

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 16 March 2018

Public Authority: Department for Business, Energy & Industrial Strategy

Address: 1 Victoria Street
London
SW1H 0ET

Decision (including any steps ordered)

1. The complainant has requested information concerning a meeting which took place on 13 June 2016 between his MP and the then Minister of State for Skills, Nick Boles MP and civil servants. Department for Business, Energy & Industrial Strategy originally withheld the requested information under section 36(2)(b)(ii) of the FOIA but latterly, during the Commissioner's investigation, applied section 14(1) to refuse the request on the grounds that it was vexatious. The Commissioner has decided that Department for Business, Energy & Industrial Strategy is entitled to rely on section 14(1) to refuse the request.

Background

2. In submissions to the Commissioner, Department for Business, Energy & Industrial Strategy (BEIS) advised the Commissioner that the complainant had a long history of corresponding with the Department. He was, from around 1997, a franchisee of a company and in 1999 the Department¹ considered whether to take action against the company under the Trading Schemes Regulations 1997 (the "TSRs", which were primarily intended to regulate pyramid selling) but ultimately concluded that the TSRs did not apply to the company. The complainant's

¹ Then the Department of Trade and Industry

franchise subsequently collapsed, due indirectly, he argues, to the Department's failure to take action against the company under the TSRs. The complainant claims that as a result, the Department is liable for losses he sustained due to the collapse of his franchise.

3. BEIS advised that for approaching 20 years the complainant has conducted a campaign of (sometimes abusive) correspondence against the Department, its officials and its ministers regarding this matter. This has involved, on a number of occasions, the complainant personally approaching Department officials and a Secretary of State at their homes. BEIS advised that in this long correspondence history the Department has responded in detail to the complainant's concerns and explained their position on several occasions. They advised the Commissioner that the complainant refuses to accept this and alleges that the Department is engaging in a cover-up.
4. BEIS explained that around March 2016 the complainant contacted his Member of Parliament, James Heapey MP, to raise his long-standing concerns about the TSRs. Mr Heapey requested a meeting with the then Minister of State for Skills, Nick Boles, and a meeting took place on 13 June 2016. Formal minutes of the meeting were not created but a brief note of the meeting was taken.

Request and response

5. On 22 June 2016, the complainant wrote to BEIS and requested information in the following terms:

'A meeting was held on Monday 13th June 2016 between civil servants and Minister Nick Boles and James Heapey MP. Please could we have copies of the minutes of that meeting'.
6. BEIS acknowledged receipt of the request on 20 July 2016 and advised the complainant that section 35(1)(a)(formulation or development of government policy) applied to his request and that they needed further time to consider the public interest test. Further such holding letters were sent to the complainant by BEIS on 17 August, 15 September and 13 October 2016.
7. On 13 October 2016 the complainant wrote to BEIS requesting an internal review and stated that *'the reasons for the delay is that a cover up of the falsification of legal opinions is in operation'.*
8. On 7 November 2016 BEIS provided the complainant with their delayed substantive response to his request. The Department apologised for the delay in responding to the request and advised that it had taken longer to administer than they would have liked. BEIS confirmed that they

held the information requested but that it was exempt from disclosure under section 36(2)(b)(ii)(prejudice to the effective conduct of public affairs) of the FOIA. The Department stated that:

'During the meeting held between former Minister Nick Boles and James Heapey MP on 13th June 2016, views were exchanged in the expectation that they would not be disclosed. Release of this information would have an inhibiting effect because future exchanges could be more reticent and circumscribed with the result that Ministers would have less information on which to base the development of government policy'.

9. The Department advised that:

'We consider that the public interest continues to favour withholding the minutes of the meeting² because, whilst release of the information would provide greater transparency in Government processes, it would do so to the detriment of the self-contained space in which policy making proceeds, and have a chilling effect on the free and frank exchange of views that is necessary for decision making and relationship management in Government'.

10. BEIS considered that the public interest in disclosing the requested information was outweighed by the public interest considerations in favour of withholding the information.

Scope of the case

11. The complainant contacted the Commissioner on 7 November 2016 to complain about the way his request for information had been handled. He explained that:

'The meeting to which the complaint refers was called by MP James Heapey in order to get a 'broad terms' explanation of the Trading Schemes Act 1996 such that a layman could understand. He called this meeting as he himself had been unable to make sense of a piece of legislation that regulates contracts between a franchisor and franchisee where ambiguity can force the smaller party (which the regulations are designed to protect) into legal activity with their much larger franchisor in order to determine the validity of the contracts'.

² In actual fact a brief note of the meeting

12. The complainant contended that *'due to the nature of the regulations and their impact on contracts, there is no room whatsoever for the slightest ambiguity and the 'broad terms' understanding has to be clear to the public at large and solicitors'*. He stated that BEIS *'were not asked to discuss my case at all and in any event the exemptions do not exist to cover up the wrongdoing of a government department'*.
13. The complainant questioned how, after introducing legislation 19 years ago, the Department could still be forming government policy on it and contended that, *'if you introduce legislation that is contract affecting between businesses then the exact interpretation needs to be made from the start so everyone knows where they stand. They can't leave it for a test case in the courts to decide (which incidentally hasn't happened in 19 years) otherwise the first person to have a contract problem effectively is sacrificed'*. The complainant alleged to the Commissioner that BEIS were *'falsifying legal opinions to cover up the fact they introduced defective legislation'*.
14. By way of managing his expectations, the Commissioner explained to the complainant that FOIA affords a right of access to recorded information but does not impose any duty or requirement upon a public authority to create new information or justify or explain decisions or actions or provide explanations of legislation. Therefore, FOIA could not assist the complainant in obtaining a 'broad terms' explanation of the law, for which he would need to seek legal advice.
15. In the course of the Commissioner's investigation, the complainant provided the Commissioner with a copy of a letter dated 19 July 2016 which he had received from his MP. Mr Heappey enclosed for the complainant's attention a copy of a response which he (Mr Heappey) had received from BEIS following departmental enquiries into the concerns which he had raised at the 13 June 2016 meeting just over a month earlier.
16. The Commissioner would note, having had sight of the withheld information, that the information provided to the complainant by Mr Heappey in the letter of 19 July 2016 reflects the information contained in the briefing note (withheld information). That is to say, the complainant was personally informed of the outcome of the meeting by his MP. The Commissioner is satisfied that the withheld information does not reveal or suggest any dishonesty or improper conduct, of the nature asserted by the complainant.
17. In submissions to the Commissioner, BEIS advised that having re-examined the request, they were applying section 14(1) as *'alternative grounds for refusal'* as they considered that the request formed part of a vexatious course of correspondence. They noted that this ground for

refusal should have been reflected in their original response to the request and apologised for introducing the exemption at a late stage.

18. Consequently, the Commissioner obtained further submissions and evidence from BEIS in support of the section 14(1) refusal and informed the complainant (as the Department had not) that his request was being refused as vexatious.
19. In light of the Department's revised position that the complainant's request should be refused on the basis of section 14(1) of FOIA, this decision notice solely focuses on whether BEIS can correctly rely on this provision of FOIA. That is to say, it does not consider the substantive exemption (section 36(2)(b)(ii) applied by the Department. The Commissioner is required to follow this procedural approach as section 14(1) states that section 1(1) of FOIA does not oblige a public authority to comply with a request for information if the request is vexatious.

Reasons for decision

Section 14(1) – vexatious requests

20. Section 14(1) of FOIA allows a public authority to refuse to comply with a request if it is considered to be vexatious.
21. In the Commissioner's view, section 14(1) is designed to protect public authorities by allowing them to refuse any requests which have the potential to cause a disproportionate or unjustified level of disruption, irritation or distress. This will usually involve weighing the evidence about the impact on the public authority and balancing this against the purpose and value of the request. This should be judged as objectively as possible; i.e. would a reasonable person think that the purpose and value are enough to justify the impact on the public authority.
22. The context and history in which a request is made will often be a major factor in determining whether the request is vexatious, and public authorities need to consider the wider circumstances surrounding the request before making a decision as to whether section 14(1) applies. In practice, this means taking into account such factors as:
 - Other requests made by the requester to the public authority (whether complied or refused);
 - The number and subject matter of those requests;
 - Any other previous dealings between the public authority and the requester.

And assessing whether these weaken or support the argument that the request is vexatious.

23. A request which would not normally be regarded as vexatious in isolation may assume that quality once considered in context. An example of this would be where an individual is placing a significant strain on an authority's resources by submitting a long and frequent series of requests, and the most recent request, although not obviously vexatious in itself, is contributing to that aggregated burden. As Lady Judge Arden observed in the Court of Appeal Case *Dransfield v Information Commissioner and Devon County Council* [2015], '*the decision maker should consider all the relevant circumstances in order to reach a balanced conclusion as to whether a request is vexatious*' (Para 68).

BEIS' position

24. In submissions to the Commissioner, BEIS advised that there is a substantial history of correspondence and other contact with the complainant, despite the Department having notified him that it considers the matter closed on a number of occasions. Referring to the Commissioner's guidance on section 14(1) which lists a number of (non-exhaustive) indicators which may be features of a vexatious request, BEIS cited the complainant's unreasonable persistence, in that he '*is attempting to reopen an issue which has already been comprehensively addressed by the public authority, or otherwise subjected to some form of independent scrutiny*'. The Department contended that the complainant's unreasonable persistence and behaviour could be seen through his sustained campaign of correspondence on this matter between, at least, November 1999 and March 2015.
25. The Department also noted the futile nature of the complainant's request, in that '*the issue at hand individually affects the requester and has already been conclusively resolved by the authority or subjected to some form of independent investigation*'. BEIS stated that the complainant's course of correspondence, of which the request of 22 June 2016 was merely the latest example, '*relates to an issue that has been comprehensively addressed by the Department*'.
26. BEIS cited paragraph 59 of the Commissioner's guidance, which states that, '*the requester's past pattern of behaviour may also be a relevant consideration. For instance, if the authority's experience of dealing with his previous requests suggests that he won't be satisfied with any response and will submit numerous follow up enquiries no matter what information is supplied, then this evidence could strengthen any argument that responding to the current request will impose a disproportionate burden on the authority*'.

27. The Department noted that the complainant *'appears to be claiming some form of compensation (absent any formal legal or judicial process) for his claimed losses'* and they believed that *'it is clear from the Department's correspondence with (the complainant) that it does not intend to pay any such compensation and there does not otherwise appear to be any response that the Department could give that would persuade him to stop corresponding with the Department on this matter'*. Furthermore, BEIS contended that the past correspondence showed that any information which was provided to the complainant *'will be deployed so as to open up new avenues of enquiry, leading to further burden on and disruption to the work of the Department'*.
28. BEIS also noted that at times the complainant had used abusive or aggressive language towards officials, and had repeatedly 'door-stepped' officials and ministers, in some cases leading to the individuals concerned feeling intimidated and threatened.
29. BEIS advised the Commissioner that due to machinery of government changes and changes to the Department's records systems during the almost twenty year period of the complainant's correspondence, it was not possible to identify each item of the same. However, a search of the complainant's name alone in the Department's electronic management system had resulted in 10 pages of entries covering a wide span of years. Consequently, the Commissioner asked BEIS to provide a sample of the complainant's previous correspondence, in particular his prior information requests, from across the period in question (1999 to 2016). The Commissioner cites the more pertinent parts of this correspondence below.
30. On 1 November 1999 the Department of Trade and Industry (DTI) wrote to the complainant further to previous correspondence and confirmed their view that the relevant companies were schemes to which Part XI of the Fair Trading Act and the Trading Schemes Regulations did not apply. The Department advised the complainant that they did not intend to take any action in relation to the schemes.
31. On 23 October 2000 DTI wrote to the complainant and advised him that they had decided not to disclose instructions to Counsel and advice from Counsel (as requested by the complainant under the Code of Practice on Access to Government Information³) because such information was legally privileged under exemption 4(d) of the Code.

³ Which pre-dated the FOIA

32. On 12 February 2001, Kim Howells MP (then Parliamentary Under Secretary of State for Consumers and Corporate Affairs at DTI) wrote to the complainant's MP, in relation to the complainant's ongoing attempts to obtain copies of documents concerning the Department's decision not to take any action under the trading schemes legislation against the relevant companies. Mr Howells noted that the complainant had written to the Department in August 2000 requesting a review of an earlier decision not to disclose information to him under the Code, and the complainant had been informed of the outcome of that review on 23 October 2000 and that if he remained dissatisfied he had the right to raise the matter through an MP with the Parliamentary Ombudsman. Mr Howells advised the complainant's MP that he was satisfied that this had been '*a justified decision*' and that he would not seek the release of the documents to the complainant. Whilst expressing his sympathy with the complainant for the loss of his business, Mr Howells stated that he was satisfied that '*his complaints have been considered fully*' and that there was '*nothing further that I or the Department can do in this matter*'.
33. The complainant wrote to the Director General of Competition and Markets at DTI on 20 April 2001 and stated:

'It should not have escaped your attention that the purpose of The Fair Trading Act 1973 and The Trading Schemes Act 1996 is "to prevent participants and potential participants from being unfairly treated" (Para 119). The responsibility for enforcement of these Acts lies with the DTI. After consideration of my complaint, and those of my fellow complainants, the DTI came up with its preposterous 'view' and denied us any explanation. This is injustice twice over. Moreover, it is surely in the public interest, i.e. participants and potential participants, to understand the department's 'view'. How else are they to know that they are receiving the protection to which they are entitled?'
34. On 1 May 2001 DTI wrote to the complainant to advise him that in view of the protracted correspondence and other communication that had taken place in the matter, the department believed that they were fully justified in invoking exemption 9 of the Code, relating to voluminous and vexatious requests, in respect of all future correspondence, save for that arising from his rights under the Data Protection Act 1998.
35. Following further correspondence from the complainant, the Department wrote to him on 14 September 2001 referred him back to their notification of their invoking of exemption 9 of the Code.
36. On 27 February 2007 the complainant wrote to the Permanent Secretary at DTI, beginning his letter with '*you absolute bastard*' and accusing him of covering up criminal activity on the part of the Department. The complainant referred to having obtained a memo (under the FOIA) issued by DTI to the British Franchise Association (BFA) and contended

that the memo *'is a clear intention to pervert justice by not properly interpreting the legislation'*. The complainant advised that a file, including the memo, would be passed to the police.

37. The complainant wrote to the Director of Consumer and Competition Policy at Department for Business, Enterprise and Regulatory Reform (BERR)⁴ on 13 March 2009 and accused a named DTI official of amending the Trading Schemes Guide in 1997 and the Department of deceit in operating to protect her and themselves. The complainant contended that, *'contrary to your assertions we are not the bad guys here, we are the good guys battling against a government cover up of an event which (named official) was the originator'*. The complainant stated that the official was *'not in any danger from us'* and gave his word that they would not be visiting her ever again. The complainant stated that it would be a lot simpler if BERR admitted that the official had *'amended' the law 'by making an addition to the guide book and compensated us for the huge, huge losses that we suffered'*.
38. On 9 April 2009, the complainant emailed the Director of Consumer and Competition Policy and stated that, *'hundreds of thousands of pounds of taxpayers' money have been spent over 11 years trying not to answer any of our questions on this this. And you want me arrested. Well, bring it on I say and let's finally get those answers'*. He urged the Director to *'pucker up and get the department to stop lying'*.
39. The Director responded to further emails from the complainant on 3 July 2009. After stating the Department's own position in respect of the legislation she advised the complainant that:
- 'I understand that you enquiries on this subject have received considerable attention from officials over the years. As you would expect, all of those officials have considered your representations and responded constructively to you. On reflection, I cannot see that there is more the Department could have done, or can do now, to help you'*. In closing, the Director asked the complainant to reflect carefully on the wisdom of carrying on with such correspondence, *'given the long history of exchanges on this matter, which was closed some years ago'*. The complainant was warned that further communications, particularly those to retired members of staff, *'may be considered vexatious'*.
36. On the same date (3 July 2009) the complainant made an FOI request for *'details of what discussions took place, who the discussions were with and the minutes of the discussions'*. Department for Business,

⁴ DTI having been disbanded in June 2007

Innovation and Skills (BIS)⁵ responded to the complainant's request and advised that they had interpreted it '*as a query about discussions with stakeholders relating to participants in a trading scheme prior to the November 1997 update to the Government's guidance on trading schemes; a wish to know the identities of those involved in any discussions held; and a request for copies of any minutes of those discussions*'. The response noted that the discussions referred to were the same discussions which related to the Government's formulation in 1997 of policy on multi-level trading schemes. The response noted that the complainant had requested material relating to these policy discussions in an FOI request the previous year and the Department referred him to the previous request response. BIS advised that they had conducted a further search of their files in respect of any additional information relating in particular to the amendment of the guidance and had found no further information that was available for disclosure. The Department confirmed that correspondence on the formulation of policy was conducted with the solicitors concerned, and this correspondence had been considered for release under the complainant's previous request and was considered exempt for the reasons set out in their reply to that previous request.

37. Following the formation of the Coalition Government in May 2010, the complainant wrote to the then Secretary of State for Business, Innovation and Skills, Dr Vince Cable MP on 4 October 2010, and stated:

I and my colleagues hope that you will indeed shine a harsh light on the murky world within your own department and bring some miscreants to justice. We also hope that you will demand that our complaints be reconsidered in the light of our evidence under the legislation as enacted. Such reconsideration should lead firstly to an apology, and subsequently to compensation for the wrong we have suffered as a result of the actions and inaction of your department over the last twelve and a half years'.

38. In an (undated) letter in October 2010, Ed Davey MP (then Minister for Employment Relations, Consumer and Postal Affairs) wrote to the complainant on behalf of Dr Cable. Mr Davey advised the complainant that having looked into the matter, he had concluded that, '*there is nothing further that I or anyone else in the Department can add to what has already been said and provided to you on this matter over the course of several years*'. Mr Davey went on to acknowledge that '*I appreciate that you hold strong views on how the Department has dealt*

⁵ Created in June 2009 by the merger of BERR and Department for Innovation, Universities and Skills (DIUS)

with your complaints and enquiries over the years. Nevertheless, there is nothing in your recent representations which cause us to rethink the Department's position. I do not believe that there appears to be anything to be gained from further correspondence on this'.

39. In another (undated) letter in October 2010, Dr Cable wrote to the complainant, thanking him for his letters of 4 October *'which you handed to me at home'*. The Secretary of State advised the complainant that, *'The Department has responded to your concerns in detail previously and has fully explained its view on the interpretation of the legislation. I am satisfied that the Department can add nothing on this matter which it has not already provided to you over the course of several years'*.
40. Four years later on 9 June 2014, the complainant emailed Tessa Munt MP (his MP at the time) and stated *'You are aware that I doorstepped Vince Cable and a colleague doorstepped Ed Davey in 2010 to present them each with a file on the falsification of legal opinions and the perversion of justice which is the Trading Schemes Act 1996'*. The complainant informed Ms Munt of another situation involving franchisees and stated that, *'we are no longer 3 people with a problem but now over 100 people with a problem'*. On 18 June 2014 the complainant emailed Ms Munt again about the franchisees situation and contended that, *'the DTI should now step in to do what the law requires them to do'*. On 20 June 2014 the complainant emailed Ms Munt at 10.05pm and informed her that *'we doorstepped Vince Cable again tonight'*.
41. On 13 July 2014 the complainant made an FOI request to BIS for *'details of which companies the Secretary of State has petitioned to have wound up in the public interest on the basis that they have committed an offence under Section 120 of the Fair Trading Act (breach of the trading schemes regulations)'*. BIS responded to the request on 18 July 2014 and confirmed that they did not hold the information requested but that Companies House might hold the information and they suggested that the complainant write to Companies House.
42. On 28 July 2014 the complainant submitted an FOI request to BIS for *'any briefing notes made available for BIS officials or officers for responses to the public when complaints are made on breaches of the Trading Schemes Act 1996'*. The Department responded to the request on 11 August 2014 and refused the same under section 12 of FOIA. BIS suggested that the complainant might wish to refine his request by providing more specific details as to the information which he required, and by limiting the timescale of his request to a shorter period.
43. BEIS provided the Commissioner with a copy of a letter sent to one of the complainant's associates on 19 March 2015, in which they stated that, *'as we have clarified before, departmental guidance does not have*

the force of legislation and merely represents the department's view of the law. Furthermore, there is nothing inconsistent in what we say in guidance and what the law says'.

The Commissioner's position

44. The Commissioner notes that at the time of his information request to BEIS of 22 June 2016, the complainant had been corresponding with the Department (and predecessor departments) for around 17 years. This correspondence stemmed from the collapse of the complainant's franchise and the DTI's conclusion that the TSRs did not apply to the company. In submissions to the Commissioner the complainant contended that the meeting of 13 June 2016 between his MP and the Minister and officials had been arranged because the Department had been asked *'for a broad terms explanation of the law'* and *'they were not asked to discuss my case at all'*. However, the Commissioner considers that the complainant's long-running attempts to obtain such an explanation are inextricably linked to his grievance against the Department and his contention that the Department *'are falsifying legal opinions to cover up the fact they introduced defective legislation'*.
45. Whilst there has been some degree of differentiation and variety in the complainant's correspondence (including FOI requests) with the Department over the years in question, the common theme of the correspondence has been the complainant's attempt to expose what he believes to be wrongdoing on the part of Department officials. The complainant informed the Commissioner that he wanted to know the identity of the officials present at the meeting of 13 June 2016 who had *'overruled'* his MP and the Minister.
46. The Commissioner recognises and acknowledges that the collapse of the complainant's franchise has been financially and personally devastating. It is understandable and not unreasonable that the complainant should have made enquiries of the DTI at the time if he felt that legislation was not being enforced and that he had suffered financial consequences as a result. However, as far back as November 1999 DTI wrote to the complainant and confirmed the Department's view that the TSRs did not apply to the situation in which he found himself and that they did not intend to take any action in relation to the relevant schemes. That is to say, the Department's interpretation of the legislation does not accord with that of the complainant. The question as to which (if any) interpretation of the legislation is correct is not one which the Commissioner can answer and FOIA cannot assist an individual in obtaining a *'broad terms'* explanation of particular legislation.
47. Therefore, the futility of engaging in further correspondence with the Department about this matter should have been evident to the complainant many years ago. On multiple occasions over the preceding

17 years the Department has been clear that they have considered the complainant's representations and complaints but they do not consider that these provide any cause for them to change their long established position in this matter. Several individuals, at the most senior levels, including Ministers (e.g. Mr Davey) and a Secretary of State (Dr Cable) have repeatedly informed the complainant that the Department can add nothing further and that there is nothing to be gained from further correspondence.

48. Despite such confirmations and advice the complainant has persisted in corresponding with the Department, including the use of FOI requests, and the accusatory tone and content of such correspondence has gone way beyond the level of criticism that a public authority or its employees should expect to receive. Calling individuals lying and absolute 'bastards' is highly offensive and totally unacceptable. Door-stepping Ministers and officials is likely to have been felt threatening and intimidatory, even if this were not the complainant and his associates' intention.
49. In *Betts v The Information Commissioner* [EA/2007/0109], which involved the refusal of a request as vexatious by the public authority, the majority Information Tribunal found that section 14 was engaged and commented as follows:

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

50. The Commissioner considers that the complainant has displayed similarly obsessional behaviour in the present case, and over a much longer and sustained period of time. The complainant has a firm and deeply entrenched belief that the Department has lied and has been engaged in a cover-up. He contends that the meeting of 13 June 2016 between his MP and the Minister was part of that cover-up and that attending officials lied during the same. The Commissioner notes that the complainant was given feedback as to the outcome of the meeting by his MP, Mr Heappey, in a letter dated 19 July 2016, and that feedback reflects the content of the withheld information (i.e. the brief note of the meeting), which does not reveal or suggest any such dishonesty or wrongdoing. However, this feedback has in no way altered the complainant's belief and his adversarial attitude towards the Department.

51. It is clear, and has been for many years, that the Department do not intend to amend their stated position in this matter as far as the complainant's arguments about the TSRs are concerned. Whilst the Commissioner would not necessarily expect the complainant to agree with the Department's view on the relevant legislation (that being a matter potentially open to challenge through appropriate legal channels), she considers that a reasonable person would have long ago realised and accepted that continued correspondence on this matter with BEIS, particularly in abusive and inflammatory language and tone, could serve no useful or constructive purpose. In pursuing this matter as long as he has done, the Commissioner considers that the complainant has shown a marked and unreasonable persistence.
52. The Commissioner would concur with BEIS in their assessment that there is no response (other than the payment of some form of unascertained compensation) that is likely to satisfy the complainant and in the Commissioner's view it is clear from the history of the complainant's contact with the Department that he is highly likely to continue corresponding with the Department to absolutely no avail.
53. Therefore, when the complainant's request of 22 June 2016 is placed into the crucial context and history set out above, the Commissioner has no hesitation in finding that it is vexatious, in that it forms part of a persistent and manifestly unreasonable campaign by the complainant, which is unjustified and disproportionate. The abusive and aggressive language and tone employed by the complainant is totally unacceptable and in the Commissioner's view adds further grounds for finding the request to be vexatious.
54. Given the clearly disproportionate and oppressive burden that the complainant's persistent correspondence (including FOI requests) has placed upon the Department over many years, the Commissioner is surprised that the Department has not relied on section 14(1) as a way of appropriately managing the same before now.
55. The complainant was notified at least as far back as May 2001 that further correspondence in this matter would be treated as vexatious (then under exemption 9 of the Code). In July 2009, he was warned that further correspondence might be treated as vexatious (under section 14(1) of FOIA). Despite these prior warnings the Department continued to respond to the complainant's correspondence, including his information request of 22 June 2016 (i.e. applying section 36(b)(ii) of FOIA). The Department only applied section 14(1) to refuse this request in submissions to the Commissioner, and then as '*alternative grounds for refusal*'. BEIS did not inform the complainant of their intention to rely on section 14(1) and it was the Commissioner who advised the complainant of the Department's revised position.

56. Given the manifestly strong case for refusing the complainant's request of 22 June 2016 as vexatious, the Commissioner considers that the Department should have adopted a more focused and robust approach in their response to the request, refusing the same under section 14(1) and advising the complainant accordingly. That the Department should have taken more than four months to respond to the request, and then not make any mention of section 14(1) to the complainant, was not acceptable and only fuelled the complainant's suspicions.
57. Finally, the Commissioner recognises and understands why the complainant (and possibly other individuals in similar circumstances) wishes to obtain an explanation of the relevant legislation. However, as FOIA cannot assist in such matters of statutory interpretation, it is neither reasonable nor rational for the complainant to continue to correspond with BEIS in pursuit of this objective.

Right of appeal

58. 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@hmcts.gsi.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

59. 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.

60. 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

Andrew White
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