

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 25 February 2015

**Public Authority:** Department for International Development  
**Address:** 22 Whitehall  
London  
SW1A 2EG

### **Decision (including any steps ordered)**

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1. The complainant submitted a request to the Department for International Development (DFID) regarding the drafting and approval of a particular document. DFID considered the request to be vexatious and thus relied on section 14(1) of FOIA to refuse to answer it. Furthermore, DFID relied on section 17(6) of FOIA as a basis not to issue the complainant with a refusal notice citing section 14(1). The Commissioner has decided that the request is vexatious and that in the circumstances of the case it would have been unreasonable to expect DFID to issue the complainant with a notice explaining this.

### **Request and response**

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2. The complainant wrote to DFID on 5 September 2014 and requested information in the following terms:

'The last sentence of paragraph 16 in this linked document <https://www.gov.uk/government/uploads/sy...> states:

" Signing a joint memorandum of this sort may does not preclude the need for a DFID MoU"

Under FOIA section 16 (advice and assistance) please correct the evident typographical error to make definite and certain which word, that is, "may" or "does" DFID authorised and directed be used to give proper meaning to this part of the document and

disclose all information held in relation to the drafting and approval of this document.'

3. Having received no response to her request the complainant contacted DFID again on 13 October 2014 and asked it to respond. DFID did not reply to this communication.

### **Scope of the case**

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4. The complainant contacted the Commissioner on 23 October 2014 in order to complain about DFID's failure to respond to her request of 5 September 2014.
5. Upon receipt of this complaint the Commissioner contacted DFID and asked it to clarify its position in relation to this request.
6. DFID informed the Commissioner that it had received the request but it did not acknowledge receipt of it or issue a refusal notice. This was because it considered the request to be the latest in a series of vexatious requests and that, having taken into account all the circumstances of the case, it considered section 17(6) of FOIA to apply.
7. Section 17(6) states that a public authority does not have to issue a refusal notice where (a) it is relying on a claim that section 14 applies; (b) the requestor has been given a refusal notice citing section 14 in relation to a previous request and (c) in the circumstances it would be unreasonable to expect the public authority to serve a further refusal notice in relation to the current request.
8. The Commissioner contacted the complainant and explained DFID's position to her. She explained that she disputed DFID's reliance on section 14(1) and wished a decision notice to be issued.
9. Therefore this decision notice considers whether DFID is entitled to rely on section 14(1) to refuse to answer the complainant's request of 5 September 2014. This notice also considers whether DFID is entitled to rely on section 17(6) of FOIA as a basis to not issue a refusal notice citing section 14(1) in response to the request.

### **Reasons for decision**

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#### **Section 14 - vexatious**

10. Section 14(1) of FOIA allows a public authority to refuse to comply with a request if it is considered to be vexatious.

11. 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.
12. This will usually involve weighing the evidence about the impact on the authority and balancing this against the purpose and value of the request. This should be judged as objectively as possible; in other words, would a reasonable person think that the purpose and value are enough to justify the impact on the public authority. Where relevant, this will involve the need to take into account wider factors such as the background and history of the request.

### DFID's position

#### *Background*

13. DFID explained that the complainant had been in correspondence with it since 2007. The Commissioner does not intend to detail this correspondence here as the majority of it is summarised at paragraphs 10 to 14 and paragraph 24 of a previous decision notice recently issued by him.<sup>1</sup> In addition to the correspondence summarised in that decision notice, DFID highlighted the notice itself (ie FS50536357) had also concluded that the requests the complainant submitted to it on 3 February and 26 February 2014 were vexatious.
14. DFID argued that in its view the overarching subject matter of the complainant's previous correspondence with it had been:
  - corruption in the World Banking Group's (WBG's) internal justice system (IJS) and perversion of justice committed by senior and other WBG officials; and
  - breach of the institutional law of the International Finance Corporation (IFC) governing acceptance and use of UK (and other donor) trusts funds for international development technical assistance purposes (under, in the UK's case, the provisions of the International Development Act 2002).

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<sup>1</sup> See [FS50536357](#)

15. DFID argued that this background was relevant because the complainant's latest request appeared to be related to the same subject matter. The request was for information regarding the drafting and approval of a specific document: "[DFID Guidance Note: The Partnership Principles](#)". Although DFID acknowledged that it cannot know exactly what the complainant's specific interest in this document is, it considered it reasonable to conclude that at least part of her interest concerned the 3<sup>rd</sup> Partnership Principle i.e.:

***"A commitment to strengthening financial management and accountability, and reducing the risk of funds being misused through weak administration or corruption***

*The commitment of the partner government to strengthening the management of public finances and fighting corruption."*

*Limited value*

16. DFID suggested that the complainant maintained a belief that there was fraudulent behaviour at the World Bank Group and that DFID is culpable in that fraud to some extent. Thus, as indicated, it believed that this latest request covered a similar subject matter to her earlier requests.
17. DFID assumed that in light of her concerns about such fraudulent behaviour, the complainant would argue that trying to obtain information from DFID, via her request of 5 September 2014, about its financial management responsibilities constituted a serious purpose. However, DFID argued that the Commissioner's view expressed in his decision notice FS50536357 was equally applicable to this case:

*'While the Commissioner would accept that her initial FOI requests had a serious purpose and intention, he finds it difficult to accept that the same can be said of her requests of February 2014 given the previous consideration already given to her allegations by various bodies.'*<sup>2</sup>

18. In any event, DFID argued that there was limited value in the complainant's request. Although the headings within the Partnership Principles document may have suggested to her that its contents might have helped with her arguments about DFID's governance role and accountability for the prevention of corruption, in its opinion in reality the detail of the document would not have been particularly relevant to her ongoing issues with the World Bank and, by extension, with DFID.

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<sup>2</sup> Paragraph 39.

19. DFID acknowledged that the request was of course not for the document itself – albeit that the complainant sought a correction or clarification of it - but information regarding its drafting and approval. Again, DFID accepted that it could not be certain of why the complainant would be concerned with gathering detailed information regarding a failure to prevent a typographic error but it argued that it is useful to consider the broader context of the complainant's previous interactions with DFID. DFID argued that the complainant has previously created tendentious arguments in which minor matters have been interwoven into a complex web of allegations of deceit or incompetency. In order to support this view DFID referred the Commissioner to the complainant's grounds of appeal against his decision notice FS50324650.
20. Ultimately DFID argued that the following statement from the Commissioner's decision notice FS50536357 was equally applicable in this case:

*'...in the Commissioner's opinion the complainant's continued use of FOIA to seek information on this topic reflects an abuse of the right of access rather than any approach designed to meet some wider public interest or provide any sort of objective value.'<sup>3</sup>*

#### *Detrimental impact*

21. Set against the context of the complainant's history of engagement with it, DFID argued that it was not unreasonable for it to conclude that providing information to the complainant about the drafting and approval of the Partnership Principles document would simply lead to further questions about its competency in regard to wider financial management and its relationship to the World Bank.
22. It suggested that the situation in this case is therefore akin to the position in *Betts vs ICO*, (EA/2007/0109 19 May 2008). That is to say the complainant's request of 5 September 2014 would not have been seen as vexatious in isolation, but becomes so when looked at as a continuation of a pattern of behaviour and part of an ongoing campaign to put pressure on DFID. The request on its own is simple, but DFID's experience suggested that providing any response to any matter associated with issues raised in her previous correspondence would be likely to lead to further correspondence, requests and complaints.

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<sup>3</sup> Ibid.

23. Dealing with such correspondence would, DFID argued, result in a disproportionate diversion of resources away from core duties or providing services to other customers and place a significant and disproportionate burden on it. Given this wider context and history, the request should be seen as harassing, likely to impose a significant burden, and obsessive.

The complainant's position

24. The Commissioner invited the complainant to provide him with submissions to support her position that the request of 5 September 2014 was not vexatious. She did not provide any submissions.

The Commissioner's position

25. The Commissioner is satisfied that taking into account the complainant's previous correspondence with DFID, the request of 5 September 2014 represents a further attempt by her to pursue her concerns about the World Bank. That is to say it represents a continuation of behaviour – involving the submission of FOI requests to DFID – which in previous decisions the Commissioner has concluded is vexatious. Consequently, the Commissioner has no hesitation in accepting DFID's submissions that in light of this background answering this request would result in it dealing with further correspondence from the complainant which would place a significant and disproportionate burden on it. Moreover, the Commissioner is in no way persuaded that such an impact on DFID is one that could be justified given that there seems to be no clear or obvious reason why provision of the information sought would address any specific public interest. The Commissioner is therefore satisfied that DFID is entitled to refuse to answer the complainant's request of 5 September 2014 on the basis of section 14(1).

**Section 17 – refusal notices**

26. Section 17(5) of FOIA states that if a public authority is relying on section 12 or section 14 to refuse to answer a request then it must provide the requestor with a refusal notice explaining this position.
27. However, as noted above, section 17(6) removes this duty if certain conditions are met, namely:
- (a) the public authority is relying on a claim that section 14 applies;
  - (b) the requestor has been given a refusal notice citing section 14 in relation to a previous request; and

(c) in the circumstances it would be unreasonable to expect the public authority to serve a further refusal notice in relation to the current request.

28. As the preceding parts of this decision notice indicate conditions (a) and (b) are clearly met: DFID is seeking to refuse to answer the request of 5 September 2014 on the basis of section 14(1) and it has previously also relied on section 14(1) to refuse requests submitted by the complainant, most recently her requests of 3 and 26 February 2014.
29. In terms of (c) the Commissioner's guidance on this matter explains that he will usually only consider it unreasonable to issue a further notice when an authority has previously warned the requester that it will not respond to any further vexatious requests on the same or similar topics. In the circumstances of this case, when DFID issued its refusal notice (on 4 March 2014) to the complainant in relation to her requests of 3 and 26 February 2014 it explained that further requests on the same or similar requests would not be responded to.
30. In light of this warning provided by DFID, and indeed taking into account the pattern of the complainant's correspondence with DFID on this topic, the Commissioner is satisfied that it would have been unreasonable to expect DFID to issue a refusal notice citing section 14(1) in response to the request of 5 September 2014.

## Right of appeal

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31. 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 123 4504

Fax: 0870 739 5836

Email: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

32. 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.
33. 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 .....**

**Alexander Ganotis**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**