

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 31 May 2011

Public Authority: The Chief Constable of Wiltshire Police
Address: Wiltshire Police Headquarters
London Road
Devizes
Wiltshire
SN1 02DN

Summary

The complainant requested information regarding a Wiltshire Police (the 'Police') investigation entitled Operation Antler. Requests made by the complainant regarding Operation Antler had previously been deemed vexatious under section 14(1) of the Act. The Police did not respond to the request because of this, relying on section 17(6) of the Act. The Commissioner finds that the Police satisfied all 3 criteria of section 17(6); it was therefore unreasonable in all the circumstances to issue a further refusal notice.

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. The complainant contacted Wiltshire Police (the 'Police') via email on 24 August 2010, to make the following request:

'This request for information was first sent to the IPCC who have since informed me that it should be addressed to the Wiltshire Police.'

I refer you to a complaint I made to Wiltshire Police regarding the gross misconduct of three officers who were involved in the Antler investigation. The officers named in my complaint are [3 named Police Officers].

(1) How many members of the Wiltshire Police Authority were given the full details contained in my complaint?'

3. The Police did not respond to the complainant's request on the basis of section 17(6) of the Act. It had previously deemed requests made by the complainant regarding Operation Antler vexatious under section 14 of the Act and had warned him that any further requests regarding Operation Antler would be considered vexatious and not responded to. (The complainant was made aware of the refusal to respond by his email having been blocked; it was during the course of the Commissioner's subsequent investigation that that Police formally confirmed that it had relied on section 17(6) to refuse to respond to this particular request.)

Scope of the case

4. On 24 August 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:

'A request for information address to [a named Wiltshire Police FOI Officer] has been returned. Will you please record this matter as a complaint? Clearly they are making a mockery of the FOI Act and need to be corrected. The sheer arrogance and disregard for the law as shown by the Wiltshire police is a clear indication that they are in fact corrupt as well as being afraid of my questioning.'

Chronology

5. The Commissioner wrote to the complainant on 6 January 2011. He outlined the scope of his investigation: whether or not the Police were correct in relying on section 17(6) of the Act to not respond to the complainant's request.
6. The Commissioner contacted the Police on 6 January 2011 to confirm the scope of his investigation and to ask questions relating to the application of section 17(6) of the Act. The Police provided its response to the Commissioner's questions on 2 February 2011.
7. The complainant was contacted by the Commissioner on 12 April 2011 to ask if there had come to light any new or materially relevant issues which had prompted him to make his request regarding Operation

Antler, which may suggest that it was reasonable in the circumstances for him to do so, despite the Police's previous warning to him.

8. The complainant responded to this on 12 April 2011. In the Commissioner's opinion the complainant provided no new or materially relevant evidence to him.
9. The Commissioner also asked the Police if it believed there was any new or materially relevant evidence which may have prompted the complainant to make his new request. It confirmed that they were unaware of any new evidence to suggest this. It is on the basis of this and the complainant's response to the Commissioner's questions on which the following analysis is based.

Analysis

Substantive Procedural Matters

10. Section 17(6) of the Act states that:

'Subsection (5) does not apply where—

(a) the public authority is relying on a claim that section 14 applies,

(b) the authority has given the applicant a notice, in relation to a previous request for information, stating that it is relying on such a claim, and

(c) it would in all the circumstances be unreasonable to expect the authority to serve a further notice under subsection (5) in relation to the current request.'

11. There are therefore three criteria to be met by a public authority in order for it to be able to rely on section 17(6) and therefore not be required to issue an applicant with a notice under section 14.

A claim that section 14 applies (a) / The complainant has previously been informed that section 14 applies to future requests on related subject matter (b)

12. On 11 December 2009 the Police issued a refusal notice to the complainant in respect of a request relating to Operation Antler. This request was refused in reliance of section 14(1) of the Act. The refusal notice informed the complainant that any future request on the same

subject matter would also be considered vexatious and would not be responded to:

'...I am firmly of the view that further consideration of requests on the same circle of subject topic and detail is a vexatious use of the process and these requests are accordingly refused as being vexatious under the provisions of section 14 (1) of the Act.'

13. The Commissioner accepts that the first two criteria in section 17(6) have been satisfied. The complainant was informed in the Police's letter of 11 December 2009 that requests made by him relating to Operation Antler (as the one currently being considered here is) were vexatious under section 14(1) and that any future requests on the same subject would also be considered as such.
14. The Police have confirmed that they have no record of the complainant requesting an internal review of this decision and the Commissioner has not considered a complaint from the complainant regarding the specific request to which the citing of section 14(1) in the above letter relates.

Would it in all the circumstances be unreasonable to expect the authority to serve a further notice under subsection (5) in relation to the current request?

15. Having previously had requests regarding Operation Antler deemed vexatious (i.e. the request of 11 December 2009 and previous requests), the Commissioner felt it necessary to contact the complainant to clarify if he had any new or previously unmentioned relevant evidence regarding Operation Antler, which had motivated him to make the request under consideration here.
16. The Commissioner considered this necessary so that he could ascertain if the circumstances surrounding Operation Antler had changed. This helped provide evidence as to whether or not it was unreasonable in all the circumstances for the Police to have to respond to the request by providing a further refusal notice.
17. The complainant responded to the Commissioner's enquiry by discussing a report supplied to him in response to an earlier request (which he believed to be falsified). In the Commissioner's view, this was information already in the possession of the complainant and in the public domain and did therefore not shed new light on the subject matter (Operation Antler). As no other new or relevant issues were raised, the Commissioner considers the matters surrounding Operation Antler to remain unchanged.
18. Given that there has been no material change in circumstance, the Commissioner considers that the arguments cited by the Police

regarding section 14 to a previous request by the complainant are still relevant and therefore applicable to this request. The Commissioner considers it unreasonable in all the circumstances for the Police to have to issue a further refusal notice in relation to the request being considered here. The Police were therefore correct in relying on section 17(6) of the Act.

The Decision

19. The Commissioner's decision is that the public authority dealt with the request for information in accordance with the Act.

Steps Required

20. The Commissioner requires no steps to be taken.

Right of Appeal

21. 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

22. 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.
23. 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 31st day of May 2011

Signed

**Alexander Ganotis
Group Manager – Complaints Resolution
Information Commissioner’s Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Legal Annex

Freedom of Information Act 2000

Vexatious 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, in relation to any request for information, 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.”

Section 17(5) provides that –

“A public authority which, in relation to any request for information, is relying on a claim that section 12 or 14 applies must, within the time for complying with section 1(1), give the applicant a notice stating that fact.”

Section 17(6) provides that –

“Subsection (5) does not apply where –

- (a) the public authority is relying on a claim that section 14 applies,
- (b) the authority has given the applicant a notice, in relation to a previous request for information, stating that it is relying on such a claim, and
- (c) it would in all the circumstances be unreasonable to expect the authority to serve a further notice under subsection (5) in relation to the current request.”

Section 17(7) provides that –

“A notice under section (1), (3) or (5) must –

(a) contain particulars of any procedure provided by the public authority for dealing with complaints about the handling of requests for information or state that the authority does not provide such a procedure, and

(b) contain particulars of the right conferred by section 50.”