

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 17 November 2021

Public Authority: Chief Constable Staffordshire Police
Address: Police Headquarters
Weston Rd
Stafford
ST18 0YY

Decision (including any steps ordered)

1. The complainant requested information relating to the contract of employment for a named individual.
2. Staffordshire Police refused to comply with the request, citing section 14(1) (vexatious request) of FOIA.
3. The Commissioner's decision is that Staffordshire Police was entitled to rely on section 14(1) to refuse the request.
4. The Commissioner requires no steps to be taken as a result of this decision.

Request and response

5. On 16 November 2020 the complainant wrote to Staffordshire Police and requested information in the following terms:

"It appears [name redacted] in the formulation of his report conducted 'Open Source Searches' of the internet about me on a Police Computer. Justice [name redacted] in the JR [Judicial Review] hearing remarked that he was 'Disturbed' by this process of attempting to 'Bolster' the case against me. I require the following information which must form part of any investigations.

- 1. *Full disclosure of any searches, 'Open' or within 'Police Systems' undertaken by him or on his behalf:*
 - 2. *Any documents notes or record of the purported 'Verbal Statement' made to [name redacted] or a member of the OHU [Occupational Health Unit] by the SMP Doctor [name redacted] on the [date]; that she could not make a decision. (Relevant to the content of the 'Report')*
 - 3. *A copy of the contract of employment of [name redacted] and the performance and standards required for that contract.*
 - 4. *A copy of the contract of employment for the Mental Health Coordinator and the performance standards required for that contract. Her Medical Qualifications and medical registrations together with the department, organisation, or private company from which she was seconded.*
 - 5. *Any electronic or photographic recordings from the moment I entered the Occupational Health Unit and throughout the review process on [date]".*
6. Staffordshire Police wrote to him on 8 December 2020, acknowledging receipt of the requests for contracts of employment (parts (3) and (4) of the request).
 7. Staffordshire Police provided its substantive response on 23 December 2020. It quoted a subset of the request above, omitting parts (1), (2) and (5). It confirmed it holds some of the requested information, namely information within the scope of part (3) - a copy of the contract of employment of the named individual and the performance and standards required for that contract. However, it refused to provide that information, citing section 40(2) (personal information) as its basis for doing so.
 8. It denied holding some of the requested information, namely information within the scope of part (4) relating to the Mental Health Coordinator.
 9. On 4 January 2021, the complainant requested an internal review of its handling of part (3) of the request.
 10. Staffordshire Police sent him the outcome of its internal review on 11 January 2021. It upheld its original position.

Scope of the case

11. The complainant contacted the Commissioner on 11 January 2021 to complain about the way his request for information had been handled. He said that while he considered Staffordshire Police had failed to address the first two and last points within the request, what he was asking the Commissioner to determine was whether the information which has been withheld, should be released.
12. The Commissioner understood, therefore, that the complainant disputed Staffordshire Police's application of section 40(2) to the information within the scope of part (3) of the request. She wrote to the complainant accordingly.
13. In his response, while the complainant referred to matters relating to parts (1) and (4) of the request, the Commissioner considers that, from the arguments he put forward, his complaint was with respect to Staffordshire Police's handling of part (3) of the request.
14. During the course of the Commissioner's investigation, Staffordshire Police wrote to both the complainant and the Commissioner advising that, having revisited its handling of the request in response to the complaint made to the ICO, it was now citing section 14 (vexatious request) of FOIA.
15. The complainant confirmed that he was dissatisfied with that revised position. Appealing Staffordshire Police's decision, he asked the Commissioner to make a determination regarding disclosure of the information.
16. However, as Staffordshire Police is now citing section 14, the single issue for the Commissioner to determine is whether Staffordshire Police is entitled to find the request vexatious.

Reasons for decision

Section 14 vexatious request

17. Section 14(1) of FOIA states that section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious. The section is not subject to a public interest test.
18. The term 'vexatious' is not defined in FOIA. The Upper Tribunal considered the issue of vexatious requests in the case of the *Information Commissioner v Devon CC & Dransfield* (Dransfield). The Tribunal commented that vexatious could be defined as the "*manifestly unjustified, inappropriate or improper use of a formal procedure*". The Tribunal's definition clearly establishes that the concepts of

proportionality and justification are relevant to any consideration of whether a request is vexatious.

19. In the Dransfield case, the Upper Tribunal also found it instructive to assess the question of whether a request is truly vexatious by considering four broad issues: (1) the burden imposed by the request (on the public authority and its staff), (2) the motive of the requester, (3) the value or serious purpose of the request and (4) harassment or distress of and to staff.
20. The Upper Tribunal did, however, also caution that these considerations were not meant to be exhaustive. Rather, it stressed the:

"...importance of adopting a holistic and broad approach to the determination of whether a request is vexatious or not, emphasising the attributes of manifest unreasonableness, irresponsibility and, especially where there is a previous course of dealings, the lack of proportionality that typically characterise vexatious requests" (paragraph 45).

21. The Commissioner has published guidance on dealing with vexatious requests¹. That guidance includes a number of indicators that may apply in the case of a vexatious request. 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 the case will need to be considered in reaching a judgement as to whether a request is vexatious.
22. As discussed in the Commissioner's guidance, the relevant consideration is whether the request itself is vexatious, rather than the individual submitting it. A public authority can also consider the context of the request and the history of its relationship with the requester when this is relevant. The Commissioner's guidance states:

"The context and history in which a request is made will often be a major factor in determining whether the request is vexatious, and the public authority will need to consider the wider circumstances surrounding the request before making a decision as to whether section 14(1) applies".

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

23. Sometimes it will be obvious when a request is vexatious, but sometimes it may not. In that respect, the Commissioner's guidance states:

"In cases where the issue is not clear-cut, the key question to ask is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress".

The complainant's view

24. The complainant put forward comprehensive arguments in support of his complaint. In his submissions to the Commissioner, which included a lengthy report, the complainant responded to what he considered to be false allegations by Staffordshire Police.
25. The complainant addressed the Commissioner with regard to the various aspects of Staffordshire Police's refusal.
26. With respect to Staffordshire Police's view on the impact of his requests on its staff, he told the Commissioner that he would never intentionally want to cause someone such distress.
27. With respect to the purpose and value of the request, he told the Commissioner:

"I believe the request is entirely appropriate and legitimate It is very much in the 'Public Interest' to know what this person was contracted to do and to obtain the professional standards to which he must adhere".

28. He told the Commissioner:

"SP are obstructing the request not because it is 'Vexatious' but in order to protect [name redacted] from being held to account under the terms of his contract of employment".

Staffordshire Police's view

29. By way of background to the request in this case, and its response, Staffordshire Police told the Commissioner:

"This applicant has taken exception to SP conducting a review of the Injury on Duty (IOD) pensions. Over the years this has resulted in the applicant making both FOI and SAR/RoA [Subject access request/Right of access] requests and then picking over the variety of data, not just IOD pension related, that has been supplied to cause further complaint, challenge or demands for more data to various department in the organisation. Whatever responses are sent the applicant has never been satisfied".

30. Staffordshire Police told the Commissioner:

"The applicant has used derogatory comments about employees taking exception to the fact that some are not warranted officers..."

31. In support of its view, Staffordshire Police provided the Commissioner with a list of some of the correspondence from the complainant dating back to 2015, detailing:

"...the type of language that has been used about employees, the organisation in general and its processes"

32. For each of the items on the list, Staffordshire Police highlighted the tone or language used by the complainant. Within the examples it provided the Commissioner notes that the terms and phrases used include:

"criminality, conspiracy, misfeasance, misuse of computers, female none warranted, negligence, victimisation, malicious, vindictive, gross misconduct, no integrity" on 02/09/2019;

"conspiracy to pervert the course of justice, corrupt practice, misfeasance in public office, gross neglect of duty, gross misconduct, falsehood, prevarication, untenable, obstruction of justice, discrimination, victimisation" on 12/12/2019;

"negligent, wilful and discreditable conduct" on 21/02/2020;

"gross incompetence, falsehoods, gross negligence, gross misconduct, misfeasance" on 10/06/2020.

33. Citing correspondence received since the date of the request under consideration in this case, Staffordshire Police provided examples of this practice continuing:

"poor professional standards, failings, abysmal, incapable, gross incompetence, pervert the course of justice, misfeasance in public office, corrupt practice, subversion, incompetent" on 29/03/21;

"gross maladministration, bullying, intimidating, falsehood, gross misrepresentation, dishonesty" on 04/08/21.

34. Summarising the overall impact of that correspondence, Staffordshire Police told the Commissioner:

"It can't be stressed enough how this applicant's constant bombardment of employees in the departments concerned causes upset and distress. To have constantly had the ability, integrity and

honesty of employees questioned over the last 5 + years by one applicant is debilitating”.

35. In its submission to the Commissioner, Staffordshire Police described the complainant as someone who is persistent in revisiting matters that have been resolved:

“... not only by SP but also the ICO, IOPC or through other legal process”.

36. It argued that there is no substance to the request other than to cause disruption and nuisance; nor did it consider that the complainant would be satisfied if the requested contract was to be disclosed. Rather, it considered that he would continue to make further requests for information.

37. In that respect, it told the Commissioner that an explanation of the content of a Staffordshire Police contract has been provided to the applicant on more than one occasion. It therefore considered that the request under consideration in this case:

“...shows an unreasonable persistence to obtain information about an employee that the applicant is not entitled to”.

38. With respect to the impact on the department, Staffordshire Police told the Commissioner:

“Responding to all of this has been burdensome for SP and the cost to the public purse on this one applicant is disproportionate. This has diverted SP resources from dealing with requests from other members of the public”.

The Commissioner’s view

39. The Commissioner acknowledges that there are many different reasons why a request may be vexatious, as reflected in her guidance. There are no prescriptive ‘rules’, although there are generally typical characteristics and circumstances that assist in making a judgement about whether a request is vexatious. A request does not necessarily have to be about the same issue as previous correspondence to be classed as vexatious, but equally, the request may be connected to others by a broad or narrow theme that relates them.

40. As the Upper Tribunal in Dransfield 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”.

41. In her guidance on dealing with vexatious requests, the Commissioner recognises that FOIA was designed to give individuals a greater right of access to official information with the intention of making public bodies more transparent and accountable.
42. While most people exercise this right responsibly, she acknowledges that a few may misuse or abuse FOIA by submitting requests which are intended to be annoying or disruptive or which have a disproportionate impact on a public authority.
43. The Commissioner recognises that dealing with unreasonable requests can place a strain on resources and get in the way of delivering mainstream services or answering legitimate requests. Furthermore, these requests can also damage the reputation of the legislation itself.
44. The Commissioner does, however, recognise 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.
45. In her guidance, the Commissioner also accepts that:

“A request which would not normally be regarded as vexatious in isolation may assume that quality once considered in context”.

Was the request vexatious?

46. The Commissioner considered both the complainant’s position and Staffordshire Police’s arguments regarding the information requests in this case.
47. The Commissioner recognises that the requested information is clearly of interest to the complainant and he believes that he has a serious purpose behind his request.
48. As in many cases which give rise to the question of whether a request is vexatious, the evidence in the present case showed a previous engagement between the parties. Clearly in this case, Staffordshire Police considered that the particular context and history strengthened its argument that, at the time of the requests, the request was vexatious.

Context and history

49. In her guidance, the Commissioner recognises that the context and history in which a request is made will often be a major factor in

determining whether the request is vexatious. She considers that, in practice, this means taking into account factors such as:

- other requests made by the requester to that public authority (whether complied with or refused);
- the number and subject matter of those requests;
- any other previous dealings between the authority and the requester and assessing whether these weaken or support the argument that the request is vexatious.

50. In her guidance, the Commissioner acknowledges that:

"A request which would not normally be regarded as vexatious in isolation may assume that quality once considered in context".

51. The Commissioner is mindful that the evidence provided to her by both parties confirms that, prior to the request in this case, there had been ongoing contact between the parties for a considerable period of time.

52. From the evidence she has seen, she gives weight to the argument that responding to the request would be likely to result in further requests and contact on the subject matter, and runs the risk of diverting Staffordshire Police from dealing with other matters.

Burden

53. The Commissioner recognises that 'Burden on the authority' can be a useful indicator of a vexatious request. This is described in her guidance as follows:

"The effort required to meet the request will be so grossly oppressive in terms of the strain on time and resources, that the authority cannot reasonably be expected to comply, no matter how legitimate the subject matter or valid the intentions of the requester".

54. The Commissioner accepts that the request in this case, although not obviously vexatious in itself, does form part of a wider interaction the complainant has had with the Staffordshire Police. She also acknowledges that Staffordshire Police provided no indication as to the amount of information within the scope of the request, and no evidence of the effort and resources required to collate and provide the requested information.

55. Rather, in support of its application of section 14, Staffordshire Police provided her with a 'non exhaustive' list of some of the letters it has received from the complainant since 2015. That list documents an

increasing level of correspondence over the years. It also shows that Staffordshire Police has continued to receive correspondence from the complainant since the date of this request.

56. The Commissioner acknowledges that Staffordshire Police told her that responding "to all of this" has been burdensome and the cost to the public purse disproportionate.
57. Although it did not provide any details as to the number of requests it typically deals with, or what proportion of its work is taken up by responding to requests from the complainant in this case, Staffordshire Police provided details of continuing correspondence from the complainant and argued that its experience of dealing with his previous requests suggests that he will not be satisfied with any response.
58. The Commissioner considers this past pattern of behaviour strengthens Staffordshire Police's argument that responding to the current request will impose a disproportionate burden on the authority.

Motive/value or serious purpose of the request

59. The request in this case concerns the contract of employment of a named individual.
60. With regard to the purpose and value of the request, the complainant explained:

"The object of obtaining the 'Contract' and its professional standards is to provide transparency, accountability, and value for money in the employment of this particular post holder therefore the disclosure of his contract of employment and associated documents defining the standards required must be open to public scrutiny ...".

61. He also told the Commissioner:

"It is very much in the 'Public Interest' to know what this person was contracted to do and to obtain the professional standards to which he must adhere".

62. In contrast, Staffordshire Police disputed that the purpose and value of the request provides sufficient grounds to justify the distress, disruption or irritation that would be incurred by complying with the request.
63. The Commissioner recognises that the requested information is clearly of interest to the complainant and he believes that he has a serious purpose behind his request. However, the Commissioner acknowledges that the requested information is very specific. She therefore considers

that the wider public interest in the request is likely to be limited. Nevertheless, the Commissioner considers that the request in this case does have a value, to the complainant at least.

Harassment/distress

64. The Commissioner accepts that the complainant told her that he did not intend to cause distress.
65. From the evidence she has seen, the Commissioner considers that the complainant's frustration in dealing with Staffordshire Police is evident from the examples provided of the tone and language used in his correspondence. Although the Commissioner has not been provided with the individual items of correspondence by Staffordshire Police, she expects a public authority to have provided her with a representative sample of the correspondence it is relying on.
66. While the Commissioner accepts that public officials can be subject to criticism, she considers from those examples of tone or language that the requester's correspondence goes beyond the level of criticism that a public authority or its employees should reasonably expect to receive.
67. Furthermore, the length of time that Staffordshire Police has been subject to this level of criticism from the complainant adds to the overall effect of harassment and distress.

Conclusion

68. It is for the public authority to demonstrate to the Commissioner why the exemption at section 14 applies.
69. In reaching a decision in this case, the Commissioner has taken into account that section 14(1) of FOIA is designed to protect public authorities by allowing them to refuse any requests which have the potential to cause a disproportionate or unjustified level of disruption, irritation or distress.
70. The Commissioner has balanced the purpose and value of the request against the detrimental effect on the public authority.
71. She has also considered, in light of the nature, and degree, of the previous dealings between the complainant and Staffordshire Police, whether, at the time, the request crossed the threshold of what was reasonable.
72. The Commissioner accepts that there has been previous engagement between the two parties relating to matters concerning his pension. She

also accepts that the parties hold different opinions as to whether matters have been addressed satisfactorily.

73. To the extent that some of the correspondence referenced by Staffordshire Police in support of its view that the request was vexatious post-date the request in this case, the Commissioner has not taken them into account. However she considers that they are still relevant to the extent that they explain the nature of the dealings between the parties.
74. The Commissioner recognises that the complainant had his reasons for pursuing information from Staffordshire Police. She also acknowledges that the complainant denies that his request is vexatious and disputes that he would intentionally cause distress.
75. The Commissioner is not aware that complying with the request, in isolation, would cause a disproportionate or unjustified level of disruption. In this case, the ongoing burden placed on the public authority and issues of harassment and distress to members of staff are the significant factors which make the request vexatious.
76. The burden is not just the time and energy required to satisfy an unceasing stream of inquiries but the knowledge that no answer, however definitive, will halt or even slow it down.
77. The purpose of section 14 of the FOIA is to protect public authorities and their employees in their everyday business.
78. On the basis of the evidence provided, and taking into account the findings of the Upper Tribunal in Dransfield that a holistic and broad approach should be taken in respect of section 14(1), the Commissioner is satisfied that the request was a manifestly unjustified and improper use of FOIA such as to be vexatious.
79. Accordingly, she is satisfied that Staffordshire Police was entitled to apply section 14(1) of FOIA.

Right of appeal

80. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

81. 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.

82. 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

Laura Tomkinson
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF