

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 14 September 2009

Public Authority: The Chief Officer of Lancashire Constabulary
Address: Lancashire Constabulary Headquarters
PO BOX 77
Hutton
Preston
PR4 5SB

Summary

The complainant made a six-part request for information to Lancashire Constabulary ('the Constabulary'). The Constabulary cited section 14 of the Act and refused to provide the requested information on the grounds that the request was vexatious.

The Commissioner has decided that the Constabulary was incorrect to rely on section 14 of the Act at the time of the request. However he has determined that the information sought by the complainant would, if held, constitute his personal data and therefore attract section 40(1) of the Act. The Commissioner finds that the Constabulary should have cited section 40(5) of the Act and should have neither confirmed nor denied holding the complainant's personal data.

Ordinarily the Commissioner would go on to make a separate assessment under section 42 of the Data Protection Act 1998. However, because the complainant made a Subject Access Request for the same information on 18 October 2005, and he has already carried out such an assessment, he will take no further action in this matter.

The Commissioner's Role

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.

The Request

2. On 22 September 2005 the complainant made the following request to Lancashire Constabulary ('the Constabulary'):
 - 1) *"Can you provide all detail of all of the regular meetings I had with [a named person]? Please include any times, dates, persons in attendance, minutes or any other relevant detail.*
 - 2) *Can you please provide all correspondence sent to [a named person] on a weekly basis, any replies from this individual or any relevant detail? I was involved with [a named person] for many months therefore I require evidence of the many, many items sent directly to [a named person].*
 - 3) *Can you please provide me with details of the correspondence, the subjects of the correspondence, any responses from the police and any other relevant detail as regards the variety of subjects that I wrote of to Fleetwood police around this time?*
 - 4) *Can you please provide all documentary evidence and any other relevant detail as regards the official complaints that I "often" made according to [a named person]?*
 - 5) *Can you also provide all material relevant to the regular correspondence entered into concerning these "complaints" at 4?*
 - 6) *Can you please provide all documentary evidence, correspondence, memos or any other items or material concerning contact between the Metropolitan Police Service and Lancashire Constabulary at this time?"*

The complainant specified that this request concerned information held by the Constabulary for the years 2003, 2004 and 2005.

3. The Constabulary responded to the complainant's request on 11 October 2005, informing him that his request had been considered to be a "Vexatious or Repeated Request", falling within section 14 of the Freedom of Information Act 2000.
4. On 16 October 2005 the complainant wrote to the Constabulary asking it to review its decision. The complainant's email set out 6 reasons why his request should not be considered vexatious.
5. On 18 October 2005 the complainant sent an email to the Constabulary asking whether it had received his request for an internal review. He stated his expectation that the review should be carried out by a different person to the one who took the original decision.
6. The Constabulary responded to the complainant's email, also on 18 October 2005, by informing him that it was not in a position to correspond with him, as his original request was in the hands of the Information Commissioner.
7. In February 2006 the complainant made a complaint to the Constabulary's Professional Standards Department. The complaint concerned matters between the Constabulary and the complainant which fall outside the scope of this Act. It

did however include the allegations that the Constabulary had ignored his request under the Freedom of Information Act and his Subject Access Request (SAR) under the Data Protection Act 1998 ('the DPA'). The complainant gave an interview statement outlining his various complaints on 7 February 2006.

8. The complainant did not complain to the Commissioner at this time, on the advice of his solicitor. He was advised to allow the Constabulary's Professional Standards Department the necessary time to deal with his complaint.
9. On 2 February 2007 the Constabulary's Professional Standards Department wrote to the complainant concerning its investigation of his complaint. The Constabulary informed the complainant that:

"There is supporting evidence that your requests for information in accordance with the relevant legislation were not dealt with within the legal timescales. There is however no supporting evidence that [a person] or anybody else deliberately withheld documentation from you".

The letter concluded with the statement:

"I have also asked, in view of the criticisms in relation to the processes within the Constabulary Information Unit, that your correspondence be reviewed to identify any further requests for information under the Data Protection Act and the Freedom of Information legislation that have not been processed".

10. The complainant wrote to the Constabulary again on 20 March 2007. He drew the Constabulary's attention to the contents of its Professional Standards Department's letter (above), requiring the Information Unit to review his correspondence. The complainant pointed out that the Constabulary had not responded to his request for an internal review. He also asked the Constabulary to note that: *"... this information in relation [a named person] and [a second named person] has not been supplied in any way via the DPA 1998 or the FOIA 2000 for almost 18 months".*

The Investigation

Scope of the case

11. On 15 August 2007 the complainant contacted the Commissioner to complain about the way his request for information had been handled.

Chronology

12. The Commissioner wrote to the complainant on 7 April 2008 seeking clarification of item 6 of his information request. The Commissioner asked whether the request concerned correspondence connected to the complainant himself or for

all the correspondence between Lancashire Constabulary and the Metropolitan Police Service between the specified years.

13. The complainant provided the following clarification of item 6:

“... I am concerned that Lancashire Constabulary and the Met Police have distributed official and formal internal information about me not only between themselves but to the IPCC and the MPA as well as attached. There has been some statutory basis for this and I am just concerned that I receive all information in relation to this from Lancashire and the Met. [...] I had no knowledge whatever as to what Lancashire Constabulary and the Met were saying about me via internal correspondence. [...] I should point out that I have also requested the same information via the DPA 1998 twice at Lancashire Constabulary (RFA0183245 and RFA0103088)¹ but none has ever been produced. Therefore Lancashire Constabulary will not be able to claim anything is personal data if they so choose. RFA0183245 is also currently being assessed by the ICO.”

14. On 10 June 2008 the Commissioner telephoned the complainant to gain further clarification regarding the nature of the information being sought. The complainant confirmed that his request was for his personal data and that it was the same request as his Subject Access Request of 18 October 2005. The complainant expressed his belief that the Constabulary should have responded to his request by applying section 40 of the Act rather than section 14.
15. The Commissioner wrote to the complainant on 11 June 2008. He stressed that the Freedom of Information Act was not the correct information access regime for the complainant to obtain his personal data. In view of the fact that the Commissioner had already made an assessment of his Subject Access Request in RFA0103088, he informed the complainant that he did not intend to investigate the Constabulary's application of section 14.
16. The complainant replied to the Commissioner on 12 June 2008, making the following points.
- Lancashire Constabulary ignored the complainant's request for internal review having refused to supply the requested information.
 - The complainant afforded the Constabulary an avenue to provide his personal data which they had refused to supply following his Subject Access Request.
 - The Commissioner had made a 'negative assessment' with regards to the Subject Access Request in RFA0103088.
 - The Constabulary's Professional Standards Department (PSD) had informed the complainant that it had *“... asked, in view of the criticisms in relation to the processes within the Constabulary Information Unit, that your correspondence be reviewed to identify any further requests for*

¹ Reference numbers given to requests for assessment made to the Information Commissioner under section 42 of the Data Protection Act 1998.

information under the Data Protection Act and Freedom of Information legislation that have not been processed”.

- Following the PSD's statement, the Constabulary has ignored the complainant's outstanding information requests and his request for internal review in this case.
 - The Constabulary continues to make the same procedural errors made in response to an earlier request.²
17. The complainant stressed that he wanted the Commissioner to issue a Decision Notice concerning the request made in this case and the Constabulary's refusal to undertake an internal review. However he also acknowledged that, *“even though the correct way forward procedurally under the FOIA 2000 was to offer [the complainant] to make the request under the DPA 1998 subject access provisions...”*
 18. The Commissioner wrote to the Constabulary on 29 July 2008. He asked the Constabulary to provide him with copies of the information it holds falling within the scope of the complainant's request, and to indicate which pieces of information were sent to the complainant in response to his Subject Access Request.
 19. The Constabulary responded to the Commissioner's enquiries on 12 September 2009, pointing out that this was the complainant's second request, made at a time when his first request was still under investigation by the Commissioner. The Constabulary found the complainant's large amounts of correspondence confusing, covering a number of linked and un-linked issues. It perceived the second request to be connected with the first request and therefore it was deemed vexatious. The Constabulary drew the Commissioner's attention to the information sought in the second request. This refers to a previous investigation undertaken by the Metropolitan Police Service which, as a result of information being provided in response to the first request, brought about this request.
 20. Notwithstanding its application of section 14 of the Act, the Constabulary accepts that the request could have been refused under the provisions of section 40 (Personal data).
 21. Noting that the Constabulary had failed to send him copies of the information he had requested in his letter of 29 July, the Commissioner wrote to the Constabulary again on 6 October 2008, asking for that information once more.
 22. The Constabulary provided the Commissioner with its response to his latest letter on 25 November 2008.

² The complainant made a complaint to the Commissioner about the Constabulary's response to a request he made on 3 January 2005. The Commissioner issued a Decision Notice in that case (FS50072183) on 18 May 2006 which identified procedural errors concerning sections 1, 16 and 17 of the Act.

Analysis

Substantive Procedural Matters

Section 14 – Vexatious and repeated requests

23. The Commissioner has provided the following criteria to assist public authorities in their identification of vexatious requests:
- The request can fairly be characterised as obsessive.
 - The request has the cumulative effect of harassing the public authority or causing distress to staff.
 - Complying with the request would impose a significant burden on the public authority in terms of expense and distraction.
 - The request is designed to cause disruption or annoyance.
 - The request lacks serious purpose or value.
24. The Constabulary did not provide the Commissioner with sufficient rationale for its application of section 14. It provided a statement concerning its perceptions that the request was in some way linked to the complainant's earlier request and made reference to the volume of correspondence it had received from the complainant.
25. The Commissioner has considered the reasons offered by the Constabulary in justification of its application of section 14. He is aware of the significant amount of correspondence between the complainant and the Constabulary and notes that much of this correspondence relates to a number of interrelated issues which the Constabulary were having difficulty in dealing with. Nevertheless the Commissioner has concluded that, on the basis of the very limited arguments provided by the Constabulary, the grounds fall short of what would be required to substantiate the claim that the request was vexatious, at the time that the request was made.
26. The Commissioner has therefore considered whether the requested information attracts section 40 of the Act.

Exemption

Section 40 – Personal Data

27. Section 2 of the Data Protection Act 1998 defines personal data as:
- “...data which relate to a living individual who can be identified –
(a) from those data, or
(b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller.”*
28. The Commissioner has considered the terms of the complainant's request. He has concluded that the information being sought relates to the complainant

himself and can fairly be characterised as his personal data in accordance with section 2 of the DPA 1998. The Commissioner has taken into account his guidance about what is personal data. This can be viewed on his website³.

29. The Commissioner's view is reinforced by the following facts.

1. The complainant made a request for the same information under the provisions of the DPA 1998 on 18 October 2005. The Subject Access Request made on this date is almost identically worded as the request under this Act on 22 September 2005.
2. The complainant received information from the Constabulary in response to his Subject Access Request.
3. The meetings, correspondence and complaints, referred to by the complainant in his request, concern meetings at which the complainant was, or was alleged to have been in attendance; correspondence of which he was either the author or its focus; and complaints which he made or was alleged to have made.
4. Referring to the letters he sent to [a named person], the complainant stated that; *"there can be no doubt that these items constitute personal data because I was supposed to have been the author and some that I admittedly authored have actually been supplied"*.
5. In his email of 12 June 2008, the complainant confirmed to the Commissioner his belief that; *"the correct way forward procedurally under the FOIA 2000 was to offer [the complainant] to make the request under the DPA 1998 subject access provisions"*.

30. Section 40(1) states that :

"Any information to which a request for information relates is exempt information if it constitutes personal data of which the applicant is the data subject".

Subsection (5) states that:

"The duty to confirm or deny:

(a) does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection (1)".

31. The Commissioner has determined that, in view of the above, the Constabulary was in fact not obliged to confirm whether or not it held the information sought by the complainant, by virtue of section 40(5).

³http://www.ico.gov.uk/upload/documents/library/data_protection/detailed_specialist_guides/personal_data_flowchart_v1_with_preface001.pdf

32. The Commissioner agrees with the complainant's own assessment of what should have been the Constabulary's response to his request; that is, it should have treated the request under section 7 of the Data Protection Act 1998.
33. The Commissioner acknowledges that the Constabulary did in fact respond to the Subject Access Request made by the complainant.

The Decision

34. The Commissioner's decision is that the public authority did not deal with the request for information in accordance with the Act because it incorrectly applied section 14 to the complainant's request. In the Commissioner's view the Constabulary should have applied section 40(5).

Steps Required

35. In view of the Constabulary having responded to the complainant's Subject Access Request, the Commissioner requires no steps to be taken.

Other matters

36. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern.
37. The Commissioner is concerned that the Constabulary failed to conduct an internal review in response to the complainant's email of 16 October 2006. Part VI of the section 45 code of practice states that an authority should have a procedure in place for dealing with complaints in relation to its handling of requests for information, and that this procedure should encourage a prompt determination of the complaint.
38. Paragraph 38 of the code states:

"Any written reply from the applicant (including one transmitted by electronic means) expressing dissatisfaction with an authority's response to a request for information should be treated as a complaint [...] These communications should be handled in accordance with the authority's complaints procedure, even if, in the case of a request for information under the general rights of access, the applicant does not expressly state his or her desire for the authority to review its decision or its handling of the application."

39. Paragraph 41 of the code states:

“In all cases, complaints should be acknowledged promptly and the complainant should be informed of the authority’s target date for determining the complaint. [...] The complainant should always be informed of the outcome of his or her complaint.”

40. The Constabulary failed to respond to the complainant’s email of 16 October 2006, which explicitly requested a review of the original decision. In response to the complainant’s email of 18 October 2006, which requested an acknowledgment of his complaint, the Constabulary instead confirmed that it would not correspond further with the complainant.

41. The Commissioner would advise the Constabulary that any such email asking for a review or expressing any dissatisfaction with the handling of a request should always trigger a full internal review of the initial decision in line with the code.

42. The Commissioner is aware that the public authority has reviewed its internal review procedures since the time of this request, and also recognises that the failure to recognise and conduct a review in this case may have been partly due to some confusion with ongoing correspondence with the complainant about a number of other requests and complaints. However, in future the Commissioner expects the Constabulary to ensure that all complaints and requests for internal review are identified and dealt with promptly in line with the provisions of the code of practice.

Right of Appeal

43. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal
Arnhem House Support Centre
PO Box 6987
Leicester
LE1 6ZX

Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@tribunals.gsi.gov.uk.
Website: www.informationtribunal.gov.uk

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.

Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is served.

Dated the 14th day of September 2009

Signed

**David Smith
Deputy Commissioner**

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

Legal Annex

General right of access

Section 1(1) provides that –

“Any person making a request for information to a public authority is entitled –

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him.”

Section 1(2) provides that -

“Subsection (1) has the effect subject to the following provisions of this section and to the provisions of sections 2, 9, 12 and 14.”

Vexatious and 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”

Refusal of Request

Section 17(1) provides that -

“A public authority which ... is to any extent relying:

- on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request, or
- on a claim that information is exempt information

must, within the time for complying with section 1(1), give the applicant a notice which –

(a) states that fact,

(b) specifies the exemption in question, and

(c) states (if that would not otherwise be apparent) why the exemption applies.”

Personal data

Section 40(1) provides that –

“Any information to which a request for information relates is exempt information if it constitutes personal data of which the applicant is the data subject.”

Section 40(5) provides that –

“The duty to confirm or deny-

- (a) does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection (1), and
- (b) does not arise in relation to other information if or to the extent that either-
 - (i) the giving to a member of the public of the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) contravene any of the data protection principles or section 10 of the Data Protection Act 1998 or would do so if the exemptions in section 33A(1) of that Act were disregarded, or
 - (ii) by virtue of any provision of Part IV of the Data Protection Act 1998 the information is exempt from section 7(1)(a) of that Act (data subject's right to be informed whether personal data being processed).”