

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 23 August 2010

Public Authority: The Metropolitan Police Service
Address: Public Access Office
20th Floor Empress State Building
Lillie Road
London SW6 1TR

Summary

The complainant made separate, related, requests for the cost of three investigations into a long running murder enquiry. The Metropolitan Police Service (MPS) responded citing a refusal under section 14(1) of the Act (vexatious request). The Commissioner, on balance, considers that the public authority was entitled to refuse the requests under section 14(1). However, he found procedural errors in the MPS's handling of the requests.

The Commissioner's Role

1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

The Request

2. On 11 October 2009 the complainant wrote to the Metropolitan Police Service (MPS), requesting the following information:

"I am writing to inquire the cost of the original (late 1980's) investigation of [personal details about the murder redacted]".

3. In a second email later the same day, the complainant requested the following information:

"I am writing to inquire the cost of the 1999 the [sic] MPS Anti-Corruption Command investigation of [personal details about the murder redacted]".

4. On 12 December 2009, the complainant wrote to the MPS with the following request:

"I am writing to inquire the cost of the most recent investigation (subsequent to the original 80's and the late 90's investigations). The costs sought are those that have arisen from the time latest investigation commenced, to the date of the trail [sic] start, but not to include this date.

The enquiry should be cross referenced to Freedom of Information Request Reference No [reference redacted]."

5. The MPS responded on 21 January 2010 providing a combined response to all three requests. The Commissioner understands that the MPS took this action on the basis that the three requests all relate to the same overarching investigation.
6. In this correspondence, the MPS cited section 14(1) and told the complainant that, in its view, each of the requests constitutes a vexatious request.
7. It also told him that, should he disagree with this decision, he could approach the ICO directly without the need to request an internal review.

The Investigation

Scope of the case

8. The complainant contacted the Commissioner on 25 January 2010 to complain about the way his requests for information had been handled.
9. The Commissioner's investigation has focussed on whether or not the MPS was correct to cite section 14(1) in relation to the three requests under consideration in this case.

Chronology

10. The Commissioner wrote to the MPS on 12 April 2010 asking it to provide further information in connection with its citing of section 14(1).
11. The MPS provided a comprehensive response to the Commissioner's correspondence on 25 May 2010.

Analysis

Substantive Procedural Matters

Section 14 Vexatious or repeated requests

12. Under section 14(1), a public authority does not have to comply with vexatious requests. There is no public interest test.
13. Section 14(1) of the Act states:

"Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious".
14. The term "vexatious" is not defined further in the Act. The Commissioner notes, however, that it is the request rather than the requester which must be vexatious.
15. The Commissioner issued revised guidance entitled "Vexatious or repeated requests" in December 2008 as a tool to assist in the consideration of when a request can be treated as vexatious. The guidance sets out key questions for public authorities to consider when determining if a request is vexatious which are set out below:
 - i. Could the request fairly be seen as obsessive?
 - ii. Is the request harassing the authority or causing distress to staff?
 - iii. Would complying with the request impose a significant burden in terms of expense or distraction?
 - iv. Is the request designed to cause disruption or annoyance?
 - v. Does the request lack any serious purpose or value?
16. The guidance indicates that an affirmative response to all of the questions is not necessary for a request to be deemed vexatious. However, it states that 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.

17. Accordingly, the Commissioner has considered whether the MPS has provided sufficient arguments in support of any of the criteria above in its application of section 14(1) in this particular case.
18. The Commissioner notes that the Information Tribunal in *Hossack v Department for Work and Pensions* (EA/2007/0024) stated, at paragraph 11, that the threshold for finding a request vexatious need not be set too high as the consequences are much less serious than the finding of vexatious conduct in other legal contexts.
19. In *David Gowers v Information Commissioner* (EA/2007/0114, paragraph 27) the Information Tribunal noted that when considering section 14:

“The proper inquiry must be as to the likely effect of the request on a reasonable public authority. In other words, the standard to be applied is an objective one”.
20. In considering whether or not a request is vexatious, the Commissioner considers it appropriate to take into account the context and history of a request in addition to the request itself in relation to one or more of the five factors listed above.

Could the requests fairly be seen as obsessive?

21. In the Commissioner’s view, the test to apply here is one of reasonableness. In other words, would a reasonable person describe the request as obsessive or manifestly unreasonable? In answering this question, 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.
22. The Commissioner’s published guidance states:

“A request may not be vexatious in isolation, but when considered in context (for example if it is the latest in a long series of overlapping requests or other correspondence) it may form part of a wider pattern of behaviour that makes it vexatious”.
23. In relation to the requests being considered in this case, MPS told the complainant:

"these requests, when considered alongside a number of others that you have made to the MPS in recent months, can be seen to form a pattern. In addition to previously requesting information regarding these investigations, you have also made a further request asking for information relating to the more recent stages of these investigations. In the wider context, these requests have been made concurrently with an ongoing chain of correspondence between yourself and units within the MPS which also relates to the subject of these investigations. It is on this basis that I have determined that the above requests are vexatious".

24. In correspondence with the Commissioner, the complainant questioned the pattern which the MPS describes. Referring to his requests, he argued:

"Of course they are related, I have specific interests which cover a wide range of activities".

25. The Commissioner understands that there is a background of requests for information and complaints in this case. The MPS has outlined the wider context and history which culminated in the three requests under consideration in this case. In this respect, it told the Commissioner that *"a truly vast amount of correspondence"* has been exchanged between the applicant and the MPS from 2003 onwards. It also told the Commissioner that, in its view:

"It is also clear that the complainant's pursuit of information in respect of the investigation is another aspect in the applicant's longer standing grievance".

26. The MPS provided the Commissioner with further explanation about the nature of the grievance. It argued that the complainant *"is prepared to exceed the level that would be considered as 'reasonable' in his pursuit of information"*.

27. Conversely, with regard specifically to these three requests, the complainant has argued:

"The MPS have had three bites at this cherry, I suspect the public would be very keen to learn just how much of their money has been wasted on these issues.

This is a serious issue and my requests are far from vexatious, they are specific and valid".

28. In correspondence to the Commissioner, the complainant also stated:

"the MPS are withholding information for no other reason than they do not wish to supply it, whether it be my subject access data or other information I have sought under FOIA [the Freedom of Information Act] I question the integrity and agenda of the MPS".

29. In support of his argument, the complainant referred the Commissioner to websites, containing numerous and lengthy entries published by the complainant, that he wished to bring to the Commissioner's attention.
30. In considering the question of reasonableness in the context of whether a request is vexatious, the Commissioner considers it will be easier to identify these requests when there has been frequent previous contact with the requester or the request forms part of a pattern, for instance when the same individual submits successive requests for information. Although these requests may not be repeated in the sense that they are requests for the same information, taken together they may form evidence of a pattern of obsessive requests so that an authority may reasonably regard the most recent as vexatious.
31. The Commissioner accepts that there is often a fine line between obsession and persistence and each case must be considered on its own facts. In this case, taking into account the context and background to the requests, the Commissioner considers that the requests can fairly be seen as obsessive.

Do the requests have the effect of harassing the public authority or its staff?

32. The Commissioner acknowledges that there will often be an element of overlap between various vexatious criteria. For instance, where a request is considered obsessive, it may be the case that it will have the effect of harassing a public authority. Whilst the complainant may not have intended to cause distress, the Commissioner must consider whether this was the effect. This is an objective test, based on whether a reasonable person would be likely to regard the request as harassing or distressing.
33. The MPS has described there being a "vicious circle" of engagement in the case of responses which do not correspond with the applicant's expectations. It has described this "vicious circle" as being a "*significant burden and distraction*" on its resources as well as serving to harass both the authority and individual employees.
34. In support of this argument, the MPS provided the Commissioner with examples of flows of correspondence between it and the complainant.

The Commissioner considers the following comments made about the flow of correspondence to be relevant to this case:

"the applicant continued to correspond on a frequent basis with the [redacted] murder investigation while his requests for costs relating to these investigations remained outstanding"; and "once again, this contact failed to end the correspondence from the applicant".

35. The Commissioner is mindful of the fact that the question at issue is not whether or not the complainant intended to harass or cause distress. It is his role to consider the effect of the requests. Having taken account of the circumstances of this case, the Commissioner considers the requests can reasonably be considered as having the effect of harassing the public authority and its staff.

Would complying with the requests impose a significant burden in terms of expense or distraction?

36. The Act was enacted to assist people in seeking access to recorded information held by public authorities. However, it was not the intention of the Act to distract public authorities unreasonably from their other duties or for public money to be spent unproductively.
37. When considering if this factor applies, the Commissioner would expect a public authority to be able to show that complying with the request would cause a significant burden in terms of both costs and diverting staff away from their core functions.
38. In this case, the MPS has told the Commissioner that the investigation in question is currently live. In this respect, it has argued that the complainant's engagement with the MPS, and with one member of the investigative team in particular, *"has served as a significant distraction"* from the core work of the investigative team. The Commissioner understands this to be preparation for a court trial in relation to the murder.
39. Further, it has said that its decision to apply section 14(1) to the requests for the costs of the investigations was *"significantly influenced by the applicant's excessive correspondence with [the Investigating Officer] and the consequences of this engagement"*.
40. The complainant has argued that he has restricted his requests *"to information pertinent to my knowledge and issues"*. He has also maintained that he has not *"sought to frustrate and complicate matters, nor have I intended to waste the time of any party"*.

41. However, from the evidence provided to him, the Commissioner is satisfied that, in this case, the additional work undertaken in order to meet the demands of the complainant constituted a significant distraction from the core business of the officer involved.

Are the requests designed to cause disruption or annoyance?

42. As discussed in the Commissioner's published guidance, this factor relates to a requester's intention and can therefore be difficult to prove. The Commissioner is mindful of the fact that under the Act the purpose behind any request is not a relevant factor. However, in examining the intent of the requester the Commissioner is considering the effect of complying with the request rather than questioning why he wants the information.
43. In the Information Tribunal Case of *Coggins v The Information Commissioner* (EA/2007/0130), the Tribunal found that a "significant administrative burden" was caused by the complainant's correspondence to the public authority that started in March 2005 and continued until the authority's application of section 14(1) in May 2007. Similarly, in this case the MPS has responded to the complainant's correspondence over a sustained period dating back to 2003.
44. The complainant has told the Commissioner "*there is nothing to be gained from me causing annoyance to anyone*".
45. Conversely, the MPS has put forward the argument that, in making the three requests which are being considered in this case, the complainant is simply continuing a "*relentless and endless pursuit of any information he believes will support his beliefs*". It has further argued that the complainant is pursuing this action "*without regard for the wider effects and consequences of his actions*".
46. Against the background of requests and related correspondence, the Commissioner is satisfied that the requests can be considered as being designed to cause disruption and annoyance.

Do the requests lack any serious purpose or value?

47. Whether a request has value is not of significance given that the Act 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 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.

48. In correspondence with the Commissioner, the complainant said:

"I have a valid interest in the enquiry.. ... I desire the information I have requested. The MPS are using the 'vexatious' excuse not to provide data as a device, a means to obstruct and further frustrate."

49. The MPS has not put forward any arguments in relation to the requests not having any serious purpose or value. The Commissioner is therefore unable to conclude that this has been demonstrated in this case.

Are the requests vexatious?

50. Section 14 of the Act is intended to protect public authorities from those who might abuse the right to request information. The Commissioner recognises that having to deal with clearly unreasonable requests can strain an organisation's resources, damage the credibility of the Act and get in the way of answering other requests.

51. He also acknowledges that there is a fine balancing act between protecting a public authority from frivolous applications and the promotion of transparency in the workings of an authority.

52. In considering the circumstances of this case in relation to the five questions set out above, the Commissioner acknowledges that the questions, to a greater or lesser extent, overlap and that the weight accorded to each will depend on the circumstances. He also re-iterates that, in his view, it is not necessary for every factor relevant to vexatious requests to be satisfied in order to refuse a request on the basis of section 14(1).

53. In this case, the Commissioner considers that, viewed dispassionately and in isolation from the considerable volume of ongoing correspondence between the complainant and the MPS, the requests under consideration here would not necessarily be manifestly unreasonable, without serious purpose or value or disproportionate. However, in considering whether the complainant's requests should be regarded as vexatious, he considers it reasonable and relevant to take into account the wider context in which the requests were made.

54. In reaching a decision in this case as to whether the requests were unduly burdensome, were designed to disrupt or cause annoyance to the MPS, or otherwise had the effect of harassing it, the Commissioner has concluded that there are sufficient grounds to uphold the application of section 14(1). He considers that the obsessive nature of

the requests, when taken in the context of the previous correspondence, and their impact on the public authority and its staff is sufficient for the requests to be deemed as vexatious.

Procedural Requirements

Section 17 Refusal of request

55. Section 17(5) provides that:

"A public authority which, in relation to any request for information, is relying on a claim that section 12 or 14 applies must, within the time for complying with section 1(1), give the applicant a notice stating that fact."

56. In this case, the first two requests for information were made on 11 October 2009 but the response was not provided until 21 January 2010. In failing to state, within 20 working days of receipt of these requests, that it was relying on section 14(1), the Commissioner finds the MPS in breach of section 17(5).

57. The MPS did not provide a response to the third request, which was made on 12 December 2009, until 21 January 2010. In failing to state, within 20 working days of receipt of this request, that it was relying on section 14(1), the Commissioner finds the MPS in breach of section 17(5).

The Decision

58. The Commissioner's decision is that the public authority dealt with the following elements of the three requests in accordance with the requirements of the Act:

- the MPS was entitled to apply section 14(1) as the complainant's requests can be correctly categorised as vexatious under the provisions of the Act.

However, the Commissioner has also decided that the following elements of the three requests were not dealt with in accordance with the Act:

- the MPS breached section 17(5) by failing to notify the complainant it was relying on section 14(1) within the statutory timescale.

Steps Required

59. The Commissioner requires no steps to be taken.

Right of Appeal

60. 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,
Arnhem House,
31, Waterloo Way,
LEICESTER,
LE1 8DJ

Tel: 0845 600 0877

Fax: 0116 249 4253

Email: informationtribunal@tribunals.gsi.gov.uk.

Website: www.informationtribunal.gov.uk

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.

Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is sent.

Dated the 23rd day of August 2010

Signed

**Graham Smith
Deputy Commissioner**

**Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Legal Annex

Vexatious or Repeated Requests

Section 14(1) provides that:

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

Refusal of Request

Section 17(1) provides that:

"A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which -

- (a) states that fact,*
- (b) specifies the exemption in question, and*
- (c) states (if that would not otherwise be apparent) why the exemption applies."*

Section 17(5) provides that:

"A public authority which, in relation to any request for information, is relying on a claim that section 12 or 14 applies must, within the time for complying with section 1(1), give the applicant a notice stating that fact."