

Freedom of Information Act 2000 (the Act)

Decision notice

Date: 16 July 2020

Public Authority: The Department for Work and Pensions

Address: Caxton House
Tothill Street
London
SW1h 9NA

Decision (including any steps ordered)

1. The complainant has requested the correspondence sent between two DWP employees.
2. The Commissioner's decision is that DWP is not entitled to rely on section 14(1) of the Act to refuse to comply with the requests.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Issue a fresh response which does not rely on section 14(1).
4. 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 pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 29 April 2019, the complainant wrote to DWP and requested information in the following terms:

"I am asking for following disclosure pursuant to provisions of FOI, and DPA;

- All work correspondences in between [named individual] or other rank holders as him, Compliance Manager(s) and any other rank holder

identifiable as a person concerned with said sources in chain of command with [named individual] from April 2016 to April 2017."

6. The complainant also submitted the following request on the same day:
- "Pursuant to provisions of FOI and DPA , I am asking for disclosure of :*
- 1. The Job Title and a copy of Job Description for the Position held by [named individual] on 17 May 2016*
 - 2. A copy of the Job description for the Position hold in immediate operational supervision capacity above the rank holder identified above (e.g. Compliance Manager)*
 - 3. Full job titles of the manager to whom a rank holder as identified above (named individual) was accountable on his day to day performance.*
 - 4. All correspondences emails, minutes, personal diary note, live messaging and like information record in between three position holders identified above from January 2016 to January 2017 concerning any issue /complaint/ report and like matters involving or in relation with conduct of interviews/ conduct of meeting with customers / handling of appointments carried out by way of writing to customers in terms like "We are reviewing your benefit claim " " come to your meeting to keep us up to date" and like invitations."*
7. DWP responded on 13 May 2019 and refused to comply with the requests dated 29 April 2019 on the basis that it considers the requests are vexatious.
8. The complainant requested an internal review on 25 June 2019. DWP provided the outcome of the internal review on 13 August 2019 and upheld its original position.

Scope of the case

9. The complainant contacted the Commissioner on 21 August 2019 to complain about the handling of his request for information.
10. The Commissioner considers that the scope of the investigation is to determine whether DWP is entitled to rely on section 14(1) to refuse to comply with the complainant's request for information.

Reasons for decision

11. Section 14(1) of the Act states that section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious.
12. The term "vexatious" is not defined in the Act. The Upper Tribunal considered the issue of vexatious requests in the case of the *Information Commissioner v Devon CC & Dransfield*¹. The Tribunal commented that vexatious could be defined as the "*manifestly unjustified, inappropriate or improper use of a formal procedure.*" The Tribunal's definition clearly establishes that the concepts of proportionality and justification are relevant to any consideration of whether a request is vexatious.
13. The Upper Tribunal also found it instructive to assess the question of whether a request is truly vexatious by considering four broad issues:
 - a. The burden imposed by the request (on the public authority and its staff);
 - b. The motive of the requester;
 - c. The value or serious purpose of the request; and
 - d. Any harassment or distress of and to staff
14. The Upper Tribunal did, however, also caution that these considerations were not meant to be exhaustive. Rather it stressed the "*importance of adopting a holistic and broad approach to the determination of whether a request is vexatious or not, emphasising the attributes of manifest unreasonableness, irresponsibility and, especially where there is a previous course of dealing, the lack of proportionality that typically characterise vexatious requests.*" (paragraph 45)
15. In the Commissioner's view, the key question for public authorities to consider when determining if a request is vexatious is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress.
16. The Commissioner has identified a number of indicators which may be useful in identifying vexatious requests. These are set out in her published guidance on vexatious requests². The fact that a request

¹ <http://administrativeappeals.decisions.tribunals.gov.uk//Aspx/view.aspx?id=3680>

² <https://ico.org.uk/media/for-organisations/documents/1198/dealing-with-vexatious-requests.pdf>

contains one or more of these indicators will not necessarily mean that it must be vexatious. All of the circumstances of a case will need to be considered in reaching a decision as to whether a request is vexatious.

The complainant's position

17. The complainant considers that DWP failed to show sufficient grounds for relying on section 14(1) by the time of his complaint to the Commissioner.
18. The complainant set out that the independent scrutiny referred to by DWP is that of the Independent Case Examiner's (ICE) report³. The complainant considers that the ICE did not offer any auditing or scrutiny of the matters which his request seeks information on.
19. The complainant also confirmed that, contrary to DWP's statement, the matter dealt with by the ICE is not closed as he had recently succeeded in asking the Tribunal to open a file to hear his case after two years. The complainant considers that this is despite "*spurious manoeuvres and attempts by DWP to obstruct my access to judiciary ever since 2016*".
20. The complainant stated that DWP had alleged that one of his requests may prove costly and rejected this as a baseless estimate. He considers that on the basis of the nature of such correspondence and low likelihood of this correspondence to be officially recorded.
21. The complainant also considers that DWP is displaying bias by not complying with his request as he states that DWP provided similar information to another member of the public in 2016.
22. The complainant disputes that complying with the requests would in fact result in any distress or disruption or that any distress caused would be due to a vexatious act on his part. He disputes that the information requested is by nature capable of causing such effects as the information relates to correspondence which took place years ago.

DWP's position

23. DWP provided a sequence of events prior to the complainant making the request under consideration. This is summarised below.
24. In May 2016, the complainant attended a Compliance Interview following an allegation that he had undeclared capital or earnings. DWP

³ <https://www.gov.uk/government/organisations/independent-case-examiner>

stated that he failed to answer any questions during the interview and left after around five minutes. Following this interview, the complainant made a complaint to DWP about the handling of his case. DWP responded to the complainant and explained his case had been dealt with correctly, other than a failure to issue the correct notification of a suspension of benefits.

25. In July 2016, the complainant responded by stating that he was unhappy with the response and he did not trust the judgement of the Complaints Resolution Manager who dealt with his complaint. The complaint was passed onto DWP's Director General's Office, the second tier in the complaints process. The Head of the Fraud and Error Service wrote to the complainant on behalf of the Director General and again stated there had been no wrongdoing by DWP, other than the omission of the written notification above.
26. In October 2016, the complainant made a request under the Act for information relating to Compliance Interviews, including who at DWP was ultimately responsible for these interviews and the extent to which DWP Ministers were aware of them. The complainant also asked for the statutory basis for Compliance Interviews. DWP responded to this FOI but neglected to respond to question 1, relating to Ministerial awareness of Compliance Interviews. This request was subsequently investigated by the Commissioner, during which time DWP provided a response to question 1, relying on section 12 on the basis that the it would exceed the appropriate limit to respond to the request. The Commissioner upheld DWP's reliance on section 12 but found that DWP had failed to provide advice and assistance as required under section 16.
27. In December 2016, the complainant failed to attend a rescheduled Compliance Interview.
28. In January 2017, the complainant made another request for information relating to a letter sent to him advising that his Employment Support Allowance claim was being closed following his Compliance Interview. DWP confirmed that it was unable to locate the letter as the reference number provided did not match any in its records. DWP advised that if the complainant provided a copy of the letter, it would be able to provide a response. The complainant complained to the ICO and provided a copy of the letter to the Commissioner. The Commissioner provided this to DWP which was then able to provide a response to the complainant.
29. In March 2017, the ICE began investigating the complainant's complaint to them about DWP's handling of his case. The ICE wrote to the complainant and explained that it was not upholding his complaint, other

than the fact that DWP had failed to issue the correct notification when suspending his benefit.

30. In October 2018, the complainant submitted a request for information on the number of suicides committed by claimants who had been contacted by the Counter Fraud and Compliance Directorate within the last 12 months of their life. DWP responded by stating that it did not hold this information as it did not routinely collect the cause of death of a claimant. The complainant requested an internal review and asked DWP to look specifically at information on Peer Reviews as referenced by the Secretary of State in a Work and Pensions Select Committee hearing. DWP upheld its position that it did not hold the requested information. Following a complaint to the Commissioner, DWP located information within the scope of the request and provided figures. The Commissioner issued a decision notice stating that, on the balance of probabilities, DWP held no further information to that provided.
31. In March 2019, the complainant made a request for the direct email address of the ICE. DWP refused to provide the information as it was exempt under section 40, personal information. The complainant disputed this to the Commissioner who issued a decision notice finding that section 40 applied to the requested information.
32. In April 2019, the complainant made two requests for information which are the subject of this decision notice. The requests were for information and email correspondence of those involved in his Compliance Interview during the period he was under investigation. Due to the wider context of the complainant's request and his "*clear attempts*" to pursue a personal matter through the Act, DWP considered this request to be vexatious.
33. DWP provided the following details of the detrimental impact of complying with the requests for information under consideration.
34. DWP set out again the history of the complainant's concerns and set out that it considered this matter was resolved in March 2019, largely in DWP's favour, with only one element of the complaint upheld, ie that DWP had failed to issue appropriate notification of the suspension of the complainant's benefits
35. DWP explained that it has received five requests for information from the complainant on the back of the original Compliance Interview. It considers that in answering these requests, it has always sought to be helpful and to provide the information the complainant seeks as far as possible within the constraints of the Act.

36. DWP considers that the latest requests are the 5th and 6th in a sequence beginning in 2016, all of which have a common driver, namely the complainant's apparent dissatisfaction with the service, based on an event that took place a number of years ago. DWP set out that the latest request is focussed on the individuals he believes were involved in the original interview.
37. DWP considers that the complainant will not be satisfied with any response it provided and that follow up requests will ensue. DWP acknowledged that it has had to amend its initial responses on certain occasions and that this may have encouraged the complainant to submit new requests for information in the belief that there is more to learn, however, it believes that there is no indication that this sequence of requests will end or that it will ever provide an outcome that resolves the complainant's dissatisfaction.
38. DWP considers that expending further time on this particular request would divert valuable resource from other work and that the latest request potentially undermines the point and purpose of the legislation.
39. DWP also explained that that it was unclear how this information would benefit the complainant. It considers that there is no basis for thinking that anyone has conspired against the complainant and his complaints about the way his case was handled have been looked into by both DWP and by ICE.
40. DWP considers that there is nothing new in the current requests for information to suggest that it would be beneficial to reopen the matter in any way. DWP explained that whilst the wider public need to have absolute faith in the way it conducts its interviews and investigations, there is no indication that his case has been mishandled and that this request would reveal any wider truth. DWP considers that the complainant is pursuing a relatively trivial or highly personalised matter of little if any benefit to the wider public.
41. DWP considers that the history of the complainant's requests, as well as his repeated requests for Internal Reviews and ICO investigations, suggests a clear pattern.
42. DWP considers that there is reason to suggest that the complainant is using the Act to seek redress from DWP for a perceived grievance or to embarrass DWP in some way. DWP considers that there is nothing to indicate that the continued use of the FOI process will achieve this.

The Commissioner's position

43. The purpose of section 14 of the Act is to protect public authorities and their employees in their everyday business. In her guidance, the

Commissioner recognises that dealing with unreasonable requests can place a strain on public authorities' resources and get in the way of delivering mainstream services or answering legitimate requests. Furthermore, these requests can also damage the reputation of the legislation itself.

44. The Commissioner accepts that the complainant's request is highly personalised and may not provide a significant insight for the general public. However, as the application of section 14(1) effectively removes the requester's right to access the requested information, the Commissioner considers that the threshold for applying section 14(1) must be high.
45. DWP has not produced sufficient evidence to demonstrate that the requests will cause a disproportionate or unjustified level of disruption, irritation or distress. DWP has stated that the complainant has been making requests since 2016, however the Commissioner notes that DWP has stated that only 6 requests have been made in this time.
46. The Commissioner considers that DWP is a large organisation and whilst it does have finite resources to respond to FOI requests, the Commissioner does not accept that the number of requests made by the complainant since 2016 is significantly onerous.
47. DWP has referred to the complainant's requests for internal reviews and complaints to the Commissioner as evidence of the complainant's unreasonable persistence. However, the Commissioner does not accept that requesters exercising their rights under the Act is a valid argument of the burden placed on a public authority, particularly in light of the fact that on several occasions the complaints made to the Commissioner have been upheld.
48. The complainant provided the Commissioner with a request to DWP which is not included in DWP's submissions. When asked by the Commissioner for a copy of the response to this request, DWP confirmed that it had handled it solely as a Subject Access Request. Having reviewed the request for information, the Commissioner considers that it is clear that the request should have also been handled under the Act as it includes requests for information that are not the complainant's personal data.
49. DWP acknowledged that it had erred in the complainant's case by not issuing the required notice, but it has not confirmed to the Commissioner how this was remedied or whether it rectified the mistake.

50. The Commissioner has made her decision in the context of the Information Commissioner v Devon CC & Dransfield in which the Tribunal stressed the *"importance of adopting a holistic and broad approach to the determination of whether a request is vexatious or not, emphasising the attributes of manifest unreasonableness, irresponsibility and, especially where there is a previous course of dealings, the lack of proportionality that typically characterise vexatious requests."* (paragraph 45).
51. The Commissioner notes that DWP considers that complying with the current requests would encourage the complainant to continue making requests and that he is unlikely to be satisfied with any response provided. However, the Commissioner is not persuaded that this is an obvious conclusion from the evidence provided. The complainant has confirmed that he has submitted his case to a tribunal and the Commissioner considers that it is likely that the current requests are attempts to obtain information to prepare for this tribunal.
52. The Commissioner would however comment that, at times, the complainant's correspondence is uncivil and should the complainant continue to make requests on the same subject, the Commissioner may find that section 14(1) applies in the future. However, on the basis of the submissions provided for this case, the Commissioner is not persuaded that the high threshold for vexatious has been reached.

Right of appeal

53. 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: 0870 739 5836

Email: grc@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

54. 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.
55. 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

Victoria Parkinson
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
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SK9 5AF