Freedom of Information Act 2000 (FOIA)

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 10 January 2020

Public Authority: Ministry of Housing, Communities and Local Government

Address: 2 Marsham Street
London
SW1P 4DF

Decision (including any steps ordered)

1. The complainant requested from the Ministry of Housing, Communities and Local Government (MHCLG) various information relating to its operations. The MHCLG refused to comply with the request under section 14(1) of the FOIA because it considered that the request was vexatious.

2. The Commissioner's decision is that the MHCLG was entitled to rely on section 14(1) to refuse to comply with the request.

3. The Commissioner does not require the MHCLG to take any steps.

Background information

4. The background to the current request involves a complaint about an architect that the complainant submitted to the Architects Registration Board (ARB) in 2013.

5. When the complainant was served with a report in August 2013 on his complaint by the ARB's relevant body, he believed his complaint had not been properly addressed and that the investigations panel was

presented with different allegations to those submitted by the complainant.

6. The complainant wrote back to the ARB and challenged the report, presenting his arguments in relation to the panel's report. Subsequently, the complainant was served with a final report, which effectively upheld the preliminary report.

7. Remaining dissatisfied with the outcome of the final report, the complainant requested an independent third party review. This review was conducted by a QC appointed by the ARB. The third party review concluded that the procedure of handling the complainant's complaint by the ARB was correctly applied and the complainant was informed that the ARB has closed the case.

8. The complainant continued corresponding with the ARB in 2014 and 2015, arguing for the re-opening of his case. The ARB did not reopen the case.

9. At the same time, being convinced that his complaint was not addressed in an appropriate fashion, the complainant contacted the MHCLG (then Department for Communities and Local Government - DCLG), which is the responsible authority for overseeing the ARB, to express his concerns and seek the Department's intervention in his complaint.

10. By the end of 2014 the complainant submitted an information request to the ARB asking for information held pertaining to his original complaint about the architect submitted a year earlier.

11. The outcome of the information request was followed by additional correspondence with the ARB and the MHCLG. At a later stage, the Head of Building Regulations and Standards and the Chief Planner of DCLG were involved in the communication with the complainant.

12. On 17 July 2017, in an attempt to help address the complainant's concerns, the Chief Planner also had a face to face meeting with the complainant. This meeting was also followed with additional correspondence.

13. On 13 December 2017 the complainant submitted another information request addressed to the Chief Planner which, according to the complainant, was ignored. This led to a Stage 2 complaint about the Chief Planner to MHCLG submitted by the complainant. This complaint was not upheld.

14. Subsequently, the complainant submitted a Stage 3 complaint and around the same time submitted the information request which is the subject matter of the present case.

Request and response

15. On 25 September 2018, the complainant wrote to the MHCLG and requested information in the following terms:

> *"1) An organisational chart of the MHCLG Complaints/Information and knowledge Access Team, showing names, job titles and structure from most junior to most senior or where to find this information.*
>
> *2) A complete list of Statutory Duties/Requirements by which the MHCLG are obliged to comply or where to find this information.*
>
> *3) A complete list of Statutory Duties/Requirements relating to how the MHCLG are obliged to oversee/govern the Architects Registration Board (ARB).*
>
> *4) Copies of all internal/external correspondence relating to my case going back to 1st October 2016 (Electronic copies are acceptable)."*

16. The MHCLG responded on 23 October 2018. It refused to comply with the requests under section 14(1) FOIA as it considered the requests to be vexatious.

17. The complainant submitted a request for internal review on 29 January 2019.

18. The MHCLG contacted the complainant on 14 February 2019. It explained that they were refusing to provide an internal review since the complainant failed to request it within the deadline of two months from receiving the refusal notice.

19. Further correspondence followed in which the complainant continued to request an internal review and in which MHCLG maintained that it would not carry out a review.

Scope of the case

20. The complainant contacted the Commissioner on 1 May 2019 to complain about the way his request for information had been handled. Whilst this represented a delay in bringing the complaint to the Commissioner, in this case the Commissioner exercised her discretion to accept the complaint.

21. The Commissioner has considered in this decision notice whether the MHCLG was entitled to apply section 14(1) to refuse the request.

Reasons for decision

Section 14(1) – vexatious requests

22. Section 1(1) of the FOIA states that an individual who asks for information is entitled to be informed whether the information is held and, if the information is held, to have that information communicated to them.

23. Section 14(1) of the FOIA states:

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

24. The term "vexatious" is not defined within the FOIA. The Upper Tribunal considered the issue of vexatious requests in Information Commissioner v Devon CC & Dransfield [2012] UKUT 440 (AAC). It commented that "vexatious" could be defined as the "manifestly unjustified, inappropriate or improper use of a formal procedure". The Upper Tribunal's approach in this case was subsequently upheld in the Court of Appeal.

25. The Dransfield definition establishes that the concepts of proportionality and justification are relevant to any consideration of whether a request is vexatious.

26. Dransfield also considered four broad issues: (1) the burden imposed by the request (on the public authority and its staff), (2) the motive of the requester, (3) the value or serious purpose of the request and (4) harassment or distress of and to staff. It explained that these considerations were not meant to be exhaustive and also explained 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).

27. The Commissioner has published guidance on dealing with vexatious requests[1], which includes a number of indicators that may apply in the

[1] https://ico.org.uk/media/for-organisations/documents/1198/dealing-with-vexatious-requests.pdf

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

28. When considering the application of section 14(1), a public authority can consider the context of the request and the history of its relationship with the requester, as the guidance explains:

"The context and history in which a request is made will often be a major factor in determining whether the request is vexatious, and the public authority will need to consider the wider circumstances surrounding the request before making a decision as to whether section 14(1) applies".

29. However, the Commissioner would also stress that the relevant consideration for public authorities is whether the request itself is vexatious, rather than the individual submitting it.

30. In some cases it will be obvious when a request is vexatious but in others it may not. The Commissioner's guidance states:

"In cases where the issue is not clear-cut, the key question to ask is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress".

The complainant's position

31. The complainant maintains that the MHCLG has incorrectly considered his information request as vexatious.

32. The complainant argued that the information requested would enable him to submit a complaint with the Parliamentary Ombudsman. He suspects that there is *"collusion and dishonesty at all levels within the MHCLG and ARB to evade the problem"* and he believes that *"internal correspondence on this subject will help to highlight this as a fact."*

33. The complainant is of the opinion that "*this story represents a wholesale cover-up of incompetence, negligence and dishonesty…It seems that the MHCLG and ARB simply ignore the act when it suits them and hope the complainant can't be bothered to pursue the matter with the ICO…"*

The MHCLG's position

34. The Commissioner wrote to the MHCLG requesting a submission in respect of a number of questions in relation to the points raised by the complainant. The questions were focused on the factors that the MHCLG

took into account when it decided to refuse the complainant's request for information.

35. By way of background, the MHCLG provided a chronology of events related to the complainant's information request.

36. The MHCLG stated that in deciding to refuse the request as vexatious, it followed the Commissioner's guidance on the application of section 14(1) of the FOIA. It maintained that the complainant's request caused a disproportionate and/or unjustified level of disruption, irritation or distress.

37. The MHCLG included in its response different examples taken from the complainant's communication, when it was considered that the complainant acted unreasonably towards various staff members of the MHCLG.

38. The MHCLG stated that on a number of occasions, in his correspondence the language used by the complainant was abusive or aggressive. It quoted an email sent by the complainant on 24 April 2017 where he stated "*can you first confirm that you will not be using your response as an opportunity to spout more meaningless nonsense".* In the same piece of correspondence the complainant wrote that another staff member of the MHCLG "*must clearly know that he is choosing to lie on this point."*

39. In another email on 13 September 2018 to an MHCLG official, the complainant wrote *"I also have some concerns about my case being treated impartially by yourself as there has been already some conflict between you and I."*

40. The MHCLG argued that the complainant used unfounded criticism in a later email sent on 19 September 2018, where he stated "*[name redacted] responded to my Stage 1 complaint with answers so stupid as to be offensive."* Later on, in an email of 19 September 2018 the complainant wrote to a member of staff saying "*I have a number of serious issues with you personally. Please provide me with the name and contact details of your superior by 5pm tomorrow or I will get all the information I need under the FOI which I'm sure you will agree is a waste of everyone's time. Your behaviour is a disgrace."*

41. The MHCLG also considered that dealing with the complainant continued questions and requests has become a grossly oppressive burden in terms of strain on time and resources. The MHCLG stated that the complainant for a long time *"has exchanged correspondence with officials in the Department as we sought to explain our role in relation to ARB. Although the present request is for information from October 2016 only, this still amounts to three years of information that would need to*

be located, extracted and assessed. This is apart from the considerable amount of time that the Department has already spent dealing with [the complainant's name redacted]'s questions, over a number of years."

42. The MHCLG argued that the above excerpts from the complainant's correspondence indicate an element of personal enmity, which was sometimes accompanied by unfounded accusations.

43. It is the MHCLG's opinion that the present case is an example of abusing the rights of access to information by using the legislation as a means of venting anger at a particular decision. The MHCLG asserted that the complainant "*clearly has concerns with a decision made by the Architects Registration Board more than six years ago. Despite the Department's best efforts to mediate with the complainant and explain our position, we believe FOIA is now being used as a part of a campaign of intimidation against officials."*

44. In conclusion, the MHCLG considers that continuing to deal with the complainant's requests on this issue will be unproductive, as this matter was dealt with and concluded by the Department at a senior level. The complainant has also exhausted the MHCLG internal complaints procedure and been advised that he can appeal to the Parliamentary Ombudsman.

45. Therefore, the MHCLG believes that section 14(1) was used appropriately in this case.

The Commissioner's view

46. Firstly, the Commissioner would like to highlight that there are many different reasons why a request may be considered vexatious, as reflected in the Commissioner's guidance. There are no prescriptive rules, although there are some regular characteristics and circumstances that can assist in making a judgment about whether a request is vexatious. A request does not necessarily have to be about the same issue as previous correspondence to be classed vexatious, but equally, the request may be connected to others by a broad or narrow theme that relates them. A commonly identified feature of vexatious requests is that they can emanate from some sense of grievance or alleged wrong-doing on the part of the authority.

47. The Commissioner's guidance emphasises that proportionality is the key consideration for a public authority when deciding whether to refuse a request as vexatious. The public authority must essentially consider whether the value of a request outweighs the impact that the request would have on the public authority's resources in providing it. Aspects that can be considered in relation to this include the purpose and value

of the information requested, and the burden upon the public authority's resources.

48. In the present case, the Commissioner notes that from the background of this complaint it is clear that the relationship between the complainant and the MHCLG is significantly impaired.

49. Based on the submissions received by both parties, the Commissioner notes that extended correspondence has taken place between the parties prior to the request, which was further spurred by responses to previous requests submitted by the complainant.

50. The Commissioner reiterates that the purpose of the FOIA is to promote transparency and accountability to the general public and it should not serve as a mechanism for addressing personal grievances.

51. It is the Commissioner's opinion that the complainant's information request in question is designed in such a fashion that it will only prolong the complainant's grievance without any prospect of resolving the on-going issues.

52. Moreover, the Commissioner considers that, based on the complainant's previous conduct, were the MHCLG to comply with the present information request, it is likely it would result with additional information requests and related correspondence. That would in turn require more effort and time by MHCLG to address such additional requests and correspondence. In addition, the formulation of some parts of the request are very broad and it is likely would require significant work to achieve compliance.

53. The Commissioner notes that, although the number of information requests submitted by the complainant during a recent period of time is not extensive in itself, when considered along with the frequent correspondence and the voluminous nature of other material generated following the complainant's approach to the MHCLG, it can be considered that the cumulative impact may impose an unreasonable burden on the MHCLG's administrative resources.

54. It is clear that the issues between the MHCLG and the complainant have been ongoing for a considerable time and do not appear to be at a stage that they may be resolved soon.

55. The Commissioner appreciates that the information the complainant has requested is of interest to him. However, the Commissioner has to consider whether the request is of sufficient wider public interest or value that it would be reasonable for the MHCLG to be compelled to comply with it, despite the burden involved.

56. As such, the Commissioner recognises that taking into account the wider pattern of requests and correspondence, compliance with these requests would only serve to increase the already significant burden upon the MHCLG.

57. In the particular circumstances of this case, the Commissioner notes that the MHCLG has already dedicated a substantial amount of time and effort to respond to the issues raised by the complainant. It is the Commissioner's view that if the MHCLG were to comply with the present request it would amount to a burden that is disproportionate to the request's wider value.

58. The Commissioner also notes that the complainant strongly believes that the MHCLG has engaged in maladministration and improper use of its policies and procedures. This was also raised by the complainant in the course of the Commissioner's investigation, when further explanations were provided by the parties. The Commissioner is not, however, aware of any independent evidence that supports the allegations made by the complainant.

59. The Commissioner has given consideration to the findings of the Upper Tribunal in the *Dransfield* case, which provides a holistic and broad approach to be taken in respect of section 14(1) of the FOIA. She has also carefully reviewed all the information, arguments and evidence presented to her by both parties and finds that the request was vexatious. She considers, that on this occasion, in all the circumstances of this case, the MHCLG was entitled to rely on section 14(1).

Right of appeal

60. 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

61. 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.

62. 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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