

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 10 September 2012

Public Authority: The Chief Constable
Address: North Yorkshire Police
Police HQ
Newby Wiske Hall
Northallerton
DL7 9HA

Decision (including any steps)

1. The complainant has requested information about revenue received by the public authority from what she termed 'all sources'. The public authority found the request to be vexatious. The Information Commissioner has considered the request and has not found it to be 'vexatious'. He therefore requires the public authority to take the following steps to ensure compliance with the legislation:
 - comply with section 1(1) of the FOIA or issue a valid refusal notice complying with section 17(1).
2. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Information Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Background

3. The request can be followed on the '*what do they know*' ("WDTK") website¹.

¹ http://www.whatdotheyknow.com/request/revenue_from_all_sources_18

4. An earlier, identical request, made to this public authority by a different party, can also be followed on the WDTK website².

Request and response

5. On 6 March 2012 the complainant made the following information request:

"Under the Freedom of Information Act, for the years 2006 to 2011 would you please fully disclose:

(a) How much revenue has been received by the police force for services rendered by way of private investigations, bailiff/eviction type services, or by any other method of paid services, work performed, or contractual [sic] agreements made to business, private individuals, or organisations of any kind?

(b) Please outline the type of work or service rendered, in each case and disclose the revenue received for each type of service.

(c) How much revenue has been generated by the force for endorsements of any kind?

(d) Please indicate the types of products/services that the force endorsed for remuneration/financial benefit/fee and the revenue received.

(e) Please indicate total revenues from all sources, and break them down into categories.

(f) How many manpower hours per year, in total, have been devoted to privately paid services/contractual [sic] work?"

6. This was acknowledged on the same day.
7. On 8 April 2012, prior to receiving a response, the complainant asked for an internal review. This was acknowledged on the same day.
8. On 15 May 2012 the public authority responded. It advised her:

"... I have found that your request is vexatious on the grounds that you have acted in consort with another applicant and have requested the same information. A series of requests have been

² http://www.whatdotheyknow.com/request/private_paid_work

submitted which have imposed a significant burden. In establishing that this is the case, a police force can look at evidence provided by internal departments.

It is clear that in this case the subject matter is similar or relate to the same issues that form part of a long line of requests and correspondence with this force.

Whilst the Freedom of Information Act is generally applicant blind, public authorities may take into account the identity and motive(s) of the applicant when considering S14. As such, in these cases, there is no requirement for a public authority to adhere to the 'applicant blind' principle."

9. On 15 May 2012 the complainant responded:

"Please explain what you are talking about and supply me with the copies of the requests that you say are duplicate.

Your allegations are unfounded".

10. On the same day the complainant made a complaint to the Information Commissioner.
11. Also on the same day, the public authority provided the complainant with details of the duplicate request (as shown in 'Background' above).
12. Also on the same day the complainant again sought an internal review.
13. To date an internal review has not been provided. However, as the request has been deemed 'vexatious', a position which the public authority has advised the Information Commissioner it continues to rely on, he has used his discretion and has decided to consider the case in the absence of an internal review.

Scope of the case

14. On 15 May 2012 the complainant contacted the Information Commissioner to complain about the way her request for information had been handled. She stated:

"I wish to make a complaint against North Yorkshire Police for failing to provide me with information under the Freedom of Information Act provisions.

Furthermore, I wish to complain that they have accused me, without evidence, of vexatiousness, which is untrue. I ... have asked ALL police forces in Britain for exactly the same information. This can hardly be targeting North Yorkshire with vexatiousness, and I have been libelled. I am considering taking the matter further”.

15. She went on to clarify:

“I have only ever made two freedom of information requests to North Yorkshire”.

16. The Information Commissioner will therefore consider whether or not the request is vexatious.

Reasons for decision

Section 14 – vexatious or repeated requests

17. Section 14(1) of the FOIA states the following:

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

18. Guidance on the Commissioner’s approach to vexatious requests can be found on the Commissioner’s website and for ease of reference, at the following links:

- http://www.ico.gov.uk/for_organisations/freedom_of_information/information_request/reasons_to_refuse.aspx
- <http://www.ico.gov.uk/foikb/FOIPolicySectionsRegs.htm>

19. Under section 14(1), a public authority does not have to comply with a request for information if the request is vexatious; there is no public interest test. The term “vexatious” is not defined in the Act. The Information Commissioner notes, however, that it is the request rather than the requestor which must be vexatious.

20. In determining whether or not a request is vexatious, the Information Commissioner has regard for the context and history of the request and assesses how far the request fell into the relevant criteria. Not all of the criteria may be relevant to a request; however, where the request falls under only one or two of the categories, or where the arguments sit within a number of categories but are relatively weak,

the section 14 may be less likely to be engaged. The key criteria when determining if a request is vexatious, are that the request:

- a) would impose a significant burden on the public authority in terms of expense or distraction;
- b) clearly does not have any serious purpose or value;
- c) is designed to cause disruption or annoyance;
- d) has the effect of harassing the public authority;
- e) can fairly be characterised as obsessive or manifestly unreasonable.

21. In its refusal the public authority gave the following reasons for saying that the request was vexatious:

"Under this section of the Act, an authority is not obliged to deal with requests that are manifestly unreasonable or obsessive. The Information Commissioner has stated that a vexatious request is, or causes, a significant burden, has no serious purpose, causes disruption and annoyance and leads to harassment of the public authority.

Accordingly, I have found that your request is vexatious on the grounds that you have acted in consort with another applicant and have requested the same information. A series of requests have been submitted which have imposed a significant burden. In establishing that this is the case, a police force can look at evidence provided by internal departments. It is clear that in this case the subject matter is similar or relate to the same issues that form part of a long line of requests and correspondence with this force".

22. The public authority has therefore made reference to the request being vexatious on the grounds that the complainant has both acted in consort and submitted a series of requests which are burdensome.
23. As shown under 'Background' above, the request is clearly identical to the earlier request made by a different party. However, when considering further requests made by the complainant on WDTK, the Information Commissioner has established that she actually made the same request herself at an earlier date than the duplicate request cited by the public authority. In fact she made seven such requests, to different police forces, on 2 March 2012. The Information Commissioner would therefore conclude that it is actually the other party who has copied the wording of the complainant's request made to another public authority and sent it to this public authority in advance of her; this would explain why the complainant did not realise that the same request had already been received by the public

authority. The complainant actually goes on to make the same information request many times via WDTK, each time to a different public authority, reaching a total of forty occasions. The other party only made this request on the one occasion. Accordingly, the Information Commissioner does not accept that it is the complainant's request, rather than the one made by the other party, which is duplicated one.

24. The Information Commissioner also notes that, of all the identical requests made by this complainant, this is the only one which has been classed as 'vexatious'. This is based on the public authority's view that the complainant is acting in consort with the other party. The Information Commissioner has ascertained that the complainant has made a total of 145 requests on WDTK and 123 annotations. According to the public authority's submission to the Information Commissioner she has made 4 annotations on the other party's requests (a total he has also reconciled), two of which are on the same information request; none of these relate to this public authority. The other party has made a total of 54 requests on WDTK and 59 annotations. 17 of these annotations relate to requests made by the complainant and 9 of these relate to this information request; however, these are all in connection with the requests she has made to other public authorities. To clarify, neither party has made any annotation on requests made to this public authority.
25. The complainant has made 77 annotations on requests other than her own, of these only a very small proportion (four) relate to the other party. Based on this the Information Commissioner is not satisfied that there is sufficient evidence to support the public authority's assertion that the two parties are colluding.
26. The public authority has also based its view on the request being vexatious as it causes a significant burden. To assist with this position it has provided the Information Commissioner with evidence to show that the complainant has *acted in consort* with the other party. This amounts to lists of annotations that the complainant and the other party have made on each other's WDTK requests. As shown above the Information Commissioner does not accept that there is an collusion.
27. Furthermore, the complainant has advised that she has only ever made two requests to this public authority. The Information Commissioner does not consider this to be onerous. He notes that she has made this same request to 39 other public authorities, none of which have concluded that the request is onerous, although several of them have had annotations made by the other party on the request they have received.

28. Whilst it is obvious that the complainant and the other party are aware of each other's requests, the Information Commissioner has seen no evidence to persuade him that they are acting in concert or that they are jointly trying to put any undue pressure on this public authority.
29. Based on some of the responses other public authorities have made to this request, the Information Commissioner is of the view that it would be likely to exceed the appropriate limit to deal with this request and that it may be viewed as having the potential of being onerous in that respect. However, in terms of it being onerous in respect of section 14(1) he does not agree with the public authority.
30. Accordingly, the Information Commissioner requires the public authority to either disclose the requested information, if it is held, or to issue a valid refusal notice.

Other matters

31. Although they do not form part of this decision notice the Information Commissioner wishes to highlight the following matters.
32. The Information Commissioner notes the complainant's comments and her belief that she has been "*accused*" of "*vexatiousness*". He would like to clarify that the term 'vexatious' is part of the legislation itself and applies to a request rather than a requester. The citing of this exemption by a public authority necessitates the using of this terminology.

Right of appeal

33. 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,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504
Fax: 0116 249 4253
Email: informationtribunal@hmcts.gsi.gov.uk
Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

34. 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.
35. Any notice of appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

Jon Manners
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