

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 22 May 2012

Public Authority: Foreign and Commonwealth Office
Address: King Charles Street
London
SW1A 2AH

Decision (including any steps ordered)

1. The complainant requested information relating to the return of two Congolese nationals from the UK on 13 March 2009, as reported in a Guardian newspaper article on 28 May 2009. The Foreign and Commonwealth Office (FCO) refused the requests as vexatious citing section 14(1) of FOIA. The Information Commissioner's ('the Commissioner') decision is that the FCO correctly categorised the requests as obsessive and as having no serious purpose or value in accordance with section 14(1). The Commissioner does not require the public authority to take any steps.

Request and response

2. On 13 April 2011 the complainant wrote to the FCO and requested information in the following terms:

"Thank you for your reply of 12 April 2011 to Freedom of Information Act 2000 Request Ref: 0209-11.

I am putting in another Freedom of Information request as the questions have not been answered satisfactorily."

3. The complainant then detailed his requests for information in two specific questions. The Commissioner has included the details at Annex A of this decision notice due to the length and complexity of the wording.
4. The FCO responded on 11 May 2011. It informed the complainant that it had decided that section 14(1) applied to the requests as it believed that

they lacked serious purpose or value and that it considered that the requests were vexatious.

5. Following an internal review the FCO wrote to the complainant on 12 August 2011. It stated that, having reviewed its response of 11 May 2011, it had determined that insufficient detail of its reliance on section 14(1) had been given to the complainant in its response; however, it remained of the opinion that the requests were vexatious. It also informed the complainant that to respond to the requests would cause a disproportionate level of expense and distraction to the FCO.

Scope of the case

6. On 21 October 2011 the complainant contacted the Commissioner to complain about the way his requests for information had been handled. He told the Commissioner that, despite making many requests to the FCO on the same subject, he believed that there was still a lack of clarity and that this was the reason for him pursuing the matter. He asked the Commissioner to consider that the FCO had still not answered the question of correlation of data in respect of the log books. He also asked the Commissioner to consider his particular concerns about the subject of returning people from the UK to the Congo to alleged torture.
7. The Commissioner has focussed his investigation on the application of section 14(1) to the requests.

Reasons for decision

8. Section 14(1) of FOIA states that a public authority is not obliged to comply with a request if the request is vexatious. The term vexatious is not defined in FOIA but the Commissioner's published guidance explains that 'vexatious' is meant to have its ordinary meaning and there is no link to the legal definitions on other contexts such as 'vexatious litigants'. The Commissioner has identified five criteria of particular relevance against which a request can be assessed to determine whether it is vexatious.
 - Is the request designed to cause disruption or annoyance?
 - Does the request lack any serious purpose or value?
 - Would complying with the request impose a significant burden in terms of expense and distraction?
 - Can the request fairly be seen as obsessive?
 - Is the request harassing the authority or causing distress to staff?

9. In determining whether a request is vexatious or not, the Commissioner will consider the context and history of the request to reach a reasoned conclusion based on the strength or weakness of both parties' arguments, including any evidence provided in relation to some or all of the above five factors.
10. The FCO provided its arguments to the Commissioner for its reliance on section 14(1). It also provided him with details of the history of its correspondence with the complainant and the context and background to the requests.

Can the request be seen as obsessive?

11. The FCO argued that prior to receiving these requests the complainant had made nine separate requests, some of which had been dealt with as requests under FOIA and some as requests for comment. It argued that in each case the request related to the same subject matter and each arose from dissatisfaction with the previous responses to requests from the FCO. It argued that there was a clear pattern of the complainant using the response to one request as the starting point for making a further request. It also stated that it had provided information in previous requests as to its view that one of the documents referred to in this request did not exist. It argued that even though he was made aware of this the complainant continued to refer to the document in his requests. It said that this clearly demonstrated an obsession with the subject matter as the complainant would have been aware that there was no realistic prospect of him receiving the information. In light of this the FCO expressed its view that it did not believe that the complainant would be satisfied with any response.
12. The FCO provided the Commissioner with a breakdown of the correspondence between it and the complainant which he will not describe in detail here, but notes that it supports the arguments put forward by the FCO that a response to one request inevitably leads to another being submitted on the same subject or issue. The Commissioner, having considered the argument that the document that the complainant continually refers to does not exist, accepts the view of the FCO. He attributes significant weight to the argument that the requests can fairly be seen as obsessive.

Does the request lack serious purpose or value?

13. The FCO argued that, as it had shared all of the information that it holds on the subject matter with the complainant, the requests lack value.
14. The complainant informed the Commissioner that he believes there to have been an injustice with the return of failed asylum seekers from the

UK to the Congo. He argued that his requests therefore have a serious purpose and value.

15. It is the established view of the Commissioner that if a request is found to be obsessive that it is likely that it will also lack serious purpose or value:

"The question of whether a serious and proper purpose can continue to justify an ongoing campaign or series of requests will overlap with the question of whether the latest request can fairly be seen as obsessive. If a request is obsessive (eg if the issue has already been fully considered and debated with the applicant) then it is unlikely that there can be any continuing justification for that request".

16. In this case it is obvious that the alleged mistreatment of individuals returned from the UK to the Congo is a very serious issue. The Commissioner notes the complainant's strength of concern in this regard. As such it can be understood why the complainant has persisted in making requests. However the FCO has stated that it has taken action in relation to the log books and that it has concluded that one of the documents is not genuine. Furthermore it has indicated that it has disclosed all the information it holds on the matter to the complainant. In this context the Commissioner finds it difficult to understand how the requests relevant to this complaint, which repeat issues the FCO has already responded to, can take the matter further.
17. Accordingly, having carefully considered both the FCO's and the complainant's arguments the Commissioner is minded to accept that the requests have no serious purpose or value and to attribute weight to this argument.

Is the request harassing the public authority?

18. The FCO argued that it had received a large volume of correspondence from the complainant including requests for information, follow up emails and other contacts. It told the Commissioner that despite providing all of the information the complainant appeared to believe that the FCO was withholding information from him. It said that on more than one occasion it had offered to speak with the complainant to discuss and clarify his requests but he had not accepted the offers and had chosen to continue to communicate by email.
19. The Commissioner has considered the argument that the requests have the effect of harassing the FCO or its staff and although he appreciates that FCO staff have been involved in protracted correspondence with the complaint he is not convinced that this demonstrates a substantial effect

of harassing the FCO or its staff. Accordingly he does not attribute any weight to this argument.

Would complying with the request impose a significant burden in terms of expense and distraction?

20. The FCO argued that having previously provided all of the information it held on the subject matter and having dealt with nine separate requests, that responding to this and any future requests would create a disproportionate burden in terms of inconvenience and distraction of its staff as well as cost to the FCO. The Commissioner notes that in fact the earlier correspondence between the parties contains in excess of nine requests. This is because in some of the correspondence the complainant has in fact made multiple requests.
21. The Commissioner understands the argument that the FCO expects to receive additional requests from the complainant on the same subject matter considering the history of the requests from the complainant on the same or related subject matter. As mentioned above, he has accepted that the requests can be seen as obsessive on this basis. However, the Commissioner does not consider, on the basis of the submissions he has received, that the FCO has demonstrated or evidenced that these requests and a further ongoing pattern would result in a significant distraction from its core functions. He has therefore ascribed no weight to this argument.

Is the request designed to cause disruption or annoyance?

22. As the FCO did not rely on a position that the requests were designed to cause disruption or annoyance the Commissioner has not considered the final heading in his analysis.

Is the request vexatious?

23. The Commissioner has carefully considered the arguments provided by the FCO. He notes that there is no specific requirement for all five headings specified in his published guidance to be relied on when categorising a request as vexatious and that it is acceptable for only one or several of those headings to be relevant.
24. In this case, the Commissioner does not consider that the FCO has demonstrated that all of the factors it has relied on have been met. However he is minded to agree that the requests can be categorised as vexatious on the basis that they are obsessive and also lack serious purpose or value for the reasons specified above.

25. Having considered all of the arguments together with the background and context of the complaint the Commissioner is therefore persuaded that the FCO correctly relied on section 14(1).

Right of appeal

26. 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: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

27. 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.
28. 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

Jo Pedder
Group Manager Policy Delivery
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Annex A

Request of 13 April 2011

I now ask for all recorded information under the Freedom of Information Act on two questions:

1. You state in your reply "In that letter of July we gave you the text of a report from colleagues in the Embassy in Kinshasa that showed they had investigated the Kin Maziere official log book and 'the secret log book'. We believe this is a thorough investigation of the background to the Guardian article. We have provided you with all information relevant to Embassy staff viewing of the 'secret log book' ".

It is not possible that embassy officials could have examined the 'secret log book' as this was data from the official record of detainees admitted during a certain period to Kin Maziere, only available to the Guardian. In addition the real 'log book' is never shown to embassy staff as officials involved in torture do not provide a foreign government with evidence. In the light of this information do you still maintain that embassy officials were shown both the genuine log book containing a record of all detainees in Kin Maziere and the 'secret log book'?

2. You state in your reply "In that letter of July we gave you the text of correspondence between the Embassy in Kinshasa and UKBA in the UK. "I quote this: "In a letter to the UK Border Agency Country Specific Asylum Policy Team on 23 June 2009, a senior Embassy official wrote:

"The Embassy official then visited Kin Maziere (DRGS/Police Special Services) and checked the logbook for entries following the return of the individuals in question. There were no records of the two UK returnees named in the Guardian article."

The list of names available to the Guardian included details of two refused asylum seekers who were forcibly removed from the UK. The Guardian had knowledge of only one of the names at the time that information was passed to it. Following inquiries a second name on the list was confirmed as the client of a legal adviser in the UK. The advisor confirmed that the details such as date of arrival in Kinshasa, full name and date of birth, provided by the information, tallied with his own records. The Home Office confirmed this data too. How do you explain how the data from Kin Maziere correlated precisely with the UK data? This is a matter for the FCO to answer in order for a thorough and competent investigation to be seen to be completed.