

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 22 November 2012

Public Authority: Chief Constable of Devon & Cornwall Police
Address: Police Headquarters
Middlemoor
Exeter, Devon
EX2 7HQ

Decision (including any steps ordered)

1. The complainant has requested information concerning police investigations into allegations that he had made about fraud and false conveyancing of land. Devon & Cornwall Police originally refused to confirm or deny whether it held the information requested under section 40(5) of the FOIA. Devon & Cornwall Police latterly applied section 14(1) (vexatious request) of the FOIA to a further similar request by the complainant.
2. The Commissioner's decision is that Devon & Cornwall Police (the Police) have handled both requests in accordance with the FOIA and requires no further steps to be taken.

Request and response

3. On 5 April 2011, the complainant wrote to the Police and requested information in the following terms:

'Could you please forward me all Police Reports and documented and electronic and factual evidence that were carried out in respect of the investigations that the Force Legal Adviser letter dated the 18th March 2011 claim, with the factual evidence and investigation that created the harassment notice and threat of a further notice by Inspector X of St Ives?'

The complainant's request went on to name a number of councillors and legal professionals whom he stated had *'relevant factual evidence based documentation'* in respect of the alleged theft of land and false conveyancing.

4. In a letter dated 14 April 2011 the complainant made a number of additional questions and requests for *'evidence based documentation'* in respect of his *'original claims of deception and fraud'* with regard to the land in question. This request again named a number of individuals.
5. The Police responded to these linked requests on 4 May 2011. The complainant was informed that the information requested would in part relate to him but in the most part would relate to third parties. The complainant was advised that he could make a subject access request for his own personal data under the Data Protection Act 1998, but with regard to his requests under FOIA the Police, by virtue of section 40(5), could neither confirm nor deny that they hold the information requested.
6. Following an internal review the Police wrote to the complainant on 8 June 2011. The review upheld the original decision to apply section 40(5).
7. On 8 July 2011 the complainant made a further request to the Police for information relating to the reports and allegations which he had made to them about the alleged theft of land and false conveyancing. The request referred to a number of named individuals and essentially wanted to know whether or not the Police had investigated or acted upon the information provided to them. The exact wording of the request is contained in the confidential annex to this decision notice. This has been used to protect the identities of the named individuals.
8. The Police acknowledged this further request on 11 July 2011 and provided a substantive response in a letter dated 5 August 2011. The complainant was told that his request was being refused under section 14(1) of the FOIA on the grounds that the request was vexatious.
9. Following an internal review of this response the Police wrote to the complainant on 26 October 2011. The review upheld the original decision to apply section 14(1).

Scope of the case

10. The complainant contacted the Commissioner to complain about the way his requests for information of 5 April and 8 July 2011 had been handled.
11. The scope of the Commissioner's investigation has included the original application by the Police of section 40(5) to the complainant's requests of 5 April and 14 April 2011 and the application of section 14(1) to the subsequent linked request of 8 July 2011.

Reasons for decision

Section 40(5)

12. Section 40(5) of FOIA provides that a public authority is not obliged to confirm or deny whether information is held if to do so would:

- constitute a disclosure of personal data, and
- this disclosure would breach any of the data protection principles or section 10 of the Data Protection Act 1998 (the DPA).

Would confirming or denying that the requested information is held constitute a disclosure of personal data?

13. The DPA defines personal information 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, and includes any expression of opinion about the individual and any indication of the data controller or any person in respect of the individual'.

14. The Commissioner is satisfied that the information requested by the complainant in his requests of 5 and 14 April 2011 would (if it were held) be considered personal data relating to the individuals named by the complainant.

Would confirming or denying that the requested information is held breach a data protection principle?

15. The first data protection principle says that personal data must be processed fairly and lawfully.

16. The Police informed the complainant that, *'confirming the requested information is held would confirm that the specified individuals have been in contact with or are of interest to the Police. An individual may have been in contact with the Constabulary for a variety of reasons, as a victim, a witness or a suspect/offender. The wording of your request indicates reasons why these individuals may have been in contact with the police and confirming that such information is held with this context would have an impact on those individuals' reputations'*. Since the wording of the complainant's requests of 5 and 14 April 2011 relates to allegations of wrongdoing and name several individuals the

Commissioner agrees that confirming whether such information is held would adversely and unfairly impact upon the individuals concerned.

17. The Police went on to explain that in their view, *'confirmation or denial that a specific individual has been in contact with the Police would have a negative effect on the individual's trust in the Constabulary and the likelihood of them contacting the Police on any future occasion. It is a recognised fact that individuals are willing to contact the Police and provide intelligence on the understanding that such information will not be passed to a third party'*. Since the Police are concerned with criminal matters, which by their very nature attract a high degree of confidentiality and expectation of such from members of the public, the Commissioner concurs with this contention.
18. An important consideration when assessing whether it would be fair to process personal data, is the data subject's expectation of disclosure. The Commissioner does not consider it reasonable that any individual who had been involved in a police investigation (either as witness, victim or suspect) would have an expectation that information which reveals their involvement in that investigation would be disclosed under the FOIA. On the contrary, for the reasons advanced by the Police in this case, there would be a strong expectation on the part of such individuals that the Police would not disclose their personal data.
19. Were such personal data to be disclosed, then as the Police explained to the complainant in their response of 4 May 2011, this may give individuals grounds to bring civil litigation against the Police. Any potential fines from such proceedings would reduce the funds available for the Police to perform its duties with correspondingly negative results. As noted above, the Commissioner is of the view that disclosure of any third party personal data in this instance would pose a very real risk of discouraging individuals from assisting the Police in future. This would have a significantly detrimental impact both in terms of public confidence in the Police and the ability of the Police to effectively prevent or detect crime.
20. The Commissioner has also considered whether there is a legitimate public interest in the disclosure of the requested information. Whilst there is clearly a very important and legitimate public interest in the assurance that the Police have dutifully and adequately investigated allegations of criminal behaviour, the Commissioner considers that this interest was appropriately met in this case by the Police investigation and report of 2002. The complainant obviously strongly disagrees with the Police findings but his long-running correspondence to the Police on the matter constitutes a private and not public interest. The complainant has been provided with advice by both the Police and the

Commissioner as to which avenues he could take to pursue his individual objectives.

21. The Commissioner is satisfied that confirming or denying whether the requested information is held would constitute an unfair disclosure of personal data. Therefore, the exclusion from the duty to confirm or deny provided by section 40(5) is engaged.
22. The Commissioner notes that the complainant was advised by the Police that if legal proceedings were intended, then alternative legislation allows for requests for such information, if it exists, to be provided, including a court order.

Section 14(1)

23. Having found that the Police were correct to apply section 40(5) to the complainant's requests of 5 and 14 April 2011, the Commissioner has gone on to consider whether section 14(1) was correctly applied to the subsequent request of 8 July 2011.

24. Section 14(1) of FOIA states that:

'Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious'.

25. The Commissioner's guidance¹ explains that the term 'vexatious' is intended to have its ordinary meaning and there is no equivalence with legal definitions from other contexts (e.g. vexatious litigants). In deciding whether a request is vexatious, the Commissioner takes into account all the circumstances of the case and considers the following questions:

- Could the request fairly be seen as obsessive?
- Is the request harassing the public authority or causing distress to staff?
- Would complying with the request impose a significant burden?
- Is the request designed to cause annoyance and disruption?

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http://www.ico.gov.uk/fororganisations/guidanceindex/~/_media/documents/library/Freedom_of_Information/Detailedspecialistguides/vexatiousandrepeaterequests.ashx

- Does the request lack any serious purpose or value?
26. Whilst it is not necessary for all of the above criteria to be met, in general, the more criteria that apply, the stronger the case for arguing that a request is vexatious. Some arguments will encompass more than one heading.
 27. In establishing which, if any, of these factors apply, the Commissioner also considers the history and context of the request. In some cases, a request may not be vexatious in isolation but when considered in context it may form part of a wider pattern of behaviour that makes it vexatious. However, it is the request and not the requester that must be vexatious for section 14(1) to apply.
 28. In this case, the Police have argued to the Commissioner that the request can fairly be seen as obsessive, that the request lacks any serious purpose or value and that to comply with the request would impose a significant burden in terms of expense and distraction.

Could the request fairly be seen as obsessive?

29. An obsessive request is often a strong indication that the request is vexatious. Contributory factors can include the volume and frequency of correspondence and whether there is a clear intention to use the request to reopen issues that have already been addressed.
30. In the Commissioner's view, the test to apply here is one of reasonableness. That is to say, would a reasonable person describe the request as obsessive? Whilst a request may not be vexatious in isolation, 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.
31. In this case the Commissioner has investigated and considered the context and history behind the complainant's request. The Police confirm that the complainant has been in contact with them about this land dispute since 1996. In that year, the complainant was advised by the Police that his complaint was a civil matter and that they could not help him further. A 2002 Police report (seen by the Commissioner) into the allegations made by the complainant found no evidence of criminal offences having been committed. The complainant did not accept the findings of the Police report and over the following ten year period has sent voluminous correspondence on an intermittent basis to the Police about this matter. This correspondence includes two FOIA requests in 2007 for documentation concerning the disputed land and the Police investigations into the allegations made by the complainant.

32. Much of this correspondence has been sent to the Police Legal Services Department and the Police advised the Commissioner that since July 2008 the Department have spent approximately 47 hours dealing with the complainant's correspondence. The Police did not have software recording such information until 2008 but the complainant's correspondence on this matter dates back over the preceding twelve year period.
33. The Commissioner has had sight of correspondence to the complainant from the Police Legal Services Department in which their position in this matter was made clear to the complainant. In a letter dated 22 August 2010 the Police referred to the report of 2002, *'in which a full and comprehensive review of the matter was carried out'*. In a further letter dated 26 October 2010 the complainant was advised that, *'the complaints which you have made of criminal behaviour have been the subject of full and thorough reviews on two separate occasions by officers of this Force. Each of these reviews carefully examined the allegations which you were making and the evidence which you referred to in support. The outcome of each of the reviews was that there was no potential crime for the Force to investigate'*.
34. The Commissioner acknowledges that it can sometimes be difficult to differentiate between obsession and persistence and each case is determined on its own facts. In this particular case, the complainant has persisted in corresponding with the Police over a ten year period despite the Police having made their position clear following the report of 2002 and the Legal Services Department having more recently addressed this matter in 2010.
35. In discussions with the complainant, the Commissioner established that the complainant remains unhappy with the police investigation into his allegations and, in his own words, is *'looking for redress'*. The Commissioner informed the complainant that the ICO could not assist him in seeking to challenge the integrity or findings of the police investigations into his allegations and that he would need to approach the Independent Police Complaints Commission (IPCC) which deals with complaints about the police.
36. Given the number of occasions and over the lengthy period of time that the Police have clearly explained to the complainant that they cannot assist him with regard to his concerns, the Commissioner is satisfied that the request of 8 July 2011 can fairly be regarded as obsessive. Indeed, the repeated pattern of correspondence to the Police from the complainant over the last ten years is itself indicative of obsessive behaviour.

Does the request lack any serious purpose or value?

37. The Police have informed the Commissioner that the complainant is aware of the limitations of the FOIA regarding access to personal information relating to third parties. They advise that the complainant is similarly aware of how to make a subject access request for his own personal data as he has submitted such a request on at least one occasion prior to the requests considered by the Commissioner in this case. As the Police have been consistent in their correspondence with the complainant over the years in not altering their position following the report of 2002, they contend that the complainant's request for information cannot have any serious purpose or value.
38. From the complainant's perspective, the Commissioner appreciates that the request (and previous requests) will be considered to have a serious purpose and value in that they seek to establish what investigations the Police have carried out in response to the allegations made and to obtain transparency and accountability of any such investigations.
39. However, the Commissioner has ascertained that the complainant was provided with a redacted copy of the Police report of 2002 in response to a subject access request in May of that year. In addition, the investigating officer had met with the complainant beforehand to discuss his findings. Therefore, the complainant has been informed and aware for some years now as to how the Police went about investigating his allegations. Should the complainant wish to challenge or complain about the Police investigation then there are clear ways for him to do this which lie outside the FOIA.
40. The applicability of section 40(5) to the complainant's previous requests and correspondence to the Legal Services Department has been made clear by the Police and indeed this was reinforced by the Commissioner in his discussions with the complainant. The Commissioner is satisfied that even if section 14(1) were to fail in respect of this request, the Police could rely on section 40(5) for the reasons outlined above.
41. As the Police have consistently made clear to the complainant why they cannot confirm or deny whether the information he has repeatedly requested is held the Commissioner does not consider that the complainant's request of 8 July 2011 serves any useful purpose or value other than to perpetuate an already lengthy chain of correspondence.

Would complying with the request impose a significant burden?

42. For reasons explained above, the Police are unable to confirm or deny whether they hold the information requested by the complainant and so in the absence of the use of section 14(1) they would have been unable

to comply with the request in any event by virtue of Section 40(5). Indeed, the Police advised the Commissioner that they initially considered providing a section 40(5) response to the July request just as they had in response to the previous requests made in April. Upon looking at the July request in the context of the complainant's previous requests and correspondence it was decided that the request was in fact vexatious.

43. In submissions to the Commissioner, the Police have advised that dealing with one of the complainant's letters often involves different areas of the Constabulary and causes an unbalanced level of distraction from other duties. As noted, the Legal Services Department alone have spent approximately 47 hours dealing with the complainant's case since July 2008 and the history of correspondence stretches back to 1996. The Police state that continued correspondence with the complainant exacerbates a situation that cannot be resolved because they cannot do any more for him.
44. The Commissioner is satisfied that responding to the complainant's correspondence and requests for information has imposed a significant burden upon the Police and for a considerable period of time to date. In the absence of new matters being raised by the complainant, nothing further can be gained by responding to this request. It relates to matters which have already been investigated. The Commissioner is therefore of the view that it would impose an inappropriate and unfair burden upon the Police for them to be expected to respond to this request.

Conclusion

45. The Commissioner is satisfied that the evidence in this case clearly demonstrates that the request of 8 July 2011, when placed in the context of the previous requests and correspondence sent to the Police by the complainant over more than a ten year period, can fairly be characterised as obsessive. For the reasons set out above, the Commissioner does not consider that the request has any serious purpose or value and he considers that complying with the request (in the sense of providing yet another section 40(5) response) would impose a significant burden. The Commissioner has therefore concluded that the Police were correct to apply section 14(1) to the request of 8 July 2011.

Other matters

46. In submissions to the Commissioner, the complainant described himself as a '*whistle-blower*' and contended that the ICO would be in breach of

the Fraud Act 2006 if it failed to investigate his concerns. The Commissioner informed the complainant that his remit and jurisdiction was restricted to assessing and deciding upon the validity or otherwise (within the FOIA) of the Police responses to his FOIA requests of 5 and 14 April and 8 July 2011 and any previous linked requests or correspondence. The complainant was informed that as his real complaint/concern was clearly about the Police response/investigation into his allegations then he should contact the IPCC.

Right of appeal

47. 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,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

48. 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.
49. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

Alexander Ganotis
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