Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 13 October 2015

Public Authority: Chief Constable of Gloucestershire Constabulary
Address: Police Headquarters
No 1 Waterwells
Quedgeley
GL2 2AN

Decision (including any steps ordered)

1. The complainant requested information regarding a blocked online forum. Gloucestershire Constabulary refused to provide the requested information citing section 14 of FOIA (vexatious request).

2. The Commissioner's decision is that Gloucestershire Constabulary was entitled to apply section 14. He requires no steps to be taken.

Request and response

3. On 22 January 2015, using the 'whatdotheyknow' website, the complainant wrote to Gloucestershire Constabulary and requested information in the following terms:

> *"Please provide me with the 'January update' document, released on a forum blocked to me, by Barton, Tredworth & White City police".*

4. Gloucestershire Constabulary responded on 19 February 2015, refusing to provide the requested information on the basis that section 14(1) FOIA (vexatious request) applies.

5. Following an internal review Gloucestershire Constabulary wrote to the complainant on 25 March 2015, maintaining that position.

Scope of the case

6. The complainant contacted the Commissioner on 2 June 2015 to complain about the way his request for information had been handled.

7. The analysis below considers whether Gloucestershire Constabulary was correct to refuse the request under section 14(1) of FOIA on the grounds that the request was vexatious.

Reasons for decision

Section 14 vexatious request

8. Section 14(1) FOIA provides that a public authority is not obliged to comply with a request if it is vexatious. Under section 14, there is no public interest test.

9. The FOIA does not define the term 'vexatious', but it was discussed before the Upper Tribunal in the case of *Information Commissioner vs Devon County Council & Dransfield* [2012] UKUT 440 (AAC), (28 January 2013).

10. As the Upper Tribunal in that case observed;

> *"There is…no magic formula – all the circumstances need to be considered in reaching what is ultimately a value judgement as to whether the request in issue is vexatious in the sense of being a disproportionate, manifestly unjustified, inappropriate or improper use of FOIA".*

11. The Commissioner's guidance[1] on the application of section 14(1) FOIA refers to that Upper Tribunal decision, which establishes the concepts of 'proportionality' and 'justification' as central to any consideration of whether a request is vexatious.

12. That guidance suggests that the key question the public authority must ask itself is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress. Where this is not clear, the Commissioner considers that public authorities should weigh

[1] https://ico.org.uk/media/for-organisations/documents/1198/dealing-with-vexatious-requests.pdf

the impact on the authority and balance this against the purpose and value of the request. Where relevant, public authorities will need to take into account wider factors such as the background and history of the request.

13. The Commissioner has identified a number of 'indicators' which may be useful in identifying vexatious requests. These are set out in his published guidance and include, for example,:

- abusive or aggressive language;
- burden on the authority;
- personal grudges;
- unfounded accusations; and
- deliberate intention to cause annoyance.

14. The fact that a request contains one or more of these indicators will not necessarily mean that it must be vexatious. All the circumstances of a case will need to be considered in reaching a judgement as to whether a request is vexatious.

The complainant's view

15. The complainant disagreed with the Constabulary's application of section 14 FOIA to his request. When requesting an internal review, he said:

> *"There is nothing 'vexatious' about this request. If anything is vexatious, it is the decision of Barton police to only make the update available to residents who have registered and signed in to the online forum. My intention is to post it publicly for those who have not, the vast majority of residents in Barton & Tredworth. If the police were actually doing their job, they would post it themselves on the new community notice board outside the Co-op, on High St. There's still plenty of room.*
>
> *It may be that I can, after a vague promise by [name redacted] along those lines, get this information at Barton police station, but it should then also be possible for them to send me the information in an email, which would save me the stress of dealing personally with the police, which I tell you, no lie, is significant. Barton police, though, only seem to take *my* capacity to be distressed or upset into account when it suits them to, when they almost always exaggerate or just plain lie about it, as when they tried to justify an arrest".*

16. On 27 April 2015 he wrote:

> *"Now, the forum has been suspended, due no doubt to the risible lack of take-up by residents, so that the information isn't even available there.*
>
> *So I ask again for this information, instead of inadmissible and irrelevant excuses".*

17. In correspondence with the Commissioner he said:

> *"I fully expect to find that the document in question, and any similar, have been deleted now, and Barton police will continue to find ways to remain unaccountable and immune to criticism".*

The Constabulary's view

18. Gloucestershire Constabulary confirmed that the requested information in this case comprises a document that had been posted on an online forum. It explained that the complainant had been banned from the forum:

> *"..due to the nature of his postings which were in breach of the clear Guidelines that users of the Forum acknowledged when they signed up to the Forum".*

19. In correspondence with the complainant, Gloucestershire Constabulary told him it considered section 14 applies in this case:

> *"… because it is not appropriate that the FOI Act is used to circumvent the matter of being blocked from a Police forum".*

20. In its submissions to the Commissioner, Gloucestershire Constabulary confirmed its view that it would be an abuse of the legislation if the applicant was allowed to use FOIA to obtain information which has been blocked to him due to his unacceptable behaviour and refusal to engage with the Constabulary in a polite and productive way.

21. In that respect, it told the Commissioner:

> *"… this FOI request is part of a wider pattern of behaviour that the applicant has demonstrated in his dealings with the Force which are causing a significant distraction from the Constabulary's main policing objectives".*

22. In its submissions to the Commissioner, Gloucestershire Constabulary explained why it considers that the background and wider context to this matter are relevant in this case. For example, it said:

"The applicant has continued to raise the issue of the Forum and other issues which have been the subject of complaint or FOI requests via email to numerous areas of the Force including individual officers, FOI and PSD".

Burden and disproportionate effort

23. Gloucestershire Constabulary acknowledges that the requested information in this case is one document. However, it considers that, in light of the background and context of the request, if that information was provided to the complainant:

"he would continue to request under FOI all and every piece of information from not only the Forum but indeed other Force communication systems which have been validly blocked to him simply as a means to override the exclusion and whether or not he is really interested in obtaining the information".

24. Gloucestershire Constabulary told the Commissioner that this would result in a disproportionate and unjustified level of disruption, irritation and distress for the Constabulary and constitute an oppressive burden on the Constabulary in terms of the strain on time and resources.

25. In support of this view, Gloucestershire Constabulary provided the Commissioner with details of the volume of correspondence it has received from the complainant. Regarding the extent of his contact, Gloucestershire Constabulary told the Commissioner:

"In the period between 19/1/2015 and 14/07/2015 the Constabulary's email servers dealt with 180 items with [email address redacted] as the sender".

26. Gloucestershire Constabulary also described the complainant as taking a 'scattergun approach', explaining:

"…he will send the same email to multiple Force addresses including individual accounts, the Force Control Room, Professional Standards Department (PSD), FOI, the Chief Constable and the OPCC. He copies various organisations and individuals into the emails to the Force and copies his emails to others to multiple Force email addresses too. For the latter emails it is impossible for officers to know whether he is intending to report a crime and requiring action or is simply sending these for information. This results in many officers and staff having to try to engage with [the complainant] to ascertain his requirements. He then refuses to engage and the efforts are wasted".

27. It also referred to emails the complainant has sent to the Constabulary's FOI mailbox that did not constitute FOI requests and told the Commissioner:

> *"The Constabulary cannot continue with this unjustifiable use of public resource…."*

Abusive or aggressive language

28. Gloucestershire Constabulary stated that the complainant has persistently adopted an abusive and derogatory tone in his communications and in postings that he has made on public sites. The Constabulary told the Commissioner that due to the nature of his postings, the complainant has been blocked from the Constabulary's Twitter and Facebook accounts. The Commissioner understands that he has also been blocked from the email addresses of several individuals in the Force and the Office of the Police and Crime Commissioner (OPCC).

29. The Commissioner has had the opportunity to view examples of the correspondence that the complainant has sent to the Constabulary including via Twitter.

Personal grudges and unfounded accusations

30. In support of its application of section 14 in this case, Gloucestershire Constabulary referred to the complainant's continuous criticism of, and allegations against, the Constabulary. For example it told the Commissioner that he had specifically targeted certain officers and made personal and abusive comments about them both in email correspondence copied to numerous individuals and other authorities as well as in public postings.

Unreasonable persistence and intransigence

31. Gloucestershire Constabulary told the Commissioner that its attempts to engage with the complainant in order to address any concerns he may have and resolve his issues have proved futile. It stated:

> *"it is apparent that no matter what efforts are made by the Constabulary, [the complainant] will never be satisfied with the response".*

32. The Constabulary considers that the complainant is abusing his right of access to information by using FOIA to further harass and challenge the Constabulary in respect of its decision to ban him from the Forum and its social media accounts.

Is the request vexatious?

33. As in many cases which give rise to the question of whether a request is vexatious, the evidence in the present case shows a history of encounters between the parties which has led to the request in question here.

34. The Commissioner, in his guidance on when a request can be refused as vexatious under section 14(1) of FOIA advises that public authorities must keep in mind that meeting their underlying commitment to transparency and openness may involve absorbing a certain level of disruption and annoyance.

35. In reaching a decision in this case, the Commissioner has taken into account the background and history of the complainant's contact with Gloucestershire Constabulary. The Commissioner has also considered the arguments put forward by both the complainant and Gloucestershire Constabulary, the context in which the request was made and the evidence supplied.

36. From the evidence he has seen, the Commissioner considers that, by requesting information which he is otherwise banned from accessing, the complainant is misusing the FOIA. He also considers that it is reasonable to assume that if Gloucestershire Constabulary were to comply with the request, it is unlikely to satisfy the complainant and there is potential for it to lead to further correspondence and requests for information.

37. In light of this and on the basis of the Constabulary's arguments in support of its position that complying with the request will cause a disproportionate and unjustified level of disruption, the Commissioner has concluded that it was entitled to apply section 14(1) of the FOIA to the request.

Right of appeal

38. 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: 0870 739 5836
    Email: GRC@hmcts.gsi.gov.uk
    Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

39. 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.

40. 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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