

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 28 February 2011

Public Authority: Kent Police
Address: Police Headquarters
Sutton Road
Maidstone
Kent
ME15 9BZ

Summary

The complainant contacted Kent Police requesting information concerning its fleet listing, including the make and model of vehicles and where they were based, along with the contact details of the fleet manager. Kent Police responded citing a refusal under section 14(1) of the Act (vexatious request). The Commissioner has investigated and considers that the public authority was not entitled to refuse the request under 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 9 March 2010 the complainant wrote to Kent Police, requesting the following information:

"Please could you provide me with a current and up to date fleet listing containing all vehicles owned and used by Kent Police?"

If possible could you provide the make, model age, function and the station/location where the vehicle is based? If possible could I have

this in electronic format e.g. word document or spreadsheet? I am aware you have a basic list on your website but this just lists the type of vehicle and quantity.

Could you advise me of the name and contact details of the current fleet manager of Kent Police."

3. Following correspondence from and contact with Kent Police the complainant agreed to retract his request for a period of time and resubmit it when the public authority would be in a better position to answer it.
4. On 6 May 2010 the complainant resubmitted his request to Kent Police.
5. On 14 May 2010 Kent Police responded issuing a refusal notice under section 14(1). It told the complainant that, in its view, the request constituted a vexatious request.
6. On 14 May 2010 the complainant contacted Kent Police and requested an internal review of its decision.
7. On 14 June 2010 Kent Police completed the internal review and upheld its original decision.

The Investigation

Scope of the case

8. On 15 June 2010 the complainant contacted the Commissioner to complain about the way his request for information had been handled.
9. The Commissioner's investigation has focussed on whether or not Kent Police was correct to cite section 14(1) in relation to the request under consideration in this case.

Chronology

10. The Commissioner wrote to Kent Police on 5 November 2010 asking it to provide further information in connection with its citing of section 14(1).
11. Kent Police provided a substantive response to the Commissioner's correspondence on 12 November 2010.

Analysis

Substantive Procedural Matters

Section 14 Vexatious or repeated requests

11. Under section 14(1), a public authority does not have to comply with vexatious requests. There is no public interest test.
12. Section 14(1) of the Act states:

“Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious”.
13. 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.
14. 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 in terms of expense or distraction?
 - iv. Is the request designed to cause disruption or annoyance?
 - v. Does the request lack any serious purpose or value?
15. 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.
16. Accordingly, the Commissioner has considered whether Kent Police has provided sufficient arguments in support of any of the criteria above in its application of section 14(1) in this particular case.
17. 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.

18. 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".

19. In considering whether or not a request is vexatious in relation to one or more of the five factors listed above, the Commissioner considers it appropriate to take into account the context and history of a request in addition to the request itself.

Could the requests fairly be seen as obsessive?

20. 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.

21. 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".

22. In relation to the request being considered in this case, Kent Police told the complainant:

"...we are aware that you have made several requests focused on the obtaining of information about the workings, equipment and details of the Police Service. Although we accept that the public are generally interested in such matters...the level of detail and information you request goes beyond that normally provided and we would highlight the points regarding vexatious requests that state that they must not be obsessive or lacking any serious purpose or value."

23. In his request for an internal review of Kent Police's decision, the complainant argued:

"...I have only made two requests to Kent Police and they have been about different information..."

The complainant also stated that he had taken serious offense to the labelling of his request, and therefore himself by default, as vexatious.

24. In correspondence with the Commissioner, Kent Police explained that it was the level of detail of the information requested that, in its view, satisfied the criterion for obsessive requests. It stated: *"while a request for the size and cost of the fleet would be reasonable, [the complainant's] request for specific details about each and every vehicle was unreasonable in itself"*.
25. Kent Police went on to say that the argument that it could not apply section 14(1) to the complainant's second request alone was countered by a previous Decision Notice issued in 2009 (reference FS50238979). In that Notice the Commissioner agreed that it was appropriate to consider the history of a request involving a wider context than merely the two parties directly involved, i.e. more than one public authority. Kent Police argued: *"it is appropriate to consider the pattern of requests to the police service nationally from which the obsessive nature of this request becomes clear"*.
26. With regard to Kent Police's first point that the level of detail within the request caused it to apply section 14(1), the Commissioner's view is that this is not normally a valid justification for claiming that a request is obsessive. He has considered the request in this case and does not believe that it displays the characteristics that would make it obsessive. For example, it is not repetitive or have numerous elements to it. If it were the size of the request and therefore the amount of work involved in complying with it that brought about Kent Police's refusal, the Commissioner considers that a more appropriate course of action open to the public authority may have been to engage section 12(1) concerning the cost of compliance.
27. In deciding whether Kent Police's second point that aggregating similar requests sent to a number of different police forces was appropriate, the Commissioner has revisited the previous Decision Notice in order to understand whether the same arguments apply here.
28. In the previous case, the Commissioner stated that a refusal under section 14(1) would *"more commonly be used only after a protracted history of FOI requests or other interaction with a complainant"*. He went on to say that:

"...in some cases it will be appropriate to consider history which does not directly involve both parties to a complaint. However...in those cases where there is little prior contact, this will place a greater burden on the public authority to show reasonable arguments in relation to the five tests for vexatiousness and that these arguments apply directly to the circumstances of the requests under consideration."

29. The public authority in the previous case, unlike Kent Police in this current case, was able to show that *"the whole of the substantial body of the letter [ie the request] indicated that the complainant's approach was obsessive"* and did not rely solely on the number of requests made to the public authorities.
30. The Commissioner stated that: *"...in many cases where identical or substantially similar requests are made to a number of public authorities by the same applicant they will not constitute vexatious requests'.* However, he went on to find that the request in the previous case was vexatious owing to the fact that not only did the complainant submit a high volume of requests across the sector but *"in many cases letters contained at least 15 different requests many of which comprised a number of elements"*.
31. The requests submitted by the complainant in the previous case often implied failings by each authority, concerned related topics and were deemed to be of an *"argumentative nature"* due to the tone of the comments contained within them. The same cannot be said of the request in this current case. The Commissioner considers that there are too many differences between the current case and the previous Decision Notice quoted by Kent Police for the same arguments to apply here. Therefore, although the Commissioner accepts the fact that there is a background of similar requests having been made by the present complainant to a number of police forces, this is not sufficient grounds alone to deem the request to Kent Police as obsessive.

Does the request have the effect of harassing the public authority or its staff?

32. This criterion is concerned with the impact of the request on the authority and its staff. 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. The use of mendacious or threatening language in correspondence is often indicative of such harassment.

33. Kent Police did not provide the Commissioner with any evidence in relation to this criterion; neither has the Commissioner seen evidence which would support its relevance in this case. The Commissioner has therefore decided not to consider this factor further.

Would complying with the requests impose a significant burden in terms of expense or distraction?

34. The Act is designed 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.
35. When considering if 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.
36. Kent Police told the Commissioner that its fleet comprises 1,250 vehicles. It argued that: *"the level of detail requested, namely the make, model, age, function and the station/location where each was based, would impose a significant burden on staff tasked with retrieving this information"*.
37. The Commissioner's view is that the *"significant burden"* relied upon in section 14(1) cases should be closely linked to the other related criteria; for example, the context of a request and any obsessive nature which it may exhibit will add to the burden of work and distraction. Kent Police did not tie the burden of work involved in relation to this request into the other criteria and appeared to rely solely on the fact that it deemed the request to be of a sizable nature requiring a substantial amount of officers' time.
38. As stated earlier in this Notice, refusal on the grounds described by Kent Police in terms of the request solely imposing a significant burden of work would more appropriately fit with the exclusion under section 12(1) of the Act.
39. The Commissioner also considers that it is unreasonable for Kent Police to argue that compliance with this one request in isolation would impose an unacceptable level of distraction from its staff's core functions.

Are the requests designed to cause disruption or annoyance?

40. As discussed in the Commissioner's published guidance, this factor relates to a requester's intention and can therefore be difficult to prove. The Commissioner is mindful of the fact that under the Act the purpose behind any request is not a relevant factor. However, in examining the intent of the requester the Commissioner is considering the effect of complying with the request rather than questioning why the information is required.
41. In this case there is no evidence of an intention on the part of the complainant to cause disruption or annoyance. It has also been established that there is no evidence of a substantial pattern of correspondence between the public authority and the complainant which might increase the likelihood of such disruption having occurred. Moreover, Kent Police has not offered any further evidence in support of this factor.
42. Therefore, the Commissioner has disregarded this factor.

Does the request lack any serious purpose or value?

43. Whether a request has value is not usually of significance given that the Act is not concerned with the motives of a requester, but rather with openness and transparency through the disclosure of information. However, the Commissioner acknowledges that should any authority be able to show that a request has no serious value or purpose, this may contribute to the justification for applying section 14(1).
44. In correspondence with the Commissioner, Kent Police drew his attention to *Rigby v Information Commissioner & Blackpool, Fylde and Wyre Hospitals NHS Trust* (EA/2009/0103) in which (at paragraph 29) the Tribunal held that, for a request to be vexatious, "*there must be no proper or justified cause for it*". By way of evidence in support of this criterion, Kent Police held that its arguments regarding the prior criteria were relevant, namely the history to the request and the significant burden it imposed.
45. With regard to this burden, Kent Police went on to state: "*while there is some public benefit in knowing the size and cost of Kent Police's fleet, there is little benefit to be derived from the significant burden which would be imposed to supply the full details requested*". The Commissioner considers that in this argument Kent Police appears to be weighing up the costs and benefits of disclosure of the information, rather than demonstrating that the request has no serious purpose.

46. Moreover as Kent Police has failed to satisfy the Commissioner regarding the previous criteria (such as any relevant background to the request, an obsessive nature or a significant burden in terms of unreasonable expense and distraction), it is not sufficient for the public authority to repeat its arguments in support of this criterion. On the evidence provided the Commissioner does not accept that this request lacks serious purpose or value.

Was the request vexatious?

47. Section 14 of the Act 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.
48. He also acknowledges that there is sometimes a fine balancing act between protecting a public authority from frivolous applications and the promotion of transparency in the workings of an authority.
49. In considering the circumstances of this case in relation to the five questions set out above, the Commissioner acknowledges that to a greater or lesser extent they 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).
50. In this case, the Commissioner considers that, although Kent Police made reference to numerous similar requests made to different police forces, this was of little significance in light of the lack of other vexatious criteria. Kent Police has failed to satisfy the Commissioner that the request is of an obsessive or unreasonable nature or that it imposes a significant burden in terms of not only financial cost but distraction from its staff's core functions.
51. The Commissioner has not been presented with any cogent evidence to suggest that the request has the effect of harassing the public authority or that it is designed to cause disruption or annoyance, nor is the Commissioner able to conclude that it lacks serious purpose or value. For these reasons the Commissioner does not accept that Kent Police was entitled to refuse compliance with the request under section 14(1).

Procedural Requirements

52. In failing to provide, within the statutory time limit, information which was not exempt, Kent Police breached sections 1(1)(b) and 10(1).

The Decision

53. The Commissioner's decision is that the public authority did not deal with the request for information in accordance with the Act, in that it improperly withheld the information by reference to section 14(1). It also breached the procedural requirements in sections 1(1)(b) and 10(1).

Steps Required

54. The Commissioner requires the public authority to take the following steps to ensure compliance with the Act:

- disclose the requested information within the statutory time limit, or else issue a refusal notice compliant with the requirements of section 17.

55. The public authority must take the steps required by this notice within 35 calendar days of the date of this Notice.

Failure to comply

56. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Right of Appeal

57. 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

58. 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.
59. 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 28th day of February 2011

Signed

**Graham Smith
Deputy Commissioner
Information Commissioner's Office
Wycliffe House
Water Lane
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".