

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 16 December 2010

Public Authority: Norfolk Constabulary
Address: Jubilee House
Falconers Chase
Wymondham
Norfolk
NR18 0WW

Summary

The complainant asked Norfolk Constabulary (the “public authority”) to provide information relating to complaints about vehicles in a specific location. He had previously made a similar request for an identified vehicle but made this separate request without reference to the vehicle registration mark. Having previously refused to confirm or deny whether it held the information falling within the scope of the request, citing the exemption provided by section 40(5)(b)(i) of the Freedom of Information Act 2000 (the “Act”), the public authority claimed that this was a repeat request and withheld the information under section 14(2) of the Act. The Commissioner finds that, despite being worded differently, the request was essentially for the same information and that the public authority was therefore correct to cite section 14(2). The complaint is not upheld.

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.

Background

2. The complainant has made an earlier request, partly detailed within the Notice below. This resulted in a separate complaint made which the Commissioner has investigated under reference number FS50315766. In this case, the Commissioner upheld the public authority's position that it did not need to confirm or deny whether it held any information as to do so would breach the data protection rights of the vehicle owner.
3. The Commissioner has published guidance on the subject of vexatious or repeated requests which can be accessed via this link:

http://www.ico.gov.uk/upload/documents/library/freedom_of_information/detailed_specialist_guides/awareness_guidance_22_vexatious_and_repeated_requests_final.pdf

The request

4. On 27 March 2010 the complainant made the following information request:

"Subject: reports of dumped digger in [location removed] road, GY [Great Yarmouth] over the past 5 years

I require the reported dates of all complaints regarding the above dumped digger, [vehicle registration mark removed] in the last 5 years as reported to you by [name removed] of the car clear scheme, or by any other bodies or persons (please specify), inc the present one. If you cannot give this information by this request then i wish it to be forwarded as being made under the freedom of information act".

5. On 29 March 2010 the public authority acknowledged receipt of the request.
6. On 27 April 2010 the public authority provided its response. It advised the complainant as follows:

"It is important to understand that the Freedom of Information Act gives any member of the public the right to request that recorded information held by the Norfolk Constabulary is to be published and made available to the general public.

Under this Act, any disclosure of recorded information is a disclosure to the world and cannot be a disclosure to any single individual. This means that once information has been released under the Freedom of Information Act it becomes a matter of public record and we have a policy of publishing information released under this Act on our Force web-site.

As information that is released under the Freedom of Information Act is available to the general public, there is an exemption from publication which allows the Norfolk Constabulary to waive our duty to confirm if information is held, and to waive our duty to disclose any such information if it is necessary to protect the privacy of any individual.

Section 40 of the Act covers information that may be considered to be 'personal information'.

Members of the public have a right to privacy and no information can be released under the Freedom of Information Act if to do so would then place the Norfolk Constabulary in breach of the Data Protection Act.

In this case, you have provided a vehicle index number that can be linked with a named individual. If any recorded information that may be connected with that vehicle index number was held by the Norfolk Constabulary, then this information would be considered to be the personal data of the individual who is recorded as being the owner of the vehicle.

To confirm if any information is or is not held, would therefore be a disclosure of personal information as by confirming to the general public whether information is or is not held, we would be confirming whether the Norfolk Constabulary has or has not received complaints concerning an individual who can be identified through a specified vehicle index number.

In view of the advice provided in the paragraphs shown above, under the terms of the Freedom of Information Act and by virtue of the exemption provided at Section 40(5), which relates to personal information, the Norfolk Constabulary will publically neither confirm nor deny that any recorded information relevant to your request is held and this letter serves as a refusal notice in accordance with Section 17 of the Freedom of Information Act.

*This response **should not** be taken as an indication that any information you have requested to be made public either does or does not exist".*

7. The public authority also provided the complainant with details of his right to request any of his own personal information, should any exist, under the terms of the Data Protection Act (the "DPA").
8. On 29 April 2010 the complainant submitted the following email to the public authority:

"UNDER THE TERMS OF THE ABOVE ACT I WISH YOU TO ACCESS YOUR RECORDS AND INFORM ME IF AT ANY TIME IN THE LAST 5 YEARS YOU HAVE RECEIVED REPORTS OF A DUMPED DIGGER/TRACTOR AND OR A DERELICT CARAVAN ATTACHED TO ABOVE PLUS A TRAILER ALSO ATTACHED, LOCATED IN [location removed] ROAD JUST NORTH OF [name removed] ROAD. I ALSO WISH TO KNOW FROM WHOM ANY OR ALL OF THESE REPORTS WERE REFERRED TO THE POLICE AUTHORITY. I DO NOT WISH TO KNOW ANY SPECIFIC NAMES OF MEMBERS OF THE PUBLIC WHO MAY HAVE DONE SO, ONLY NAMES OF PUBLIC ORGANISATIONS, LOCAL OR COUNTY COUNCILS, POLICE AUTHORITIES ETC. I FURTHER WISH TO KNOW FROM WHICH DEPARTMENT WITHIN ANY SUCH PUBLIC BODY ANY SUCH REPORT WAS LODGED, AND IF POSSIBLE THE NAME OF THE PUBLIC BODY EMPLOYEE FROM WHOM THE REPORT ORIGINATED. PLEASE INCLUDE THE DATES ON WHICH ANY SUCH REPORTS WERE RECORDED... PS THE ABOVE LOCATION IS [location removed] ROAD, GREAT YARMOUTH, NORFOLK".

9. In its response of the 6 May 2010 the public authority advised the complainant:

"Thank you for your email of the 29th of April requesting information relating to complaints received by the Norfolk Constabulary. On the 28th of March 2010 you submitted a virtually identical request relating to complaints received by the Norfolk Constabulary, which was responded to on the 29th of April 2010.

In view of the fact that your latest request is substantially similar to you [sic] previous request, your email of the 29th of April will be dealt with as a request for an internal review of the way in which your original request was handled.

Your request will now be forwarded to a member of the Constabulary's management team for a review to be conducted. The Constabulary will aim to provide you with a response to your request in as short a timescale as possible, and by the 27th of May at the latest".

10. On the same date the complainant responded as follows;

"Thank you for your email, however please note the request of which you mention is to be considered as a new and totally different request under the FOI act. Having received your reply to my first request which was refused i was advised by my solicitor to put in a new request in a new format that would circumvent the reason for refusal of the first. this second request is therefore not to be associated with the first and not just to be treated as an appeal of refusal of the first. Pleasae [sic] acknowledge that you will now be treating this request as a totally different request as is my right under the FOI act. I await your reply".

11. The public authority responded to the second request on the same date. It advised the complainant as follows:

"Our decision to record your second request as a request for an internal review of your original request was based on the guidance issued by the Office of the Information Commissioner concerning requests for information that are identical or substantially similar to previous requests received by a public authority. The Information Commissioner is the regulatory body for the Freedom of Information Act, and the Commissioner's published guidance advises public authorities that:

'If the request is for information recently refused, you should treat the request as a request for internal review of your original decision'

At the time of this email, the quote shown above appears on page 9 of the Commissioner's Awareness Guidance Number 22 which can be found on the Commissioner's website:

<http://www.ico.gov.uk/>

On the 28th of March you requested the dates of any complaints made to the Norfolk Constabulary in the last 5 years concerning a digger, and you further requested that we specify the bodies or persons reporting any such complaints.

On the 29th of April you then requested the dates of any complaints made to the Norfolk Constabulary in the last 5 years concerning a digger, and you further requested that we specify the name of any public body and the name of any public employee who may have made any such complaint.

On the basis that your two requests are substantially similar, and as we had recently issued a Section 17 refusal notice for your first request, we followed the Commissioner's guidance and recorded your second request as an internal review of our original decision.

However, in view of your recent email and your clear indication that you do not wish your second request to be treated as an internal review of our original decision, we will abide with your wishes and we will record your second request as a new and separate request for information. No internal review of our original decision will be conducted.

We will now give consideration to your request of the 29th of April and we will issue a formal response shortly".

12. On 13 May 2010 the public authority sent the following response:

In considering how to respond to your request of the 29th of April 2010, I have taken the following factors into consideration.

Both of the requests received on the 27th of March, and the 29th of April can be confirmed as having been received from the same applicant

Although parts of the two requests have been presented differently using slightly different wording, the actual information being sought in both requests is identical i.e.

- *The dates of all complaints made to the Norfolk Constabulary over the past 5 years concerning a digger type vehicle with the index number [number removed]*
- *The name of the individuals making any such complaints*
- *The body/organisation to which the complainant belongs to, or on whose behalf the complaint acts*

On the 6th of May I wrote to you advising that the guidance issued by the Information Commissioner relating to requests for information received by a public authority that are identical, or substantially similar, to previous requests received, should be

treated as a request for an internal review of the original decision if the information has recently been refused. On the 6th of May you wrote to us and advised that you did not wish to have your request of the 29th of April dealt with as a request for an internal review of our original decision.

On the basis of the factors outlined above, and on the basis that your original request on the 29th of April 2010 was refused under Section 40(5), I consider your second request of the 29th of April 2010 to be a repeated request for the same information requested on the 27th of March.

This letter serves as a refusal notice under Section 17(5) of the Freedom of Information Act, by virtue of the applicant of the following exemption: Section 14(2).

As I advised in my previous response to your request of the 27th of March, if you believe that the Norfolk Constabulary holds personal information about you, such as details of any contact you have personally made with the Constabulary, and you wish to proceed with an application under the Data Protection Act, please complete the accompanying application form, and return it to the Data Protection Office of the Norfolk Constabulary, together with your proof of identity and the relevant £10 fee".

13. The complainant contacted the Commissioner about both of his requests and, on 23 July 2010, the Commissioner advised him that he would need to request internal reviews prior to him taking any further action.
14. On 24 July 2010 the complainant advised the Commissioner that he had done so but had received no response. He advised that he had hand-delivered a letter to Norwich Police Station.
15. The Commissioner contacted the public authority on 3 August 2010 and on 4 August 2010 it advised him that it had not received any request for an internal review. The Commissioner therefore requested that it undertake these.
16. On 12 August 2010 the complainant also emailed the public authority as follows:

"Please note that following your refusals of my applications under the FOI act i followed your directions for a review by writing to the address given and leaving the letter at Norwich police station for forwarding by internal mail. You never replied, hence my

contact to the ICO. However i now find there was no requirement to write to you for this purpose an email would suffice, so please accept this for that purpose. I request a full internal review of your refusal of all the refused applications ,taking each application as separate from the other. As the 2nd contains no reference specifically to any particular vehicle there is no reason to refuse it for display on your website under the DP act ,as you stated".

17. On 25 August 2010 the public authority provided its internal reviews. It maintained that this request was exempt by virtue of section 14(2).

The investigation

Scope of the case

18. The Commissioner commenced his investigation on 30 September 2010. He asked the complainant to outline his complaints in respect of each request and for details of the hand-delivered request for internal reviews.
19. On the same date the complainant confirmed that he did not keep a copy of the letter nor did he know on what date he took it to the police station, but that it was shortly after the public authority's email to him of 13 May 2010. He advised that it was: "*hand delivered to Norwich police station and given to a non police clerk behind the desk*" and that he believed it had been "*deliberately lost*". He also confirmed that he wished for the Commissioner to "*adjudicate*" as to whether or not the public authority was correct to refuse to supply the requested information.
20. On 19 October 2010 the Commissioner advised the complainant that he would deal with the two complaints by way of separate decisions.

Chronology

21. On 11 October 2010 the Commissioner raised initial queries with the public authority. On 13 October 2010 he received its full response.
22. Having considered the information supplied by both the complainant and the public authority the Commissioner decided to deal with the complainant's two requests under separate Decision Notices. He advised both parties accordingly on 19 October 2010.

Findings of fact

23. The Vehicle Registration Mark number (VRM) is the number on the number plate of a car.
24. The VRM number is a distinguishing number through which the registered keeper can be located if the car is involved in an accident or violates the law.
25. The VRM number also acts as the pivot to enable access to further information through the Driver and Vehicle Licensing Agency (DVLA). The DVLA provides information about registered keepers, under Regulation 27 of the Road Vehicles (Registration and Licensing) Regulations 2002. This requires it to release the information from the vehicle register to the police, to Local Authorities which require it for purposes connected with the investigation of an offence and to anyone else who can demonstrate 'reasonable cause' to have it. VRM details are therefore accessible to a large and wide-ranging group of organisations and individuals.

Analysis

Exclusion – section 14(2)

26. Section 14(2) is an exclusion which provides that –

“Where a public authority has previously complied with a request for information which was made by any person, it is not obliged to comply with a subsequent identical or substantially similar request from that person unless a reasonable interval has elapsed between compliance with a previous request and the making of the current request”.

27. The Commissioner’s approach to section 14(2) can be found in his Awareness Guidance on vexatious and repeated requests¹. The guidance states that a request can be refused as a repeated request if:
 - it is made by the same person as in the previous request;
 - it is identical or substantially similar to the previous request; and
 - no reasonable time has elapsed since the previous request.

¹http://www.ico.gov.uk/upload/documents/library/freedom_of_information/detailed_specialist_guides/awareness_guidance_22_vexatious_and_repeated_requests_final.pdf

The requester

28. The first point concerns the identity of the requester in this and the former request. The contact between the public authority and the named individual has continued via the same private email address for both requests. The Commissioner therefore believes it is clear that the two requests were made by the same person.

Are the requests identical or substantially similar?

29. The complainant contends that the information sought by the second request is different because he removed the VRM from the latter request. Conversely, the public authority believes that: *"Although parts of the two requests have been presented differently using slightly different wording, the actual information being sought in both requests is identical"*.
30. The Commissioner accepts that the requests are worded differently. The complainant himself explains, as shown in paragraph 10 above, that this has been done as a result of his first request being refused so that he has: *"... put in a new request in a new format that would circumvent the reason for refusal of the first"*.
31. The first request (as shown fully in paragraph 4 above) can be summarised as asking for:
- dates of all complaints about an identified "dumped digger", on a particular road, in the last 5 years;
 - details of who made the complaints.
32. The second request (as shown fully in paragraph 8 above) can be summarised as asking for:
- whether the public authority had received any reports about a "dumped digger", further described as having a derelict caravan and trailer attached to it, at a particular point on a particular road, in the last 5 years;
 - details of who made the complaints, with names of members of the public removed.
33. The Commissioner notes that the complainant has attempted to reword his second request to avoid direct reference to an identified vehicle. However, having done so he then provides a more detailed description of that vehicle and a more detailed description to pinpoint where it is located. The Commissioner considers the description of the vehicle to be unusual, i.e. a "digger" type vehicle with a caravan / trailer attached

to it. He therefore believes that it is very unlikely that there would be more than one or two vehicles which would match this description unless the location were perhaps on a building site, at a farm or some sort of commercial site. The complainant has then gone on to provide a more detailed location – the original request concerned a named road, the second request concerns a specific location on that named road. The location is not such that the Commissioner would expect to find more than one “digger” type vehicle with a caravan / trailer attached to it.

34. In the Commissioner’s opinion, the inclusion of a specific location coupled with the unusual description of a “digger” type vehicle with a caravan / trailer attached, means that the complainant is in effect describing one particular vehicle about which he is seeking information. Therefore, although the complainant has amended the wording of the second request and has also tried to stipulate that it is ‘separate’ to the earlier request, the Commissioner finds that it is substantially similar to the first request as, in essence, both requests clearly refer to the same vehicle.
35. With regard to the second part of the request, i.e. the provision of details about those who have made any complaints about the vehicle, the Commissioner notes that the complainant has reworded his second request to say that the public authority may ‘anonymise’ details of members of the public. However, in response to the complainant’s first request the public authority neither confirmed nor denied holding details of any complaints under the exemption at section 40(5), a position which the Commissioner has upheld. Therefore, the public authority is not in a position to confirm or deny holding any complaints whether anonymised or not. The Commissioner therefore concludes that these elements of the request are also substantially similar.

Reasonable interval

36. Even if the request is the same as or substantially similar to a previous request, a public authority cannot refuse it as ‘repeated’ if a reasonable interval has passed.
37. The Commissioner considers that what is a ‘reasonable interval’ will largely depend on the circumstances, including:
 - how likely the information is to change;
 - how often records are updated; and
 - any advice previously given to the requester (eg on when new information is likely to be available).

38. In this particular case, the Commissioner notes that the refusal of the first request on 29 April 2010 leads to the second request being made just over one hour later. He does not therefore consider that a 'reasonable interval' between the requests has occurred.

The Decision

39. The Commissioner's decision is that the public authority correctly refused the request for information under the exclusion at section 14(2).

Steps Required

40. The Commissioner requires no steps to be taken.

Other matters

41. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following.

Personal data of the complainant

42. The complainant advised the Commissioner that: "*This whole business follows a complaint to [the public authority] about getting the mentioned dumped vehicles removed and on this also they have been very obstructive...*". This implies that the complainant himself may have already raised complaints with the public authority. If this is the case, then the public authority is likely to hold some of his 'personal information', and, if the complainant requires copies of this, he must make a request under the terms of the DPA as such information is absolutely exempt under the Act. The Commissioner notes that the public authority has already apprised the complainant of this process and has supplied him with the means to make such a request.

Request for internal review

43. The Commissioner notes that there has been some disagreement over the delivery and receipt of the complainant's (alleged) first request for internal reviews. The complainant states that these were requested in a letter which was hand-delivered to a police station; unfortunately he

did not retain a copy nor does he recollect on what date the delivery was made. The complainant also states that his request was addressed as suggested in the refusal notices and that it was hand-delivered as he did not realise that email was an option. The Commissioner does not know why it was hand-delivered rather than posted.

44. The public authority denies having received any such request. It has stated to the Commissioner that it has checked with the Norwich police station but that such a letter would not be 'booked in'. It accepts that it might have gone astray in the internal mail system but advises that this is the first time that such a problem has occurred. As a consequence, it has informed the Commissioner that it would amend its correspondence to make it clear that a request for internal review could be made by email.
45. The Commissioner notes that the public authority has acknowledged receipt of all correspondence with the complainant other than the hand-delivered letter. He also notes that when he asked the public authority to undertake internal reviews these were conducted within his recommended timeframe. In the absence of any 'proof' of non-compliance with the apparent first request for internal review the Commissioner is unable to draw any further definite conclusion regarding any possible delay.

Right of Appeal

46. 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,
Arnhem House,
31, Waterloo Way,
LEICESTER,
LE1 8DJ

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 sent.

Dated the 16th day of December 2010

Signed

**Jon Manners
Group Manager**

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

Legal annex

Freedom of Information Act 2000

Section 14 - Vexatious or repeated requests

- (1) Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious.
- (2) Where a public authority has previously complied with a request for information which was made by any person, it is not obliged to comply with a subsequent identical or substantially similar request from that person unless a reasonable interval has elapsed between compliance with the previous request and the making of the current request.