

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 15 November 2012

Public Authority: Her Majesty's Revenues and Customs (HMRC)

Address: Information Policy and Disclosure

Room 1C/23

100 Parliament Street

London

SW1A 2BQ

Decision (including any steps ordered)

1. The complainant has requested information relating to the business engagements of Her Majesty's Revenues and Customs (HMRC) board members during the three financial years ending 31 March 2011 and in the period 1 April 2011 to the present time. HMRC refused to comply with the request as it viewed the request to be vexatious. HMRC cited section 14(1) of the Freedom of Information Act (FOIA) as its grounds for refusal.
2. The Commissioner's decision is that HMRC has correctly applied section 14(1) of the FOIA and that the request is vexatious.
3. The Commissioner does not require the public authority to take any steps in this matter.

Request and response

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

"For each of the 3 years ended 31 March 2011 and from 1 April 2011 to the present time:

Please provide in respect of each member of the Board of HMRC a list of all their business engagements, excluding those specifically arranged to resolve the tax affairs of a taxpayer, company or client of, detailing the date, the nature of engagement, the costs incurred in fulfilling the engagement."

5. HMRC responded on 2 March 2012. It stated that it was refusing to respond to the request. It cited section 14(1) of the FOIA, stating that the request was vexatious, as its grounds for refusing the request.
6. Between 7 February to 2 March 2012 the complainant submitted a further 57 requests for information to HMRC. These have all been refused as vexatious by HMRC. HMRC has provided the Commissioner with a spreadsheet documenting these requests.
7. Since the refusal notice was issued on 2 March 2012 the complainant has submitted a further 104 requests for information to HMRC (this number being correct as of 31 October 2012). HMRC has provided the Commissioner with a spreadsheet documenting these requests.
8. All of these 168 requests were made via the *WhatDoTheyKnow* website. The complainant has made a total of 170 requests for information via this website. The remaining two which were not made to HMRC were made to other public authorities, the first being to HM Treasury, and the second to the Cabinet Office. These were both about matters relating to HMRC.

Scope of the case

9. The complainant contacted the Commissioner on 27 July 2012 to complain about the way that his request for information had been handled.
10. The Commissioner considers that the scope of this case is to examine whether or not HMRC has correctly applied section 14(1) of the FOIA to the complainant's request, and to determine whether HMRC has, or has not, correctly refused the request as vexatious.

Reasons for decision

11. Section 14(1) provides the following:

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

Guidance on the Commissioner's approach to vexatious requests can be found on the Commissioner's website and for ease of reference, at the following links:

http://www.ico.gov.uk/for_organisations/freedom_of_information/guide/refusing_a_request.aspx

http://www.ico.gov.uk/for_organisations/freedom_of_information/guide/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/vexatious_and_repeated_requests.ashx

12. As explained in the guidance, the Commissioner's general approach is to consider the argument and evidence that the public authority is able to provide in response to the following questions:
 - whether compliance with the request would create a significant burden in terms of expense and distraction;
 - whether the request is designed to cause disruption or annoyance;
 - whether the request has the effect of harassing the public authority or its staff;
 - whether the request can otherwise fairly be characterised as obsessive or manifestly unreasonable; and
 - whether the request has any serious purpose or value.
13. In a letter to the Commissioner dated 5 November 2012, HMRC has provided its arguments regarding each of the above points, as well as its general arguments as to why it views the request to be vexatious.
14. HMRC informed the Commissioner that the complainant is a former employee of HMRC, and that since his dismissal the complainant has set up a LinkedIn web pages entitled "HMRC Exposed". HMRC said:

"In our view, the tone of (the complainant's) postings on this website demonstrate the strength of his negative feelings towards this department and his desire to cause disruption and embarrassment to HMRC, including through use of the FOI process."
15. HMRC argued that it has grounds to view the complainants requests as vexatious by drawing the Commissioner's attention to comments made by the First-Tier Tribunal in *The Independent Police Complaints Commission v The Information Commissioner* where they stated:

"... an approach which tests the request by simply checking how many of the five "boxes" are "ticked" is not appropriate. It is necessary to look at all the surrounding facts and apply them to the question whether the request is vexatious".

16. In light of this, the Commissioner has taken HMRC's further arguments about the background of this case and of the complainant's dealings with HMRC into account.

Whether compliance with the request would create a significant burden in terms of expense and distraction

17. HMRC further argued that answering the complainant's original request made on 6 February 2012 alone would create a significant burden in terms of expense and distraction. HMRC stated that if it had considered the request in isolation, the request would likely have been refused under section 12(1) of the FOIA as the cost of answering it would likely exceed the appropriate limit. HMRC explained this as follows:

"Had we considered this request in isolation, it is likely to have been refused under section 12(1) as we estimate it would exceed the FOI costs limit to comply with the request. To break it down into its component parts:

(i) In order to locate information in scope of the request, we would need to identify the relevant HMRC Board Member serving in each of the periods specified in the request. IT accounts (holding details of electronic diaries) of Board Members who had left HMRC in the periods would not now be available for interrogation.

(ii) At the date of receipt of the request, the HMRC Board comprised The Chief Executive (Lesley Strathie, now deceased), Chairman (Mike Clasper, now retired) and Permanent Secretary for Tax (Dave Hartnett, now retired). The rest of the Board comprises Non Executive Directors who are not HMRC employees and so information relating to their appointments may not be held.

(iii) Where information may be available, further analysis would be required to determine the costs of fulfilling the relevant engagements, e.g. refreshments, travel and subsistence.

We consider that the administrative burden of dealing with this request would be great, and vastly disproportionate to the request itself, and we would be entitled to refuse the request in accordance with section 12 FOIA."

18. HMRC further argued further that

"A feature of Mr Baker's requests is to seek information covering the 3 financial years ended 31 March 2011 (i.e. 2008/09, 2009/10 and 2010/11) and from 1 April 2011 to date. Of the 58 requests we have treated as vexatious, 37 specify a similar period or "... the 5 years ended 5 April 2011 and from 6 April 2011 to the present date". Given

the size of HMRC and the huge amount of information we hold, providing information for these time periods is likely to exceed the FOI costs limit. However, even if we were to cite costs on each of Mr Baker's requests, just processing and issuing responses for this number of requests would place a significant burden on our FOI resources."

19. HMRC stated that:

"Between 1 January 2012 and 31 October 2012, (the complainant) has submitted 168 requests to HMRC, all via the WhatDoTheyKnow website. The burden of dealing with all these requests would be significant in terms of time and impact on resources. The requests submitted by (the complainant) in the period 7 February to 2 March 2012 (which we have treated as vexatious) account for 31% of the total FOI requests received by HMRC in that period."

20. The Commissioner notes that a large part of HMRC's argument is that it is treating these requests as related and is refusing them all as vexatious. Taken cumulatively, these requests would create an even greater burden in terms of expense and distraction than the request made 6 February 2012 would alone.

21. It is the Commissioner's view that this request, even taken in isolation, creates a significant burden in terms of expense and distraction. Furthermore the Commissioner finds that this burden can be assessed in terms of the expense and distraction that answering all of these requests would cause, which shows that it would create far too great a burden in terms of expense and distraction.

22. The Commissioner is therefore satisfied that this request meets this criterion of a vexatious request, whether viewed as a stand-alone request or assessed in the context of the other requests made by the complainant.

Whether the request is designed to cause disruption or annoyance

23. HMRC argued that these requests for information

"...arise from (the complainant's) intention or desire to cause disruption to (HMRC)."

24. HMRC has provided the ICO with a log of all requests made by the complainant between 6 February 2012 and 31 October 2012.

25. The Commissioner has reviewed the log of requests made from this first date until the date of the refusal notice (that is, 2 March 2012). The Commissioner notes that a large number of these requests are

substantively similar, which often are made on the same or consecutive days. Specifically, the Commissioner notes that of the 57 requests, 20 relate to the financial affairs of HMRC and HMRC staff, 12 relate to HMRC's handling of FOI and DP issues, 12 relate to internal targets and business plans within HMRC, and a further 10 relate to complaints made to or about HMRC.

26. HMRC also stated that the complainant has posted comments on the *WhatDoTheyKnow* website encouraging users to complain to HMRC or to complain about HMRC to the ICO. HMRC have therefore argued the following:

"Because of (the complainant's) conduct in his dealings with this department over a prolonged period HMRC has reasonably concluded that the purpose of these annotations is to cause disruption to HMRC, rather than provide assistance to users of the site".

27. It is the Commissioner's view that HMRC's conclusion that these requests are designed to cause disruption and annoyance is a reasonable conclusion to come to. However, the Commissioner finds that there is not sufficient evidence to show that these requests are made solely with the intention of causing disruption and annoyance.
28. The Commissioner does recognise that these requests may be in part designed to cause disruption and annoyance, however the Commissioner is not satisfied overall that this request meets this criterion of a vexatious request.

Whether the request has the effect of harassing the public authority or its staff

29. The Commissioner notes that many requests on related topics have been made by the complainant within very short spaces of time, as outlined in paragraphs 24 and 25 above. For instance on 3 March 2012 the complainant made two FOI requests at 10:49 am, and a second at 11:06am. These requests all related to HMRC pay. On the same day the complainant made two other FOI requests, the first at 10:55am and the second at 10:59. These requests both related to HMRC pensions.
30. The Commissioner has reviewed the requests made prior to the refusal notice being served. The Commissioner notes that in this period (between 5 February and 2 March 2012) a pattern of consecutive requests for information being made has emerged, often on substantially related topics with gaps of no days, one day, two days, or occasionally three days being left between requests. Only once in this time frame did a period of greater than three days elapse in which no

requests were made (that is when a request was made on 23 March 2012 and another was not made until 31 March 2012).

31. HMRC informed the Commissioner that where it has responded to requests for information from the Complainant this has "...led to further requests and disputes as to the proper interpretation to be drawn from the information."
32. The Commissioner notes that many of the requests include allegations and derogatory comments about HMRC and HMRC staff. HMRC also stated that the complainant has made particularly disparaging comments about specific members of staff on the LinkedIn webpage. HMRC argued that these comments and postings form part of a pattern of behaviour of which FOI requests are a part. HMRC argued that this behaviour amounts to harassment, as follows:

"(The complainant's) requests have included derogatory comments and allegations about HMRC officers. He has also made unpleasant and derogatory allegations about particular individuals on websites. HMRC has reasonably concluded that this course of conduct, of which the multiple FOI requests form a part, is unreasonable and may amount to harassment. The language and tone of these postings (although not directly related to his FOI requests) demonstrate that (the complainant's) actions could have an effect on HMRC employees which, viewed objectively, may amount to harassment."

33. HMRC specifically drew the Commissioner's attention to the following request which had been sent from the complainant to HMRC on 19 December 2011 in the following terms:

"-----Original Message-----

How much is HMRC wasting on you and other colleagues who are not fit for purpose?

ICO have confirmed that THE DATE OF RECEIPT OF THE DATA BY THE DATA SUBJECT DETERMINES WHETHER OR NOT THE 40 DAY TIME LIMIT HAS BEEN BROKEN.

Please provide me with revised stats of the number of HMRC breaches of the DPA time limit - reasonable to assume it took 2nd class mail 4 WORKING, NOT CALENDAR, DAYS to deliver DATA."

34. HMRC argued the following in relation to this request:

which has directly caused distress to a member of HMRC staff, as follows:

"(This) email from (the complainant) to a colleague on the FOI team... has caused distress, and forms part of this course of conduct which HMRC has reasonably concluded may amount to harassment of HMRC officers."

35. It is the Commissioner's view that, when viewed in the context of the pattern of behaviour described outlined by HMRC in paragraph 32 above, it is reasonable to conclude that this request does have the effect of harassing HMRC and its staff. The Commissioner is therefore satisfied that the request does fulfil this criterion of a vexatious request.

Whether the request can otherwise fairly be characterised as obsessive or manifestly unreasonable

36. HMRC told the Commissioner that it had taken guidance from statements made in previous decision notices and Tribunal Judgements as follows:

"We concur with the ICO's statement in Decision Notice FS50421116 and FS50426550 that:

"... the volume and frequency of correspondence are important indicators of an obsessive pattern of request".

Our decision to treat the request as vexatious was also guided by the Tribunal's Judgement in Gowers v the Information Commissioner & London Borough of Camden (EA/2007/0114) which states:

"... when considering if a request is vexatious, it is not only the request itself that must be examined, but also its context and history. A request which, when taken in isolation, is quite benign, may show its vexatious quality only when viewed in context. That context may include other requests made by the applicant to that public authority (whether complied with or refused), the number and subject matter of the requests, as well as the history of other dealings between the applicant and the public authority. The effect a request will have may be determined as much, or indeed more, by that context as by the request itself."

37. On this basis , HMRC argued the following:

"The volume of requests is, in itself, manifestly unreasonable, and taken together with the background to this matter and the tone of correspondence, and HMRC's reasonable conclusions as to (the complainant's) intentions, HMRC has concluded that the requests may be also be characterised as obsessive."

38. It is the Commissioner's view that taking guidance from past decisions in the manner described in paragraph 37 above, and basing arguments on this guidance as HMRC has done as laid out in paragraph 38 above, is an appropriate way for a public authority to assess whether or not a request is vexatious.
39. It is the Commissioner's view that when viewed in context, this request can fairly be characterised as obsessive and unreasonable. The Commissioner is therefore satisfied that this request does fulfil this criterion of a vexatious request.

Whether the request has any serious purpose or value

40. HMRC argued that the request has no serious purpose or value, and that the purpose of these requests is to harass HMRC staff and cause disruption to HMRC. HMRC argued this as follows:

"...given the background to this matter and (the complainant's) course of conduct over a prolonged period, and due to the volume of the requests, HMRC does not consider that there is a serious purpose or value to the requests, other than to cause inconvenience and disruption to HMRC.

Taken in isolation, some of (the complainant's) requests may have been sound requests which we would ordinarily have complied with. We have advised him that we will review regularly whether there is a justification for continuing to treat his requests as vexatious. However, due to the continuing high volume of requests, at present HMRC continues to regard (the complainant's) requests as unreasonable."

41. As outlined in paragraphs 27 and 28 above, the Commissioner is not satisfied that the only purpose of this request is to cause disruption and annoyance.

42. HMRC argued that the request:

"...amounts to a speculative exploration of information potentially held by HMRC, and that (the complainant's) purpose in seeking information is to cause disruption and inconvenience to HMRC."

43. The Commissioner has reviewed the webpage mentioned in paragraph 14 mentioned above. In the Commissioner's view this webpage shows that the complainant does have the intention of finding evidence of malpractice, wrongdoing, and/or incompetence at HMRC, as explicated by the webpage's tagline:

"Revealing the darkside of HMRC, how it operates and cares for its staff".

44. The Commissioner agrees with HMRC's argument that the requests amount to "*...speculative exploration of information potentially held by HMRC*". The Commissioner does not however agree with HMRC's argument that "*...(the complainant's) purpose in seeking information is to cause disruption and inconvenience to HMRC.*" The Commissioner considers that the purpose of these requests is a serious one in the eyes of the complainant, in that the purpose of these requests can be understood as an attempt to "*...reveal(...) the darkside of HMRC*".
45. It is the Commissioner's view that this request does have a serious purpose and value, and therefore the Commissioner is not satisfied that this request meets this criterion of a vexatious request.
46. However, the Commissioner considers that the purpose and value of the requests would not be understood as sufficiently serious or valid in the eyes of a reasonable person to justify the volume and frequency of these requests. The Commissioner therefore notes that in this case the fact that this criterion has been met would not outweigh the other criteria of a vexatious request, if they are met.

Summary of five factors

47. The Commissioner is satisfied that the request meets some, but not all, of the five factors outlines above. Specifically, the Commissioner finds that the request meets the first, third, and fourth criteria of a vexatious request, but does not meet the second or the fifth criteria of a vexatious request.
48. The Commissioner especially notes that this request does not meet the fifth criteria. When balancing these five criteria, in some cases where the request does have serious purpose or value, this can be enough to prevent it from being vexatious, even if all of the other four criteria are met. The Commissioner recognises that in some cases where a request meets some or all of the other four criteria, the serious purpose and value of the request can outweigh them. However, in this case, the Commissioner finds that the serious purpose and value of this request does not outweigh these other factors.

Overall conclusions

49. The general arguments presented in paragraphs 13 to 16, along with the conclusion about the five criteria reached in paragraph 48, has led the Commissioner to find that overall the request is vexatious, and therefore section 14(1) has been correctly engaged in this case.

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,
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

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.

Signed

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