

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

Date: 24 February 2011

**Public Authority:** Department for International Development (DfID)  
**Address:** 1 Palace Street  
London  
SW1E 5HE

### Summary

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The complainant requested from the public authority, details of trust fund accounts audited by Ernst & Young in relation to the World Bank Group. The Commissioner considers the complainant's request to have been correctly deemed vexatious under section 14 of the Act.

### The Commissioner's Role

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1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

### Background

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2. The complainant is an ex-employee of a corporation which is part of the World Bank Group (WBG). Her employment with this corporation was terminated several years ago. She alleges that this termination was carried out with the purpose of hiring cheaper personnel and consultants to do her work and further alleges that facts regarding this were concealed by the corporation. Following this, she has been party to legal proceedings with the WBG regarding the termination of her employment. These have concluded and did not find in her favour.
3. The complainant has used several avenues of complaint in hope of potential redress against the WBG and the DfID. These include Ministers of the DfID, Members of Parliament, the Serious Fraud Office (SFO), the Commissioner, the Cabinet Office, the World Bank President and World Bank Executive Directors. All of these have been in relation to the

complainant's alleging of fraud within the WBG and in many cases her allegations of the DfID's collusion in these frauds.

4. The DfID conducted its own review of the projects in which the complainant alleged fraud and could find no supporting evidence.

## The Request

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5. On 29 April 2010 the complainant made the following request to the DfID:

"Reference the list of trust fund accounts audited by Ernst & Young per information in the WBG Modified Cash Basis Trust Funds Combined Financial Statement issued in September 2009 (attached):

- a) To which of the named individual accounts did the UK provide/ receive contributions; when; in what total amount?
  - b) Did DfID receive, in which case when, and does it hold, copies of the audited financial statements in respect of the receipts, disbursements and fund balance for the year ended June 30, 2009 for each trust fund account administered by the WBG to which UK contributions were made and/or monies received by the UK?
  - c) Have each of the relevant financial statements for each relevant trust fund account been subject to internal audit by DfID and to external audit by the NAO?"
6. A response was provided to this request on 28 May 2010 in which the DfID cited section 14 of the Act, stating that the requested information would not provided as the request was considered vexatious. The DfID said, *'...we believe that your request is causing unjustified disruption and harassment to DfID and placing an excessive burden on public resources.'*
  7. On 31 May 2010 the complainant requested an internal review of the DfID's initial decision. She explained that her request had a legitimate purpose and was not intended to be vexatious to the DfID. She supported this with a large selection of the public authority's and the WBG's policies regarding operations and Freedom of Information. She asserted that this evidence displayed ways in which the public authority and WBG could be held accountable for their alleged actions.
  8. The DfID's internal review decision was provided to the complainant on 14 June 2010. It maintained its original position. It explained that the request formed part of a series of requests to the Department from the

complainant (on the same subject); the complaints and representations made to the DfID had been fully investigated; and, responding to these had taken up a large amount of the time and resources of the DfID. For these reasons, it considered the complainant's request formed part of a vexatious campaign, responding to which would, *'...cause unjustified disruption and harassment, placing an excessive burden on public resources.'*

9. The complainant responded to the internal review decision on 15 June 2010. Her opinion remained contrary to that of the DfID. She explained that the DfID had *'...deliberately withheld every legitimate request for information I have made, and the reason for that is quite simply to prevent me getting at fact finding and truth telling in regards a number of serious matters'*. She stated further, that she did not believe her requests or complaints to have been *'investigated'*, her requests had been *'...wilfully suppressed'* and the DfID's statements regarding investigations *'...are thus completely unfounded'*.

## The Investigation

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### Scope of the case

10. On 20 July 2010 the complainant contacted the Commissioner to complain about the way that her request for information had been handled.

### Chronology

11. The Commissioner contacted the complainant on 21 October 2010 to confirm the scope of his investigation, this being: whether or not the DfID was correct in asserting her request to be vexatious.
12. The Commissioner also contacted the DfID on 21 October 2010. He outlined the complaint made to the DfID and asked a series of questions regarding how its decision was reached and what evidence it had to support this.
13. The Commissioner received a response from the complainant on 1 November 2010. She accepted the scope of the investigation, as outlined in the Commissioner's letter. She submitted further evidence regarding a separate (but related) complaint made against the DfID. The Commissioner reminded the complainant that this was outside of the scope of the current complaint and so could not be considered under it.
14. The DfID provided its response to the questions posed by the Commissioner on 26 November 2010, giving its reasoning and

supporting evidence (it considered the evidence provided to be sufficient but more was available if necessary). The evidence supplied forms the basis of this Notice.

## Analysis

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### Substantive Procedural Matters

15. Section 14(1) provides that:

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

16. The Commissioner has produced external guidance<sup>1</sup> for use when considering whether or not to judge a request as vexatious. This outlines five key points to consider:

- Would complying with the request impose a significant burden?
- Could the request fairly be seen as obsessive?
- Is the request harassing the authority or causing distress to staff?
- Is the request designed to cause disruption or annoyance?
- Does the request lack any serious purpose or value?

17. When considering these factors, the Commissioner takes into account the decision of the First Tier Tribunal promulgated in *Hossack v the Information Commissioner and the Department for Work and Pensions (EA/2007/0024)*. The Tribunal stated that when considering vexatious requests under the Act:

‘...the consequences of finding that a request for information is vexatious are much less serious than a finding of vexatious conduct in these other contexts, and therefore the threshold for a request to be found vexatious need not be set too high...’

18. The bar is therefore set lower, than say that for a vexatious litigant, in deeming a request vexatious. The Commissioner has assessed whether or not this request is vexatious under the Act by analysing whether the evidence provided supports any/all of the aforementioned categories, taking into account the threshold for a request to be ‘vexatious’ under the Act.

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[http://www.ico.gov.uk/upload/documents/library/freedom\\_of\\_information/detailed\\_specialist\\_guides/awareness\\_guidance\\_22\\_vexatious\\_and\\_repeated\\_requests\\_final.pdf](http://www.ico.gov.uk/upload/documents/library/freedom_of_information/detailed_specialist_guides/awareness_guidance_22_vexatious_and_repeated_requests_final.pdf)

19. The Tribunal case of *Welsh v the Information Commissioner (EA/2007/0088)* outlines that the context, background and history of a request can be taken into account when considering section 14. The Commissioner has therefore also analysed the underlying context and purpose of the complainant's request(s), and other correspondence from the complainant to or about the DfID, when making his decision.

### **The history and background of the complainant's request**

20. The complainant's request can be seen as a continuation of correspondence between herself and the DfID dating back to 2007.
21. On 15 October 2007 the complainant's MP wrote a letter to the then Parliamentary Under Secretary of State of the DfID, outlining the complainant's allegations. A response was given to the complainant on 12 November 2007. This stated that the World Bank's Department of Institutional Integrity (INT) was reviewing the matter and it would be inappropriate for the DfID to comment (the public authority has since confirmed that they were not aware, when stating this, that the INT had already informed the complainant that they would not be pursuing her case, advising her to contact the World Bank Administrative Tribunal instead). This advice was also relied on in correspondence to the complainant from Ministers of the DfID.
22. The complainant contacted the DfID's Public Enquiry Point at the end of October 2007. She again outlined her allegations and requested two project memoranda regarding China and Vietnam in which the DfID were involved. One memorandum was provided and the DfID undertook to locate the other. This was an International Finance Corporation (IFC) document and so the IFC was contacted for advice (such advice was provided on 4 February 2008 and the complainant was advised that the IFC's disclosure policy did not allow this memorandum to be released).
23. A series of correspondence was sent by the complainant from 14 December 2007 to 31 January 2008, providing additional information to support her allegations. On 01 February 2008 another Parliamentary Under Secretary of the DfID responded to the complainant, stating that he was *'...not convinced that there [was] any reason for the UK Government to become involved in what appears to be a personnel issue between you and your former employer.'* This was following the DfID's Counter Fraud Unit, within their Internal Audit Department, having considered the complainant's allegations and finding them unfounded.
24. The complainant responded on 15 February 2008 to the above letter from the Parliamentary Under Secretary. She stated her intention to proceed with a Judicial Review regarding this and claimed that ministers had acted in bad faith. (Advice was sought by DfID from the Treasury

Solicitor who advised that the line taken by the DfID, to not get involved in the initial matter, would be defensible if it came to a Judicial Review.) The complainant accused Ministers of '*...sitting on incriminating facts*' and '*...complicity in wrongdoing*' by being willing to '*...cover up knowledge of fraud and criminal offences*'.

25. On 31 March 2008 the complainant contacted the Secretary of State at the DfID. She confirmed that she had requested her MP to file a complaint against the DfID with the Parliamentary Ombudsman. This was on the basis of the DfID not handling her dispute with the World Bank. A complaint was subsequently made to the Commissioner in April 2008 in which she alleged that the DfID had failed to properly engage with her complaint. The Commissioner contacted the DfID about this complaint, which was received by the DfID in mid-June 2008. A review of this case by the Department's Head of Openness Unit upheld its decision. However it did acknowledge errors on its part in not treating the request under FOI initially and in not providing the correct complaints procedure.
26. Consequently, the Serious Fraud Office (SFO) contacted the DfID to explain that the case had been brought to its attention and requested background information. The DfID confirms that, currently, nothing further has been heard from the SFO.
27. Between December 2009 and September 2010 the complainant made a further 8 FOI requests (including the case currently considered) relating to the WBG and the public authority's involvement with it. (However the Commissioner can only take into account requests which pre-date the request in this case.) The complainant also contacted the then Secretary of State for the DfID, Douglas Alexander MP, outlining her intention to report him to the Law Society of Scotland for professional misconduct.

### **Significant burden in terms of expense and distraction**

28. When analysing whether a request imposes a significant burden on the DfID, the Commissioner is assisted by the Tribunal's decision in the case of *Welsh*. This explains that it is, '*...not just a question of financial resources but also includes issues of diversion and distraction from other work....*' (paragraph 27). In assessing this, the Commissioner has taken into account the history of the complainant's behaviour in relation to the DfID and her requests made to it.
29. The Commissioner understands the volume and frequency of the requests made, coupled with the variety of avenues of complaint used to pursue her complaints, indicate that a significant burden has been on the public authority in terms of its continued and protracted correspondence with the complainant on the substantive subject of her

requests. One request was made to the public authority in 2008 and a further eight made between December 2009 and September 2010, all of which have been subject to internal review by the DfID and several of which are currently being considered separately by the Commissioner.

30. This is supported in the Tribunal decision of *Coggins v the ICO (EA/2007/0130)* in which the complainant made 20 FOI requests and sent 73 letters and 17 postcards to the public authority. The Tribunal said the contact was, '*...long, detailed and overlapping in the sense that he wrote on the same matters to a number of different officers, repeating requests before a response to the preceding one was received...the Tribunal was of the view that dealing with this correspondence would have been a significant distraction from its core functions...*' (paragraph 28).
31. The Commissioner concedes that the volume of correspondence is not the same as in *Coggins*. However, it is the cumulative effect of the volume of the requests, their frequency, their length (the requests vary in length from quite short to very long) and their varying complexity which has imposed a significant burden on the DfID in handling them.
32. The complainant has raised very similar issues with the DfID's FOI team, the Head of its Openness Unit, the Head of Knowledge and Information Team and the Director of Business Solutions Team. The complainant's requests have involved at least 11 of what the public authority consider to be members of their Top Management Group. This list is not exhaustive and the DfID have pointed out that requests have been made which amend or overlap previous ones. The DfID has indicated that around 225 hours have been spent dealing with requests or complaints. The Commissioner accepts that these facts indicate that the DfID has devoted considerable time in dealing with the complainant's complaint and requests. This expenditure of time has diverted the DfID from its core business duties to the extent that the Commissioner accepts that the complainant's request, considered in this Notice, does represent a significant burden on the DfID. (Furthermore, the Commissioner does not consider that excluding correspondence from the complainant which post-dates the request in this case alters his view in respect of significant burden to any notable extent.)
33. The Commissioner considers it worthwhile to point out that even if the above were not found persuasive enough to evidence a significant burden on the DfID, the argument in the Tribunal case of *Betts v the ICO (EA/2007/0109)* applies: The Tribunal said that it would be reasonable to conclude that a significant burden had been imposed on a public authority, if in answering the request, it was, '*...extremely likely to lead to further correspondence, further requests and in all likelihood, complaints against individual officers...*' (paragraph 34). The DfID has

provided to the Commissioner a synopsis of all of the FOI requests made by the complainant to the Department. The Commissioner considers that these show a natural progression and link between a response being provided to one request and this causing the complainant to make another request. The requests relate to further information that the complainant desires, based on the answers previously given. The Commissioner believes that this behaviour is indicative of the imposition of a significant burden on the DfID, as in *Betts*.

**Can the request otherwise fairly be characterised as obsessive or manifestly unreasonable?**

34. From October 2007 onwards, the complainant sent a series of letters to the DfID (including Ministers) requesting it investigate her allegations. The DfID's internal audit team have investigated her allegations of fraud and have found no basis for them, concluding that this was a personnel matter with the WBG. The complainant was advised of this. From then on, the complainant submitted nine FOI requests, two Subject Access Requests under the Data Protection Act 1998, as well as stating her intention to report the former Secretary of State for professional misconduct. All of this has been focused on the DfID and the WBG, with the apparent aim of pursuing her belief of fraudulent conduct between the two bodies. The Commissioner believes the persistence with which the complainant has pursued this matter is evidence of an obsession with it.
35. The complainant has continued to request information regarding the DfID and its involvement with WBG despite an independent regulator (Parliamentary and Health Service Ombudsman (PHSO)) having reviewed her allegations and having determined not to pursue her complaint. The Commissioner sees this as similar to the complainant's actions in *Rigby v the ICO and Blackpool Fylde and Wyre Hospital NHS Trust*. In this case the Tribunal pointed out that, '*...ongoing requests, after the underlying complaint has been investigated [by independent regulators], [go] beyond the reasonable pursuit of information, and indeed persistence*'. The Commissioner considers that the complainant, in continuing to request information regarding this subject, and making continued allegations to the DfID, other public authorities and regulators, despite investigation, is indicative behaviour of someone who is going beyond the '*pursuit of information*'.
36. The Commissioner accepts that the complainant's confirmed intention to request a judicial review, as evidenced by her Letter Before Claim to the DfID, her raising of allegations with the PHSO and SFO, and her approach of making further requests and allegations following receipt of responses from the DfID, signify the complainant's '*...unwillingness to*



*accept or engage with contrary evidence...'* (Welsh). It indicates someone who accepts only their opinion, to the exclusion of any other.

37. The Commissioner considers another point within this category, which draws analogy between the present case and that of *Coggins*. In *Coggins*, the complainant was pursuing a belief that a fraud had been committed against an elderly woman, whom the complainant was helping with care arrangements. Following several reviews of decisions by separate regulators, no substantive fraud was uncovered. The Tribunal was of the opinion that the complainant was driven by a genuine desire to uncover a fraud but there came a point at which their pursuit of it should have been dropped and to pursue it any further was unjustified. The Commissioner considers the complainant to also be genuinely pursuing a belief in fraudulent activity. However, given the period of time in which the complainant has pursued this issue and the unwillingness of the complainant to accept independent or internal (to the DfID) evidence, he considers that this has gone beyond justifiability and is indeed 'obsessive'.
38. Further, (as stated above) the volume of correspondence from the complainant in this case is not the same as in *Coggins* but the Commissioner considers the behaviour of the complainant to be analogous with that of the complainant in the *Coggins* case (and as such is a further example of the complainant's obsession with the subject). A significant number of requests have been made on ostensibly the same subject, that is, the WBG and the DfID's involvement and interaction concerning the matters of interest to the complainant.

### **Does the request have serious purpose or value?**

39. Following *Coggins*, the Commissioner does however consider this request in this case to have a serious purpose or value. The complainant has a clear belief that a fraud has been committed, and as stated by her, believes this to be a legitimate pursuit to uncover this fraud. The DfID itself has noted that they consider the request to have a serious purpose, explaining that if this had been her first request on the subject, it would have been handled as normal. However, it considers this request the continuation of a vexatious campaign, the results of which have already been provided, and on which nothing further can be done.
40. The Commissioner supports the DfID's stance. Furthermore, even with the acceptance of the request's serious purpose, it has reached a point, in light of contrary evidence, where the serious purpose of the request has been mitigated by the complainant's unwillingness to accept such evidence.

## **Does the request have the intention or effect of harassing the public authority or its staff?**

41. The Commissioner considers there to be no clear evidence to demonstrate an intention on the part of the complainant to cause disruption or annoyance to the DfID. However he accepts that the volume and frequency of requests and correspondence from the complainant to the DfID regarding this matter (along with these being amended and replaced) has had the effect of harassing the DfID and its staff. It is clear that a disproportionate amount of time has been spent handling the complainant's requests and has, as pointed out by the DfID, caused a great deal of frustration to the staff who have worked hard to comply with these requests.
42. This has been compounded by the complainant's continual accusations of wrongdoing directed at the DfID's staff, following the provision of responses. The DfID has said that this has the effect of upsetting and demoralising staff, who have been doing their best to handle the complainant's requests. The Commissioner accepts this to be the case.
43. The Commissioner returns to the decision in *Welsh*, in which to deem a request as vexatious is not as serious a matter as in other circumstances and therefore the threshold need not be set too high. The request (and surrounding context) shows an obsession with the subject and has clearly imposed a significant burden in terms of expense and distraction on the DfID. The Commissioner considers that these two factors in particular provide sufficient grounds for him to consider the request to be vexatious in nature. The Commissioner therefore agrees with the DfID and accepts the request to be vexatious.

## **The Decision**

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44. The Commissioner's decision is that the DfID dealt with the request for information in accordance with the Act.

## **Steps Required**

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45. The Commissioner requires no steps to be taken.

## Right of Appeal

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46. 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,  
Arnhem House,  
31, Waterloo Way,  
LEICESTER,  
LE1 8DJ

Tel: 0845 600 0877

Fax: 0116 249 4253

Email: [informationtribunal@tribunals.gsi.gov.uk](mailto:informationtribunal@tribunals.gsi.gov.uk).

Website: [www.informationtribunal.gov.uk](http://www.informationtribunal.gov.uk)

47. 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.
48. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this Decision Notice is sent.

**Dated the 24<sup>th</sup> day of February 2011**

**Signed .....**

**Alexander Ganotis  
Group Manager – Complaints Resolution  
Information Commissioner’s Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**

## Legal Annex

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### Freedom of Information Act 2000

#### General Right of Access

**Section 1(1)** provides that -

"Any person making a request for information to a public authority is entitled –

- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
- (b) if that is the case, to have that information communicated to him."

#### **Vexatious or Repeated Requests**

**Section 14(1)** provides that –

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

**Section 14(2)** provides that –

"Where a public authority has previously complied with a request for information which was made by any person, it is not obliged to comply with a subsequent identical or substantially similar request from that person unless a reasonable interval has elapsed between compliance with a previous request and the making of the current request."