

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 24 January 2011

Public Authority: The Metropolitan Police Service
Address: Public Access Office
20th Floor Empress State Building
Lillie Road
London
SW6 1TR

Summary

The complainant requested guidance relating to the integrity testing of police staff. The Metropolitan Police Service issued a refusal notice and cited section 14(1) (vexatious) in respect of the request. In this case, having considered the context and history of the request, the Commissioner considers that there are sufficient grounds to uphold the application of section 14(1).

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 21 March 2010 the complainant wrote to the Metropolitan Police Service (MPS), requesting the following information:
"I ask to be provided with the MPS guidance to the integrity testing of police staff."
3. On 19 April 2010 the MPS refused to comply with the request citing section 14(1) of the Act and told the complainant that, in its view, the request was vexatious. The MPS also told him that, should he disagree

with this decision, he should approach the ICO directly without the need to request an internal review.

The Investigation

Scope of the case

4. On 19 April 2010 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider the following points:

"...I object to the MPS dismissing my request...I am not vexatious; I have no desire to cause irritation or annoyance..."

5. The Commissioner's investigation has focussed on whether or not the MPS was correct to cite section 14(1) in relation to the request under consideration in this case.

Chronology

6. The Commissioner wrote to the MPS on 3 August 2010 asking it to provide further information in connection with its citing of section 14(1).
7. The MPS provided a comprehensive response to the Commissioner's correspondence on 31 August 2010.

Analysis

Substantive Procedural Matters

Section 14 Vexatious or repeated requests

8. Under section 14(1), a public authority does not have to comply with a request for information if the request is vexatious. There is no public interest test.
9. The term "vexatious" is not defined further in the Act. The Commissioner notes, however, that it is the request rather than the requester which must be vexatious.
10. The Commissioner issued revised guidance entitled "*Vexatious or repeated requests*" in December 2008 as a tool to assist in the consideration of when a request can be treated as vexatious. The

guidance sets out key questions for public authorities to consider when determining if a request is vexatious, which are set out below.

- i. Could the request fairly be seen as obsessive?
 - ii. Is the request harassing the authority or causing distress to staff?
 - iii. Would complying with the request impose a significant burden?
 - iv. Is the request designed to cause disruption or annoyance?
 - v. Does the request lack any serious purpose or value?
11. The guidance indicates that an affirmative response to all of the questions is not necessary for a request to be deemed vexatious. However, it states that to judge a request as vexatious a public authority should usually be able to make persuasive arguments under more than one of the above headings.
 12. Accordingly, the Commissioner has considered whether the MPS has provided sufficient arguments in support of any of the criteria above in its application of section 14(1) in this particular case.
 13. The Commissioner notes that the Information Tribunal in *Hossack v Department for Work and Pensions* (EA/2007/0024) stated, at paragraph 11, that the threshold for finding a request vexatious need not be set too high as the consequences are much less serious than the finding of vexatious conduct in other legal contexts.
 14. In *David Gowers v Information Commissioner* (EA/2007/0114, paragraph 27) the Information Tribunal noted that when considering section 14:

"The proper inquiry must be as to the likely effect of the request on a reasonable public authority. In other words, the standard to be applied is an objective one".
 15. In considering whether or not a request is vexatious, the Commissioner considers it appropriate to take into account the context and history of a request, in addition to the request itself, in relation to one or more of the five factors listed above.

Could the requests fairly be seen as obsessive?

16. In the Commissioner's view, the test to apply here is one of reasonableness. In other words, would a reasonable person describe the request as obsessive or manifestly unreasonable? In answering this

question, the Commissioner's view is that the wider context and history of a request is important as it is unlikely that a one-off request could be obsessive.

17. The Commissioner's published guidance states:

"A request may not be vexatious in isolation, but when considered in context (for example if it is the latest in a long series of overlapping requests or other correspondence) it may form part of a wider pattern of behaviour that makes it vexatious".

18. In relation to the request being considered in this case, MPS told the complainant:

"...when viewed in the context of your previous history of correspondence with the MPS relating to both situations and individuals, this request is vexatious."

19. In correspondence with the Commissioner, the complainant disputed the application of section 14(1). He argued that the request in this case:

"...stems from a statement made by an MPS officer; it is based on the word of an MPS officer, an aspect of a conversation that I am approaching the MPS about in isolation. It is a reasonable request to follow up an allegation made by an officer to me..."

20. The Commissioner understands that there is a background of requests for information and complaints in this case. The MPS has outlined the wider context and history which culminated in the request under consideration in this case. In this respect, it told the Commissioner that *"a truly vast amount of correspondence"* has been exchanged between the applicant and the MPS from 2003 onwards. It also told the Commissioner that, in its view:

"It is also clear that the complainant's pursuit of information in respect of the investigation is another aspect in the applicant's longer standing grievance".

21. The MPS provided the Commissioner with further explanation about the nature of the grievance. It argued that the complainant *"is prepared to exceed the level that would be considered as 'reasonable' in his pursuit of information"*.

22. Conversely, with regard to the request in this case along with those he has made previously to the MPS, the complainant has argued:

"My behaviour is intentionally open and frank in respect of my requests, it is the actions of the MPS that requires scrutiny. I am requesting information in response to disclosures by the MPS, by a senior MPS Officer..."

23. In correspondence with the Commissioner concerning previous requests linked to the request in this case, the complainant has also argued:

"...the MPS are withholding information for no other reason than they do not wish to supply it, whether it be my subject access data or other information I have sought under FOIA [the Freedom of Information Act] I question the integrity and agenda of the MPS"

24. In support of his argument regarding this request, the complainant referred the Commissioner to websites, containing numerous and lengthy entries published by the complainant, that he wished to bring to the Commissioner's attention.

25. In considering the question of reasonableness in the context of whether a request is vexatious, the Commissioner considers it will be easier to identify these requests when there has been frequent previous contact with the requester or the request forms part of a pattern, for instance when the same individual submits successive requests for information. In this case, although these requests may not be repeated in the sense that they are requests for the same information, taken together they may form evidence of a pattern of obsessive requests so that an authority may reasonably regard the most recent as vexatious.

26. The Commissioner accepts that there is often a fine line between obsession and persistence and each case must be considered on its own facts. As background to its citing of section 14(1) in this and previous cases, the MPS has told the Commissioner that the complainant is a frequent user of the Act and the Data Protection Act to access information, often concurrently.

"Furthermore, the applicant has accompanied these formal approaches by frequent and lengthy emails, often containing further questions on the basis of any response received."

27. In the Commissioner's view, it appears unlikely in the circumstances that resolution of the matters involved in the complainant's request

would be brought any closer by the MPS responding in this case. Taking this into account along with the context and background to the request, the Commissioner considers that the request can fairly be seen as obsessive.

Do the requests have the effect of harassing the public authority or its staff?

28. The Commissioner acknowledges that there will often be an element of overlap between various vexatious criteria. For instance, where a request is considered obsessive, it may be the case that it will have the effect of harassing a public authority. Whilst the complainant may not have intended to cause distress, the Commissioner must consider whether this was the effect. This is an objective test, based on whether a reasonable person would be likely to regard the request as harassing or distressing.
29. The MPS has described there being a "vicious circle" of engagement in the case of responses which do not correspond with the applicant's expectations: *"Put simply, any such responses then become the subject of further correspondence"*.
30. It has described this "vicious circle" as being a *"significant burden and distraction"* on its resources as well as serving to harass both the authority and individual employees.
31. The MPS told the Commissioner that it deals with approximately 300 freedom of information requests each month. It acknowledges that, in the majority of cases, it is appropriate to use the Act *"to seek information in relation to genuine concerns"*.
32. However, the MPS told the Commissioner that, in its view, *"the applicant has taken this approach beyond that which would be considered 'reasonable'"*.
33. In support of this argument, the MPS described the manner in which the complainant engages with the MPS including *"his use of [the Act] as a means to supplement ongoing grievances"*. The MPS told the Commissioner that his approach has the effect of:

"continually expanding the volume of correspondence exchanged with the applicant, of engaging more and more MPS staff in dealing with his requests and complaints, and of inevitably increasing the number of both that are received from the applicant".

34. MPS explained:

"A truly vast amount of correspondence has been exchanged between the applicant and the MPS from January 2003 onwards."

35. In this regard, it has told the Commissioner that since 2004 at the time of writing, the complainant has made:

"41 Freedom of information Act requests;

24 formal complainants to the MPS Directorate of Professional Standards; and

3 subject access requests under the Data Protection Act".

36. MPS has told the Commissioner *"there is considerable cross-over between the subject matter at the heart of each request or complaint"*. It has also argued the following which is relevant to the request in this case:

"The MPS believed there was clear indication that the applicant was continuing his focus on [named officer], specifically seeking further details in relation to any involvement of or approaches to [named officer] in respect of...previous request[s]."

37. The Commissioner understands that there is a background of requests for information and complaints in connection with the named officer. The request under consideration could therefore be seen as the latest in a series of requests relating to the same issues.

38. In considering whether the complainant's request should be regarded as vexatious, the Commissioner considers it both reasonable and relevant to take into consideration the wider context in which the request was made. In this respect, he considers that the cumulative effect of the request was to harass the public authority and, deliberately or otherwise, appear to target the named officer.

Would complying with the request create a significant burden in terms of expense and distraction?

39. The Act was passed to assist people in seeking access to recorded information held by public authorities. However, it was not the intention of the Act to distract public authorities unreasonably from their other duties or for public money to be spent unproductively.

40. When considering whether this factor applies, the Commissioner would expect a public authority to be able to show that complying with the request would cause a significant burden in terms of both costs and diverting staff away from their core functions.
41. The MPS does not appear to be arguing that complying with this individual request would on its own have created a significant burden in terms of expense and distraction. However, as described above, the MPS has told the Commissioner that "*a truly vast amount of correspondence*" has been exchanged between the applicant and the MPS from 2003 onwards, often involving multiple departments and several officers concurrently. Compliance with previous requests and correspondence has also led to further requests under both the Act and the DPA. In this respect, it has drawn the Commissioner's attention to the "*significant burden*" this accretion of activity has placed on the MPS.
42. The Commissioner has therefore considered the cumulative effect of this request in the context of the previous activity. He accepts the MPS' argument that the request under consideration in this case, in the context of that level of previous activity, would create a relevant burden in terms of expense and distraction to the public authority. He has therefore concluded that this element has a significant impact in assessing whether the request was vexatious.

Is the request designed to cause disruption or annoyance?

43. The complainant has told the Commissioner "*I have no desire to cause irritation or annoyance*". Similarly, the MPS has not suggested that the request was intended to cause disruption and annoyance. As the Commissioner has not been presented with any evidence to suggest that this factor needs to be considered in this particular case, he has not considered it further.

Does the request lack any serious purpose or value?

44. In correspondence with the Commissioner, the complainant said of the purpose of the request:

"...[it is] designed to enable me to receive information and make an informed decision. The use of integrity testing was apparently applied to [named officer]...the officer raised this and I wish to understand the process...I wish to understand the guidance to better appreciate the implications on a member of public associated with same; such as me."

45. The MPS has not presented any argument to suggest that the request in this case is trivial. Accordingly, the Commissioner has not considered this point further.

Was the request vexatious?

46. Section 14 of the FOIA is intended to protect public authorities from those who might abuse the right to request information. The Commissioner recognises that having to deal with clearly unreasonable requests can strain an organisation's resources, damage the credibility of the Act and get in the way of answering other requests.
47. He also acknowledges that there is a fine balancing act between protecting a public authority from vexatious applications and the promotion of transparency in the workings of an authority.
48. In considering the circumstances of this case in relation to the five questions set out above, the Commissioner acknowledges that the questions, to a greater or lesser extent, overlap and that the weight accorded to each will depend on the circumstances. He also reiterates that, in his view, it is not necessary for every factor relevant to vexatious requests to be satisfied in order to refuse a request on the basis of section 14(1).
49. In this case the Commissioner considers that there are sufficient grounds to uphold the application of section 14(1) and that any purpose or value the request has is insufficient to outweigh these grounds. He considers that the obsessive nature of the request, when taken in the context of the previous correspondence, and its harassing impact on the public authority and its staff is sufficient for the request to be deemed as vexatious.

The Decision

50. The Commissioner's decision is that the public authority dealt with the request for information in accordance with the Act. The MPS was entitled to apply section 14(1) as the complainant's request can be correctly categorised as vexatious under the provisions of the Act.

Steps Required

51. The Commissioner requires no steps to be taken.

Right of Appeal

52. 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

53. 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.
54. 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 24th day of January 2011

Signed

**Jon Manners
Group Manager
Information Commissioner's Office
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Wilmslow
Cheshire
SK9 5AF**

Legal Annex

Vexatious or 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."