

## **Freedom of Information Act 2000 (Section 50)**

### **Decision Notice**

**Date: 27 June 2011**

**Public Authority:** Chief Constable of Gwent Police  
**Address:** Gwent Police Headquarters  
Croesyceiliog  
Cwmbrân  
NP44 2XJ

### **Summary**

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The complainant made a request for copies of incident logs and any other logs held by the public authority that related to a specific incident that occurred near his home in July and August 2009. The public authority originally used sections 31, 38 and 40 of the Act to refuse the request but determined, at the internal review stage, that the request was vexatious and applied section 14(1). The Commissioner has considered the matter and determined that, although the way the public authority had handled previous requests had contributed to the complainant's obvious mistrust of the information it disclosed to him, on balance the application of section 14(1) was appropriate. The Commissioner requires no steps to be taken.

### **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 complainant had previously asked Gwent Police to confirm whether vehicles involved in an incident near his home were in compliance with "Road Traffic regulations". He was unsatisfied with the response of Gwent Police and made a complaint to the Commissioner, who issued a

decision notice on that case under reference number FS50308435. During the course of the Commissioner's investigation into that case the complainant sought to introduce a request for various 'incident logs' held by Gwent Police. The Commissioner determined that the request for the logs was not within the scope of case reference FS50308435 and advised the complainant that he would need to submit a further request to Gwent Police in order to pursue that information. This notice relates to that subsequent request.

3. The background to the requests is that in the summer of 2009, members of the Traveller community parked vehicles on the public highway near to the complainant's home. The complainant maintains that the actions of Travellers led to stress and exertion that ultimately resulted in the death of a local resident. The complainant also maintains that Gwent Police had the opportunity to move the Travellers from the area when it discovered their vehicles to be in breach of Road Traffic regulations. He has stated to the Commissioner that his intention is to obtain evidence that Gwent Police had the opportunity to take action but failed to do so and, once he has this evidence, to instigate Court proceedings against it.

## The Request

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4. On 10 December 2010, the complainant wrote to Gwent Police with the following request:

"Under the provisions of the FoI Act 2000 I hereby request copies of the two documents and any other logs relevant to the incident of the episode in Jul/August 2009 when itinerants were permitted to stay on the public highway at [named location] despite contraventions of the RT [Road Traffic] regulations. The logs obviously contain personal data protected [sic] by the DPA but you can block out these details, since it is solely the nature of the offences that I wish to have copies of."
5. The copy of Gwent Police's response to the request provided to the Commissioner is undated it is therefore unclear when it was issued. However, it is clear that it was issued on or before 13 January 2011 because on that date the complainant emailed the Commissioner to express his dissatisfaction with Gwent Police's decision to redact parts of the relevant logs. It had cited sections 31, 38 and 40 of the Act as the reason for redacting some information.
6. Following discussions and correspondence with the Commissioner, the complainant submitted a request for an internal review to Gwent Police on 23 January 2011. It responded on 21 February 2011 and stated that

it considered the request to be vexatious and applied section 14(1) of the Act.

## The Investigation

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### Scope of the case

7. As stated in paragraph 4, above, on 13 January 2011 the complainant first contacted the Commissioner with a complaint about the way Gwent Police had handled his request of 10 December 2010. The complaint raised the following issues:
  - He found the reasons given by Gwent Police for withholding the information to be unacceptable.
  - In relation to the application of section 31 of the Act (law enforcement) and the public interest test, he did not consider that disclosure of the requested information would hinder the prevention and detection of crime but considered that it would serve as an example of “the police ability to detect crime”.
  - He found the application of section 38 of the Act (health and safety) to be “absurd” and stated that he considered the response of Gwent Police that disclosure might lead to identification of an individual and reprisals to imply that “the police are not competent to prevent this speculative result”. The complainant went on to say that it would be easy to redact the identity of the persons responsible for road traffic infringements and that no action was “contemplated by any party against either them [offenders] or their victims, but against the enforcement agencies for being grossly negligent in the exercise of their powers to remove RT [road traffic] offenders’ vehicles from the public highway”.
  - The complainant also said that had Gwent Police removed offending vehicles from the public highway in a timely manner the “untimely death of resident [named individual] would not have occurred, in my view, and in the view of competent cardiologists. By withholding this information Gwent Police are seeking to protect themselves against prosecution for gross negligence and possible manslaughter”.
8. The Commissioner has no authority to investigate complaints about the actions of Gwent Police into the investigation of alleged breaches of Road Traffic regulations. His investigation has therefore focused only on whether Gwent Police holds information relevant to the request of 10 December 2010 and whether it has appropriately applied the Act by withholding some of that information.

## Chronology

9. As stated in paragraph 7 above, the complainant first contacted the Commissioner with his complaint on 13 January 2011. At that time the complainant had not asked Gwent Police to conduct an internal review of its handling of his request of 10 December 2010. Gwent Police provided the complainant with the findings of its internal review on 21 February 2011 and, following the complainant's confirmation that he remained dissatisfied with the response, the Commissioner commenced his investigation.
10. The Commissioner wrote to Gwent Police on 10 March 2011 and asked for further arguments to support its position in this matter and for copies of the withheld information. Gwent Police responded on 14 April 2011.

## Analysis

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### Substantive Procedural Matters

11. In the findings of its internal review Gwent Police stated that it considered the request of 10 December 2010 to be vexatious. The Commissioner has therefore considered whether it appropriately applied section 14(1) of the Act.

### Section 14(1) of the Act – 'vexatious requests'

12. Section 14(1) of the Act provides that a public authority does not have a duty to comply with a request where it may be considered vexatious.
13. Although there is no rigid test or definition of vexatious requests the Commissioner has produced guidance to assist public authorities in this area. The Commissioner's guidance states the following:

"Deciding whether a request is vexatious is a balancing exercise, taking into account the context and history of the request. The key question is whether the request is likely to cause unjustified distress, disruption or irritation. In particular, you should consider the following questions:

- 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 in terms of expense and distraction?
- Is the request designed to cause disruption or annoyance?

- Does the request lack any serious purpose or value?"<sup>1</sup>
14. The Commissioner is also mindful of the following Information Tribunal decisions:
- In the case of *Coggins v Information Commissioner* (EA/2007/0130), the Tribunal considered that "the number of FOIA requests, the amount of correspondence and haranguing tone of that correspondence indicated that the Appellant was behaving in an obsessive manner".
  - In the case of *Betts v Information Commissioner* (EA/2007/0109), the Tribunal considered not just the request, but the background and history to the request as part of a long drawn out dispute between the parties. The request was considered vexatious when viewed in context as it was a continuation of a pattern of behaviour.
15. It is important to note that while the above cases and guidance provide a useful guide to assessing whether a request is vexatious, they do not provide a prescriptive test. In arriving at his decision on such matters, the Commissioner will assess each case on its own merits and is mindful of the Information Tribunal's decision in *Mr J Welsh v the Information Commissioner* (EA/ 2007/0088) (at paragraph 26), in which it pointed out that the threshold for vexatious requests need not be set too high.

### **The position of Gwent Police**

16. In the findings of its internal review Gwent Police set out the following reasons for finding the request to be vexatious:
- The complainant had previously made serious allegations against a senior member of the authority, which has been dealt with by both the Independent Police Complaints Commission and the Professional Standards Department of Gwent Police. These allegations were determined to be unfounded and he was made aware of this decision.
  - There was a hearing by the Gwent Coroner in relation to the death to which the complainant referred. The finding of the Coroner was that it was death by natural causes, which negates any potential offences or allegations made by the complainant both to the authority and any individual employed by Gwent Police. Gwent Police stated that the complainant was aware of the finding of the Coroner.

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<sup>1</sup> [http://www.ico.gov.uk/for\\_organisations/freedom\\_of\\_information/information\\_request/~/\\_media/documents/library/Freedom\\_of\\_Information/Detailed\\_specialist\\_guides/VEXATIOUS\\_AND\\_REPEATED\\_REQUESTS.ashx](http://www.ico.gov.uk/for_organisations/freedom_of_information/information_request/~/_media/documents/library/Freedom_of_Information/Detailed_specialist_guides/VEXATIOUS_AND_REPEATED_REQUESTS.ashx)

- The matters in relation to the death to which the complainant has referred have been debated correctly through due legal internal and external process. Gwent Police declined to debate the matter any further with the complainant.
  - The complainant persists in suggesting to other organisations and by means of email through Freedom of Information requests, that Gwent Police is still culpable in relation to a manslaughter offence and gross misconduct offences.
  - Due to the frequency of requests submitted by the complainant, responding to them had become a significant burden on Gwent Police. It also set out its belief that the complainant was mounting a campaign to disrupt the authority and open up matters that have already been debated in relation to the death to which he referred and other allegations he had made.
  - The complainant used offensive comments in his email to Gwent Police's Freedom of Information Officer on January 11<sup>th</sup> 2011 and did not follow the correct procedure in relation to requesting a review of the handling of a request, despite being sent, on several occasions, details of the process to be followed.
  - Following his request for information of 10<sup>th</sup> December 2010 the complainant also submitted a substantially similar request to Pontypool Police station. Gwent Police is of the view that the request to the Police station was done to 'muddy the waters' and cause disruption to the due process already in place.
  - The complainant had intermingled complaints that had all ready been considered and accusations of manslaughter and gross misconduct with requests for information.
  - Gwent Police stated that it had taken a decision to deal with any further requests from the complainant as vexatious requests and stated that it would not respond to any further correspondence on this matter with him.
17. In correspondence with the Commissioner, Gwent Police repeated the arguments set out in its internal review and provided some evidence to support its position. The public authority also briefly addressed each of the five questions from the Commissioner's guidance, as set out in paragraph 13, above. The Commissioner has considered these arguments further below.

### **The complainant's position**

18. The complainant is unhappy with Gwent Police's assertion that his request of 10 December 2010 was vexatious. Following his receipt of the findings of the internal review, the complainant stated in an email to Gwent Police that "your agencies [presumably a reference to Gwent

Police] have persistently procrastinated for more than a year an issue which could have been dealt with immediately. It is reasonable to expect that if there had been no such infringements [breaches of Road Traffic Regulations] you would have quickly answered my request, and by not doing so you have raised in the mind of any reasonable person the suspicion that these travellers were infringing RTA regulations, and that through your five requests to the Central Police Register your officers were well aware of these infringements, but took no action to remove the vehicles or confiscate them. This inaction led directly to the death of a local resident in my view who suffered a heart attack as a result of the intrusion on his land scattering his cattle, and the stress caused by the threats of violence made to him.”

19. The complainant went on to say that “as for your comments concerning the Coroner, since he does not at this time not [sic] have the evidence I have requested, his verdict has been flawed by being based on only partial evidence as it stands. The costs your force and IPCC have decided to incur in making such great efforts to withhold this simple information from me cannot be held up as a reason for vexatious behaviour.”

### **The Commissioner’s position**

20. In order to arrive at a decision on whether Gwent Police appropriately applied section 14(1) of the Act, the Commissioner has considered the five questions set out in his guidance.

Could the request fairly be seen as obsessive?

21. The Commissioner accepts that at times there is a fine line between obsession and persistence and although each case is determined on its own facts, the Commissioner considers that an obsessive request can be most easily identified where a complainant continues with the request(s) despite being in possession of other independent evidence on the same issue. Further, the more independent evidence available, the more likely the request can be characterised as obsessive although a request may still be obsessive even without the presence of independent evidence.
22. The Commissioner notes the public authority’s view that the complainant has submitted previous requests related to the matter of the alleged failure of Gwent Police to take action against the aforementioned Travellers for alleged Road Traffic offences. The Commissioner is aware that the complainant submitted a request to Gwent Police on 15 October 2009 in which he asked for the registration numbers “of the incomers’ vehicles collected by your Force as part of your stated investigations”. Gwent Police refused to comply with the request but did say that



between 20 July and 4 August 2009 PNC [Police National Computer] checks were carried out on five vehicles.

23. The complainant submitted a further request on 14 December 2009 in which he asked Gwent Police to "confirm or deny whether these vehicles were in compliance or not with Road Traffic regulations at the time of the incident, namely between July 20 and August 4 2009." In response, Gwent Police stated that there were no prosecutions for Road Traffic in connection with the vehicles encamped in his ward. Following a significant delay, Gwent Police issued the findings of its internal review into the handling of the request on 1 December 2010. It provided some information relevant to the request: it confirmed that it had reviewed two incident logs in relation to the incident referred to and provided the following information:

"Log dated 13 July 2009, several vehicles checked, One [sic] had no insurance, and another no MOT.

Log dated 19 July 2009, 4 vehicles were checked and found to have current insurance and MOT certificates. However some were not displaying vehicle excise licences."

24. Gwent Police went on to say that it was not possible for officers to deal with the licensing issues at the time and that if it had done so it would have referred the matter to the Driver and Vehicle Licensing Authority.
25. The request of 14 December 2009 was the subject of a decision notice served by the Commissioner on 7 March 2011<sup>2</sup>. The decision notice found that Gwent Police had not handled the request in accordance with the provisions of the Act. The main issues identified by the Commissioner were the delays encountered by the complainant in obtaining the results of Gwent Police's internal review and a lack of clarity over the relevant information it held. The Commissioner ordered Gwent Police to reconsider the request under the provisions of the Act.
26. Gwent Police also supplied the Commissioner with a copy of a request of 23 December 2010 that the complainant submitted directly to Pontypool Police station. The request was essentially a duplicate of the request of 10 December 2010 and the view of Gwent Police is that it was submitted in order to cause disruption.
27. The Commissioner is also aware that, following Gwent Police's reconsideration of the request of 14 December 2009 and a letter it issued to the complainant to clarify its position, the complainant

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<sup>2</sup> [http://www.ico.gov.uk/~media/documents/decisionnotices/2011/fs\\_50308435.ashx](http://www.ico.gov.uk/~media/documents/decisionnotices/2011/fs_50308435.ashx)



continued to correspond with the public authority. He has also continued to do so since the Commissioner commenced his investigation into the current case. For example, on 8 April 2011, the complainant wrote to Gwent Police's Information Officer to express dissatisfaction with his explanation of the information it held and the reasons for delays and the provision of inconsistent information.

28. The Commissioner is of the view that taken in isolation, the requests and associated correspondence, do not demonstrate that the request of 10 December 2010 was obsessive. This is because, on the face of it, the inadequate handling of the request of 14 December 2009 led the complainant to question the motives of Gwent Police and it could be argued that this led to his further request of 10 December 2010.
29. However, the Commissioner is aware that there is a history of contact between the complainant and Gwent Police and he has therefore considered the public authority's view that, through his information requests and correspondence, the complainant is seeking to re-open matters – ie his allegations that the failure of Gwent Police to take action to address alleged Road Traffic offences resulted in the death of a local resident - that have already been dealt with by the Independent Police Complaints Commission (IPCC), Gwent Police's own Professional Standards Department (PSD) and the Coroner.
30. The Commissioner has seen evidence that the complainant made a complaint about the conduct of a member of Gwent Police on 18 March 2010 and, because of the serious nature of the complaint, Gwent Police's PSD referred the matter to the IPCC who subsequently referred it back to Gwent Police to handle in accordance with the Police Reform Act 2002. The PSD of Gwent Police subsequently applied to the IPCC for permission to dispense with the complaint because there was no evidence of any misconduct to indicate that the action of Gwent Police contributed to or caused the death of the local resident.
31. In a letter of 31 March 2010, the IPCC informed the complainant that it was granting dispensation to Gwent Police not to investigate his complaint. This was because the IPCC considered that he was not a complainant as defined by the Police Reform Act 2002; he was not subject of the alleged misconduct, he did not witness it and he was not adversely affected by it.
32. The Commissioner has not seen any evidence to support the view of Gwent Police that the Coroner found that the death of the individual in question was a result of natural causes but he has no reason to doubt that this was the case. Correspondence he has seen between Gwent Police and the complainant (see paragraph 18, above) indicates that the

complainant was aware of the findings of the Coroner but disputes that they were based on all available evidence.

33. The Commissioner does not consider the question of obsession to be clear cut in this case. By failing to handle his request of 14 December 2009 in a timely and consistent manner, Gwent Police has clearly contributed to the complainant's feelings of mistrust towards it. On the other hand, the Commissioner considers that there is evidence that the request of 10 December 2010 is indicative of an obsession with holding Gwent Police to account for the death of the local resident. There is a clear link between the request of 10 December 2010, the previous requests of 14 December 2009 and 15 October 2009 and the complainant's allegations that Gwent Police acted negligently or that it is guilty of manslaughter. The complainant has openly stated that the purpose of his requests is to obtain information that will allow him to pursue this matter further.
34. The complainant has made various accusations that Gwent Police was guilty of negligence and manslaughter and linked these allegations to his request for information. For example, such accusations were made in the complainant's email to Gwent Police of 11 January 2011 and 23 January 2011 and various letters to the Commissioner. For example:
  - A letter to the Commissioner of 2 July 2010 regarding a previous complaint case alleged that Gwent Police was guilty of gross negligence and manslaughter and that the complainant intended to bring a private prosecution.
  - An email to the Commissioner of 9 December 2010 alleged that the failure of Gwent Police to move the Travellers when they had the opportunity to do so resulted in the death of the local resident and his intention to take the matter to Crown Court.
35. The Commissioner considers that there is evidence that the complainant is seeking to re-raise issues that have already been dealt with by appropriate bodies; the PSD of Gwent Police, the IPCC and, notably, the Coroner. On balance, he feels that the request on 10 December 2010 is obsessive because the complainant is trying to continue to debate issues that have already been considered by those bodies. He notes the complainant's stated aim of obtaining sufficient evidence to commence private court proceedings against Gwent Police and considers there to be more appropriate methods of obtaining information on which to rely in court, such as the Court rules on disclosure.

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

36. The Commissioner's guidance on vexatious requests states that when considering this issue, "the focus should be on the likely effect of the request (seen in context), not on the requester's intention. It is an objective test – a reasonable person must be likely to regard the request as harassing or distressing. Relevant factors under this heading could include the volume and frequency of correspondence, the use of hostile, abusive or offensive language, an unreasonable fixation on an individual member of staff, or mingling requests with accusations and complaints."
37. There is no evidence that the complainant's intention is to cause offence or distress but the Commissioner considers that the language and allegations used by the complainant towards staff at the public authority would be likely to have the effect of harassing and causing distress to individuals. From the outset the complainant's requests have been intermingled with serious allegations against Gwent Police and its employees. For example, in his original request of 15 October 2009 the complainant made an allegation of negligence against Gwent Police. In his request of 14 December 2009 he made allegations of negligence and manslaughter. In his request of 10 December 2010 the complainant made allegations that Road Traffic offences had been committed and asked Gwent Police to "confirm or deny the veracity of my allegation". The Commissioner's view is that the effect of having to receive and respond to such serious allegations would have the effect of causing distress to staff at Gwent Police.
38. In addition, the Commissioner is aware that the complainant regularly included those allegations in correspondence associated with his requests for information and considers that some of the phrases he has used and his choice of language are like to cause further upset to staff having to deal with them. For example, in an email to Gwent Police of 8 April 2011, the complainant questioned whether a period of sickness absence (which was mentioned by Gwent Police as a reason why responses to requests for information had been previously been delayed) was genuine and hinted that he might submit a request for evidence of the sickness absence. The Commissioner considers that, regardless of his intention, the complainant's use of the Act as a tool with which to threaten an individual or to question their integrity would have the effect of harassment.
39. In an email of 11 January 2011, in which the complainant asked Gwent Police to conduct an internal review of its handling of his request of 10 December 2010, the complainant stated that he was unhappy with the reasons for withholding information and stated that "one does not ask the fox to judge the actions of chickens, so I have formulated my appeal direct to the ICO, a copy of which is attached setting out the reasons for

my appeal". Again, regardless of the intention of the complainant, the Commissioner considers that any reasonable person would take that statement as an insult and that it would therefore be likely to cause distress to the person dealing with that correspondence.

Would complying with the request impose a significant burden in terms of expense and distraction?

40. Gwent Police stated that it has spent a great deal of time dealing with the complainant's requests, reviews and complaints and that this has had created a significant burden on its resources. However the Commissioner has not been provided with sufficient evidence to support the public authority's position in this area.

Is the request designed to cause disruption or annoyance?

41. The public authority has not made any arguments in relation to this area and the Commissioner has not seen any evidence to support the view that the request was designed to cause disruption or annoyance.

Does the request lack any serious purpose or value?

42. Gwent Police has suggested that the request has no serious purpose or value because it seeks only to continue to try to discredit it when the issue at the route of the request has been considered by the appropriate bodies. The complainant clearly considers that the request has a serious purpose. The Commissioner considers that in this case there is no evidence to suggest the request lacks any serious purpose or value and he has already considered whether the request can be considered obsessive.

Summary of the Commissioner's position

43. The Commissioner considers that the public authority, through inadequate handling of the complainant's previous request (delays and inadequate explanation of the information it held) contributed to the complainant's obvious mistrust of its responses. However, the Commissioner's role in this case is not to point out the failings of the public authority – which it has admitted to - in relation to previous requests for information but to determine whether it correctly considered treated the request of 10 December 2010 as vexatious.

44. On balance, the Commissioner considers that there is sufficient evidence for him to determine that the request of 10 December 2010, when considered in the context and history of the complainant's contact with the public authority, is obsessive and has the effect of harassing and causing distress to the staff of Gwent Police. The Commissioner considers that the allegations made by the complainant, and the related

incident that are at the root of his requests, have been considered by the appropriate bodies and the complainant is seeking to use the Act to continue to submit his allegations. The requests and the allegations that the complainant continues to submit are likely to have the effect of harassing the public authority and causing distress to its staff. The Commissioner's decision is that the public authority has correctly applied section 14(1) of the Act.

## **The Decision**

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45. The Commissioner's decision is that the public authority dealt with the request for information in accordance with the Act.
46. The Commissioner requires no steps to be taken.

## Right of Appeal

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47. 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: 0300 1234504

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)

48. 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.
49. 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 27<sup>th</sup> day of June 2011**

**Signed .....**

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

## Legal Annex

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### **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”