

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 4 November 2014

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

Decision (including any steps ordered)

1. The complainant submitted two requests to the Department for International Development (DFID). DFID refused to answer these requests using section 14(1) of FOIA on the basis that they were vexatious. The Commissioner has concluded that section 14(1) has been correctly applied to both requests.

Request and response

2. The complainant submitted a request to the Department for International Development (DFID) on 3 February 2014. She then submitted a further request on 26 February 2014. Both requests are set out in the annex to this notice.
3. DFID responded to these requests on 4 March 2014. It explained that it was refusing both requests on the basis of section 14(1) of FOIA because it considered them to be vexatious.
4. The complainant contacted DFID on 10 March 2014 in order to ask for an internal review of this decision.
5. DFID informed her of the outcome of the internal review on 7 April 2014; the review concluded that section 14(1) had been correctly applied to both requests.

Scope of the case

6. The complainant contacted the Commissioner on 27 April 2014 to complain about DFID's decision to refuse both requests on the basis of section 14(1).

Reasons for decision

Section 14 - vexatious

7. Section 14(1) of FOIA allows a public authority to refuse to comply with a request if it is considered to be vexatious.
8. 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.
9. 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

10. DFID explained that the complainant had been in correspondence with it since 2007. It explained that there had previously been some disagreement as to the number of FOI requests the complainant had submitted. However DFID explained that the First Tier Tribunal concluded (when considering a previous appeal of the complainant's) the following:

'We are satisfied that, up to and including this request, the Appellant made 8 requests for information under FOIA to DfID between October 2007 and April 2010:

[1] 16.10.07 - request for DfID/IFC [International Finance Corporation] Project Agreements.

[2] 3.12.09 - request for trust fund law governing the relationship between DfID and WBG [World Bank Group]. [DFID ref: F2009-309]

- [3] 17.12.09 – request of 3.12.09 amended but Appellant asked that DfID treat these as two separate requests. [DFID ref: F2009-324]*
[4] 24.12.09 – series of requests for WBG Executive Directors voting and decisions. [DFID ref: F2009-325]
[5] 15.1.10 – request concerning how DfID ministers and officials handled issues contained in Appellant's letter of complaint to the British Executive Director of the WBG dated 28.9.07. [DFID ref: F2010-016]
[6] 15.1.10 – series of questions relating to a named official of DfID. [DFID ref: F2010-015]
[7] 8.2.10 – series of questions in respect of when DfID seeks legal advice. [DFID ref: F2010-043]
[8] 29.4.10 – this request. [Our ref: F2010-124]¹

11. DFID explained that in relation to the requests of 3 and 17 December 2009 (requests 2 and 3) it had confirmed that it did not hold any recorded information. It explained that the complainant complained to the Commissioner about this decision. The Commissioner issued a decision notice on 25 October 2010 in which he concluded that on the balance of probabilities, DFID did not hold the information.² The complainant appealed this decision to the First Tier Tribunal. The Tribunal upheld the Commissioner's findings in a judgment issued on 3 June 2011.³
12. In relation to the request of 24 December 2009 (request 4) DFID explained that it did not hold the majority of information requested, except for one part which was readily accessible to her by other means. She complained to the Commissioner about this finding and the subsequent decision notice of 24 February 2010 upheld DFID's position.⁴ The complainant appealed this decision to the Tribunal which rejected the appeal.⁵
13. DFID explained that at the point it received the complainant's request of 29 April 2010 (request 8) it decided that in light of the volume, regularity, extent and style of her previous requests and the administrative burden they caused to DFID, the request should be

¹ [EA/2011/0077 para 37](#)

² [FS50296292](#)

³ [EA/2010/0189](#)

⁴ [FS50298338](#)

⁵ [EA/2011/0010](#)

treated as vexatious under the terms of FOIA. The Commissioner upheld this decision in a notice dated 24 February 2011.⁶ The complainant's subsequent appeal to the Tribunal was rejected in a decision dated 18 October 2011.⁷ The complainant's application to appeal this decision to the Upper Tribunal was refused.

14. DFID explained that when it received the complainant's next FOI request on 15 September 2010 it refused this request as vexatious. It did not receive any further FOI requests from the complainant until it received the two requests which are the focus of this decision notice, albeit that DFID explained that it did receive other correspondence from her in the intervening period (which is discussed below).
15. DFID argued that this background was directly relevant to its decision to refuse the two requests of 3 and 26 February 2014 as vexatious because:
 - they concerned the same overall subject matter as the request of 29 April 2010 i.e. accounting and auditing in the International Finance Corporation (IFC) and the management of World Bank-administered Trust Funds;
 - the nature of the complainant's requests and her behaviour in raising the correspondence were the same as those described in the Commissioner's decision of 24 February 2011 and the First Tier Tribunal's decision of 18 October 2011 which confirmed her previous correspondence had been vexatious; and
 - the impact of the request on individual officers and on the resources of DFID is, or would be, the same as her previous vexatious request.

Detrimental impact

16. DFID argued that the request of 3 February 2014 is both tendentious and haranguing. It is a mixture of a request for information, questions on accounting procedure and an accusation that the International Finance Corporation (IFC): *'avoided...disclosure and potential embarrassment by manipulating the books'*.

⁶ [FS50342650](#)

⁷ [EA/2011/0077](#)

17. DFID argued that the number, frequency and extensive nature of the complainant's previous requests had caused considerable frustration to those staff in DFID who have attempted to deal with her in as fair and prompt a manner as possible. Whilst the primary purpose of the current requests may not have been to harass staff she should be aware that this is the effect she has had, not least because this was set out clearly in the Commissioner's decision notice of 24 February 2011 (Ref: FS50324650).
18. Moreover, DFID argued that it would be reasonable to expect that the complainant is cognisant of the impact on staff of making inflammatory accusations of wrongdoing regarding named individuals and copying these to other people within and outside of DFID. An example of this is an email of 28 April 2014 to the then manager of the DFID Openness Unit in which the complainant called upon the manager in question to: *'Further explain why you signed a statement of truth in Appeal EA/2010/0189 when the facts and the evidence now show glaring discrepancies sufficient to disprove your witness statement adopted in evidence.'* DFID argued that it was a very serious accusation to suggest that an official had made a deliberately false statement to the First Tier Tribunal. DFID suggested that such accusations were completely unacceptable behaviour and staff in DFID should not have to be subjected to, or respond to, such accusations.
19. DFID explained that the complainant's previous FOI requests up to that dated 29 April 2010 had already placed a significant and excessive burden on it. It estimated that its previous dealings with the complainant had consumed over 225 working hours including its Top Management Group, as well as the policy team, Internal Audit Unit and, of course, the Openness Unit. In addition, there have been discussions with other government departments, for example, the Foreign Office, Cabinet Office, Treasury Solicitors and Parliamentary Ombudsman which have required their time and effort too.
20. DFID acknowledged that there had been a more limited impact on it since 2010 but additional time, at least 2 working days, had been spent by the Openness Unit in processing her subject access requests submitted under the Data Protection Act.
21. However, DFID estimated that three members of staff in the Information Rights Team (formerly the Openness Unit) have spent at least a further 24 hours dealing with her requests of 3 and 26 February 2014, her internal review request of 4 March 2014 and this complaint to the Commissioner. Further resource will be required if it is necessary to make representations in response to an appeal with the First Tier Tribunal.

22. DFID argued that if it answered the two requests which are the focus of this complaint, then it would create a further unnecessary administrative burden on it and would not result in a cessation of correspondence from the complainant. Rather it expected the same pattern of correspondence to recur which it had seen previously. This would 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 DFID.
23. DFID argued that this assumption was supported by a similar conclusion reached by the Tribunal in its decision when it upheld DFID's decision to refuse her request of 29 April 2010 as vexatious:

'DfID is of the view that as all responses to FOI requests were met with complaints and accusations that they were deliberately hiding information or covering up wrongdoing. If they answered this request, it would inevitably lead to further correspondence or further requests for information. This is borne out by the evidence. The sample of correspondence we have included in this Decision demonstrates the doggedness of the Appellant and it is reasonable to infer that this would continue.

*This correspondence is evidence to support the view that the Appellant is unlikely to be satisfied until DfID takes some sort of criminal proceedings or other action against [World Bank Group] WBG....'*⁸

24. DFID argued that this assessment was supported by the complainant's continued non-FOI correspondence with the department, even though DFID had not responded to correspondence. DFID argued that it was reasonable to assume that her contact would have been even more frequent if her prior correspondence had not been deemed vexatious. The correspondence in question was as follows:

- Email of 10 September 2012 to Justine Greening, Secretary of State for Department for International Development and Lynne Featherstone, Parliamentary Under Secretary of State for Department for International Development.
- Email of 13 September 2012 to Justine Greening, Secretary of State for Department for International Development.
- Email of 16 September 2012 to Justine Greening, Secretary of State for Department for International Development.

⁸ [EA/2011/0077](#) paras 60 and 61.

- Series of emails ending 24 September 2012 between the complainant and Deloitte LLP copied to Justine Greening, Secretary of State for Department for International Development.
- Email of 31 October 2012 to Justine Greening, Secretary of State for Department for International Development.
- Emails of 5 November 2012 between the complainant and World Bank Group copied to Justine Greening, Secretary of State for Department for International Development.
- Email of 28 November 2012 to DFID FOI Team containing a Data Protection Act Section 10 notice.
- Email of 24 December 2012 to Rt Hon Andrew Mitchell MP copied to DFID FOI Team.
- Email of 22 January 2013 to Lynne Featherstone, Parliamentary Under Secretary of State for Department for International Development.
- Email of 31 May 2013 to Justine Greening, Secretary of State for Department for International Development.

Limited value

25. DFID explained that all of the correspondence it had received from the complainant essentially related back to its relations with the World Bank Group (WBG) and her allegations of:
 - a) corruption in the WBG's internal justice system (IJS) and perversion of justice committed by senior and other WBG officials; and
 - b) breach of the institutional law of the 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).
26. To DFID it appeared that the complainant maintained a belief that there was a fraudulent behaviour at WBG and that it, i.e. DFID, is culpable in that fraud to some extent. Consequently, the complainant would consider that trying to obtain information from DFID about the World Bank and its accounts was a serious purpose.
27. DFID suggested that although initially there appeared to be a serious purpose to the complainant's requests, she had now pursued several avenues of complaint since 2007 in the hope of potential redress of action against WBG or DFID. These include Ministers of DfID, Members of Parliament, The Serious Fraud Office, the Information Commissioner, the Cabinet Office, the World Bank President and World Bank Executive Directors. DFID suggested that the complainant appears to have been unsatisfied with the outcome of all processes followed with these organisations.

28. DFID referred to a finding of the Commissioner's decision notice of 24 February 2011 concerning its application of section 14(1) to her request of 29 April 2010 (request 8). DFID argued that this finding was equally applicable to this complaint and demonstrated why the requests of 3 and 26 February 2014 had no real value:

'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'.

The Commissioner went on to state that: "[The complainant's] approach of making further requests and allegations following receipt of responses from DFID, signify the complainant's '...unwillingness to accept or engage with contrary evidence...' ⁹

29. DFID argued that it should be noted again that the complainant's previous correspondence with it suggested that she will always continue to follow processes of review or appeal until such point as those processes are exhausted and the relevant body or organisation refuses to take further action. The actions of DFID have been subject to scrutiny by the Parliamentary and Health Service Ombudsman and its responses to previous FOI requests have been subject to the Commissioner's complaint procedures and consideration by the First Tier Tribunal. In particular, DFID argued that the complainant's request of 26 February 2014 was an attempt to try to prove that DFID does hold information from the World Bank relevant to her previous FOI requests from December 2009. However, the Commissioner and First Tier Tribunal have already previously concluded that no such information is held.
30. In DFID's view, given those findings a reasonable person should have concluded that appropriate responses had been made and that further requests for information would serve no serious purpose as they would not lead to the provision of information of the kind requested or any affirmation of the complainant's arguments.
31. Furthermore, DFID argued that that the complainant's recent requests clearly formed part of an extended campaign which the complainant was continuing to pursue despite indications that the campaign is not well-founded i.e. none of the organisations who have been approached by the complainant have accepted there is substance to her allegations.

⁹ FS50324650 para 35.

Consequently, DFID argued that this provided further evidence that there is no value or purpose to the latest two FOI requests in question.

Weighing exercise

32. DFID argued that its submissions, as summarised above, constituted clear evidence that the latest FOI requests concerned the same subject matter which had been repeatedly addressed previously by DFID, the Commissioner and other bodies. Furthermore, it argued that the complainant refused to accept all findings which are contrary to her own opinions. In light of the complainant's obsessive engagement with DFID on this matter, it was entitled to rely on section 14(1) in order to prevent it bearing the administrative burden of complying with the requests of 3 and 26 February 2014 and the burden of dealing with any further requests which were likely to be submitted on this matter.

The complainant's position

33. The complainant noted that DFID's refusal notices and internal review responses in relation to both requests failed to provide any indirect or direct evidence to support its application of section 14(1). In any event, the complainant argued that her requests did have a serious purpose because the information requested was needed to reveal and address the following alleged practices: i) the unjust enrichment of IFC through breach by IFC of their own trust fund policies; (ii) IFC accounting irregularities and auditing deficiencies, and (iii) serious misconduct by the equivalent of the World Bank's internal police (Institutional Integrity Department) and justice system (Appeals Committee) to cover up (i) and (ii).
34. Furthermore, in respect of the request of 26 February 2014, the complainant argued that the information sought by this request would provide the essential elements to prove that a criminal breach (under section 77 of FOIA) was committed by DFID when it 'concealed' information which fell within the scope of the requests she submitted on 3 and 17 December 2009 (i.e. requests 2 and 3.) As noted above, DFID's position was that it did not hold any information falling within the scope of these two requests, a position upheld by both the Commissioner (FS50296292) and the Tribunal (EA/2010/0089). However, the complainant argued that as a result of information that she had discovered in late 2012, DFID's statements to the effect that no information was held in relation to requests 2 and 3 was in her view incorrect. She argued that the information sought by her request of 26

February 2014 would allow her to provide further documentary evidence to further substantiate her allegation of concealment by DFID.¹⁰

The Commissioner's position

35. The Commissioner accepts that despite the time that has passed since the complainant's previous FOI requests, there is a sufficient similarity between such requests and her requests of 3 and 26 February 2014 – for the precise reasons described at paragraph 15 – to make the background details set out by DFID directly relevant to the Commissioner's assessment of section 14. In other words, in the Commissioner's view, it would be correct to see the requests of 3 and 26 February 2014 as a renewed attempt by the complainant to use FOIA as a means to address further her concerns about the World Bank.
36. Despite this context, the Commissioner would not accept that DFID can simply import the entire burden of undertaking the previous requests, i.e. 225 hours, as direct evidence of the burden in relation to these requests. In the Commissioner's view, it should be recognised that a considerable period of time has clearly passed between the complainant's requests of February 2014 and her last FOI request to DFID of September 2010. Furthermore, the Commissioner is not entirely comfortable with DFID's inclusion of some of the activities in its estimate that complying with these latest requests has taken approximately 25 hours. In the Commissioner's view, the burden that should be considered by public authorities in this context should focus on the time actually taken to comply with the requests rather than the time dealing with, for example, the preparation of letters of submission to the Commissioner or potential time involved in dealing with potential appeals to the Tribunal.
37. That said, the Commissioner recognises that both the requests of 3 and 26 February 2014 seek a variety of information, some of it likely to date back a number of years and thus complying with the requests is unlikely to be a particular straightforward matter. Equally importantly though, given the complainant's pattern of previous FOI correspondence, and her approach of continuing to send non-FOI correspondence to DFID, the Commissioner accepts DFID's suggestion that if it complied with the requests of February 2014 it would be very likely to receive further

¹⁰ The Commissioner has explained to the complainant that he cannot consider this allegation because offences committed under section 77 are time barred and any potential prosecution would have to be commenced within 6 months of an alleged offence being committed.

similar requests from the complainant. Given the pattern of the complainant's previous behaviour, the Commissioner has no doubt that such requests – in addition to the time taken to respond to the requests of 3 and 26 February – would place a significant administrative burden on DFID.

38. Furthermore, the Commissioner also believes that the nature of the language used by the complainant in parts of her recent correspondence with DFID is likely to cause irritation and/or distress given the haranguing nature of language used in the request of 3 February 2014 and the allegations that a member of DFID staff knowingly gave false testimony to the Tribunal.
39. The question for the Commissioner is therefore whether such a burden is one that in all the circumstances is a disproportionate or unjustified one. In relation to the request of 3 February 2014, the Commissioner is satisfied that there is an overwhelming case for concluding that such a burden would be wholly disproportionate. In the Commissioner's view the complainant's allegations have been well rehearsed before, and considered by, various bodies as discussed above. 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. In the Commissioner's view simply because the complainant does not wish to accept DFID's (and other parties) views on her allegations and indeed DFID's desire to see this matter as concluded, her continued pursuit of such allegations does not automatically equate to her requests having a serious purpose. In contrast, 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.
40. In relation to the request of 26 February 2014, the Commissioner accepts that a different assessment is necessary given the complainant's desire to have the information sought by this request in order to support her allegations of breach of section 77 of FOIA. However, as noted above, the Commissioner cannot investigate the complainant's allegations of concealment given the time that has elapsed since the offence was allegedly committed. Consequently, although disclosure of the information sought by the request of 26 February 2014 may provide the complainant with the further documentary evidence she needs to support her allegations, the Commissioner will still not, and indeed cannot, take any action in relation to such allegations. Therefore, in the Commissioner's opinion there is very limited value to the complainant in such information being provided to her and moreover no discernible

wider public interest in the disclosure of such information. Moreover, for the reasons discussed in the previous paragraph, the Commissioner is also of the view that when the request of 26 February 2014 is seen simply as one concerning the complainant's ongoing campaign regarding allegations of corruption at the World Bank, the request also reflects an abuse of FOIA rather than a request designed to meet some wider public interest.

41. The Commissioner has therefore concluded that DFID was entitled to rely on section 14(1) to refuse to answer the complainant's requests of 3 and 26 February 2014.

Right of appeal

42. 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
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

43. 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.
44. 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

Annex

Request submitted on 3 February 2014:

'In a letter dated 14th June 2010, Simon Jones, Director of Business Solutions claimed that DFID had "fully investigated" various accounting and auditing issues in relation to the International Finance Corporation (IFC), an international organisation in which UK taxpayers are shareholders.

On the basis of that investigation a request is made for all information held by DFID which addresses each of the following points:

Was IFC having income problems in 2001 through 2003? Were they on the verge of reporting a loss?

If there was previous double or triple accounting that understated income (former department A recognised in MIS alongside new department B and former departments A and B recognised alongside new department C) was the substitution of budget allocations (replacing budgeted staff with externally funded Trust Fund consultants) done to re-balance income or "set the records straight" by overstating income in the subsequent year, which would create a wash between 2002-2003 fiscal years?

Did this mean that instead of recognizing an accounting error in 2001 or 2002, as the case may be, and doing a prior period adjustment in the following year to fix the problem as required under US GAAP and international accounting standards, IFRS, and auditing standards as well, IFC avoided the disclosure and potential embarrassment by manipulating the books to achieve the same results. Is this what happened? If not what information does DFID hold that provides answers to what did happen?'

Request submitted on 26 February 2014:

'By reference to the report: A Management Framework for World-Bank Administered Trust Funds dated September 14, 2007, available here:

http://www-wds.worldbank.org/external/default/WDSPContentServer/WDSP/IB/2007/11/01/000020439_20071101164945/Rendered/PDF/410630R200710198.pdf

the following information is requested under the terms of the Freedom of Information Act (2000) and/or under section 16 (Advice and Assistance), as relevant:

1. The number and identity of departmental and other UK Government participants, as relevant, at the World Bank Group Donor Forum meeting held in Paris between May 14-15, 2007

2. Considering paragraph 1.08 of the report which states:

" Recognising the likely administrative, operational and financial impact of changes to Trust Fund Policies and practices, extensive consultations on the proposal in this paper were held with shareholders within and outside the Bank [...] In addition, as a key input to proposals, Management solicited feedback from donors at the working level and during the May 14-15, 2007 Donor Forum held in Paris. Subsequent responses to a survey circulated to donor participants at the Forum formed the basis for further refining the proposals presented in this paper. Annex 3 includes a Chairman's Summary of the discussions held at the Donor Forum" :-

all other disclosable information in relation to the Donor Forum meeting, including but not limited to agendas, briefing papers, speeches and other presentations, and the comments and suggestions offered by or through DFID which were to be treated as "key inputs in finalising the paper on The Trust Fund Management Framework which is scheduled for discussion by the Audit Committee of the World Bank's Board of Executive Directors in July 2007" (Annex 3 page 65).

4. By reference to Box 8 point 5 in the report which states:-

"[...] Bank Executed Trust Funds are administered in accordance with the provisions of the Administrative Manual that apply to the Bank's administrative budget"

which versions of the Administrative Manuals DFID held and consulted when providing comments and suggestions for the preparation of the report and

which versions DFID currently hold (including any archived versions) covering all World Bank Group entities?

5. By reference to paragraph 3.01 of the report which states:

" [...] the prevailing framework is the result of reforms sustained over the 2001-2006 period. Launched in 2001, Trust Fund reforms most immediately sought to respond to a crisis in donor confidence ensuing from a high-profile case of corruption in Consultant Trust Funds and the resulting revisions and audits" -

what information about trust fund reforms prior to those proposed in 2007 did DFID hold and consult when providing feedback and other input to the 2007 reform programme?

6. By reference to paragraph 6.15 of the report which states:

" Provided the Executive Directors approve these policy principles and the proposed fee revisions [...] Management plans to proceed with the implementation of the up-dated Trust Fund Management Framework with immediate effect. Management will submit for the Board's consideration a note setting out: (a) the differences between the proposed policy and existing Trust Fund policy statements, and (b) any new policy issues raised in the development of the new OP/BP. The draft OP/BP will also be provided to the Board for information and the Executive Director's approval of any policy changes will be sought on an absence of objection basis. The existing OP/BP 14.40 and other Trust Fund-related policies will continue to govern until the Board's consideration of the note and approval of any new policy changes, following which the new OP/BP will be issued" -

all information held by DFID relating to these matters.'