

Freedom of Information Act 2000 (FOIA)

Decision Notice

Date: 11 March 2013

Public Authority: Department of Justice for Northern Ireland
Address: Laganside House
23-27 Oxford St
Belfast
BT1 3LA

Decision (including any steps ordered)

1. The complainant made three information requests to the Department of Justice (the Department). The Department refused these requests as it considered them to be vexatious and repeated under sections 14(1) and 14(2) of the FOIA. The Commissioner's decision is that the Department correctly categorised the requests as vexatious. Therefore the Commissioner does not require any further steps to be taken.

Background

2. The complainant has made requests to various parts of the Department, including the Northern Ireland Courts and Tribunals Service (the NICTS) and the Minister for Justice.
3. The NICTS is an executive agency of the Department. Therefore the Department is the public authority for the purposes of the FOIA, and the Department is ultimately responsible for requests made to the NICTS.

Request and response

Request 1 (29 February 2012)

4. On 29 February 2012, the complainant requested the following information from the Department:

"Please supply all information held by NICTS regarding:

1. *A 'complaint' against a judge that does not involve any criminal allegation;*
 2. *A 'complaint' against a judge that includes a criminal allegation;*
 3. *(a) The 'procedure/rules' if a claimant doesn't attend court for its own requested hearing; and*
(b) The 'procedure/rules if after being ordered to attend for an 'adjourned hearing' the claimant still doesn't attend court;
 4. *The procedure for commencing and prosecuting a private criminal prosecution."*
 5. The Department responded to the complainant on 1 March 2012. In relation to parts 1 and 2 of request 1 the Department advised the complainant that it had already provided this information in response to previous requests. The Department referred to its letter of 9 June 2011, in which it advised the complainant that it did not hold any information in relation to complaints about judges as these were dealt with by the office of the Lord Chief Justice (the LCJ). The LCJ is not a public authority under the FOIA, nor is it part of the Department or any other public authority for the purposes of the FOIA.
 6. Similarly, in relation to part 4 of request 1 the Department advised the complainant that it had already provided this information in response to a previous request. The complainant had submitted the following request to the Department on 24 May 2011:

"Do you hold any information as to the procedure for commencing a private criminal prosecution?"
 7. The Department had responded to the complainant on 3 June 2011. In this letter the Department noted that the complainant had already sought this information from the LCJ, who had responded as follows:

"The procedure to bring a prosecution in the magistrates' courts is prescribed in the Magistrates' Courts Rules (NI) 1984 (as amended) (Statutory Rule 1984 No. 225). A person seeking to make a complaint for the purpose of proceedings before a magistrates' court for an offence is required to describe the specific offence with which the accused is charged and to give such particulars as to the nature of the charge. If the offence is one created by or under any statutory provision, the description of the offence should include a reference to the section or the Act or the rule, order, regulation etc.
- Forms 1 and 2 of the Magistrates' Courts Rules are the forms you should use to make a complaint. I attach a scanned copy of these forms for*

your information. You do not need to fill in the date of court etc but you should set out the alleged offences."

8. In the letter of 3 June 2011 the Department had confirmed that it agreed with the LCJ's explanation and did not hold any further information. The Department had however provides the complainant with further copies of Forms 1 and 2 of the Magistrates' Courts Rules.
9. In the letter of 1 March 2012 the Department advised the complainant that it would respond separately to part 3 of request 1.
10. The complainant wrote to the Department again on 5 March 2012. The complainant was dissatisfied with the Department's response of 1 March 2012 and reminded the Department that he had asked what information NICTS held in relation to complaints about judges. The complainant repeated his request for this information.
11. On 6 March 2012 the Department responded to the complainant. The Department reiterated its previous explanation that complaints about judges were handled by the LCJ. The Department explained that the LCJ is not a public authority under the FOIA, therefore it is not required to answer information requests made under the FOIA. The Department also repeated its previous explanation that, if the NICTS received any complaint about a judge, it would pass this correspondence to the LCJ. Therefore the Department maintained that it did not hold any information relating to complaints about judges.

Request 2 (1 March 2012)

12. On 1 March 2012 the complainant submitted an information request directly to the Minister for Justice:

"Please supply a copy of all information held by your Office and/or any other relevant person known to you, with regard to the alleged Perversion of Public Justice.

Please also supply details of anybody to whom you have discussed the matter with".

Request 3 (12 March 2012)

13. The complainant made a further request to the Department on 12 March 2012:

"Please provide all information held by NICTS regarding:-

1. *The procedure if a claimant fails to attend Court for his own requested 'hearing';*

2. *The procedure if a claimant, having been ordered to attend for an 'adjourned hearing' fails to attend for his own requested 'hearing';*
 3. *To what extent does un-contested 'evidence' filed in court proceedings have relevance;*
 4. *The procedure if a 'complaint' is made against a Judge that may involve a criminal investigation;*
 5. *The procedure for commencing a private criminal prosecution and the status of any personnel involved;*
 6. *On what grounds can the Court refuse to issue a summons for an accused to attend court?"*
14. The Department wrote to the complainant on 30 March 2012. In this letter the Department confirmed that it was responsible for handling requests made to the Minister and to the NICTS. The Department advised the complainant that it was refusing requests 1, 2 and 3 under sections 14(1) and 14(2) of the FOIA. Section 14(1) states that a public authority is not obliged to comply with vexatious requests, and section 14(2) allows a public authority to refuse to comply with repeated requests.
15. Following an internal review the Department wrote to the complainant on 14 May 2012. The outcome of the internal review was that the Department maintained its reliance on sections 14(1) and 14(2) in order to refuse the requests.

Scope of the case

16. The complainant contacted the Commissioner on 16 July 2012 to complain about the way his requests had been handled. The complainant did not accept that his requests were vexatious or repeated, but told the Commissioner that the Department had failed to provide him with any of the information he had requested.
17. The Commissioner is aware that the complainant was involved in a case dealt with by the Small Claims Court in 2008. The complainant alleged that the judge in this case had acted inappropriately, and complained to the LCJ. The complainant also attempted to bring a private prosecution in respect of his allegations, although this was unsuccessful. The complainant has acknowledged that the Commissioner can only consider whether his requests have been handled in accordance with the FOIA, as opposed to the wider dispute.

18. In light of the above the scope of this case is to consider whether sections 14(1) and 14(2) have been correctly applied to the complainant's requests.
19. As explained above the LCJ is not a public authority under the FOIA, therefore the Commissioner has not investigated the complainant's requests to the LCJ as part of this complaint.

Reasons for decision

Section 14(1): vexatious requests

20. Section 14(1) of the 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 FOIA, but the Commissioner's published guidance¹ explains that the term is intended to have its ordinary meaning and there is no link with legal definitions from other contexts (e.g. vexatious litigants). The Upper Tribunal recently considered the issue of vexatious requests in the case of *Information Commissioner v Devon CC & Dransfield*². The Tribunal commented that the Commissioner's guidance that consideration of whether the request is likely to cause distress, disruption or irritation, "*without any proper or justified cause*"

"...provides a useful starting point, so long as the emphasis is on the issue of justification (or not)".

21. In its refusal notice and internal review letters the Department advised the complainant that it considered his requests demonstrated a pattern of obsessive behaviour. The Department referred to the history of continued and overlapping requests and correspondence with several areas of the Department, along with the complainant's refusal to accept the Department's responses to previous requests.
22. The Department also pointed out that the complainant had stated in an email to the LCJ:

¹

http://www.ico.gov.uk/for_organisations/guidance_index/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/VEXATIOUS_AND_REPEATED_REQUESTS.ashx

² GIA/3037/2011

"You are not the only dept that I am harassing..."

23. The Department accepted that complying with the current requests would not themselves impose a significant or unreasonable burden on it as a public authority. Rather, the Department maintained that it had answered the complainant's substantive enquiries on a number of occasions. The Department had concluded that compliance with the current requests would lead to further requests and correspondence, none of which would satisfy the complainant.
24. The Department advised the Commissioner that the complainant has been in contact with various business areas of the Department since the court case in 2008. The Department provided the Commissioner with copies of this correspondence. The Commissioner notes that the correspondence contains a number of requests to the various business areas of the Department, all on the same broad topics as the three requests detailed above. These topics include complaints about judges, various court rules and procedures, and allegations of perverting the course of justice.
25. The complainant accepted that he had been in frequent correspondence with various business areas of the Department, but maintained to the Commissioner that he had been required to put his requests to several different areas because each area failed to answer his requests. However the Commissioner notes that the complainant accepted the Department's response of 3 June 2011 as described at paragraph 8 above. On 1 July 2011 the complainant confirmed to the Department that he was content with its response, although he considered the procedure for bringing private prosecutions in Northern Ireland to be "flawed".
26. The Commissioner considers that parallels can be drawn between this case and the Information Tribunal case of *Betts v Information Commissioner Information Tribunal*³. In *Betts*, the complainant made a series of requests for information tenuously connected with his ongoing dispute with the public authority. The majority Tribunal found section 14(1) was engaged and commented:

"...the Appellant's refusal to let the matter drop and the dogged persistence with which he pursued his requests, despite disclosure by

³ Appeal no EA/2007/1009

the Council and explanations as to its practices, indicated that the latter part of the request was part of an obsession. The Tribunal accepted that in early 2005 the Appellant could not be criticised for seeking the information that he did. Two years on however and the public interest in openness had been outweighed by the drain on resources and diversion from necessary public functions that were a result of his repeated requests..." (para 38).

27. The Commissioner is mindful that the complainant has made a number of requests to the Department, all on the same broad topics as identified above. The complainant has made requests both to specific business areas, and to the Minister for Justice, which the Commissioner considers has resulted in duplication of effort and unnecessary complication. The Commissioner understands that the complainant believes he has valid grounds for complaint about the behaviour of the judge in his case. However, the complainant has unsuccessfully pursued this complaint through the LCJ and with the police, and his persistence in making related requests to the Department has reached the stage where it could reasonably be described as obsessive.
28. The Commissioner considers that, as with *Betts*, the complainant in this case has continued to submit requests despite the fact that the Department has already answered his questions. It is not clear what outstanding information the complainant believes the Department holds, that it has not already provided to the complainant. The Commissioner considers that this weakens any justification the complainant may have for making further requests.
29. The Commissioner is also of the view that the complainant should have complained to him earlier if he was not satisfied with the Department's responses to his requests, rather than submitting further requests for similar information. The Commissioner is therefore inclined to attach significant weight to the Department's argument that the complainant's continuing correspondence, particularly with different business areas of the Department, demonstrates a pattern of obsessive behaviour.
30. The Commissioner has inspected the email in which the complainant says that the Department is not the only authority he is harassing. However the Commissioner considers this to be a flippant rather than literal comment, and is not inclined to attach significant weight to its interpretation.

31. The Commissioner has been assisted in his considerations by the Upper Tribunal's comments in the case of *Wise v Information Commissioner*⁴:

"Inherent in the policy behind section 14(1) is the idea of proportionality. There must be an appropriate relationship between such matters as the information sought, the purpose of the request and the time and other resources that would be needed to provide it."

32. Although the Department has not claimed that compliance with the current requests alone would create an unreasonable burden, the Commissioner is mindful of the Upper Tribunal's recent comments in *Dransfield*, where the Tribunal commented on the importance of considering a request in the context of previous correspondence:

"...a long history of requests e.g. over several years may make what would otherwise be taken in isolation, an entirely reasonable request, wholly unreasonable in light of the anticipated present and future burden on the public authority."

33. The Commissioner agrees with the Department's assessment that compliance with the current requests would result in further requests, and he has seen no evidence to suggest that compliance would satisfy the complainant or bring an end to the correspondence.
34. The Commissioner also notes that the complainant submitted requests via the What Do They Know website (WDTK), as well as via his personal email account. In addition to request 1 described at paragraph 5 above, the complainant contacted the Department via WDTK on the same day to complain that he had not received a response to his request of 24 May 2011 as described at paragraph 7 above. The Commissioner considers the request of 24 May 2011 and part 4 of the request of 29 February 2012 as being for the same information. The Commissioner has seen the Department's response to the request of 24 May 2011 and is therefore satisfied that this request was answered. It is not clear to the Commissioner why the complainant chose to contact the Department via WDTK about a response which had clearly been provided, whilst simultaneously submitting a further request for the same information.
35. In light of the above the Commissioner finds that there is sufficient evidence to support the Department's claim that requests 1, 2 and 3

⁴ GIA/1871/2011

were vexatious. The Commissioner is not satisfied that the complainant had any material justification for continuing to make requests for information he had already largely received. Adding further requests and rewording previous requests did not assist the complainant in furthering his understanding of the Department's position, but created a cumulative burden which the Commissioner considers disproportionate.

36. Accordingly the Commissioner finds that section 14(1) is engaged in relation to each request, and the Department was not obliged to comply with any of the three requests. As the Commissioner has found that section 14(1) applies to the requests he has not considered it necessary to make a decision in relation to section 14(2).

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

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