

**Freedom of Information Act 2000 (FOIA)
Environmental Information Regulations 2004 (EIR)**

Decision Notice

Date: 31 March 2016

Public Authority: Department of Finance and Personnel
Address: Clare House
303 Airport Road
Belfast
BT3 9ED

Decision (including any steps ordered)

1. The complainant has requested information relating to an application for a copy of a land ownership folio. The Department of Finance and Personnel originally refused the request under section 40(2) of the FOIA, but later sought to rely on section 14 instead since it considered the request vexatious. The Commissioner has concluded that the request should have been dealt with under the EIR but that the Department would have been entitled to refuse to comply with the request on the basis of regulation 12(4)(b) because it is manifestly unreasonable. No steps are required.

Request and response

2. On 19 June 2015 the complainant requested the following information from the Department:

"I hereby request that all Documents and Information protected by the above Act and relating to the said 'In House Document No 2000/25224' be released to me as a matter of urgency."
3. The complainant referred to the FOIA and the Data Protection Act 1998.
4. The Department issued a refusal notice on 23 July 2015, advising that the requested information was exempt under section 40(2) of the FOIA since it *"concerns a third party"*.

5. The complainant wrote to the Department on 25 July 2015 to challenge its refusal, and in this correspondence she referred to a further requested document: 2000/25524.
6. The Department provided the outcome of the internal review on 12 August 2015. The Department advised the complainant that the two references (ie 2000/25224 and 2000/25524) were not documents in themselves, but references referring to applications for copies of Land Registry folios made by other individuals. The Department maintained that it could not disclose the applicants' details without breaching the data protection principles as set out in the Data Protection Act 1998 (the DPA).
7. The complainant wrote to the Department on 14 August 2015 to acknowledge receipt of the outcome of the internal review. Whilst accepting that the review had been dealt with properly, the complainant remained dissatisfied. The complainant explained that she required the information in connection with her late father's estate. Specifically the complainant described the information as:

"The two documents, namely 2000/25224 and 2000/25524 (the subjects of my FOI request) are the missing links in the paper trail surrounding Folio 1380..."

8. The complainant argued that

"...the non-acquisition of the information contained within 2000/25224 and 2000/25524 directly hinders my ability to apply for Probate of his [the complainant's late father] Estate".

Scope of the case

9. The complainant contacted the Commissioner on 14 August 2015 to complain about the Department's refusal to disclose the requested information.
10. The Commissioner asked the complainant to clarify the nature of the disputed information. The complainant was unable to provide a detailed description but told the Commissioner that the two documents were
"central to eventually proceeding to Probate of my late father's estate."
11. The Department advised the complainant and the Commissioner that one of the references specified in the request related to a folio that was not connected with the complainant or her family in any way. In any event the application for that folio had been abandoned. In respect of the other reference, the Department did hold information identifying the

applicant, but the applicant was a solicitors' firm rather than one or more identifiable individuals. Since the applicant was not an individual the Commissioner advised the Department that the exemption under section 40 of the FOIA was not engaged in respect of this information.

12. The Department reconsidered the request and revised its position. The Department advised that it now sought to refuse the request as it was vexatious. The Department issued a fresh refusal notice stating this on 18 March 2016, although it did not explicitly claim reliance on section 14 of the FOIA.

Reasons for decision

Which access regime does the requested information fall under?

13. The Commissioner asked the Department to clarify which access regime the requested information fell under. The Department said that it had considered the request under the FOIA since it did not consider the requested information to comprise environmental information within the meaning of the EIR.
14. The definition of environmental information is set out at regulation 2(1) of the EIR. In the Commissioner's opinion regulations 2(1)(a) and (c) are most relevant in this case:

"environmental information" has the same meaning as in Article 2(1) of the Directive, namely any information in written, visual, aural, electronic or any other material form on –

(a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;

(c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a) and (b) as well as measures or activities designed to protect those elements;'

15. The Department argued that the information sought by the complainant did not fall within the definition of environmental information since it did not impact on the state of the elements of the environment, nor did it constitute or refer to factors affecting or likely to affect the elements of

the environment. The Department maintained that land registration and mapping are administrative functions and merely record facts.

16. Having carefully considered the matter, the Commissioner respectfully disagrees with the Department. The requested information is a record of an application for a copy of a land folio. In the Commissioner's opinion the requested information should be considered in its context, and the process of requesting information relating to registration of land, can be seen as information "on" a measure – namely the process of registering of land – that is likely to affect the land itself. How a piece of land is registered, and to whom, is in the Commissioner's opinion likely to affect the use of that land and thus have a direct effect on it. Therefore an application for information relating to this registration is not so far removed from the measure as to prevent it from being environmental information within the meaning of regulation 2(1)(c) of the EIR. The Commissioner is satisfied that the requested information is environmental information, and the EIR is the correct access regime.

Regulation 12(4)(b)

17. The Commissioner is mindful that the Department has sought to refuse the complainant's request on the basis that it is vexatious. The equivalent provision of the EIR is regulation 12(4)(b), which permits a public authority to refuse a request if it is manifestly unreasonable. The Commissioner's published guidance on regulation 12(4)(b) explains that:

*"In practice there is no material difference between a request that is vexatious under section 14(1) of FOIA and a request that is manifestly unreasonable on vexatious grounds under the EIR."*¹

18. The Commissioner is therefore satisfied that it is appropriate to consider the Department's section 14 arguments in the context of regulation 12(4)(b). In the Commissioner's view it would be a disproportionate use of resources to ask the Department to resubmit its arguments under the EIR in this case.
19. In determining whether the complainant's request was manifestly unreasonable the Commissioner has had regard to the Upper Tribunal's comments in the case of *Information Commissioner v Devon County*

¹ <https://ico.org.uk/media/for-organisations/documents/1615/manifestly-unreasonable-requests.pdf>

Council & Dransfield.² The Upper Tribunal identified proportionality as a key consideration when assessing whether a request is vexatious, and this is clearly relevant to consideration of a request as manifestly unreasonable:

"Inherent in the policy behind section 14(1) is the idea of proportionality. There must be an appropriate relationship between such matters as the information sought, the purpose of the request, and the time and other resources that would be needed to provide it."

20. The Commissioner's guidance on regulation 12(4)(b) advises public authorities to refer to his guidance on section 14³ which sets out a number of indicators that public authorities may find it useful to consider when determining whether a request is vexatious. The guidance clarifies that the fact that a particular request contains one or more of these indicators will not necessarily mean that it must be vexatious. All the circumstances of the case must be taken into consideration in order to determine whether the request is vexatious or manifestly unreasonable.
21. The key question the public authority must ask itself is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress. Where this is not clear, the Commissioner considers that a public authority should weigh the impact of the request upon it and balance this against the purpose and value of the request. Where relevant, public authorities will also need to take into account wider factors such as the background and history of the request.

The Department's position

22. The Department told the Commissioner that the complainant had engaged in extensive correspondence, by email and letter. Between 27 July 2015 and 13 December 2015 the complainant emailed one departmental official 138 times, including eight emails on one day. The complainant had twice contacted the Northern Ireland Assembly's Finance and Personnel Committee concerning her probate issue. The Committee referred the complainant back to the Department each time.
23. In addition the Department said that the complainant had made frequent telephone calls to various members of staff in respect of her

² UKUT 440 (AAC), 28 January 2013

³ <https://ico.org.uk/media/for-organisations/documents/1198/dealing-with-vexatious-requests.pdf>

legal case. The Department explained that it had designated one of its staff to be a single point of contact for the complainant to try and manage this frequent correspondence. The complainant had telephoned and emailed staff for acknowledgement of emails sent, sometimes within minutes of sending the email. Despite this the complainant had submitted a complaint about perceived “tardiness” in responding to her.

24. The Department stressed to the Commissioner that the complainant has always been polite in her dealings with its staff. However the Department was of the view that its staff had found the level of persistence, in particular the frequency of correspondence and follow-up contacts, distressing.
25. The Department also expressed concern about the consequences should it comply with the complainant's request. The Department pointed out that there was a public right of access to folios via the Land Registry, although this would not provide any information about previous applications for folios. According to the Department's website:⁴

“If the land is registered you can view the folio detail on screen. This will show the current registered owner, any rights or charges that affect the folio. You can also see historical details of previous owners, rights and charges back to the date of first registration with the Land Register.”

26. Disclosure of the requested information would identify who had applied for a copy of the two folios, but the purchaser had been a solicitors' firm in each case. Therefore the Department expected that the complainant would contact the solicitors' firm and adopt a similar approach of frequent and voluminous correspondence in the pursuit of information about their client or clients.

The complainant's position

27. The complainant has provided the Commissioner with voluminous correspondence relating to her case. This includes correspondence with the Department in respect of other requests for information, correspondence with a bank and correspondence with the Financial Ombudsman Service.
28. Most recently, the complainant wrote to the Commissioner on 21 March 2015 following receipt of the Department's correspondence citing section 14(1) of the FOIA. In this correspondence the complainant advised the

⁴ <https://www.nidirect.gov.uk/articles/searching-the-land-registry>

Commissioner that she had made a further information request to the Department on 11 March 2016. The complainant advised the Commissioner that between Friday 11 March 2016 and Friday 18 March 2016 she had sent one departmental official eight emails in respect of this request, but had not received a response. The complainant recognised that 17 March 2016 was a public holiday and not a working day, but stated that the member of staff she had emailed was not on holiday during the rest of this time.

29. The complainant has not specifically addressed the Department's assessment of her request as vexatious. Nor has she provided any arguments as to why the requested information would be of value to the wider public. However the complainant maintains that the requested information is necessary for her own legal case.

The Commissioner's conclusions

30. The Commissioner is mindful that the EIR is motive-blind and applicants are not required to explain why they are making any request. The Court of Appeal commented in *Dransfield*⁵ that it was often appropriate to ask the question:

"Does the request have a value or serious purpose in terms of the objective public interest in the information sought?" (para 38)

31. The Commissioner accepts that the complainant made her request in good faith. The complainant clearly believes the request has a serious and justifiable purpose, ie the pursuance of her probate case. However the Commissioner attaches limited weight to the complainant's purely private interests as opposed to a wider public interest in the requested information. The Commissioner is unable to identify an objective public interest in the public being informed as to the name of a solicitors' firm that requested a copy of a particular folio. In any event it is not clear to the Commissioner how the requested information itself would assist the complainant's case in practical terms.
32. The Commissioner would point out that the EIR is merely one mechanism for public access to official information. The Commissioner notes that anyone can inspect or obtain a copy of a folio on payment of a fee, although this would not inform the applicant as to who else has made a similar application for a particular folio. Where information is sought in connection with a particular matter or legal action there may

⁵ *Dransfield v Information Commissioner and Devon County Council* [2015] EWCA Civ 454

be other routes of access to relevant information, but this would fall outside the scope of this decision notice.

33. The Commissioner has also examined the Department's arguments with regard to the frequency of correspondence from the complainant, and the impact it has had on its staff. The Commissioner has carefully considered the correspondence provided by the complainant in support of her request, and by the Department in support of its argument that the request is unreasonable.
34. The Commissioner accepts that the complainant's correspondence has been frequent and persistent. For example, the complainant emailed the Department at 9.27am on Friday 19 June 2015 to submit the request that is the subject of this decision notice. The complainant emailed the Department again on 12.04pm, requesting a response "by return". The complainant telephoned the Department at 2.25pm and emailed again at 3.52pm, referring to this telephone call and requesting a response by 4.30pm. The EIR allows a public authority 20 working days after the date of receipt to respond to a request. There is no statutory requirement to provide an acknowledgement of a request, although in the Commissioner's view it is good practice. In this case the Commissioner notes that the Department did acknowledge receipt of the request at 4.40pm on 19 June 2015. The complainant expected the Department to respond to her information request of 11 March 2016 on the same day, and sent eight emails across five working days requesting a response. The Commissioner does not consider this to be a reasonable expectation, particularly given that the EIR allows public authorities to take up to 20 working days to respond to a request (or 40 days where the request is voluminous or complex).
35. The Commissioner accepts that such persistence may be frustrating for a public authority, particularly as it will distract staff from other duties. The Commissioner does not consider that the Department has demonstrated that staff are in fact distressed by the level of correspondence. However, the Commissioner is minded to accept that dealing with frequent requests for acknowledgements and updates will inevitably have the effect of distracting staff from other business, and could result in substantive responses being delayed.
36. The Commissioner also notes that the Department has attempted to explain its position to the complainant on a number of occasions. The Department says its staff have spoken with the complainant by telephone in addition to written correspondence, and have clarified that the requested information merely comprises a record of a request for the folio in question. The Commissioner has also discussed this with the complainant, and it is not clear to the Commissioner whether the complainant truly understands the limited content of the information she

has requested. It appears to the Commissioner that the complainant has become fixated on the requested information as a “missing link” in her probate case, without any concrete evidence to support this assumption.

37. The Commissioner has also considered the effects or consequences of compliance with the request. As indicated above the concept of proportionality is key to regulation 12(4)(b). There is no doubt that the complainant believes she needs the requested information. However the Department is equally certain that compliance with the request would not satisfy the complainant. It would merely inform the complainant as to the identity of the solicitors' firm who applied for a copy of the folio. The Commissioner accepts as valid the Department's concern that disclosure of this information would lead to the complainant contacting the solicitors' firm in an attempt to obtain further information. The Commissioner also accepts that, given the complainant's persistent contact with departmental staff, that she may adopt a similar pattern of excessive contact with other parties. The complainant has provided the Commissioner with copies of correspondence with a bank and another regulator, and in the Commissioner's view this correspondence indicates a pattern of disproportionate persistence.
38. Finally the Commissioner considers it appropriate to take into account the general expectations of any person making a request for a folio (whether an individual, their solicitor or a company, etc). The Department argued that applicants would not expect their identities to be disclosed into the public domain. In the same way that the EIR is motive blind, there is no requirement for an applicant to justify or explain their application for a folio. The reason may be a legal dispute or plain curiosity. The Commissioner considers that this further diminishes the legitimate public interest in making the requested information publicly available.
39. In conclusion, the Commissioner acknowledges the complainant's personal reasons for making her request, but is unable to afford them significant weight. Therefore the Commissioner concludes that the complainant's request of 19 June 2015 was manifestly unreasonable. Accordingly the Commissioner finds that regulation 12(4)(b) is engaged, and has gone on to consider the public interest test.

Public interest test

40. Unlike section 14(1) of FOIA, there is a public interest associated with the exception under regulation 12(4)(b). The Commissioner has also taken into account the presumption in favour of disclosure as set out at regulation 12(2) of the EIR.

41. The Commissioner is assisted by Judge Wikeley's comments in the Upper Tribunal case of *Craven v The Information Commissioner and the Department of Energy and Climate Change*.⁶

"I do not believe that the existence of the of the explicit public interest test in the EIR and the statutory presumption of a restrictive interpretation of regulation 12(4)(b) should mean that, even at the margins, it is in some way "easier" to get a request accepted under the EIR than under FOIA." (paragraph 22)

42. In the Commissioner's view there is a significant public interest in protecting the Department's resources. In contrast, as set out above the Commissioner is not persuaded that there is any objective public interest in the requested information. The Commissioner recognises that the Department has already sought to address the complainant's issues, and has tried to explain to the complainant that the information she has requested would not in fact assist her personal interest. The Commissioner is satisfied that the public interest in maintaining the exception at regulation 12(4)(b) clearly outweighs the public interest in complying with the request.

⁶ UKUT 442 (AAC), 28 January 2013

Right of appeal

43. 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

44. 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.
45. 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

Sarah O'Cathain
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