

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 16 May 2011

Public Authority: The Chief Constable of Hampshire Constabulary
Address: Police Headquarters
West Hill
Romsey Road
Winchester
Hampshire
SO22 5DB

Summary

The complainant made a request for information to Hampshire Constabulary (the Constabulary) on 10 March 2010. On 15 March 2010 he made a similar and related request for information. The Constabulary treated both requests as a single request and refused to provide the information in reliance on section 14(1) of the Act (Vexatious or repeated requests). The Commissioner considers the complainant's requests to have been correctly deemed vexatious under section 14(1) of the Act.

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.

Background

2. The complainant has made several requests to this Constabulary and other constabularies. All his requests concern Police investigations relating to the complainant, birds of prey (avian genetics) and the RSPB. The complainant received a custodial sentence from a Crown Court over 10 years ago. The relevant indictment contained 13 counts relating to the Control of Trade in Endangered Species (Enforcement) Regulations 1985. The matter was subject to an appeal against the sentence but was

dismissed. The complainant has maintained his innocence and has continually striven to prove this.

The Request

3. The complainant made the following request through the website 'What Do They Know' on 10 March 2010:

'Please supply how much tax payers money was used in the following case by the police including any money given to pay for [a named person's] legal cost. Please supply any information that you have in relation to the case in question highlighted in the court judgement supplied below.'

4. The complainant extended his request on 15 March 2010, stating:

'The public are still waiting and I would extend my information request to the total cost on the taxpayer due to [a named person's] case.'

5. The Constabulary provided a response to the complainant on 15 March 2010. The Constabulary informed him that it would not respond to the request because, in response to an earlier request, he had been informed that any further requests regarding bird of prey investigations would be deemed vexatious under section 14 of the Act. The response of 15 March 2010 was made in respect of both the initial request made on 11 March 2010 and the extension of the request on 15 March 2010.
6. The complainant requested an internal review of the Constabulary's decision on 15 March 2010. A response was provided by the Constabulary on 23 March 2010, in which it stated it would not be providing an internal review and directed the complainant to contact the Commissioner if he was dissatisfied with this response.
7. There then followed a series of correspondence between the complainant and the Constabulary, in which the complainant attempted to get the Constabulary to conduct an internal review of its response. This culminated on 23 September 2010 when the Constabulary reaffirmed that it would not deal any further with the request and again advised the complainant to contact the Commissioner if he was dissatisfied with this response.

The Investigation

Scope of the case

8. On 7 September 2010 the complainant contacted the Commissioner to complain about the way his request for information had been handled, asking the Commissioner to ask the police to release the information that he has requested.
9. The Commissioner contacted the complainant on 3 February 2011 to inform him that the scope of his decision would be whether or not the Constabulary had correctly cited section 14(1) of the Act to his request. On the same day, the Commissioner also contacted the Constabulary, asking it further questions regarding the basis of its citing of section 14(1).

Chronology

10. The Constabulary provided its response to the Commissioner's questions on 11 February 2011 and it is on the basis of its response that he has reached his final decision in this Notice.

Analysis

Substantive Procedural Matters

11. 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"

12. The Commissioner has produced external guidance¹ for use when considering whether or not to judge a request as vexatious. This outlines five key points to consider:
 - Would complying with the request impose a significant burden?
 - Could the request fairly be seen as obsessive?
 - Is the request harassing the authority or causing distress to staff?
 - Is the request designed to cause disruption or annoyance?
 - Does the request lack any serious purpose or value?

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

13. When considering these factors, the Commissioner takes into account the decision of the First Tier Tribunal promulgated in *Hossack v the Information Commissioner and the Department for Work and Pensions (EA/2007/0024)*. The Tribunal stated that when considering vexatious requests under the Act:

'...the consequences of finding that a request for information is vexatious are much less serious than a finding of vexatious conduct in these other contexts, and therefore the threshold for a request to be found vexatious need not be set too high....'

14. The bar in determining whether a request is vexatious is therefore set lower than that required for determining whether a person is a vexatious litigant. The Commissioner has assessed whether or not this request is vexatious under the Act by analysing whether the evidence provided supports any, all or some of the aforementioned categories, to the extent that the application of section 14 is or is not justified.
15. The Tribunal case of *Welsh v the Information Commissioner (EA/2007/0088)* outlines that the context, background and history of a request can be taken into account when considering section 14. The Commissioner has therefore also analysed the underlying context and purpose of the complainant's request(s), and other correspondence from the complainant to or about the Constabulary, when making his decision.

The history and background of the complainant's request

16. The complainant's request can be seen as a continuation of correspondence between himself and the Constabulary dating back to 2007.
17. On 8 May 2007, the Constabulary received its first request from the complainant, to which it provided a not held response under section 1(1) of the Act. It also provided a warning to him that any further requests based on the subject of 'avian genetics' would be considered vexatious. This was done on the basis of documentation available to the Constabulary and its awareness of the complainant's continuing dispute with another Constabulary, flowing from his conviction.
18. The Constabulary was aware that the complainant was continuing to pursue complaints against another Constabulary despite the conclusion of its legal processes. It was also aware of the fact that the complainant had written to several Members of Parliament and other public authorities regarding these investigations, including: the Department for Constitutional Affairs (more recently the Ministry of Justice), the Home Office and the Independent Police Complaints Commission, as well as

several other police authorities. (Several of these requests resulted in the complainant appealing the responses to the Commissioner.)

19. Despite the Constabulary explaining to the complainant that any further requests regarding 'avian genetics' would be considered vexatious, the complainant made a further, and related, request to the Constabulary the day after it had provided its response to his initial request (the response being provided on 29 May 2007 and the second request being made on 30 May 2007). This request was deemed vexatious by the Constabulary.
20. The complainant appears to have then heeded the Constabulary's advice regarding the application of section 14(1) to requests regarding avian genetics. His next request was not made until 7 August 2009 and related to RSPB/RSPCA employee involvement in police raids. The Constabulary points out that as this was not wholly related to avian genetics and given that no related requests had been made for two years, it treated this request appropriately under the Act and issued a refusal notice citing section 12 (where the cost of compliance exceeds the appropriate limit). Nevertheless the refusal notice made clear that the Constabulary had considered applying section 14(1) again.
21. This request of 7 August 2009 was refined by the complainant after this was suggested to him by the Constabulary in its section 12 notice. The Constabulary appropriately responded to the revised request, but made clear that any further requests from the complainant on a related subject matter would be considered vexatious under the Act.
22. A month after this request the Constabulary received a new request asking for information relating to a particular individual who had been part of previous RSPB investigations which related to the complainant. This request was not submitted in the complainant's name. However, the Constabulary believes it was submitted by the complainant using a pseudonym or made by another individual acting in concert with him. The Constabulary was alerted to this possibility by the similar tone and content of the request and the fact that this applicant regularly annotates the complainant's requests on the website 'What Do They Know'.
23. The Constabulary has included this request in its consideration of the substantive request dealt with by this notice. It has done this because it believes it demonstrates a continuing pattern of requests in pursuance of information centred on a single issue; so much so that the Constabulary believes the requests can be properly characterised as an obsession.

24. The Constabulary has also considered that that the complainant was requesting information across a number of Public Authorities all relating to the same subject matter i.e. relating to avian genetics, the RSPB, Police investigations and a named individual.
25. The next requests received were those under consideration in this Notice. The Constabulary has pointed out that on the day after it made its response to the complainant, in respect of these requests, it received yet another request. The Commissioner can confirm that the wording of the new request is the same as that made by the complainant (in the request being considered). The Constabulary has pointed out that this request was also introduced using the same format and wording. The Constabulary believes this is unique, or at least distinctive, to requests made by the complainant. It therefore believes that this request was made by the complainant, either through a 3rd party or by the complainant using a pseudonym.

Significant burden in terms of expense and distraction

26. When considering whether a request imposes a significant burden on a public authority, the Commissioner is assisted by the Tribunal's decision in the case of *Welsh*. This explains that it is, '*...not just a question of financial resources but also includes issues of diversion and distraction from other work...*' (paragraph 27). In assessing this, the Commissioner has taken into account the history of the complainant's behaviour in relation to the Constabulary and his requests made to it.
27. The Commissioner understands the volume and frequency of the requests made, coupled with the variety of avenues used to pursue his complaints, indicate that a significant burden has been on the public authority in terms of its continued and protracted correspondence with the complainant on the substantive subject of his requests. Although the number of requests which can categorically be accepted as having been made by the complainant to the Constabulary is only five, it has pointed out that a specific officer within the force has received over 75 emails from the complainant, which the Constabulary describes as '*...long rambling emails with many images, links and documents embedded therein. They are frequently repetitive and seem to include random snippets of information that ostensibly have no relevance or link to each other.*'
28. This consideration is supported in the Tribunal decision of *Coggins v the ICO (EA/2007/0130)* in which the complainant made 20 FOI requests and sent 73 letters and 17 postcards to the public authority. The Tribunal said the contact was, '*...long, detailed and overlapping in the sense that he wrote on the same matters to a number of different officers, repeating requests before a response to the preceding one was*

received...the Tribunal was of the view that dealing with this correspondence would have been a significant distraction from its core functions....' (paragraph 28).

29. The Commissioner concedes that the volume of correspondence is not the same as in *Coggins*. However, the Constabulary has pointed out that the FOI requests (and the emails sent to the specific officer) are very often extremely long (running to 20-30 pages on occasions) and which the Constabulary would describe as often unfocussed. This requires the Constabulary to go through the whole of the documents submitted to it by the complainant on each occasion to determine if any further requests are contained in them or if other relevant information can be gleaned from them.
30. The Commissioner considers that it is the cumulative effect of the volume of the requests and emails, their frequency and their length which has imposed a significant burden on the Constabulary in handling them. It appears that the complainant is attempting to engage other branches of the Constabulary outside of its FOI team, and specifically a particular named officer. It is these factors which the Commissioner considers are diverting the Constabulary and its employees away from their core functions and which impose a significant burden on the Constabulary.
31. The Commissioner considers it worthwhile to point out that even if the above were not found persuasive enough to evidence a significant burden on the Constabulary, the argument in the Tribunal case of *Betts v the ICO (EA/2007/0109)* applies. The Tribunal said that it would be reasonable to conclude that a significant burden had been imposed on a public authority, if in answering the request, it was, '*...extremely likely to lead to further correspondence, further requests and in all likelihood, complaints against individual officers....'* (paragraph 34).
32. The Constabulary has provided the Commissioner with a synopsis of all of the FOI requests it has received from the complainant, and an outline of the contents of the emails sent to the specific officer previously mentioned. The Commissioner considers that these show a natural progression and link between a response being provided to one request and this causing the complainant to make another request. The requests and emails ostensibly relate to avian genetics (birds of prey), the RSPB, investigations surrounding his conviction and a specific individual involved with his conviction. The Commissioner believes that this behaviour is indicative that the complainant's requests – including that to which this notice relates - impose a significant burden on the Constabulary in the manner described in the Tribunal's decision in *Betts*.

Can the request otherwise fairly be characterised as obsessive or manifestly unreasonable?

33. As previously mentioned the complainant has pursued complaints with the Commissioner about other public authorities regarding the same subject matter. These include at least three with Northumbria Police, which have been fully investigated and have resulted in Decision Notices upholding Northumbria Police's application of section 14 of the Act. The subject matter of the request currently under consideration is directly connected with the complaints against Northumbria Police mentioned above and the Constabulary is of the opinion that this clearly illustrates the continued pursuance of the same issue. As the Constabulary has stated:

'...relevant legal avenues have already been explored, public authorities have already held themselves accountable and the applicant has already received a wealth of information and responses around this subject area...[The] applicant is not seeking new information but is simply seeking to revisit old ground and attempting to re-open debates that have already been concluded via many recognised procedural mechanisms.'

34. The Commissioner sees this as similar to the complainant's actions in *Rigby v the ICO and Blackpool Fylde a Wyre Hospital NHS Trust*. In this case the Tribunal pointed out that, '*...ongoing requests, after the underlying complaint has been investigated...[go] beyond the reasonable pursuit of information, and indeed persistence*'. The Commissioner considers that the complainant, in continuing to request information regarding this subject matter, and making continued allegations to the Constabulary and other public authorities and regulators, despite investigation, is indicative behaviour of someone who is going beyond the '*...pursuit of information...*'

35. The Commissioner considers another point within this category, which draws analogy between the present case and that of *Coggins*. In *Coggins*, the complainant was pursuing a belief that a fraud had been committed against an elderly woman, whom the complainant was helping with care arrangements. Following several reviews of decisions by separate regulators, no substantive fraud was uncovered. The Tribunal was of the opinion that the complainant was driven by a genuine desire to uncover a fraud but there came a point at which their pursuit of it should have been dropped and to pursue it any further was unjustified. In the present case the Commissioner considers the complainant to be genuinely pursuing a belief that he has been incorrectly convicted of an offence. However, given the period of time covered and the unwillingness of the complainant to accept contrary

evidence, the Commissioner is of the view that this has gone beyond justifiability and is indeed 'obsessive'.

36. Further, (as stated above) the volume of correspondence in this case is not the same as in *Coggins* but the Commissioner considers the behaviour of the complainant to be analogous with that of the complainant in the *Coggins* case and as such is a further example of the complainant's obsession with the subject matter. A significant number of requests have been made on ostensibly the same subject matter.

Does the request have the effect of harassing the public authority or its staff?

37. The Commissioner accepts that the volume and frequency of requests, together with his correspondence to the Constabulary about the subject matter, has the effect of harassing the Constabulary and its staff and in particular one member of staff.
38. The Constabulary has pointed out that the complainant's grievance seems to be to a great extent focussed on a particular officer; the officer being the subject of complaints made by the complainant. He has also accused another civilian member of staff of lying and perverting the course of justice. The Commissioner considers that this would have the effect of harassing these two specific members of staff in particular, and the complainant's general interaction with the Constabulary has the effect of harassing its staff as a whole. The Commissioner believes that the request considered in this Notice demonstrate a continuation of this effect.
39. The Commissioner has the view that the factors listed in the preceding paragraph can also be regarded as a cause of distress or annoyance to these specific members of staff.
40. The Constabulary has also suggested that the complaint communicates in an aggressive and often sarcastic tone; in particular, regularly using block capitals to emphasise his points. Although the Commissioner can understand that this could be viewed as harassing to staff and has seen some evidence of this, he does not, in the context of all the available evidence, consider this tone to be strong a factor in his overall consideration of the vexatious aspects of the complainant's conduct in respect of the request considered in this case.

Does the request have serious purpose or value?

41. The complainant has a clear belief that he has been incorrectly convicted of an offence and is attempting to get hold of information which he believes will be able to exonerate him. However, the Constabulary considers this request the continuation of a vexatious campaign, the

results of which have already been provided to him, and on which nothing further can be done. Nevertheless the Commissioner considers that there is insufficient cause for him to determine that the request has no serious purpose or value.

42. The Commissioner returns to the decision in *Welsh*, in which to deem a request as vexatious is not as serious a matter as in other circumstances and therefore the threshold need not be set as high. The request (and surrounding context) clearly shows an obsession with the subject matter; it has imposed a significant burden in terms of expense and distraction on the Constabulary; and, has had the effect of harassing it and its staff. The Commissioner considers that these three factors provide sufficient grounds for him to consider the request to be vexatious in nature. The Commissioner agrees with the Constabulary and accepts the request to be vexatious.

The Decision

43. The Commissioner's decision is that the public authority did deal with the request for information in accordance with the Act.

Steps Required

44. The Commissioner requires no steps to be taken.

Right of Appeal

45. 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

46. 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.
47. 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 16th day of May 2011

Signed

**Alexander Ganotis
Group Manager – Complaints Resolution
Information Commissioner’s Office
Wycliffe House
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Cheshire
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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”

Section 14(2) provides that –

“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 a previous request and the making of the current request.”