

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 26 September 2012

Public Authority: Driving Standards Agency (DSA)
(an Executive Agency of the Department of Transport)

Address: The Axis Building,
112 Upper Parliament Street,
Nottingham, NG61 6LP

Decision (including any steps ordered)

1. The complainant has requested information relating to Equality impact assessments of DPA/FOI and dismissal processes.
2. The Commissioner's decision is that the Driving Standards Agency (the 'DSA') has correctly applied section 14 of the FOIA.
3. The Commissioner does not require the public authority to take any steps.

Request and response

4. On 18 July 2011, the complainant wrote to the DSA and requested information in the following terms:
 - the Equality impact assessments of the DPA/FOI and dismissal processes.
 - the standard operating procedure for Data Protection Act requests
5. The Commissioner notes that under FOIA the DSA is not a public authority itself, but is actually an executive agency of the Department for Transport which is responsible for the DSA and therefore, the public authority in this case is actually the

Department for Transport not the DSA. However, for the sake of clarity, this Decision Notice refers to the DSA as if it were the public authority.

6. The DSA responded on 15 August 2012. It stated that the request for Equality impact assessments is considered to be vexatious under section 14(1) of the FOIA. Also that the request for the standard operating procedure for Data Protection Act requests was vexatious under section 14(2) as a repeated request.
7. Following an internal review the DSA wrote to the complainant on 16 September 2011. It maintained its original position.

Scope of the case

8. The complainant contacted the Commissioner to complain about the way his request for information had been handled. He stated that the question was not answered by the DSA and deemed vexatious. He also stated that the DSA refused to explain why or conduct a proper review.
9. The Commissioner considers the scope of this request to be to determine if the DSA has correctly engaged section 14(1) and section 14(2) of the FOIA to the two parts of the request as outlined above.

Reasons for decision

10. Section 14 (1) of the FOIA states that:

"Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious"

11. Previous Information Tribunal (Tribunal) decisions have aided the Commissioner when coming to a decision as to whether or not a request is vexatious. In determining whether a request is vexatious or not, the Commissioner will consider the context and history of the request as well as the strengths and weaknesses of both parties' arguments in relation to some or all of the following five factors:

- Would complying with the request impose a significant burden in terms of expense and distraction?
 - Could the request fairly be seen as obsessive?
 - Does the request have the effect of harassing the authority or causing distress to its staff?
 - Is the request designed to cause disruption or annoyance
 - Does the request lack any serious purpose or value?
12. The Commissioner agrees with the Tribunal that the bar need not be set too high in determining whether to deem a request vexatious. He also agrees with the Tribunal that the term 'vexatious' should be given its ordinary meaning, which is that it 'vexes' (causes irritation or annoyance; in relation to section 14(1) annoyance must be caused by the process of complying with the request).
13. The DSA has stated that the complainant's request is vexatious as it is: obsessive, harassing or causing distress to DSA staff, has caused a significant burden in terms of time and expense, lacks any serious purpose or value and that it believes the request is designed to cause disruption or annoyance.
14. In the Commissioner's view, an affirmative response to all of the questions is not necessary for a request to be deemed vexatious. However, he considers that, in order to judge a request as vexatious, a public authority should usually be able to make persuasive arguments under more than one of the above headings.
15. Accordingly, the Commissioner has considered whether the DSA has provided sufficient arguments in support of any of the criteria above in its application of section 14(1) in this particular case.

Could the request be seen as obsessive?

16. It is the Commissioner's view that the test to apply here is one of reasonableness. In other words, would a reasonable person describe the request as obsessive or manifestly unreasonable?
17. The DSA states that the complainant makes amendments or additions to original sets of questions days after initial receipt. For

example the DSA sent an acknowledgement and the complainant replied asking for additional information not covered in the original request.

18. The complainant continues to push points which have been replied to and not accepting the reply stated e.g. in an email from the complainant regarding a DSA response to a request, he challenged the accuracy of the data and who cleared the response.
19. The DSA believes that there is a clear intention to use the requests to challenge an HR case which has been concluded. The complainant continued to submit requests after the date to submit to an employment tribunal had expired.
20. The DSA considers that the complainant's unwillingness to accept or not to continue to challenge information released and decisions made is an indicator of someone obsessed with his/her viewpoint.
21. The complainant has regularly asked for confirmation as to who was responsible for the accuracy of the information and the clearing of DSA responses.
22. Between 9 May 2011 and 16 September 2011 the complainant wrote to the DSA 7 times.
23. Some of this correspondence makes new requests, whilst at the same time complaining about how his requests have been dealt with. Additional correspondence has evidenced that the complainant also challenges how the accuracy of the information provided has been checked, that it is correct, truthful and conforms to applicable legislation.
24. There is often a fine line between obsession and persistence and each case must be considered on its own facts. In answering the question regarding whether a request can be seen as obsessive, the Commissioner's view is that the wider context and history of a request is important as it is unlikely that a one-off request could be obsessive.
25. In this case, taking into account the context and background to the request, the Commissioner considers that the request can fairly be seen as obsessive.

Is the request harassing the authority or causing distress to staff?

26. It is the Commissioner's view that relevant factors to consider could include the volume and frequency of correspondence, the use of hostile, abusive or offensive language, an unreasonable fixation on an individual member of staff, or mingling requests with accusations or complaints.
27. The DSA considers that continual responses to a final letter are providing Information Access (IA) staff with "case fatigue". The constant mingling of requests within accusations and complaints has caused crossed purposes on at least one occasion and impacted on the handling of the case.
28. The number of requests and complaints received has involved 7 levels of employee in the same line management chain to provide some review of past actions. Even when recourse has been explained as the ICO only, the complainant continues to push for further information using the separate correspondence complaints procedure and accuses individuals of acting inappropriately in terms of case handling and knowledge.
29. The complainant has sought to identify key decision makers in the process and in the most recent correspondence referred to the alleged incompetence of the Head of IA and the Chief Information Officer. Previous correspondence left other decision makers feeling targeted. The complainant has sent targeted emails to those involved in the sign off process of his requests challenging information provided and its accuracy.
30. Having considered the information available it is the Commissioner's view that the correspondence supports the argument that the cumulative effect of the requests was to harass the public authority. It would not be unreasonable for staff to regard correspondence as harassing when there was every indication that it would only lead to further complaints and requests without generating a productive outcome.

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

31. FOIA was enacted to assist people in seeking access to recorded information held by public authorities. However, it was not the

intention of FOIA to distract public authorities unreasonably from their other duties or for public money to be spent unproductively.

32. The Commissioner's guidance states that when considering any burden imposed in complying with a request, consideration will need to be given not only to the cost of compliance, but also whether staff would be diverted or distracted from their usual work.
33. The DSA has explained that resources are a large part of this assessment. There has been considerable resource put into each request. Some of the key requests received have been received a significant time after a final response to another slightly different request and therefore it considered this was too weak to apply consolidated costs bringing in section 12 of the FOIA. It is acknowledged that resource alone was a weak argument but this is part of the overall consideration as to the application of section 14. The resource issue is contextualised given the other elements mentioned in this document.
34. Over 19 months, the DSA have received 32 pieces of correspondence from the complainant resulting in 7 FOIA requests, 3 internal reviews and 2 Subject Access Requests (SAR)/DPA cases. Although this is a relatively low number, they have been complex and involved numerous questions.
35. The volume and length of the overlapping nature of the requests distract staff from their core other functions taking time away from other work and imposes a significant burden to ensure that all correspondence hasn't contradicted or changed any way a statement made previously. References to previous replies sent to the complainant following a significant and further correspondence in between also cause staff to spend excessive amounts of time handling the cases. The correspondence mixed SAR, FOIA requests and general complaints. The complainant also tried to use the customer correspondence regime for dealing with his requests and making complaints about how they are dealt with.
36. Personal attacks and asking the names of decision makers constantly put pressure on those concerned and distracting them from carrying out their duties.
37. It is clear to the Commissioner that the time required by the DSA to deal with previous requests from the complainant has been significant. Not only has it required input from the DSA's IA team,

it has also required several other levels of staff to become involved reviewing the responses and complaints made.

Is the request designed to cause disruption or annoyance?

38. In the Commissioner's view, as this factor relates to the requester's intention, it can be difficult to prove.
39. The DSA acknowledges that, although hard to prove, the nature of the HR case involving the complainant could provide the potential for the complainant to harbour the intention to cause disruption to the DSA.
40. Where requests have included in the whole or in part previously asked questions, these have been referred back to, however this has not been accepted. The requestor is an ex-employee of the DSA and it is believed by the DSA that he is out of time for submitting an employment tribunal appeal so is using the FOIA route to be disruptive and annoying.
41. The complainant has been sending emails requesting information to all areas of the business. He has been told of the appeals process for FOIA requests but has tried to use the general correspondence complaints process where he is unhappy with the DSA response.
42. The Commissioner has noted the DSA's arguments on this point but finds no evidence that the request is designed to cause disruption or annoyance. He has therefore not given any weight to this factor.

Does the request lack any serious purpose or value?

43. Whether a request has value or not is not usually a relevant consideration in freedom of information requests, since FOIA is not concerned with the motives of an applicant, but rather in promoting transparency for its own sake. However, the Commissioner acknowledges that should any public authority be able to show that a request has no value or purpose, this may help bolster the application of section 14(1) when taken together with other supporting factors.
44. The original requests for information were of value to the individual to support any challenge to his HR case. However, as time has passed and the information has not been forthcoming to

the complainant's satisfaction, the types of request received by the DSA have been about operational processes and there is not an apparent link between the original purpose or value perceived by the DSA in respect of more recent requests.

45. There could be a genuine desire to ensure that the processes being followed are in line with FOIA and have been applied to the complainant's specific cases, however even when the complainant has been informed of the routes for recourse (specifically to the Commissioner) following statements that on internal review no further information has been identified and can therefore be provided, the complainant continues to return to the DSA with a complaint and more requests for information.

Is the request vexatious?

46. Although each request seen in isolation could not necessarily be seen as vexatious, the frequency and subject matter when combined is seen as vexatious. The continuing pattern of behaviour of mixing complaints with requests for information and persistence in contacting the DSA when a clear path of recourse has been provided brings the consideration of section 14 into account.
47. For all the reasons set out above, the DSA believe that the complainant's request for Equality impact assessments of the DPA/FOIA and dismissal processes is vexatious. Whilst the complainant's original FOIA requests did have a purpose in assisting with providing information to support his employment tribunal claim, he is now well outside the time period for being able to lodge a complaint. As the complainant no longer has any recourse of action against the DSA, the DSA believes that his requests are becoming obsessive and lack any valid purpose apart from causing disruption and annoyance to staff and harassing the DSA.
48. The Commissioner finds that the public authority was justified in relying on four of the factors described above to support its application of section 14(1). It is the Commissioner's view that the factors which give most weight to the DSA's position are that the request can fairly be seen as obsessive, the request harasses the authority and that complying with the request would impose a significant burden in terms of expense and distraction on the public authority. For these reasons the Commissioner concludes that part one of the request made on 18 July 2011 was vexatious

for the purposes of section 14(1) and consequently the DSA was not obliged to comply with.

Section 14(2)

49. Section 14(2) states:

"Where a public authority has previously complied with a request for information which was made by any person, it is not obliged to comply with a subsequent request identical or substantially similar request from that person unless a reasonable interval has elapsed between compliance with the previous request and the making of the current request."

50. On 16 May 2011, the DSA received a request from the complainant for '...all the documents, emails and so forth that you use to process the FOI and DPA requests'. This was handled under a previous request and a response was issued on 31 May 2011 which included copies of the DSA standard operating procedures for both FOIA and DPA requests.
51. On 18 July 2011, the complainant submitted a request for '...the standard operating procedure for Data Protection Act requests'. A response to this request was issued on 15 August 2011 and the information was refused under section 14(2).
52. Both of the above requests were submitted by the complainant and whilst the wording in the second request was more specific to the information requested, the information he wanted was captured and supplied under his first more general request. The DSA believe that no reasonable interval had elapsed since it supplied the standard operating procedure as only seven weeks had elapsed.
53. The Commissioner is satisfied, that after considering the context and the history of the request, the DSA has correctly applied section 14(2) for the FOIA to the second part of the complaint.

Right of appeal

54. 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

55. 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.
56. 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

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