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Freedom of Information Act 2000 (FOIA)

Decision notice

Date: **22 September 2011**

Public Authority: **Medicines and Healthcare products Regulation Agency ('the MHRA')**

Address: **10th Floor, Market Towers**
1 Nine Elms Lane
London
SW8 5NQ

Decision (including any steps ordered)

1. On 2 February 2010 the complainant requested information about the correspondence and communications between the MHRA and another organisation.

2. The MHRA did not respond to this request. After correspondence with the Commissioner, it explained that it believed it was not obliged to respond to this request for information by virtue of section 17(6) because it was part of a pattern of requests that were vexatious under section 14(1).

3. The Commissioner considered the complainant's own personal data in an assessment made under the Data Protection Act 1998 ('the DPA').

4. For the remainder of the information, the Commissioner considers that the MHRA was correct in finding that the request was vexatious under section 14(1) and that it did not need to answer it.

5. The Commissioner has also found that the MHRA could rely on section 17(6) appropriately and requires no remedial steps to be taken in this case.

Request and response

6. On 2 February 2010, the complainant wrote to MHRA and made a three point request for information. Due to the nature of the complaint the Commissioner has placed everything that could identify the complainant

in a confidential annex that will be sent to both parties in this case. This includes the request dated 2 February 2010 and the MHRA's earlier refusal notice dated 20 November 2009.

7. On 23 February 2010 and 2 March 2010 the complainant issued reminders to the MHRA.

8. The MHRA did not issue a response to this particular request. It explained to the Commissioner it was relying on section 17(6). It also explained that it had issued a refusal notice to an earlier request on 20 November 2009 that explained that the current request was vexatious. It confirmed to the Commissioner that it would not therefore be required to issue a refusal notice for further requests on set topics that it specified.

Scope of the case

9. The complainant contacted the Commissioner to complain about the way his request for information had been handled. On 31 January 2011 the complainant agreed that the Commissioner was to determine:

    1. whether the MHRA was entitled to say that the request dated 2 February 2010 was vexatious;

    2. whether the MHRA was right that it did not need to issue a refusal notice in respect to this request under the Act; and

    3. any further issues about timeliness where they arise.

10. The Commissioner determined that some of the withheld information was the complainant's own personal data. He considers that this information was exempt under section 40(1) of the Act and has already made an assessment under section 7 of the DPA about this aspect of his request under a separate reference number. He will not consider this information further in this Notice.

Reasons for decision

11. 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'.

12. The Commissioner considers that the request dated 2 February 2011 was vexatious because:

- in its context it would impose a significant burden in terms of expense and distraction;
- in its context it was harassing to the MHRA;
- in its context it has an obsessive quality; and
- while he accepts that the request has a serious purpose, this purpose was inadequate to outweigh the weight of the other factors.

13. It follows that section 14(1) was applied appropriately by the MHRA.

14. The Commissioner has decided to place his detailed reasoning in a confidential annex that will be provided to both sides, but not published. He wishes to clarify that this approach has been taken purely due to the nature of this particular case and the need to ensure he meets his obligations as regulator of the DPA. It should not be construed as meaning he will follow this approach in any future consideration of complaints from this or any other complainant.

15. Section 17(6) allows a public authority not to issue a response under the Act when three conditions apply:

    a. the public authority is relying on section 14(1);

    b. it has given the applicant a notice stating this; and

    c. it would in all the circumstances be unreasonable to serve a notice under section 17(5) to the current request.

16. As noted above, in the request section, the first two conditions apply. The Commissioner also considers that the third condition applies too and his reasoning for this will also be found in the confidential annex section of this Notice. The MHRA therefore relied on section 17(6) appropriately.

Other matters

17. Section 7 of the DPA gives an individual the right to request copies of personal data held about them – this is referred to as a right of Subject Access. As the information being sought was in fact the complainant's personal data this request should have been dealt with as a subject access request rather than a request under the Act. The Commissioner encourages public authorities to consider requests under the correct regime in the first instance. In the Commissioner's opinion responsibility for applying exemptions and determining whether a request should be

considered under the Act or the DPA rests with the public authority and not the requestor.

18. Under section 42 of the DPA the Commissioner can make an assessment of the public authority's compliance with the DPA. An assessment under section 42 of the DPA is a separate legal process than that under section 50 of the FOI Act. The Commissioner has undertaken such an assessment in respect of the public authority's handling of this request and has communicated the result of his assessment in a separate letter.

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Right of appeal

19. 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

20. 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.

21. 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 ………………………………………………

Pamela Clements
Group Manager – Complaints Resolution
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Annex

To be provided to the complainant and the MHRA, but not placed on the website.

Note - It is not our usual practice to publish confidential annexes. However, following the outcome of the decision of the First-tier Tribunal (Information Rights), the decision has been made that this can now be published.

Background

22. The MHRA's primary duty and responsibility is to safeguard public health by the oversight and regulation of medicinal products and medical devices on the UK Market. The complainant has a dispute about a product with the MHRA about a product that he markets.

The Request

23. On 2 February 2010 the complainant requested the following information from the MHRA:

    'I believe the MHRA and Mr Petrie have been in touch recently with the IMB [the Irish Medicines Board] *re m* [sic]

    Can I therefore under the DPA and or the FOI act ask you to please provide me with

    1. *a date, name of person making contact and to whom at the Irish Competant* [sic] *authority the IMB about myself my company or my products from Jan 2009 to 31st jan* [sic] *2010;*

    2. *to provide me with copies of all communications pertaining to (1);*

    3. *confirmation that Mr Petrie contacted the IMB and when* [sic] *these last 6 months re, me or my company or its products, the dates of such contact, whom he spoke to and the contents of any correspondence or notes.'*

24. On 23 February 2010 and 2 March 2010 the complainant also issued a reminder to the MHRA.

25. No response was issued to this particular request. After correspondence with the Commissioner, the MHRA confirmed that it was relying on section 17(6). It explained that its refusal notice dated 20 November 2009 declared a previous request vexatious.

26. The Commissioner has reproduced the relevant parts of that Notice in full:

> *'On all of these matters you have been in correspondence with a large number of individuals in the Agency for several months. The volume of correspondence continues to be significant (for instance, I am informed that the Agency received at least 47 letters and emails from you during the month of October), and the points you raise continue to be essentially the same as those I have covered above, or an extension of them. It does not seem to me that there is a likelihood that continued exchange of correspondence on these matters will satisfy your concerns or enable a resolution of them.*
>
> *I believe it is now right, therefore, to remind you of the provisions of Section 14 of the Freedom of Information (FOI) Act….*
>
> *Guidance from the Information Commissioner's Office defines "vexatiousness" thus:-*
>
> *"…a request (which may be the latest in a series of requests) can be treated as vexatious where:*
>
> - *It would impose a significant burden on the public authority in terms of expense or distraction; and meets at least one of the following criteria.*
> - *It clearly does not have any serious purpose or value.*
> - *It is designed to cause disruption or annoyance.*
> - *It has the effect of harassing the public authority.*
> - *It can otherwise fairly be characterised as obsessive or manifestly unreasonable."*
>
> *I have little doubt that the complaints and queries you have raised with the Agency arise from concerns about which you genuinely feel aggrieved. I do not consider that there is any deliberate attempt on your part to waste the Agency's time. However, I believe that the Agency has many times over given the fullest response it can give to the points of substance you raise, and continued correspondence would simply repeat the same points, with minor variations according to how you choose to express your complaint. It appears clear to me that no matter*

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how much effort the Agency goes to in responding to your complaints and queries we will be unlikely to reach a point that is likely to satisfy your concerns. I also have to weigh up the fact that dealing with your correspondence has been taking up a substantial amount of staff time.

I am therefore now giving you notice, as an extension of the notification given to you in my letter of 8 May, that the Agency considers as vexatious under Section 14 of the FOI Act any correspondence from you (or those representing you) on the matters covered above in this letter, including:

- *The Agency's investigations and conclusions relating to complaints made against other manufacturers' products;*
- *The Agency's interpretation and application of the legal provisions regarding confidentiality in relation to the regulation of medical devices and in vitro diagnostic devices;*
- *Matters to do with sterility of medical devices and in vitro diagnostic devices;*
- *Matters regarding classification of medical devices and in vitro diagnostic devices*
- *Procedures, practices, standards etc relating to compliance investigations;*
- *Any Agency procedures. practices, standards, policies etc, where the queries or points being raised appear to us to be in further pursuance of the issues above.*

Please note also, that section 17(6) of the FOIA provides that a public authority will not need to issue a new refusal notice if they have already given the same requester a refusal notice for a previous vexatious or repeated request, and where it would be unreasonable to issue another one.

The effect of this will be that we will not respond to any correspondence that relates to these matters, including all outstanding correspondence received by the Agency before the date of this letter, where we believe we have already provided all reasonable information in response to issues of substance. Any further correspondence we receive that we consider falls within the remit of Section 14 will not be replied to, nor will it be acknowledged. Furthermore, should a request relate closely to issues already addressed, we may consider it also to fall with the remit of Section 14.'

Analysis

Substantive Procedural Matters

Exclusion – section 14(1)

27. The MHRA confirmed that it would not issue a response under the Act because it believed the request was vexatious and it was not therefore required to issue a response by virtue of section 17(6). The first part of the Commissioner's investigation has considered whether section 14(1) has been applied appropriately. He must therefore determine whether the request dated 2 February 2010 was correctly characterised as being vexatious. The MHRA contends that the request is vexatious and it should be entitled to rely on section 14(1). The Commissioner will consider its detailed arguments below.

28. The complainant argues that his requests are not vexatious and that a reasonable public authority could not rely on section 14(1) in this case. The Commissioner will also consider his detailed arguments.

29. Section 14(1) is an exclusion that provides that –

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

30. The Commissioner's view is that whether a request is vexatious for the purposes of the Act must be considered at the date it was received by the public authority.

31. When assessing vexatiousness the Commissioner adopts the view of the Information Tribunal (the 'Tribunal') decision in *Ahilathirunayagam v Information Commissioner's Office* (EA/2006/0070) (paragraph 32); that it must be given its ordinary meaning: would be likely to cause distress or irritation. Whether the request has this effect is to be judged on objective standards. This has been reaffirmed by the Tribunal in *Gowers v Information Tribunal and London Camden Borough Council* (EA/2007/0114) ('Gowers') (paragraph 27). The Commissioner has developed a more detailed test in accordance with his guidance but it is important to understand that it has developed from these general principles and these guide him in applying his test.

32. The Commissioner also endorses the Tribunal's consideration of this point in *Mr J Welsh v the Information Commissioner* (EA/ 2007/0088) ('Welsh') (paragraph 21) where it stated:

    > *'In most cases, the vexatious nature of a request will only emerge after considering the request in its context and background. As*

part of that context, the identity of the requester and past dealings with the public authority can be taken into account. When considering section 14, the general principles of FOIA that the identity of the requester is irrelevant, and that FOIA is purpose blind, cannot apply. Identity and purpose can be very relevant in determining whether a request is vexatious. It follows that it is possible for a request to be valid if made by one person, but vexatious if made by another; valid if made to one person, vexatious if made to another.'

33. The Commissioner has taken into account the complainant's previous interaction with the MHRA when determining whether the request can be correctly characterised as vexatious. This means that even if the request appears reasonable in isolation, it may be vexatious when considered in context. The MHRA has argued that the request by itself should be regarded as vexatious after considering its context.

34. The Commissioner has issued guidance as a tool to assist in the consideration of what constitutes a vexatious request[1]. This guidance explains that for a request to be deemed vexatious the Commissioner will consider the context and history of the request as well as the strengths and weaknesses of both parties' arguments. The Commissioner considers arguments put forward in relation to some or all of the following five factors to reach a reasoned conclusion as to whether a reasonable public authority could refuse to comply with the request on the grounds that it is vexatious:

    (1) whether compliance would create a significant burden in terms of expense and distraction;

    (2) whether the request has the effect of harassing the public authority or its staff;

    (3) whether the request can fairly be characterised as obsessive;

    (4) whether the request has any serious purpose or value; and

    (5) whether the request is designed to cause disruption or annoyance.

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[1] This guidance is called 'When can a request be considered vexatious or requested?' and can be located at the following link:

http://www.ico.gov.uk/~/media/documents/library/Freedom_of_Information/Detailed_specialist_guides/VEXATIOUS_AND_REPEATED_REQUESTS.ashx

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35. When considering the MHRA's reliance upon section 14(1), the Commissioner has had regard to the Information Tribunal's decision in *Welsh* at paragraph 26. In that case, the Tribunal spoke of the consequences of determining a request vexatious. It pointed out that these are not as serious as those of finding vexatious conduct in other contexts and therefore the threshold for vexatious requests need not be set too high. The complainant has expressed concern that the finding of the request vexatious may lead the MHRA to find his overall complaints as being vexatious. The Commissioner confirms that his decision only concerns whether the request dated 2 February 2010 was vexatious or not.

36. The MHRA has told the Commissioner that it believes that only the first three factors apply in this case to render this request vexatious. The Commissioner will look at these factors in turn and also factor (4) in order to consider whether the request has a serious purpose and if so, whether that purpose is such that it can outweigh all the other factors and render the request not vexatious.

Does the request constitute a significant burden in terms of expense and distraction?

37. When considering this factor the Commissioner endorses the Tribunal's approach in *Welsh* (in paragraph 27). It stated that whether a request constitutes a significant burden is:

> *"…not just a question of financial resources but also includes issues of diversion and distraction from other work…"*

38. The Commissioner therefore expects the MHRA to show that complying with the request would cause a significant burden both in terms of costs and also diverting staff away from their core functions.

39. The Tribunal in *Gowers* emphasised at paragraph 70:

> *'…that in considering whether a request is vexatious, the number of previous requests and the demands they place on the public authority's time and resources may be a relevant factor'*

40. The MHRA has confirmed that it believes that it would only have taken it 30 minutes to answer the request dated 2 February 2010. However, its argument is that it is the context and history that renders the request burdensome. The tone, coherence, nature and frequency of the previous requests that have led to its conclusion that the request dated 2 February 2010 should be regarded as vexatious.

41. The complainant has explained to the Commissioner his belief that members of staff have acted inappropriately and the burden of this

request is mild. The Commissioner agrees that the burden of the request dated 2 February 2010 on its own is not great.

42. However, he agrees with the MHRA that its context and history are crucial to consider in this case. The MHRA explained that the burden in terms of expense and distraction of the previous requests was so great that it was reasonable to say that the request dated 2 February 2010 caused a significant burden within its context. The MHRA asked the Commissioner to take into account the following arguments about the request's context, which the Commissioner considers to be relevant to its burden:

- The MHRA confirmed that it believed the request was a manifestation of the complainant's overall complaint about the way his company's product has been investigated;

- The MHRA provided a schedule of requests that preceded the one under investigation. It confirmed that this was only a rough guide, as many enquiries and requests were answered as part of the review or complaint processes and not recorded separately. The schedule contained one request dated from 2005 and then 29 further requests dating from 3 October 2008 to the date of the request 2 February 2010. Of the 29 further requests, 9 were received between 1 October 2009 and 11 December 2009;

- From the schedule, the Commissioner accepts that previous requests are all connected to the complainant's concerns about the MHRA's investigation into his company's product. The Commissioner also considers that the volume of requests meant that the MHRA often received duplicate requests and further requests, before a response had been issued to the original request;

- The MHRA explained that it had received 18 formal complaints from the complainant (1 in 2005, 4 in 2008, 8 in 2009 and 1 in 2010). Five of those were then referred to the MHRA's Independent Complaints Advisor (ICA), who is the independent person who investigates when the complainant remains unhappy with the MHRA. The ICA partially upheld two of the five complaints;

- The MHRA explained that it does not routinely record the amount of time that it spends answering complaints and/or requests. However, it can confirm that its complaint officer had spent on average one day a week in 2008 and 2009 dealing with his complaint. In relation to the requests, it estimated that it had spent (without including its lawyers or directors) the equivalent of nine and half months' full time employment of one individual;

- It explained that the sheer volume, lack of clarity and repetitive nature of the requests come together to distract the MHRA from its core functions. It explained that the lack of clarity of the correspondence was supported by Mr Justice Lloyd Jones' remarks in a hearing that related to the complainant's application for judicial review, where he stated:

  > *'I am not supposed to give advice. It is my job to decide cases. You* [the complainant] *may find it of assistance… in the future* [if] *you are going to be involved in cases where you are writing letters. It would be of so much more assistance if you kept them short and very much to the point.'*

- It believed that the requests constituted an administrative burden. The volume of correspondence has led to this conclusion as well as them being directed to a considerable number of recipients. This is complemented by the evidence that strongly suggests that the complainant was likely to remain unhappy whatever was provided and that from experience the provision of further information would lead to other correspondence, further requests, and in all likelihood complaints against individual officers. It provided evidence of this occurring in relation to previous requests and explained that as a public authority it must be possible to draw an appropriate line under this issue; and

- The provision of the information requested was not required for formal complaints to be made by the complainant.

43. The Commissioner has considered the above eight points and the evidence the MHRA has provided to support them. He is satisfied that the evidence provided by the MHRA shows that the eight points are supported by the evidence. The Commissioner is satisfied that a great deal of the MHRA's time has already been spent dealing with previous requests and with complainant's associated correspondence about the way his company's product has been investigated.

44. The Commissioner has considered the reasoning in the Tribunal decision of *Coggins v Information Commissioner* [EA/2007/0130] ('*Coggins*') about what constitutes *'a significant administrative burden'* and is satisfied that dealing with the requests in this case would have contributed to a *'significant distraction from its core functions'* (paragraph 27). Indeed, the Commissioner is satisfied that the sheer number of the multiple interlinking requests dispersed with serious allegations about individual members of staff have caused a real burden for the MHRA.

45. The Commissioner is satisfied that the unceasing potential for further requests about an issue where the disagreement between the parties was not possible to resolve supports the MHRA's view that answering the request dated 2 February 2010 would constitute a significant burden in both expense and distraction.

46. The Commissioner has also considered the approach in *Betts v The Information Commissioner* [EA/2007/0109], where the Tribunal indicated that it would be reasonable for the public authority to consider its past dealings with the complainant, particularly in relation to its experience of answering one request which would likely lead to still further requests. This had the effect of perpetuating the requests and adding to the burden placed on the authority's resources. The Tribunal said:

   '…it may have been a simple matter to send the information requested in January 2007, experience showed that this was extremely likely to lead to further correspondence, further requests and in all likelihood complaints against individual officers. It was a reasonable conclusion for the Council to reach that compliance with this request would most likely entail a significant burden in terms of resources.'

47. The Commissioner has considered the public authority's arguments and examined the pattern of the requests and has no doubt that this was what was happening in this case. He is satisfied that the MHRA has demonstrated that the complainant, when unhappy with any response received from the public authority (or where it does not accord with his view of the situation), will continue to correspond in an effort to sway the public authority to respond in a manner more to his liking. The Commissioner finds that it is reasonable for the MHRA in this case to consider that compliance would lead to further correspondence, thereby imposing a significant burden.

48. The complainant has provided a considerable weight of arguments as to why he believes that the context of these requests should be disregarded and/or that the previous interaction was reasonable given that the concerns that he has. The Commissioner considers that they can be summarised as follows:

    1. He believes that the MHRA acted inequitably in relation to the issues contained in his substantive complaint;

    2. He also believes that the MHRA considered factors that were irrelevant and failed to consider factors that were relevant;

    3. Accountability was therefore crucial for him to be able to understand the depths of this perceived inequity;

4. He believes that the MHRA are inappropriately applying section 14 on a continuous and blanket basis;

5. He alleges that there are examples of various public authorities 'grooming' each other to avoid disclosing information under the Act and colluding with one another to his detriment;

6. He argues that non-compliance with recognition of his limited resources has been designed to cause him as a requestor a significant burden;

7. He hasn't received the information that was requested on 2 February 2010; and

8. That the public authority failed to answer previous requests appropriately and in line with the Act.

49. The Commissioner has considered the complainant's arguments, including those summarised above. He is not satisfied that the significant burden in terms of expense and distraction can be put down to the public authority's previous poor performance. In addition, the test is not whether the complainant experiences a significant burden in making requests, but whether the MHRA experiences one in answering them. It is discretionary for the complainant to choose to submit requests for information. While, the MHRA had delayed responding to a number of requests, the sheer quality and quantity of correspondence was burdensome. In addition, as noted above, the Commissioner considers that it was reasonable for the MHRA to act in a manner that balances transparency against the erosion of its ability to carry out its core functions.

50. The Commissioner has considered the complainant's allegations about 'grooming' and/or conspiracy between the MHRA and partner organisations (the complainant mentioned the Department of Health (DoH) and Health Protection Agency. The DoH is the parent body of the MHRA and in the Commissioner's view it is reasonable for it to work with its partner organisation. The Commissioner does not find the complainant's allegations about 'grooming' and/or conspiracy to be supported by the evidence. The evidence indicates that the MHRA have carefully considered the effect of the request and come to its own position in relation to it.

51. The Commissioner appreciates that the complainant believes he has been wronged. However the previous repetition of requests when the answers were stated to be not acceptable by the complainant continued to create further work, further distraction and did not in the Commissioner's view constitute a responsible use of the Act.

52. Assessing all the circumstances of the case, the Commissioner finds that the request dated 2 February 2010, taken in the context of the hours spent dealing with the previous correspondence about the disagreement surrounding the investigation and the resulting distraction from the public authority's core purposes, would impose a significant burden in terms of both expense and distraction. He therefore finds in favour of the public authority on this factor. The Commissioner finds that this is a significant factor in favour of applying section 14(1) on the facts of this case.

Does the request dated 2 February 2010 have the effect of harassing the MHRA or its staff?

53. The complainant contends that there is no evidence of this request harassing the MHRA or its staff, other than correctly holding it accountable for its actions. Instead he believed it was important that the information held was out in the open so that the MHRA's actions were open to scrutiny. He explained that while he understood that exposing 'corruption' may be unnerving, it was crucial that these issues are placed into the open, so that real impetus is provided for it to re-evaluate its actions and policies.

54. The MHRA believes that the correspondence it received from the complainant has:

    1. Had the effect of harassing the MHRA as a corporate body – through the frequent and continued allegation of corruption and malpractice; and

    2. Had the effect of harassing its individual staff members whom have to deal with the correspondence.

55. To support these points it provided a number of examples of correspondence that predated the request that objectively evidenced this effect. The Commissioner considers that it is instructive to quote ten examples that led up to the request dated 2 February 2010:

    (i) 17 May 2009 – '*we are all aware of the very strong public anger if not outrage at the conduct of the authorities who should be protecting – ie the issue of Baby P …. It may well be the last straw of toleration that the public can bear if their health regulatory authorities to the highest level are it appears in effect "corrupt"*';

    (ii) 1 June 2009 (20 page letter including) – '*and I think the evidence robustly points this way it is vile and sickening and such an abrogation of duty and integrity as to place the conduct in the failure field of the utterly horrific life of Baby B… some collective*

witch hunt coupled with what appears to be an institutionalised KZ mentality of the MHRA compliance unit.' The complainant then provided a footnote to explain what he meant – *'A KZ-mentality is taken from the approach of the concentration camp officers…it is an abuse of power… power of fear and authority, coupled with threats of destruction for failure to comply.'*

(iii) 10 June 2009 – *'…MHRA appears to love its previous ability of acting in star chamber like fashion or perhaps within the concept of a more serious type of institutionalised violence. For it is violence you are doing against me… Is the MHRA bribable…Am I making myself clear. Allow itself to be influenced by third parties in a sort of corrupt way ie in terms of the UK corruption laws?'*

(iv) 2 October 2009 – 'This is not coincidental timing but appears to be a form of mafiosa blackmail by the MHRA…

(v) 11 November 2009 – *'In fact I am beginning to wonder if there is an Anti-Semitic streak in the MHRA in its singular hostility to me….certainly some internal emails were highly derogatory and played on my surname* [no examples provided]'

(vi) 6 December 2009 – *'In reading through the files and considering the Newmhraberg* [Nuremberg] *'law' my real concern at a pattern of discrimination and falsification and apparent self deception by denial emerging coupled with attempts at constructive and sustained denigration…I am to a certain extent aware…of the crimes against humanity perpetrated by the Nazi regime but am as interested in how did it occur or put it another way did it begin by crimes against the individual?…Again no comparison* [between the MHRA alleged action and the Nazi party policies] *to the policy of the Nazi's but my preliminary thoughts are that this is an important step to tolatarianism* [sic]. *Control content and thought…the MHRA participated in the DH Wannsee conference of around May this year… Frankly I think one of the conclusions is that prejudice and hate is about this – I mean just think of the amount of jewish businesses, homes etc that were taken over by the Nazi's…'*

(vii) 13 December 2009 – *'It has also come to my attention that* [Named Individual A redacted] *has been in touch with the police in Oxford possibly to inhibit a fair examination of the criminal charges we have laid…'*

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(viii) 24 January 2010 – *'I am beginning to wonder if you* [sic] *continued actions are designed to make me do extra work, worry and fret, have a heart attack…'*

(ix) 1 February 2010 – *'I am beginning to wonder if the worst of the English civil servant is perhaps worse than that of the German Nazi civil servants – for the reason that they carried out orders in a cold hearted way while the worst if the English civil servants appear to notch things up a bit by giving orders, not just recording but generating the issues to be recorded. It is a power trip, playing god where as the Nazi civil servant did not do this but recorded what 'god' was up to. This is something I must ponder, as UI must the phrase perfidious albion for my poem 'the Love Song of D Adolph Hitler. And generally Do you have any thoughts on this that you would care to share? Would you agree with this distinction?'*

(x) Another general complaint - '*I look forward to your decision regarding taking the Newmhraberg [Nuremberg] law as a complaint to the ICA… the MHRA appears a law unto itself – a veritable Star Chamber… is this corrupt or corrupting comments.*'

56. The Commissioner appreciates that to harass is a strong verb and emphasises that it is the effect of the requests and not the requester that must be considered. It is an objective test: so a reasonable person must be likely to regard the request as harassing or distressing. The Commissioner's guidance states that the features that could make a request have the effect of harassing the public authority or its staff are:

- Volume and frequency of correspondence;
- The use of hostile, abusive or offensive language;
- An unreasonable fixation on individual members of staff; and
- The mingling of requests with accusations and complaints.

57. The MHRA has argued that the effect of these requests should be carefully judged in light of the complainant's previous behaviour that is illustrated above. It argues that it was correct to consider that these requests had the effect of harassing its members of staff.

58. The MHRA have explained that the volume and frequency of the requests did have the effect of harassing it. The Commissioner has already determined that there was a considerable volume of overlapping requests. The Commissioner is satisfied that this feature from his guidance is made out in this case and that the volume combined with the intemperate nature of the correspondence must be taken into account.

59. The MHRA has also expressed real concern about the intemperate nature, tone and content of the correspondence. While the complainant is not consistent in his accusations, he has made a number of very defamatory accusations about the MHRA.

60. The MHRA explained that its view was that these intemperate and intolerant comments are distressing. It noted that this effect is enhanced for more than one individual who works for it as they lost relatives in the tragedy that the MHRA is being compared to. It also explained that it wrote to the complainant to ask him to stop using these terms on 10 December 2009 and was ignored. It concluded that such terminology can only be regarded as satisfying the criterion of hostile, abusive or offensive language. The language has also continued since the receipt of the request.

61. The Commissioner also considers that the request (and the previous ones – marked as (viii) and (ix) in paragraph 34) are focussed on Mr Petrie and in its context it is appropriate to regard this request as being fixated on him. He considers that in this case the repetition of allegations in a manner where they are self reinforcing for the complainant amounts to an unreasonable fixation. In light of the history and volume of correspondence, these effects are enhanced. It follows that this criterion is satisfied too.

62. Finally, the Commissioner notes that the requests are mingled with accusations; for example (i) and (x) were complemented by requests about corruption and racism. It follows that the complainant's requests have all four features that are mentioned in the Commissioner's guidance and so he has determined that a reasonable public authority could find that request dated 2 February 2010 had the effect of harassing its members of staff.

63. The Commissioner supports this conclusion with the First Tier Tribunal (Information Rights)[2] decision of *Tony Wise v The Information Commissioner* [EA/2009/0080] which he considers to be analogous in respect of this point. In this case the Tribunal found that the complainant repeatedly called the Council *'corrupt, dishonest, unethical liars'* and that the requests *'cannot be divorced from the correspondence upon the same topic being sent to those at the Council tasked with answering the information requests'.* The Commissioner is satisfied that the public authority was under the same sort of unmitigated pressure in this case.

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[2] The First Tier Tribunal (Information Rights) is the body that has replaced the Information Tribunal.

64. The Commissioner considers that *Coggins* provides further support. The Information Tribunal considered whether the requests amounted to having the effect of harassing the public authority and found that it did because:

> *"…what we do find is that the Appellant often expressed his dissatisfaction with the CCU in a way that would likely have been seen by any reasonable recipient as hostile, provocative and often personal…and amounting to a determined and relentless campaign to obtain any information which he could then use to discredit them….we find that taken in their context, the requests are likely to have been very upsetting to the CCU's staff and that they…are likely to have felt deliberately targeted and victimised…."* (paras 53 & 54).

65. For analogous reasons as stated in *Coggins*, the Commissioner is satisfied that the requests in their context did have the effect of harassing the MHRA. The Commissioner therefore considers that this factor strongly supports the application of section 14(1) in this case. He has also decided this factor deserves very real weight on the facts of this case.

Can the request dated 2 February 2010 be characterised as obsessive?

66. The complainant contends that his request for information was not obsessive. He explained that the alleged underhand behaviour of the MHRA and its corruption; measured against the ease of answering the request renders the request reasonable. He explained that it was necessary to ensure his rights to natural justice. He therefore requires access to all of the appropriate information. He explained that he believes his actions were reasonable and any contention that he was obsessive has not been supported by any evidence.

67. The MHRA indicated that it viewed the request as being obsessive. It presented the following arguments to support its view:

- the MHRA believed that the subject matter of the correspondence had been effectively exhausted in November 2009;

- the MHRA had spent a very large amount of its resources attempting to assuage the complainant's concerns. It believed that it had provided as complete a response to his substantive concerns as it was able to provide at the time. This did not stem the requests and whatever further effort was undertaken;

- the substantive concerns were being considered through both a compliance investigation and a judicial review application that

was ongoing. The MHRA ensured that the complainant could contact it in relation to the compliance investigation as appropriate; and

- the MHRA believes that the approach taken by the complainant to correspond in an abusive manner to a large number of its staff illustrated obsessive behaviour.

68. As above, the Commissioner has noted that the arguments about burden and intemperate language are supported by the evidence.

69. The Commissioner has considered where the balance lies in this case and notes that he is considering the situation on 2 February 2010. The Commissioner accepts that at times there is a thin line between obsession and persistence and each case should be determined on its own facts.

70. The Commissioner considers that the complainant's general approach has indeed been obsessive and at the time of the requests it was clear that these requests did form part of an obsessive campaign against the MHRA and its employees.

71. The Commissioner appreciates that there is importance in accountability and transparency where possible. However, against this he also feels that it is important that public authorities are able to use their resources effectively to promote the public good. Protection should therefore be provided where a sequence of parallel requests concerning issues under current consideration and become a continuous burden on the public authority's resources.

72. It follows that in this case, the Commissioner considers that the requests have an obsessive quality. He considers that there was little possibility of satisfying the complainant in this case. The Commissioner therefore accepts that a reasonable public authority would find these requests obsessive, so also finds in the MHRA's favour on this factor. The Commissioner has not placed as much weight on this factor, for he believes that the obsessive behaviour is less pronounced in this case than the burden and the reasons why he found the requests to be harassing its staff.

Did the request have value and/or a serious purpose?

73. While the MHRA no longer argues that the requests lack a serious value or purpose, the Commissioner considers that it is important that he considers this factor as he is of the view that in some cases the serious value and purpose of a request can be such as to make an otherwise vexatious request valid.

74. The complainant has argued that this request does have a serious purpose and value. He told the Commissioner that the purpose of his request was to see what the MHRA were up to in their attacks on him. He also explained that the information may assist him in defending himself against allegations about the product and its distribution. The Commissioner understands that the complainant wants to obtain the correspondence between the different regulators in order to understand what regulatory action may be taken.

75. The MHRA explained that it accepted that the complainant believed that the request had a serious value and purpose.

76. However, it argued that the serious value and purpose was mitigated by a number of factors. Firstly, it knew that the complainant had already obtained the COEN2 form that was the centrepiece of the disputed information. It knew this because the complainant had quoted from it. Secondly, the correct channels are available to be undertaken in relation to the substantive complaint and these do not require the requested information. Thirdly, if the information is required for any court case then it would be open for the complainant to ask a court to order is disclosure. Finally, the complainant's approach as noted above is causing real distress to its staff.

77. The Commissioner accepts that it is clear the complainant believes that there are serious questions about the nature of the events and that there was a serious purpose to this request for information when it was made. The Commissioner recognises that there is an assumption built into the Act that disclosure of information by public authorities on request is in the public interest in order to promote transparency and accountability in relation to the activities of public authorities. He has therefore found that this factor favours the complainant.

78. As noted above, the Commissioner has considered whether the purpose is such as to render the request not vexatious. This is because he believes that it is prudent to consider the position in light of the Information Tribunal's comments in *Coggins* (at paragraph 20), where it:

> *"could imagine circumstances in which a request might be said to create a significant burden and indeed have the effect of harassing the public authority and yet, given its serious and proper purpose ought not to be deemed as vexatious . For instance, one could imagine a requester seeking to uncover bias in a series of decisions by a public authority, covering many years and involving extensive detail, each of fairly minor importance in themselves but representing a major issue when taken together. This might indeed be experienced as harassing*

but given the issue behind the requests, a warranted course of action."

79. Therefore the Commissioner has considered whether the serious purpose can be considered to have sufficient weight to overcome the other factors. In this instance he is not persuaded that sufficient weight can be placed on the serious purpose identified to make it inappropriate to deem the request vexatious in this case. This is in view of the overall context of these particular requests and his conclusions above about other aspects of this case.

Could a reasonable public authority refuse to comply with the request dated 2 February 2010 on the grounds that it was vexatious?

80. The Commissioner recognises that there is sometimes a fine balance between protecting a public authority from meritless applications and the promotion of the transparency in the workings of the authority.

81. He has had regard to the Information Tribunal's decision in *Welsh*, where the Tribunal commented that the threshold for vexatious requests need not be set too high. He notes that it is not necessary for every factor mentioned in his guidance to be made out from his guidance for the requests to be correctly characterised as vexatious.

82. The MHRA explained to the Commissioner that it takes its responsibilities under the Act seriously. However, the burden and nature of the requests has led to a corporate decision to be taken at directorship level that the requests on this subject matter were reasonable to declare vexatious.

83. The Commissioner has considered all the evidence presented in this case, including the history and context of the request. The Commissioner is satisfied that the request had a serious purpose. However, he has found that it was harassing, obsessive and burdensome in terms of both expense and distraction. The Commissioner is satisfied that in all the circumstances the MHRA was entitled to find the request dated 2 February 2010 vexatious. He emphasises that this determination was made on the circumstances as they existed on 2 February 2010.

Procedural Requirements

84. The Act provides an obligation to issue a response under the Act, unless the circumstances in section 17(6) are in operation. Section 17(6) is designed so that where a series of requests are vexatious, the public authority is not required to continue issuing new refusal notices for every request it receives on the same subject. Instead it can issue one

section 17(6) notice and comply with the Act in respect to future requests on those matters.

85. The Commissioner has therefore considered whether the actions of the public authority meant that it didn't need to respond to the request dated 2 February 2010.

86. There are three requirements for section 17(6) to apply:

(i) The public authority is relying on section 14(1);

(ii) It has given the applicant a notice stating this; and

(iii) It would in all circumstances be unreasonable to serve a notice under subsection 17(5) to the current request.

87. The first two elements are clear in this case. The MHRA has issued a number of notices about it applying section 14(1) to previous requests. It has explained that in its view the subject matter of the request was covered by its letter dated 20 November 2009.

88. When considering whether in all circumstances it would be unreasonable to serve a notice under section 17(5) the Commissioner has considered the following arguments from the MHRA:

1. all the information requests relate to the same issue – the MHRA's investigation into a specific company's product;

2. that this has expanded to include challenges to the investigation, its complaints procedure and its record keeping;

3. the complainant was unlikely to ever be satisfied with the response;

4. that the burden in responding to requests and complaint is very great; and

5. that it was reasonable, in all the circumstances, for the MHRA to assume that the issuing of refusal notices would merely invite more comment and correspondence from the complainant, intensifying the burden following.

89. The Commissioner has considered that in the circumstances of the case, it was reasonable for the MRHA to be required to issue a separate notice for each request, until it placed the complainant on notice. This is because it would ensure that the complainant was aware that it had received the requests and considered them individually. However, once the notice was issued on 20 November 2009 the circumstances have

changed. Requests received shortly after this notice must be considered in light of it.

90. Overall, the Commissioner considers that the notice dated 20 November 2009 rendered it unreasonable for the MHRA to be required to issue a new refusal notice for the request dated 2 February 2010. It follows that he finds the requirements of section 17(6) satisfied on the facts and circumstances of this case.

91. However, he wants to note that this determination only concerns the information requested on 2 February 2010 and the breadth of the notice dated 20 November 2009 must be carefully considered by the MHRA on receipt of any future requests. In addition, an important factor that favoured the MHRA in this case was the relatively short period of time between the notice dated 20 November 2009 and the request for information dated 2 February 2010. This factor will change in time and he advises the MRHA to carefully consider its position in relation to future requests.