

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 27 January 2015

Public Authority: Ministry of Justice
Address: 102 Petty France
London
SW1H 9AJ

Decision (including any steps ordered)

1. The complainant requested information relating to a customer service poster displayed in some courts. The Ministry of Justice (MoJ) did not respond to the request, relying on section 14(1) of FOIA (vexatious requests).
2. The Commissioner's decision is that MoJ has correctly applied section 14(1) to the request. He does not require any steps to be taken.

Request and response

3. On 17 September 2014 the complainant wrote to MoJ requesting information under the FOIA in relation to a poster, apparently displayed in many courts, showing information about standards of customer service. Full details of the request can be found in the annex to this decision notice.

Scope of the case

4. The complainant contacted the Commissioner on 16 October 2014 to complain about the way his request for information had been handled. Due to the lack of response from MoJ within 20 working days of receiving his request he wished to complain about MoJ's refusal to engage with the request. He told the Commissioner:

"Should you conclude the failure to reply is intentional - as I have little doubt that it is - I hope you have the time to take, and indeed will take, the necessary enforcement action. I believe the failure to reply is vexatious and part of a program of discrimination and abuse".

5. During the course of the Commissioner's investigation, in response to his enquiries about its handling of the request, MoJ confirmed that it had not responded.
6. In its submission to the Commissioner MoJ explained that it considers that the request in this case is similar in nature to other requests which were made by the same complainant and which it has refused as vexatious. It therefore considers that section 14(1) applies.
7. The Commissioner considers the scope of his investigation to be whether MoJ correctly applied section 14(1) to the request of 17 September 2014.

Reasons for decision

Section 14 vexatious request

8. Section 14(1) of FOIA states that section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious. There is no public interest test.
9. Section 17(6) of FOIA allows a public authority not to respond to a request if it has previously issued a notice relying on section 14 and it would be unreasonable for the public authority to issue a further refusal notice. The Commissioner 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.
10. The term 'vexatious' is not defined in the legislation. In *Information Commissioner vs Devon County Council & Dransfield*¹, the Upper Tribunal took the view that the ordinary dictionary definition of the word

¹ <http://www.ossccsc.gov.uk/judgmentfiles/j3680/GIA%203037%202011-01.doc>

vexatious is only of limited use, because the question of whether a request is vexatious ultimately depends upon the circumstances surrounding that request.

11. In further exploring the role played by circumstances and whether the request has adequate and proper justification, the Tribunal concluded that 'vexatious' could be defined as the "...*manifestly unjustified, inappropriate or improper use of a formal procedure.*" (paragraph 27).
12. The decision clearly establishes that the concepts of 'proportionality' and 'justification' are central to any consideration of whether a request is vexatious.

The complainant's view

13. In correspondence with the Commissioner, the complainant stated:

"In fact it is the MoJ who are vexatious and who have caused significant disruption to myself inter alia by its deliberate and improper refusals to comply with FOIA, DPA and of course its advertised standards of customer service and published complaints procedures.... The MoJ have behaved disgracefully, evasively and fraudulently and its latest ruse is simply more of the same".

14. He also told the Commissioner:

"Its allegation that my prior request was vexatious is desperate, ludicrous and disgusting".

MoJ's view

15. By way of background to this complaint, MoJ explained to the Commissioner that, in its view, the request in this case is linked with an earlier request made in 2012 and repeated on 26 August 2014. In respect of that request MoJ wrote to the complainant on 23 September 2014 citing section 14. MoJ told the complainant:

"In this case I consider your request to be vexatious and designed to cause disruption to the business and to circumvent matters that have been the subject of judicial decisions".

16. MoJ's correspondence dated 23 September 2014 referred to the complainant's 'persistent requests' and drew his attention to some of the earlier communications on that matter. It also referred to 'the volume of follow up correspondence' to MoJ staff.

17. The Commissioner understands that the complainant requested an internal review of the earlier refusal. He has been provided with a copy of the outcome of MoJ's internal review, dated 12 December 2014, in which MoJ upheld its application of section 14.
18. In support of its reliance on section 14 in this case, MoJ also provided the Commissioner with copies of other correspondence it considers to be relevant that it has sent to the complainant. The Commissioner notes that one of those letters was dated 8 October 2014, shortly after the request in this case was made. That correspondence from MoJ to the complainant was in response to:

"your email of 9 September enclosing two letters".

19. In that correspondence, MoJ told the complainant that it considered his requests to be deliberately designed to cause an unjustified level of disruption to the Department:

"It is my assessment that you are placing an unnecessary burden on the Department across a number of teams to answer your requests, which only serve to generate further correspondence".

20. It also told him that it considers that his requests have no obvious intent to obtain information but are:

"simply to extend a personal agenda at the Department's expense".

21. MoJ told the complainant:

"Overall, I believe your correspondence to be obsessive, harassing in nature and deliberated [sic] designed to disrupt the work of the Department. The Department has already spent a considerable amount of time and resources corresponding with you and cannot continue to do so".

22. MoJ advised him in its letter of 8 October 2014 that, under section 17(6) of FOIA, it would no longer be responding to freedom of information requests which it determines are in any way related to the complainant's grievance. The complainant was advised of his right to appeal MoJ's decision.
23. In correspondence with the Commissioner, MoJ explained that it considers the complainant's requests for information relate to a complaint from 2009 and are linked to his litigation proceedings – proceedings that have been concluded.

24. With respect to the request that is the subject matter of this decision notice, MoJ wrote to the Commissioner during the course of his investigation. MoJ told the Commissioner:

"Following a number of vexatious requests, [complainant] has previously been issued with a refusal notice under Section 17(6) in the attachment [reference redacted]. We are satisfied that [complainant's] request dated 17 September 2014 also relates to his grievance against HMCTS and its staff therefore it is our intention to refer to our notice of refusal under Section 17(6) and not to respond to [complainant] on this".

25. In other words, MoJ is relying on the warning in its correspondence of 8 October 2014 to refuse to respond to the request of 17 September 2014.

Is the request vexatious?

26. The Commissioner recognises that dealing with unreasonable requests can place a strain on resources and get in the way of delivering mainstream services or answering legitimate requests. Furthermore, these requests can also damage the reputation of the legislation itself.
27. Consistent with the Upper Tribunal's decision which established the concepts of 'proportionality' and 'justification' as central to any consideration of whether a request is vexatious, the Commissioner's guidance for section 14(1)² confirms that the key question to ask when weighing up whether a request is vexatious is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress.
28. Where this is not clear, the Commissioner considers that public authorities should weigh the impact on the authority and balance this against the purpose and value of the request. Where relevant, public authorities will need to take into account wider factors such as the background and history of the request.
29. The Commissioner's guidance makes it clear that section 14(1) can only be applied to the request itself, and not the individual who submits it. An

² <https://ico.org.uk/media/for-organisations/documents/1198/dealing-with-vexatious-requests.pdf>

authority cannot, therefore, refuse a request on the grounds that the requester himself is vexatious. Similarly, an authority cannot simply refuse a new request solely on the basis that it has classified previous requests from the same individual as vexatious.

30. As in many cases which give rise to the question of whether a request is vexatious, the evidence in the present case shows a history of previous information requests and various encounters between the parties.
31. Clearly in this case, MoJ considers that the context and history strengthens their argument that the request is vexatious. To a large extent, MoJ relies on this history when characterising this request as vexatious.
32. In reaching a decision in this case, the Commissioner has considered the arguments put forward both by the complainant and MoJ as well as the context in which the request was made.
33. The Commissioner notes MoJ's representations in relation to its previous dealings with the complainant. In this case, MoJ has been able to demonstrate that it has engaged to a significant extent with the complainant's correspondence over a number of years. The Commissioner is prepared to accept that, cumulatively, MoJ has spent a significant amount of time and resources in dealing with the complainant's information requests, in addition to separate complaints and other correspondence and contacts from the complainant.
34. It is also clear to the Commissioner that the complainant is not satisfied with MoJ and how it conducts itself. In that respect, the Commissioner understands that, over time, the complainant has made a number of complaints to MoJ including about how his complaints have been handled.
35. The Commissioner is mindful that, if the problems which a public authority faces in dealing with a request have, to some degree, resulted from deficiencies in its handling of previous enquiries by the same requester, then this will weaken the argument that the request, or its impact upon the public authority, is disproportionate or unjustified.
36. However, in the circumstances of this case and on the basis of the evidence provided, the Commissioner considers that it is reasonable to conclude that the complainant will continue to submit requests, and/or maintain contact about the subject matter regardless of any response provided to the request in question. The disruption to MoJ resulting from any continuing correspondence would be disproportionate. The Commissioner is therefore satisfied that, in the context of MoJ's previous

and ongoing dealings with the complainant, compliance with the request would result in a disproportionate burden on its resources.

37. Consequently the Commissioner is satisfied that the MoJ has correctly relied on section 14(1).

Right of appeal

38. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

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

39. 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.
40. 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

Jon Manners
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Annex

The request for information in this case is as follows:

- 1. Kindly provide a copy of the "Standards of Customer Service Poster" prominently displayed in many Courts.*
- 2. I note that it informs that "The standards have been signed off by the HMCS board."*
- 3. With regard to the aforementioned poster and standards kindly also provide all information on and around the following:*
 - (a) the consultations and correspondence held surrounding the formulation of the advertised standards and the poster;*
 - (b) the instructions and training materials that were provided to staff in order that they display the poster and comply with the standards;*
 - (c) the names of those who participated in formulating the standards; compiling the poster and contributing to the overall project;*
 - (d) the sanctions available to management should staff fall short in the delivery of the advertised standards;*
 - (e) why the need was felt to specify/formulate the standards and furthermore to advertise and publish the same;*
 - (f) whose idea the formulation of the standards and the poster was;*
 - (g) all feedback provided to and received from the board and management as to the success or otherwise of the implementation of the standards and as to customers' reactions, comments and complaints as to the same;*
 - (h) the relationship between the standards and HMCS' advertised goal, Courts Charters, ex343 Complaints Procedures, Framework Agreement, the Civil Service Code and pre-action/out-of-court/alternative dispute resolution obligations and such like;*
 - (i) the standards in place prior to those advertised in the poster and why they were felt to be inadequate and/or in need of updating/revising.*

4. Kindly acknowledge this email upon receipt and confirm when you intend to provide your full replies by if not by return.