



Information Access Team
Shared Services Directorate
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Mr Phillip Main
request-24304-c148de2c@whatdotheyknow.com

13th April 2010

Dear Mr Main,

Freedom of Information Request (our ref. 13647): Internal Review

I am writing further to our letter of 3 February 2010, about your request for an internal review of our response to your Freedom of Information (Fol) request.

I have now completed the review. I have considered whether the correct procedures were followed and assessed the reasons why the Home Office did not comply with your request. I confirm that I was not involved in the initial handling of your request.

My findings are set out in the attached report. My main conclusion is that section 14(1) was applied correctly in deeming this request as vexatious, when considered with the previous requests you have submitted relating to Phorm. Section 14(1) of the Act provides that the Department does not need to comply with a Freedom of Information request if it is considered as vexatious. As stated in our original response, if we consider any future requests on this topic to be vexatious, we will not respond to them.

This completes the internal review process by the Home Office. If you remain dissatisfied with the response to your Fol request, you have the right of complaint to the Information Commissioner at the following address:

The Information Commissioner
Wycliffe House
Water Lane
Wilmslow
Cheshire SK9 5AF

Yours sincerely,

A handwritten signature in black ink, appearing to read 'L Fisher', written in a cursive style.

L Fisher
Information Access Team

Internal review of response to request under the Freedom of Information (Fol) Act 2000 by Mr Phillip Main (reference 13647)

Responding Unit: Information Management Service

Chronology

| | |
|--|--------------------------------|
| Original Fol request: | 7 th December 2009 |
| Unit response to Fol request: | 6 th January 2010 |
| Internal review request received: | 24 th February 2010 |
| Internal review acknowledgement letter sent: | 2 nd March 2010 |

Subject of request and Unit response

1. Mr Main asked for information relating to correspondence sent from the Department for Business, Innovation and Skills (BIS) Press Office on BT and Phorm. The request is set out in full at **Annex A**, followed by the Information Management Service (IMS) response.
2. This internal review considers whether IMS responded within the terms of the Freedom of Information Act to Mr Main's request.

Procedural issues

3. A response was sent to Mr Main's original request on 6th January 2010, 20 days following receipt of the request. This complies with the statutory 20-day deadline set out in section 10(1) of the Act.

Mr Main's request for internal review

4. Mr Main asked for an internal review of the IMS response in an email of 24th February 2010. He did not refer to the fact that the request was refused under section 14(1) (vexatious requests).

Consideration of the response

5. I have reviewed the original IMS response to Mr Main and the refusal of the request under section 14(1) of the Act. Section 14 can be invoked to protect public authorities from those that may abuse the right to request information. The Act states:

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

(2) *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 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.*

6. A public authority is not obliged to comply with a request for information under section 1(1) of the Act if the request is deemed vexatious. Section 14 is similar to an absolute exemption in that the public authority does not have to consider the public interest test.
7. According to guidance from the Information Commissioner's Office (ICO), a key question in deeming a request vexatious is whether the request is 'likely to cause distress, disruption or irritation, without any proper or justified cause'. To help public authorities make this decision they advise us to evaluate the following factors when deciding whether a request should be treated as vexatious.
- Could the request fairly be seen as obsessive?
 - Is the request harassing the authority or causing distress to staff?
 - Would complying with the request impose a significant burden?
 - Is the request designed to cause disruption or annoyance?
 - Does the request lack any serious purpose or value?
8. Using the questions above, I will determine whether section 14(1) was applied appropriately for this Freedom of Information request. The ICO state that 'to judge a request vexatious, you should usually be able to make relatively strong arguments under more than one of these headings.' The public authority can also consider other case-specific factors in addition to the questions above. I will first look at the context and history of the requests from Mr Main.

Context and history

9. Mr Main has submitted a number of Freedom of Information requests to the Home Office and across the public sector since 2008, the majority relating to Phorm. Mr Main is the author of a website on Phorm, which can be found at the following link <http://www.pingusperiratus.pwp.blueyonder.co.uk/>. He contributes to the [Bad Phorm](#) forums under his 'Pingus Periatatus' alias,

10. Mr Main has submitted all of his Freedom of Information requests to the Home Office via the website *whatdotheyknow*. A record of his requests can be found at the following link: http://www.whatdotheyknow.com/user/phillip_main?page=1
11. On the 9th March there were four internal reviews under consideration across the public sector for Mr Main, according to *whatdotheyknow*. All of the review requests related to Phorm.
12. Mr Main submitted three Freedom of Information requests to the Home Office in December 2009, all of which were judged as vexatious. At internal review the decision to deem one of these requests as vexatious (ref. 13690) was overturned, as it was a general correspondence question rather than a Freedom of Information request. That internal review was not called upon to consider the decision to deem Mr Main's other two Freedom of Information requests as vexatious. One of these is under consideration in this report.
13. By way of background, another user of the Phorm campaigning websites has been judged as vexatious by the Home Office both at the initial request and internal review stages, based on the volume of requests made and the evidence of campaigning activity on some of the Phorm websites.

Can this request fairly be seen as **obsessive**?

14. ICO guidance states that obsessive requests are a strong indication of vexatiousness. One of the factors that can qualify a request as vexatious is the volume and frequency of requests on a particular subject. The volume of requests made by Mr Main on Phorm does not in itself mean that they should be considered as obsessive, but it is certainly unusual. This is considered in more detail in paragraphs 16 – 20.

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

15. A case might be made that the request could be seen as harassing the Home Office, when put in the wider context of comments made on some of the Phorm-related websites, but in this review I consider it sufficient to base the conclusions on the questions of whether the request, when considered with others, imposes a burden and creates disruption.

Would complying with the request impose a **significant burden**?

16. The series of requests on the subject has created a significant burden in terms of costs and diverting staff away from their core functions. This is another contributory factor to assessing whether a request is vexatious and is supported by the Tribunal's assessment in the *Welsh v the Information Commissioner* (EA/2007/0088) case. The outcome from this case states that whether a request represents a significant burden on the public authority is "not just a question of financial resources but also includes issues of diversion and distraction from other work."

17. The policy unit dealing with the requests has confirmed that members of staff have spent a significant amount of time dealing with Phorm related requests, both from Mr Main and other users of the campaigning website, diverting them away from their core policy duties.
18. The Freedom of Information requests submitted by Mr Main to the Home Office from the beginning of 2009 to date are listed at **Annex B**. During a 10 month period Mr Main submitted 14 Fol requests on Phorm to the Home Office, four of which were sent in December 2009 alone. Three of Mr Main's requests received on 7th December 2009 were refused under section 14(1). One of these was incorrectly deemed as vexatious as it was a general correspondence question rather than a Freedom of Information request. For this particular request the original decision on vexatiousness was overturned at the internal review stage.
19. In total, Mr Main has made 78 Freedom of Information requests during a 12-month period (from 26th February 2009 to 24th February 2010) across the public sector using the *whatdotheyknow* website, all relating to Phorm. The requests made by Mr Main via this website can be viewed at the following link: http://www.whatdotheyknow.com/user/phillip_main?page=1
20. The volume of requests received from Mr Main both in the Home Office and across the public sector should certainly be considered as a factor in the conclusion that the current request is vexatious. ICO decision notice [FS50099755 \(Cabinet Office\)](#) states that when requests are aggregated across the public sector then the effects of complying with the request can place 'a very substantial burden on the public authorities concerned'. When this is considered with the wider context of this case and the likelihood of Mr Main submitting an internal review request following a response, then the burden that is being placed on the Home Office and across the public sector is significant.

Is the request designed to cause **disruption or annoyance**?

21. The requestor is a poster on the Bad Phorm website forum under the alias 'Pingus Periatius'. There is evidence here which suggests that the large number of Fol requests submitted to the public sector on this subject could be due to a campaign by users of this site. I conducted a search on this website for a previous internal review on Phorm and found the following two examples of campaigning activity:

| Author | Post |
|--|--|
| [name redacted] | Tue Jun 10 2008, 06:41AM |
| [name redacted] Registered Member #143 Joined: Sun Mar 09 2008, 08:35PM Posts: 637 | <p>- ICO "We will deal informally..." Blah, Blah, Blah...</p> <p>- HO "DPA = ICO; RIPA = MET..." PFFFFT</p> <p>- BT "We took Legal Advice..." New Legal Team needed BT?</p> <p>- Phorm "We are Legal..." ROFLMFAO</p> <p>- K*nt "2 dead in Iraq..." How low can you get?</p> <p>- E**a "Um... eh... um..." C'mon on girl, spit it out!</p> <p>Ok, I have a new strategy... I am going to bombard every MP, Councillor, MEP, MSP, Lord, the ISPs, and the above.</p> <p>I hope you will all join me in rasing the issues.</p> <p>My target is Friday this week, and I am looking to send a letter, with your views aswell.</p> <p>ENOUGH IS ENOUGH</p> |

| | |
|--|--|
| | <p>OUR PRIVACY IS OUR PROPERTY:-</p> <p>NO GOVERNMENT NO COMMERCIAL ENTERPRISE NO ISP NO CEO NO SPYWARE GURU NO INFORMATION COMMISSIONER NO ONE CALLED EMMA</p> <p>NO ONE WILL GET AWAY WITH STEALING THIS FROM ME; VIOLATING MY TRUST; INVADING MY HOME AND MY LIFE.</p> <p>THIS IS WAR!!!!!!</p> |
|--|--|

| Author | Post |
|---|---|
| [Name redacted 1] | Mon Nov 16 2009, 02:17PM |
| [Name redacted 1] Registered Member #95 Joined: Wed Mar 05 2008, 12:06AM Posts: 2382 | <p>Now the people in the Home Office are worried about Elf and Safety,</p> <p><i>"The information requested must be considered under the exemptions contained within sections 31 (Law Enforcement) and 38 (Health & Safety)"</i></p> <p>What a load of old [redacted].</p> <p>Its getting more and more like asking naughty children for information.</p> |
| [Name redacted 2] | Mon Nov 16 2009, 02:24PM |
| Registered Member #372 Joined: Wed Apr 23 2008, 03:12PM Posts: 483 | <p>With it being a campaign, there are so many FOI requests that the building might fall in. Due to weight of paper.</p> <p>[name redacted 2]</p> |

22. There is a section on the Bad Phorm website called 'Fight Back' under which there is a forum thread called 'Complaints about Phorm – Have you complained? Did you get an answer? Let everyone know who's listening (or not!) to our complaints.' Most of the forum threads under this section are about Freedom of Information requests. The thread below was posted in this section of the Bad Phorm website by a Mr John under his 'felixcatuk' alias on his recent FOI requests to several Government Departments and Agencies. Mr Main under his pseudonym responds saying, 'I do not hope you have been vexatious'.

| BadPhorm - When good ISPs go bad! :: Forums :: Fight Back :: Complaints about Phorm | | << Previous thread Next thread >> |
|---|--------------------------|---|
| Busy few foi days ahead | | |
| Moderators: [name redacted 1], [name redacted 2], felixcatuk, [name redacted 3] | | |
| Author | Post | |
| felixcatuk | Tue Jan 26 2010, 11:54PM | |
| felixcatuk | 28 January | |

| | |
|---|--|
| Registered Member #95 Joined: Wed Mar 05 2008, 12:04AM Posts: 2382 | <p>CPS Accountability & Transparency: BT/Phorm Prosecution</p> <p>Why has it taken 500 days to consider the Phorm complaint?</p> <p>HoC Compatibility of Email Encryption with MP's Email Systems (and Impact of DPI)</p> <p>The House of Commons request is *very* over due a reply, the ICO have told the HoC to respond by 28 Jan or suffer a merciless horse whipping in Parliament Square. Seems tragic that an institution, supposedly the mother of Parliamentary democracy, should find it so very very hard to answer an FoI request.</p> <p>Home Office: Phorm/Second Phase of European Commission Infringement Case 64/08/INSO</p> <p>Cabinet Office: Phorm/Second Phase of European Commission Infringement Case 64/08/INSO</p> <p>BIS: Phorm/Second Phase of European Commission Infringement Case 64/08/INSO</p> <p>One of them must know what the heck is going on, surely?</p> <p>2 February</p> <p>MOJ: RIPA Part I Offences: Statistics for 2008</p> <p>Supposedly the UK has strict laws preventing unauthorised surveillance. Okie dokie... that would mean Phorm and BT Directors were arrested and prosecuted in 2008 when it became apparent that they had covertly spied on the private and confidential communications of 200,000 people and the businesses that served them. Wouldn't it?</p> <p>3 February</p> <p>CH: Striking Off: Companies that fail to deliver accounts for 3 years on the trot</p> <p>If you don't file accounts with Companies House you can expect the weight of the UK's most rigid bureaucracy to descend on your head. At least, that's what happens to most other UK small business directors that can't be bothered to file their accounts/annual returns.</p> <p>And a foreign company run by crooks would get even less sympathy</p> <p>[Edited Wed Jan 27 2010, 12:03AM]</p> |
| PingusPeriratus | Wed Jan 27 2010, 09:59AM |
| Registered Member #657 Joined: Fri May 01 2009, 05:32PM Posts: 434 | <p>I do hope you haven't been 'vexatious'.</p> <p>P.</p> <p>I am not employed by any company with interests in the outcome of this campaign.</p> <p><i>"Phorm, like mud, sticks"</i></p> <p>Pingus Periratus Wepage Say No to Phorm</p> <p>Tiny url to pingusperiratus</p> <p>FOI requests sent</p> |

23. The examples shown provide sufficient evidence to suggest that the Phorm requests could be considered as part of a campaign and is another contributory factor in the decision to treat the latest request as vexatious under section 14(1) of the Act.

Does the request lack any **serious purpose or value**?

24. ICO guidance states that 'if a request does have a serious purpose or value then this may be enough to prevent it being vexatious, even if it imposes a significant burden and is harassing or distressing staff.' I believe the Phorm-related Fols to have a serious purpose.

25. Section 14(1) is similar to an absolute exemption in that a public authority does not have to consider the public interest test in applying it. Although we recognise that there are arguments in favour of disclosure of information on Phorm in general, on balance, the request should still be treated as vexatious when taken in conjunction with the total volume of requests received on Phorm by the Home Office and across the public sector.

Conclusions

26. The IMS response of 6th January 2010 was provided to Mr Main 20-working days following receipt of his original request and complied with section 10(1) of the Fol Act.
27. The volume of requests received on this subject from Mr Main provides sufficient justification for the decision to refuse this request under section 14(1). The number of requests received across the public sector on Phorm and the aggregated costs involved provide additional justification. There is also evidence to show that this could be part of a deliberate campaign by users of the Phorm-related websites, which is another contributing factor. Responding to the requests from Mr Main and his campaigning website colleagues has placed a significant burden on the Home Office in dealing with both the initial requests and the subsequent internal review stage. I conclude that section 14(1) was applied correctly in treating this request as vexatious.

Information Access Team, Home Office, April 2010

Annex A Original request, IMS response and Mr Main's comments

Mr Main's original Freedom of Information request:

Email dated 9th September 2008 10:48 from [redacted] to [redacted], [redacted], [redacted], [redacted], [redacted]

All,

I've spoken to [redacted] at press office. This is what's agreed.

1. An extension to the deadline, if required, will not look bad from a media point of view. According to Cabinet Office it will make us look bad with the Commission.
2. I will send the Q&A up to [redacted] by cop today
3. [redacted] will send it onto Shriti and deal with it
4. [redacted] will also inform BT and Phorm when the letter is sent to the Commission
5. [redacted] is liaising with MOJ, HO and ICO press offices

[redacted]

Please supply the correspondence or telephone notes, fax, letter or email indeed any notification sent to BT and Phorm by the press office as detailed in point 4 of the above email. I sending this to the Home Office as DBIS claim to have no record of it.
http://www.whatdotheyknow.com/request/copies_of_letters_sent_to_bt_and

Yours faithfully,

Phillip Main

IMS response:

Mr. Philip Main

request-24295-310eba37@whatdotheyknow.com

request-24304-c148de2c@whatdotheyknow.com

request-24823-8b7dac34@whatdotheyknow.com

Date: 6th January 2010

Dear Mr. Main,

I write in response to three Freedom of Information Act requests that you submitted to the Home Office, two on the 7th December and one on the 17th December 2009.

These requests were for:

- information about Article 5(3) of Directive 2002/58/EC (Home Office Fol reference **CR 13531**);
- information referred to in an press office email circulation dated the 9th September 2008 (Home Office Fol reference **CR 13647**); and
- a clarification to a response provided to another Fol applicant (Mr. P John) regarding RIPA (Home Office Fol reference **CR 13690**)

We have considered your requests and we consider them to be vexatious when considered in conjunction with the previous requests you have submitted on this topic. Section 14(1) of the Act provides that the Home Office is not obliged to comply with a request for information of this nature. We have decided that these requests are vexatious because they meet with the criteria laid out by the Information Commissioner's Office. A copy of this guidance can be viewed here –

http://www.ico.gov.uk/upload/documents/library/freedom_of_information/detailed_specialist_guides/awareness_guidance_22_vexatious_and_repeated_requests_final.pdf

If you are dissatisfied with this response you may request an independent internal review of our handling of your request by submitting a complaint within two months to the address below, quoting the relevant reference number above.

*Information Access Team
Home Office
Ground Floor, Seacole Building
2 Marsham Street
London
SW1P 4DF*

Alternatively, you can email: info.access@homeoffice.gsi.gov.uk

As part of any internal review the Department's handling of your information request will be reassessed by staff who were not involved in providing you with this response.

If you remain dissatisfied after this internal review, you would have a right of complaint to the Information Commissioner as established by section 50 of the Freedom of Information Act.

Please also note that, should we consider that any future requests on this topic to also be vexatious, we will not respond to them.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Ian Lister', with a long, sweeping horizontal stroke extending to the right.

Ian Lister
Information Access Consultant
Information Access Team

Mr Main's comments on the response:

request-24304-c148de2c@whatdotheyknow.com

Dear Home Office,

Please pass this on to the person who conducts Freedom of Information reviews.

I am writing to request an internal review of Home Office's handling of my FOI request 'Copies of letters sent to BT and Phorm informing them of government letter to EU'.

The information I have requested has been referred to in a previous FOI request. I am attempting to establish whether this correspondence took place.

A full history of my FOI request and all correspondence is available on the Internet at this address:

http://www.whatdotheyknow.com/request/copies_of_letters_sent_to_bt_and_2

Yours faithfully,

Phillip Main

Annex B Home Office Freedom of Information requests from Mr Phillip Main (February 2009 – December 2009)

| | Ref. | Received | Request |
|----|-------|-----------|---|
| 1 | 11136 | 02-Feb-09 | Have there been any meetings between the Home Office and BERR to discuss Deep Packet Inspection Systems ,and their deployment? Any meetings by the above offices to discuss the legality of interception of transmissions by non governmental bodies ? If so what were the dates of the meetings and what was discussed? |
| 2 | 11703 | 16-Apr-09 | Please supply dates of any meetings between Lord Lamont of Lerwick and Home Office in the period 1st Jan 2006 to 15th April 2009 along with details of persons present at any such meeting. |
| 3 | 12020 | 29-May-09 | Please supply dates of any meetings with the Home Office and Kip Meek with any minutes or notes and details of those present at any such meeting for your information and clarification of my request. |
| 4 | 12111 | 05-Jun-09 | Please supply copies of any correspondence between yourselves and the Prime Ministers Office relating to Phorm/Media121. |
| 5 | 12129 | 05-Jun-09 | Please supply copies of all correspondence between the Home Office and Patricia Hewitt MP who is also a board member of BT. The time period from 1st Jan 2006 till 5th June 2009. |
| 6 | 12505 | 23-Jul-09 | <p>Yesterday on the Interactive Investor forum at the link below http://www.iii.co.uk/investment/detail?code=cotn:PHRM.L&display=discussion&it=</p> <p>A poster, ho claims to have knowledge of Phorm's dealings made the claim that Phorm shares were 'government backed'. I would be grateful for</p> <ol style="list-style-type: none"> 1.copies of any correspondence that shows the commercial, monetary, shareholding or other stock options held or controlled by the government or its representatives or brokers. 2. Any legal agreement or contract entered into by the government and Phorm/121Media. If none state none. 3.Copies of any documents detailing any support monetary or otherwise the government has pledged or signed up to with regard to Phorm/121Media 4. Any monies advanced to Phorm by any government department or government representative 5. Any documents stating the governments responsibility to Phorm/121Media in respect of share prices and values. 6. Any documents relating to the precise relationship between the government and Phorm/121Media <p>In this request the phrase 'the government' shall mean any party acting at the behest of the government be they government department, government official, or any person or company acting for the government in an official capacity.</p> |
| 7 | 12607 | 04-Aug-09 | Please supply copies of any correspondence between the Home Office and BERR/DBIS for the time period 1st Jan 2005 to 31st December 2005. |
| 8 | 12608 | 07-Aug-09 | Please supply copies of any correspondence between the Home Office and 121Media/Phorm for the time period 1 st Jan 2005 to 31st December 2005. |
| 9 | 13023 | 09-Oct-09 | <p>The disclosure of correspondence between BERR/BIS and British Telecom, and BERR/BIS and Phorm, concerning protests and protesters at the BT AGM (held on 16 July 2008)</p> <p>The disclosure any correspondence between BERR/BIS and British Telecom, and BERR/BIS and Phorm, concerning protests and protesters at the BT AGM (held on 15 July 2009)</p> <p>The disclosure of what personal information about protesters was provided to companies concerned, and what information was received.</p> |
| 10 | 13024 | 09-Oct-09 | I would also ask you to provide me with any correspondence by the Home Office regarding what personal information about protesters was provided to companies concerned, and what information was received?" |
| 11 | 13531 | 07-Dec-09 | Please supply copies of any correspondence letters emails or telephone notes between the Home Office and the Internet Advertising Bureau or any other party regarding Article 5(3) of Directive 2002/58/EC with regards to informed consent, and the government's attempts to amend the aforementioned article. |
| 12 | 13555 | 07-Dec-09 | Please supply copies of any correspondence between VirginMedia and the Home Office concerning the deployment of Cview. The legality or justification of the interception by Detica under RIPA. Any advice given to VirginMedia or Detica by the Home Office. The necessity of Virgin Media / Detica to obtain the consent of users to the interception. |
| 13 | 13647 | 07-Dec-09 | <p>Email dated 9th September 2008 10:48 from [redacted] to [redacted], [redacted], [redacted], [redacted], [redacted]</p> <p>All,</p> <p>I've spoken to [redacted] at press office. This is what's agreed.</p> <ol style="list-style-type: none"> 6. An extension to the deadline, if required, will not look bad from a media point of view. According to Cabinet Office it will make us look bad with the Commission. 7. I will send the Q&A up to [redacted] by cop today 8. [redacted] will send it onto Shriti and deal with it 9. [redacted] will also inform BT and Phorm when the letter is sent to the Commission 10. [redacted] is liaising with MOJ, HO and ICO press offices <p>[redacted]</p> <p>Please supply the correspondence or telephone notes, fax, letter or email indeed any notification sent to BT and Phorm by the press office as detailed in point 4 of the above email. I sending this to the Home Office as DBIS claim to have no record of it. http://www.whatdotheyknow.com/request/copies_of_letters_sent_to_bt_and</p> |

| | | | |
|----|-------|-----------|--|
| | | | |
| 14 | 13690 | 17-Dec-09 | <p>I refer you to freedom of information request http://www.whatdotheyknow.com/request/deticacview_and_virgin_media#outgoing-44024</p> <p>the final section of this request by Mr. John is as follows.</p> <p>*****</p> <p>In early FoI responses you told me; (Mr. P. John)</p> <p>"Unlawful interception under section 1 of the Regulation of Investigatory Powers Act 2000 attracts a penalty, on conviction on indictment, of imprisonment for a term not exceeding two years or to a fine, or to both. In the case of a summary conviction a person found guilty of an offence will be liable to a fine not exceeding the statutory maximum. "</p> <p>That being the case, and assuming no trial has been authorised by the Secretary of State, and bearing in mind the EC Infraction Proceedings currently facing the UK Government, where can the public report concerns about criminal offences by Internet Service Providers who intercept and monitor the content of communications traffic without the consent of sender or recipient?</p> <p>*****</p> <p>I can see no reply to this section of the request could you please clarify to which regulatory or government body the public should make such complaints.</p> |