

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 20 February 2014

Public Authority: Chief Constable of Wiltshire Police
Address: Wiltshire Police Headquarters
London Road
Devizes
Wiltshire
SN10 2DN

Decision (including any steps ordered)

1. The complainant has requested information in connection with an investigation entitled "Operation Antler". Requests made by the complainant regarding this operation have previously been deemed vexatious under section 14(1) of the FOIA. The public authority again relied on section 14(1) when considering this request and the Commissioner finds that it was entitled to do so. No steps are required.

Background

2. The Commissioner has previously issued a decision notice finding requests on this subject matter were 'vexatious'. A copy can be found on his website¹.

¹[http://www.ico.org.uk/~media/documents/decisionnotices/2011/fs_50354115.ashx](http://www.ico.org.uk/~/media/documents/decisionnotices/2011/fs_50354115.ashx)

Request and response

3. On 3 May 2013, the complainant wrote to the public authority and requested information in the following terms:

"Now it has been established that 39 deaths of Porton Down veterans had taken place, this request relates to the Wiltshire Police investigation code named "Operation Antler" that lasted approx 5 years.

(Q1) At any time during the 5 year Antler investigation were any deaths of Porton Down veterans ever discovered.? (YES or NO)

(Q2) If the answer to the above question is YES were the deaths reported to any other party - if so to what agency were the deaths reported to, and when were the deaths first discovered? If the answer is NO why were the deaths I have alluded to not discovered despite a 5 year investigation taking place?

(Q3) Was any of the following named doctors ever interviewed by police officers investigating Porton Down? Dr R.J. Shephard: (Porton Down) Dr Keith Cooper : (MRC) (YES or NO)

(Q4) If the answer to the above question is yes what was the purpose of the interview? If the answer is no why was no interview ever conducted?

(Q5) What was the purpose of the meeting known to have taken place between the City of London Police and Wiltshire Police shortly after I had reported a 3.72 million pounds fraud to London Police involving the law firm Leigh Day & Co? (It was Senior Partner Martyn Day who was awarded 3.72 million pounds for supposedly acting on behalf of 645 Porton Down veterans and 39 families of deceased veterans. THE 3.72 million pounds "AWARDED TO MARTYN DAY" is now known to be FRAUDULENT)

(Q6) Did any member of Wiltshire Police at any time speak with, or correspond with, any person or member of staff involved with the law firm Leigh Day & Co including Senior Partner Martyn Day?

(Q7) Has the IPCC ever contacted the Wiltshire Police on any of the above mentioned matters, as well as any matter relating to Operation Antler?"

4. The public authority responded on 5 June 2013. It stated that:

"This information is exempt by virtue of s14(1) of the Freedom of Information Act 2000 (the Act).

On the 11th December 2009 Wiltshire police wrote to you, informing you of the decision to make your requests for information, relating to "Operation Antler", vexatious in accordance with section 14(1) of the Act. A full explanation was provided to support our reliance on this exemption. As a result of your obvious disappointment and personal attack on [name removed], a further letter was sent to you from the Deputy Chief Constable on the 22nd March 2010 to further clarify our position. For ease of reference and the avoidance of doubt, I have copied an extract from that letter below:

'You should take note that there is no obligation for the Wiltshire Police to further respond to your requests or any subsequent requests about Operation Antler now this subject and your volume of requests have been declared as vexatious. Further requests will not be considered, acknowledged or replied to unless the Information Commissioner's Office decides that the application of section 14 is flawed and is therefore overturned'.

Despite our detailed clarification that any future requests would not be acknowledge or replied to, you continued to request information relating to "Operation Antler"; which resulted in your subsequent complaint to the Information Commissioners Office (ICO) in 2010, citing our non compliance.

On the 31st May 2011 the ICO informed all relevant parties via Decision Notice FS50354115 that Wiltshire police was correct in its application of 17(6) of the Act. Furthermore it provided all parties with the right to appeal within 28 (calendar) days.

One could argue that Wiltshire police has no obligation placed on it to acknowledge or respond to your latest request for information relating to "Operation Antler". However, as a gesture of goodwill and to once again reiterate; we will not acknowledge or respond to any further requests relating to "Operation Antler"."

Scope of the case

5. The complainant contacted the Commissioner on 16 October 2013 to complain about the way his request for information had been handled.
6. The Commissioner will consider the citing of section 14(1) and reliance on a previous refusal notice issued under section 17(6). He will also

comment on the complainant's assertion that the public authority is 'blocking' his correspondence.

Reasons for decision

Section 14(1) – vexatious requests

7. Section 14(1) of the FOIA provides that:

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

8. As stated above, the Commissioner has previously issued a decision notice relating to requests on this same subject matter. The previous decision notice found that the public authority had correctly relied on section 14(1).
9. The Commissioner considers that the request featured here represents a continuation of the complainant's previous correspondence with, and requests to, the public authority about similar matters.
10. The ICO released new guidance on section 14 in May 2013². This guidance includes further indicators of vexatiousness, namely:
 - abusive or aggressive language;
 - unreasonable persistence;
 - unfounded accusations;
 - intransigence;
 - frequent overlapping requests;
 - deliberate intention to cause annoyance.
11. In determining whether section 14 was applied correctly in this case, the Commissioner considered the evidence previously provided by the public authority. For the request that is the subject of this notice, the Commissioner is of the view that the subject matter remains the same, and that the analysis relied on in the previous decision notice continues to hold in line with his new guidance. For brevity, the Commissioner will not reproduce the content of that decision notice here but he has

²http://www.ico.org.uk/for_organisations/guidance_index/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/dealing-with-vexatious-requests.ashx

concluded, on that same basis, that the public authority again correctly relied on section 14(1) when considering this request.

12. In doing so the Commissioner has taken into account the context and history of the correspondence and contact between the complainant and public authority, including further contact which the complainant has made following the public authority's response. Therefore, applying the new guidance, the Commissioner has found again that the public authority correctly applied section 14(1) to this request.

Other matters

13. The complainant has also raised the issue of the public authority apparently 'blocking' his emails. He provided evidence to the Commissioner of two occasions where an automated response has been sent to him on 28 October 2013 and 11 November 2013; these both post-date this particular request and complaint so he has not considered them as part of his formal investigation above.

14. The message which was returned to the complainant on these occasions, was done so under the subject header "Delivery failure", and reads as follows:

"Due to the abusive nature of previous messages sent by you to members of the Wiltshire Police, all e-mail sent from you to ...@wiltshire.pnn.police.uk addresses will be blocked and returned without it being read. If you wish to contact the Wiltshire Police please do so in writing to Police Headquarters, London Road, Devizes, Wiltshire SN12 2DN."

15. When asked about this the public authority explained that this is a standard message which is sent out to those who have been given restricted contact with the force, as is the case with this complainant. The public authority assured the Commissioner that the complainant was nonetheless able to contact its generic email address for making freedom of information requests – as can be proved by the response to the request considered above – although this is obviously not apparent from the wording of the email sent.
16. The Commissioner understands that organisations may need to control the access to their staff on occasion, for example when the person contacting them has a history of being abusive, and that this standard 'rejection' email is meant to assist them in this process. Such procedures ensure that the writer is still given access to the public authority but in a managed way.

17. However, following discussion with the Commissioner the public authority has agreed that it would be helpful if it were to change the wording of this standard rejection response to include details of how to make an FOIA request directly to its generic email address. It intends to do so in the near future.
18. It may also be useful to note that once a request has been found to be 'vexatious' then a public authority may properly rely on this to forego issuing a refusal notice in response to similar requests. If a requester believes that a request made under the FOIA has not been responded to then they can raise a complaint with the Commissioner.

Right of appeal

19. 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: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

20. 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.
21. 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
Group Manager
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