

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

**Date: 6 January 2011**

**Public Authority:** Lancashire Constabulary  
**Address:** Police Headquarters  
Saunders Lane  
Hutton  
Preston  
PR4 5SB

#### Summary

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The complainant requested information about the duties and whereabouts of Lancashire Constabulary's Chief Legal Advisor during specific days in May 2009. This request was initially made using a pseudonym. The complainant repeated the request in his own name and at that time he also requested the Advisor's remuneration and salary and the Constabulary's legal department budget over the past five years. The Constabulary's applied section 14(1) (vexatious request) to that part of the request which had previously been made under a pseudonym, and this was the basis of the complainant's appeal to the Commissioner. The Commissioner has considered the case carefully and upholds the Constabulary's application of section 14(1).

#### The Commissioner's Role

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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.

#### Background

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2. The first part of this request was initially made to Lancashire Constabulary by the complainant using a pseudonym via the "What Do

They Know" website on 3 November 2009. The Constabulary responded via the website with a refusal notice on 13 November 2009.

## The Request

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3. On 5 January 2010 the complainant made the following request for information to Lancashire Constabulary:

"I believe that the Constabulary's Chief Legal Advisor is [a named person]. I also believe that she acts as solicitor to the Chief Officer. This makes [the named person] a public servant and thus her performance, duties and general accountability are subject to the general public interest.

Please supply general details of her duties, times, meetings and places that she worked/attended on 11,12,13,14 and 15 May 2009. For instance I don't require a specific room in a specific building. For example Police HQ between certain hours would suffice. I am also aware that these details date back over 7 months and the disclosures should therefore have no impact on the force or their activities. I am also not interested in entirely personal information related to her time when not in the pay of the taxpayer.

Further can you also supply current rates of remuneration of [the named person] and her total salary for the last five tax years? Can you also please supply the amounts of the total monetary budgets of Lancashire Constabulary's legal department in the last five years?

TO CLARIFY: I only require general information as involved in [the named person's] activities as a supposedly highly paid and taxpayer funded public servant. For example I also don't wish to prejudice any "investigation" or involve myself in any personal information. However all official duties and the rest whilst in the pay of the taxpayer are entirely relevant to my request."

4. On 2 February 2010 the Constabulary responded and referred to its previous correspondence with another applicant regarding the first part of this request. The Constabulary stated that as it had already published a response and internal review to the earlier applicant's 'near identical' request, it believed that section 14(1) of the Act applied to this part of the request. The Constabulary provided the information for the second part of the request.
5. On 2 February 2010 the complainant requested an internal review.

6. On 12 March 2010 the Constabulary provided the review upholding its original application of section 14(1) to part of the request. However the application was supported with different reasoning as a result of the complainant informing the Constabulary that he had also made the earlier request on the "What Do They Know" website using a pseudonym.

## The Investigation

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### Scope of the case

7. On 30 April 2010 the complainant contacted the Commissioner to complain about the way his request for information had been handled.
8. The complainant stated his concerns regarding the Constabulary's involvement in his complaint to the Lancashire Police Authority regarding the Chief Constable. However this matter did not form part of this request.
9. The complainant explained to the Commissioner that:  
"...I only made this request in the public interest and in an attempt to expose possible misconduct at a vital public authority."
10. The complainant also raised other issues in his correspondence with the Commissioner that are not addressed in this Notice because they are not requirements of Part 1 of the Act.
11. On 17 August 2010 the Commissioner confirmed to the complainant that the scope of his investigation would be to determine if the Constabulary had appropriately applied section 14(1) to part of the request.

### Chronology

12. In his letter of 17 August 2010 the Commissioner invited the complainant to provide any arguments he had against the Constabulary's application of section 14(1).
13. Also on 17 August 2010 the Commissioner wrote to the Constabulary asking for its full reasoning for the application of section 14(1).
14. On 25 August 2010 the complainant responded to the Commissioner with his considerations as to why the Constabulary had refused part of his request.

15. On 31 August 2010 the Commissioner wrote to the complainant and referred him to his guidance on section 14 on the ICO website. The Commissioner explained that he would be considering the points detailed in the guidance with respect to this request. In view of this, he again invited the complainant to provide his reasons why he believed that the request was not vexatious, which the Commissioner would take into consideration in his investigation.
16. On 31 August 2010 the Constabulary provided further justification of its application of section 14(1).
17. On 6 September 2010 the complainant wrote to the Commissioner about his request. He stressed "the context of why I made it and what the Constabulary were up to as suggested by the available evidence". He attached further emails in support of his complaint.
18. On 11 September 2010 the Constabulary provided further information to the Commissioner.
19. The complainant provided further submissions to the Commissioner on 16 and 28 September 2010, 23 October 2010 and 11 November 2010 with numerous attachments to each email.

## Analysis

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### Section 14(1)

20. Section 14(1) states that "Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious".
21. When assessing whether a request is vexatious the Commissioner endorses the Tribunal's consideration of this point in *Mr J Welsh v the Information Commissioner* (EA/ 2007/0088) (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.'

22. The Commissioner has taken into account the complainant's previous interaction with the Constabulary 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 Constabulary has acknowledged that in this case the request by itself may not be vexatious, but argues that it is vexatious within the context of the complainant's history of complaints and information requests. It argues that this request relates to an underlying complaint. That complaint has generated numerous other requests for information and the issues raised by the complaint have been investigated and considered by the Constabulary.
23. The Commissioner has followed his own guidance<sup>1</sup> and considered the context and history of the request along with the following five factors relevant to section 14(1) in respect of both parties' arguments:
- (1) whether compliance would create a significant burden in terms of expense and distraction;
  - (2) whether the request is designed to cause disruption or annoyance;
  - (3) whether the request has the effect of harassing the public authority or its staff;
  - (4) whether the request can otherwise fairly be characterised as obsessive; and
  - (5) whether the request has any serious purpose or value.

### **Would compliance create a significant burden in terms of expense and distraction?**

24. When considering whether a request constitutes a significant burden the Commissioner endorses the Tribunal's approach in *Mr J Welsh v the Information Commissioner (EA/ 2007/0088)*(at paragraph 27). It stated that it is:

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[http://www.ico.gov.uk/~media/documents/library/Freedom\\_of\\_Information/Detailed\\_specialist\\_guides/VEXATIOUS\\_AND\\_REPEATED\\_REQUESTS.ashx](http://www.ico.gov.uk/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/VEXATIOUS_AND_REPEATED_REQUESTS.ashx)

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

25. The Commissioner therefore expects a public authority 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.

26. The Tribunal in the case of *Gowers v the Information & London Borough of Camden* (EA/2007/0114) emphasised that previous requests received from an individual may be a relevant factor:

*'...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'* (paragraph 70 of its decision).

27. This means that even if the request does not impose a significant burden when considered in isolation, it may do so when considered in the context of a complainant's previous interaction with a public authority.

28. The Constabulary asked the Commissioner to take into account the following arguments about the context of the request:

- The Constabulary has been in continuous correspondence with the complainant since 2005.
- The complainant has submitted 20 Freedom of Information requests and four Subject Access requests.
- The complainant's requests have in turn generated further queries and correspondence which appertain to points arising from the same matter.
- Each fresh request results in work to consider the background and the issues already investigated and dealt with accordingly.
- Although this request is a separate application, the information sought would provide another piece of information to add to the information already amassed on the same matter.
- The request was a repeated request made initially by the complainant using a pseudonym via the 'What Do They Know' website. This in itself has generated further unnecessary correspondence resulting in diverting staff from other work and wasting resources.

29. The complainant disagreed with the Constabulary's arguments about the context of his request. He explained his over-arching view to the Commissioner and stressed that:

"It is, however, vital to put the request into the context of why I made it and what the Constabulary were up to as suggested by the available evidence". He went on to provide his view on this factor:

- "Telling me the duties etc over a couple of days of a very senior public servant who could potentially have engaged in activities that are sailing close to the wind as regards process corruption would not cause any burden be it significant or otherwise. But it may impose a significant burden in trying to 'defend the indefensible'."
- The complainant provided his reasoning as to the importance and significance he attached to his request in the context of his other on-going matters with the Constabulary.

30. When considering the substantive request in the context of its background and context, on the basis of the evidence supplied to him the Commissioner is satisfied that the Constabulary has devoted considerable time and resources in dealing with the complainant's previous requests and with his associated correspondence. He considers that the request is connected to the previous requests and in this context it adds to the significant burden already shouldered by the Constabulary. The request dated 5 January 2010, taken in the context of the hours spent dealing with the previous correspondence and the resulting distraction from the Constabulary's core business activities, would impose a significant burden in terms of both expense and distraction.

31. The Commissioner has considered the approach of the Information Tribunal 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.'*

32. The Commissioner considers that the Constabulary has sufficiently demonstrated that the complainant is likely to continue to correspond with the Constabulary when he receives a response to his requests. He apparently does so in an effort to influence the Constabulary to respond in a manner more to his liking. It must therefore be accepted that although the Constabulary 'may' be able to provide a response to the complainant on this one issue, it would seem reasonable that complying with the substantive request would lead to further correspondence thereby adding to an already significant burden.
33. The Commissioner finds that this request in context would impose a significant burden in terms of expense and distraction and therefore finds in favour of the Constabulary on this factor.

**Was the request designed to cause annoyance and disruption?**

34. With respect to this factor the Constabulary explained to the Commissioner its belief that the complainant's request relates to his complaints about the Chief Constable. It further explained that these complaints have already been investigated and have not been substantiated. The Constabulary assert that revisiting the matter would result in disruption and annoyance.
35. The complainant provided the following explanation to the Commissioner:

"I have never attempted to cause disruption or annoyance to anyone in my life. But I do exercise my democratic right to expose misconduct and unlawfulness at public authorities that are engaged in the enforcement of the law that they themselves are breaching. This is a major public interest purpose of the FOI Act in any event. However I recognise that if the misconduct were exposed via FOI it would cause serious disruption and annoyance to the culprits who have been caught out when they are so universally used to escaping account."
36. The Commissioner accepts that this factor should be related to the complainant's intention at the time of making the request and is difficult to assess. The Commissioner understands the Constabulary's conclusion in that the request perpetuated a matter which should be, in its opinion, closed. However the Commissioner believes that although the complainant's intent was to prolong an otherwise closed complaint, it was not simply to cause annoyance and disruption although this was the resultant outcome.
37. The Commissioner has determined that the Constabulary has not presented sufficient evidence to support its application of section 14(1)



in respect of any disruption and annoyance the complainant's request may have been designed or intended to cause in this case.

**Did the request have the effect of harassing the public authority or causing distress to its staff?**

38. The Constabulary has stated that although this request "may be seen as reasonable" the previous correspondence about which the matter relates has caused distress and harassment to the staff at the Constabulary. The Constabulary specifically drew attention to the accusatory and derogatory nature of the correspondence and complaints concerning specific individuals which had a harassing effect.

39. With respect to this factor the complainant made the following comment:

"I dare say that if the wilful misconduct is exposed it will be very distressing and harassing to the culprits when they are found out. However the same can be put in context as regards a burglar being distressed and harassed after being caught robbing old ladies with the attendant criminal case and court appearances."

40. The complainant has made clear his perspective in detailed correspondence to the Commissioner. The complainant has stated:

"...all I am trying to do is expose and publicise misconduct at the Authority and force. The force is merely attempting to cover up serious misconduct as is all too usual."

41. The Commissioner considers that the volume and nature of previous correspondence with the Constabulary has resulted in staff being unnecessarily harassed. The Commissioner has noted the acerbic tone of the complainant's correspondence to both the Constabulary and the Commissioner's Office. The complainant's correspondence contains critical commentary and allegations of varying significance. The Commissioner's view is that the Constabulary and its staff would be harassed by this request, particularly in the context that it relates to matters already considered and investigated by the Constabulary and by others.

42. The Commissioner believes that the request implies the complainant is attempting to reopen issues that have already been dealt with in the appropriate channels. The complainant has provided the Commissioner with copies of responses he has received from several other constabularies as evidence of procedures he considers should have been and had not been followed at Lancashire Constabulary. The

Commissioner cannot comment on the content of this information although its existence indicates that the complainant continues to research the matter.

43. The Commissioner finds that this factor supports the Constabulary's application of section 14(1).

**Can the request be characterised as obsessive?**

44. It is clear to the Commissioner that this request stems from the complainant's original complaint about the Chief Constable and the investigation of that complaint. In previous cases the Commissioner has found that requests set in the context of a longstanding grievance or dispute are often determined to be obsessive.
45. The series of requests made by the complainant before the request of 5 January 2010 have, for the most part, been in relation to a few specific issues. The requests have frequently been the subject of further correspondence with not only the Constabulary and its Professional Standards Department, but also other public authorities including the IPCC, the Lancashire Police Authority, other constabularies and police authorities. During the Commissioner's investigation the complainant has asked the Commissioner to consider copies of the information provided to the complainant by several police authorities regarding their procedures in respect of investigations of conduct allegations against a Chief Constable.
46. The complainant has made clear that he believes:  
"...that the force, Lancashire Police Authority and the Chief Constable were involved in serious and criminal corruption ...." "I have even provided copies of the various drafts of the formal investigation reports to the ICO that prove the alterations that were made that were all to the advantage of the force and Chief Constable."
47. The Commissioner recognises that the complainant has provided correspondence to demonstrate the legitimacy of his request in this case. However, the Commissioner considers that the complainant's 'evidence', rather than providing this legitimacy, demonstrates a disproportionate persistence in a matter which has already been subject to independent investigation.
48. The complainant has been provided with the outcome of a separate complaint considered by the Commissioner relating to his allegation that the Lancashire Police Authority and the Constabulary had breached the Data Protection Act 1998 (DPA) regarding the same matter outlined above. The Commissioner's conclusion when he

considered this matter separately was that there was no strong likelihood that the DPA had been breached.

49. The Commissioner therefore concludes that the request in this case may be deemed to be obsessive when taken in the context described above and finds that this factor supports the Constabulary's application of section 14(1).

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

50. In his arguments to the Commissioner, the complainant stated, "...this case demonstrates beyond any reasonable doubt a serious purpose and value. That is to expose serious and blatant misconduct at public authorities that are involved in the law enforcement sector and at the same time are involved in wilfully breaching the same law."
51. The Commissioner noted that the Constabulary explained that it did not consider this factor in its application of section 14(1). However, in other correspondence the Constabulary stated: "...it is questionable as to what value the request possessed when the central issues have been thoroughly investigated by others".
52. The Constabulary also referred the Commissioner to the "waste of time in dealing with the original request under a pseudonym".
53. The Commissioner acknowledges that the applicant repeated his request in his own name after receiving the findings of the Constabulary's internal review of the same request made under a pseudonym. The complainant has explained to the Commissioner that his reason for repeating the request was in order to be able to bring a complaint to the ICO after receiving a response from the Constabulary, in his own name. The Commissioner notes that the Constabulary's response to the pseudonym's request did not apply the section 14(1) exemption.
54. The Commissioner has considered the context of the request and has not been convinced by the complainant's arguments. The Commissioner believes that there comes a time, when in light of what has gone before, the degree to which a request has a serious purpose diminishes. In the context of this case the Commissioner considers that the point has been reached where the complainant's request no longer has a serious purpose. He agrees with the Constabulary that the complainant is not likely to be satisfied by whatever response he receives and that this request is part of his campaign against the public authority. He therefore finds that this factor favours the application of section 14(1) and finds in favour of the Constabulary in this case.

### **Could a reasonable public authority refuse to comply with the request on the grounds that it is vexatious?**

55. The Commissioner has considered the evidence and arguments put forward in this case, including the history and context of the request. On the basis of the circumstances of this case, the Commissioner finds that the evidence and arguments are sufficient to establish the application of section 14(1) and consequently that a reasonable public authority would find the complainant's request vexatious. The Commissioner therefore concludes that Lancashire Constabulary appropriately applied section 14(1) of the Act to the complainant's request.
56. In reaching this decision the Commissioner also took note of confirmation provided by the Constabulary that it will treat each new request from the complainant on its own merits. Indeed the Commissioner notes that the information requested in the second paragraph of the complainant's request was provided to the complainant as it was considered to be "a new and valid query" [which the Constabulary was] "happy to consider as a separate FOI enquiry".

### **Section 17(5)**

57. In refusing part of the complainant's request by relying on section 14(1) the Constabulary issued its refusal notice under section 17(5) in accordance with the Act

### **The Decision**

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58. The Commissioner's decision is that the public authority dealt with the request for information in accordance with the Act.

### **Steps Required**

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59. The Commissioner requires no steps to be taken.

## Right of Appeal

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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](mailto:informationtribunal@tribunals.gsi.gov.uk).

Website: [www.informationtribunal.gov.uk](http://www.informationtribunal.gov.uk)

61. 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.
62. 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 6<sup>th</sup> day of January 2010**

**Signed .....**

**Alexander Ganotis  
Group Manager – Complaints Resolution**

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

## **Legal Annex**

### **Section 1(1) provides that -**

"Any person making a request for information to a public authority is entitled –

- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
- (b) if that is the case, to have that information communicated to him."

### **Section 1(2) provides that -**

"Subsection (1) has the effect subject to the following provisions of this section and to the provisions of sections 2, 9, 12 and 14."

### **Section 10(1) provides that –**

"Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt."

### **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"

### **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."