concern:
'If you believe that you are being required to act in a way which conflicts with this Code, your department or agency must consider your concern, and make sure that you are not penalised for raising it.' (para. 15) The Commission believes that departments should encourage their staff to raise concerns and should actively support*

them in doing so. We will take very seriously any suggestion that you have been penalised for raising a concern. We would want you to approach us at any time if you believe this is the case. We would be prepared to use all the remedies available to us to prevent and rectify any penalisation."

Under the Freedom of Information Act therefore, I request the following information:

- 1) How many Civil Servants have been sacked for raising concerns with the Civil Service Commission under the Civil Service Code since 2007?*
- 2) How many of the above have the Civil Service Commission failed to treat it as a Civil Service Code matter and failed to use all the remedies available to prevent and rectify any penalisation?*
- 3) How many Civil Servants have been sacked for raising concerns with the Civil Service Commission under the Public Interest Disclosure Act 1998 since 2007?*
- 4) How many of the above have the Civil Service Commission failed to treat it as a Civil Service Code matter and failed to use all the remedies available to prevent and rectify any penalisation?"*
5. CSC responded on 14 May 2012. It stated that it was treating the request as vexatious under section 14(1) of the Act.
6. Following an internal review CSC wrote to the complainant on 21 May 2012. It stated that it was upholding its original decision.

Scope of the case

7. The Commissioner considers the scope of the case to be whether CSC correctly refused the request on the grounds that it was vexatious.

Reasons for decision

Purpose of CSC

8. CSC has two specific functions:
 - To ensure that recruitment of civil servants is based on merit and not prejudiced in any fashion, and
 - To hear complaints by civil servants under the Civil Service Code (the Code). The Code comprises four key values – honesty, integrity, impartiality & objectivity.
9. CSC also makes clear, both on its website and in the Code, that it does not cover human resources issues or matters regarding personnel management¹.

Case background

10. In October 2007 the complainant raised concerns with CSC that his former employers, HMRC, were in breach of the Code.
11. The complainant's submissions were reviewed and CSC advised him that they did not meet the criteria needed for a complaint to be investigated.
12. The complainant was dismissed by HMRC in 2008, and over the next few years he submitted further documents about his disciplinary process to CSC, stating that he considered them to be breaches of the Code.
13. CSC repeatedly informed the complainant that his submissions were human resources and personnel matters and therefore outside of their remit², and also provided the complainant with the names of the organisations who could investigate the issues he has raised.

¹ <http://resources.civilservice.gov.uk/wp-content/uploads/2011/09/civil-service-code-2010.pdf>

² As stated in section 18 of the Civil Service Code: <http://resources.civilservice.gov.uk/wp-content/uploads/2011/09/civil-service-code-2010.pdf> N.B. words to this effect were also in the 2006 version of the Code.

Vexatious request

14. Section 14(1) of FOIA states that:

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

15. The Commissioner has published guidance which describes the attributes that are usually present in vexatious requests. They can be determined using the following questions:

1. Can the request fairly be seen as obsessive?
2. Is the request harassing the authority or causing distress to staff?
3. Would complying with the request impose a significant burden in terms of expense and distraction?
4. Is the request designed to cause disruption or annoyance?
5. Does the request lack any serious purpose or value?

16. CSC has only considered questions 1, 2 and 5; therefore the Commissioner will only investigate these questions.

17. Recent decisions from the Information Tribunal have established that the Commissioner's guidance should not be used as a checklist, as it is possible for one factor to be so extreme that it alone can justify the use of section 14(1). However, it should be noted that the Tribunal considers the guidance “helpful”³ and it remains a useful guide for public authorities to determine whether a request is vexatious.

18. In determining whether the request meets the attributes referred to in the guidance, the Commissioner will consider the context and history of the request. In certain circumstances the request itself will not be vexatious but can be considered so when placed in the wider context of the complainant's behaviour.

Can the request fairly be seen as obsessive?

19. As stated in the case background section, the complainant attempted to make a complaint to CSC in October 2007.

³ Information Commissioner v Jbol Ltd, EA/2011/0238

20. Over the next four years, the complainant's persisted in trying to raise a complaint to CSC. As a result, on 6 March 2012 one of the Civil Service Commissioner's wrote the complainant to inform him that:

"Having advised you repeatedly, throughout our telephone and written communications with you, that the Civil Service Code does not cover HR management issues, you have persisted in demanding that your concerns should be heard. On numerous occasions we invited you to produce evidence to enable your complaints to be given serious consideration. You have failed to provide any information that relates to anything other than HR management issues. Such matters are not covered by the Code and therefore cannot be seen to constitute a breach of the Code, which means the Commission has no jurisdiction to investigate them...

The Commission believes nothing further is to be gained in corresponding with you on issues that are outside its remit to investigate."

21. Having reviewed the submissions made by CSC and the complainant, the Commissioner considers that CSC was correct in stating that the complainant's concerns were beyond the remit of CSC and not a matter to be investigated as a breach of the Code.
22. The complainant remains convinced that these concerns should have been investigated by CSC. CSC has stated that this is demonstrated by this request, which is an attempt to draw CSC back to the complainant's original concerns.
23. The complainant refuses to accept that, based on the information he has submitted to them, CSC was not able to help him with dispute against his former employers. Instead, as is evident from his blog about CSC⁴, he is adamant that CSC purposefully mishandled his complaint in order to cover up mistakes made by HMRC.
24. The Commissioner does not consider this request *in isolation* to demonstrate obsession. However, he accepts CSC's view that this request is an attempt to have CSC revisit the complainant's concerns, which the Commissioner considers to have been appropriately dealt with. In context therefore – and taking into account the complainant's previous attempts to dispute this position – the Commissioner's decision is that this request can fairly be seen as obsessive.

⁴ <http://bunglingcivilservicecommissioners.blogspot.co.uk/>

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

25. The Commissioner would like to highlight that when considering this part of the criteria, he is not concerned with what the complainant's intention may have been. It is not unusual for a request to be deemed vexatious even though the complainant genuinely believes that the request and contextual behaviour was entirely justified. Instead, the Commissioner is concerned with the effect that the request would have had on any reasonable public authority.
26. CSC has provided the Commissioner with the correspondence between the two parties, which shows that the complainant sent approximately 70 emails and 55 documents about his dispute with HMRC, although none were sufficient to prompt an investigation.
27. The Commissioner considers the volume of correspondence sent by the complainant to be excessive, given that CSC made it clear on more than one occasion what was required for them to be able to consider an investigation against HMRC.
28. The complainant has also copied CSC into messages to third parties about his grievance and has often spoken of how CSC was conducting an investigation based on his complaint, even though this was not the case. These third parties include: National Audit Office about how HMRC wasted money by disciplining him, IPCC over a complaint into he had against the Metropolitan Police, a BBC journalist over his complaint to the IPCC, a bullying charity about his view that he was bullied by HMRC, the Prime Minister's Office, Lancashire Constabulary about his desire to have HMRC prosecuted, and emails to HMRC about how well his book concerning his grievance was selling.
29. Further, there is also the aforementioned blog which document his dealings with CSC, the tone of which can be surmised from the following extracts:

"Ever wondered what the Civil Service Commissioners actually do when you raise a concern with them under the Civil Service Code and Public Interest Disclosure Act 1998? [The complainant] can tell you - nothing, except delete your e-mails, refused to meet with you, ignore your calls and do what they can to fob you off - when they're not desperately seeking the inept gratitude of their Civil Service colleagues."

"[T]he Civil Service Commission deliberately mishandle complaints in order to conceal and suppress mind -boggling abuses of public funds the Civil Service really don't want you to know about."

"I have always thought that government watch dogs are a pretty incompetent bunch, good at appearing before Parliamentary

Committees, television cameras and writing reports, but not much else, so I wasn't exactly blistering with confidence they would swing in to action to investigate my complaints. Sure enough, I was right."

30. Whilst the request *in itself* is not harassing, it is clearly linked to the complainant's grievance against CSC and is a continuation of his unwarranted fixation.

31. In their submissions to the Commissioner, CSC stated:

"As a small organisation that handles complaints brought under three different complaint regimes, it is our view that vexatious and unreasonable requests brought by dissatisfied complainants can have the effect of reducing our ability to provide an appropriate standard of service to all by commanding a disproportionate share of resources."

32. A great deal of correspondence has been created due to the complainant's misunderstanding of CSC's function. In the context of this - and taking into account the nature of the correspondence - the Commissioner considers it fair to conclude that the request has harassed the CSC.

Does the request lack any serious purpose or value?

33. As previously mentioned, the Commissioner considers this request to be a continuation of the complainant's grievance, which is wrongly born out of his misunderstanding of the function of CSC. The Commissioner considers this to seriously undermine the serious purpose and value of the request.

34. Furthermore, the content of the request also highlights this misunderstanding, the questions ask for information about civil servant sackings, which is not relevant to CSC's function. As such it is highly unlikely that CSC would hold any relevant information.

35. In taking these points into account, the Commissioner has deemed the request to lack any serious purpose or value.

Summary

36. The request can be seen to be obsessive, harassing and lacking in serious value or purpose. Therefore Commissioner's decision is that the request is vexatious and that CSC was correct to refuse it under section 14(1) of the Act.

Right of appeal

37. 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

38. 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.
39. 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

Alexander Ganotis
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