

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 30 July 2012

**Public Authority:** Chief Constable of Northumbria Police  
**Address:** Police Headquarters  
North Road  
Ponteland  
Newcastle Upon Tyne  
NE20 0BL

#### Decision (including any steps)

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1. The complainant has requested information about any copyright complaints the public authority has referred to 'facebook'. The public authority initially concluded that it did not hold the requested information and explained why this was the case. During the investigation the public authority alternatively sought to rely on section 12. The Information Commissioner's decision is that the public authority has correctly stated that to ascertain if it holds any data would exceed the appropriate limit. He does not require any steps to be taken.

#### Background

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2. The request can be followed on the "What Do They Know" ("WDTK") website<sup>1</sup>.
3. It may be helpful to consider a further decision notice which is being written at the same time as this one and relates to a similar topic. Its reference is FS50435643.

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<sup>1</sup>[http://www.whatdotheyknow.com/request/complaints\\_made\\_to\\_facebook\\_by\\_n](http://www.whatdotheyknow.com/request/complaints_made_to_facebook_by_n)

## Request and response

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4. On 22 June 2011, the complainant wrote to the public authority and requested information in the following terms:

*"I am requesting this information under section 84 of the FOIA, 'information recorded in any form' as follows;*

- 1. How many complaints have Northumbria Police made to facebook concerning alleged Infringes of copyright during the past 12 months and up until the date this request is answered.*
- 2. Please supply full details of all/any complaints made, copies of all correspondence between Northumbria Police and facebook and also copies of all/any such complaints.*
- 3. Please supply all information and documents concerning person(s) within NP who made such complaints to facebook and reason(s) and background for all/any such complaints".*

5. The public authority responded on 18 July 2011. It explained:

*"I can confirm that an exhaustive log of every copyright complaint is not held, nor required to be held as complaints of this nature are not made at Force level, they can and are made by individuals as and when they are identified. To attempt to calculate the number of such complaints would mean physically asking members of relevant teams if they had ever made such a complaint. This research would take over 18 hours and would not give a definitive list as it would rely on staff providing accurate information (rather than using Force data).*

*I can advise that in generic terms complaints are made by individuals where our force logo, or a photograph/image which is copyright to the force has been used without our permission. This is reported directly to Facebook using the built-in reporting tool".*

6. The complainant responded on 18 July 2011, raising various questions. He also made the following new requests:

*"In the meantime while you are dealing with this matter can you please send me all information ... relating to all complaints made to facebook by Northumbria Police as follows;*

*1. How many complaints have Northumbria Police made to facebook concerning alleged Infringes of copyright during May and June 2011?*

*2. Please supply full details of all/any complaints made by NP to facebook during the months of May, June 2011, i.e., as above, please supply copies of all correspondence between Northumbria Police and facebook concerning all/any such complaints as well as copies of the complaints themselves.*

*3. Please supply all information and documents concerning person(s) within NP who made such complaints to facebook during May and June 2011 and also the reason(s) and background for all/any such complaints.*

*Please can you ensure that the information, documents which you refer to in your reply; "I can confirm that the information you have requested is held in part by Northumbria Police." as well as all of above information, correspondence, 1, 2 and 3 above, relating to complaint by NP to facebook during May and June 2011 is released to me immediately, while I am awaiting for you to deal with other matters, as above."*

7. On 29 July 2011 the public authority wrote and provided further explanations to the complainant as follows:

*"... have liaised further with the Media Team that were originally consulted on this request. They have confirmed that the only information held regarding your request, was the information supplied to you in our original response. That is that complaints are made by individuals where the force logo, or a photograph which is copyright to the force has been used without permission.*

*As complaints are made by individuals rather than by the Force, numbers of complaints made would be impossible to calculate without consulting every member of the Northumbria Police work-force. As explained in our original response, this would take over 18 hours and there is therefore no requirement to respond to that part of your request.*

*We consulted the web team regarding any complaints that they may have made during that time period and whilst they confirmed that they were aware that complaints had been made, there was no record of these complaints kept as there is no requirement to do so. Therefore no further information on this subject was available for potential disclosure to you. Please note, there is no requirement under the legislation to create records in order to respond to requests made in this arena".*

8. The public authority responded to the latter request on 9 August 2011. It explained to him that:

*"Following receipt of your request, searches were again conducted with the Corporate Communications Department of Northumbria Police I can confirm that, as your previous request, FOI 472/11 refers, I can again confirm this information is not held, nor required to be held.*

- 1. The Force do not hold records of complaints made to facebook concerning alleged infringements of coyright [sic] during this period.*
- 2. As the Force do not hold records of complaints made to facebook concerning alleged infringements of coyright [sic] during this period - N/A*
- 3. As the Force do not hold records of complaints made to facebook concerning alleged infringements of coyright [sic] during this period - N/A".*

9. On 10 August 2011 the complainant made further requests in respect of a disclosure of information that the public authority had made in dealing with a different request on WDTK. He stated:

*"The [previous disclosure] very clearly shows that NP did contact facebook to remove a force logo. It also shows that the person who dealt with the reporter must have spoken to a person/s within NP who either reported the matter to facebook or at the very least is aware of ther [sic] person who did so.*

*Please supply me with all of the information you have concerning all contact between facebook and NP relating to above, NP 'requested the removal of on-line data containing copyright material...' call it what you will, however, please release all of the information, that I have been requesting between NP and facebook relating to all matters concerning above, the request by NP, the complaint by NP to facebook".*

10. Again on 10 August 2011 the complainant made these further requests:

*"1. Please supply all information concerning how NP Infringes of copyright etc to facebook.*

*2. How many times have NP reported Infringes of copyright to facebook during the month of May, June and July 2011.*

*3. Supply full details and information regards reason/s for such reporting, regards 1 and 2 above, by NP to facebook during May, June and July 2011.*

*4. You say; "The Force hold no recorded information regarding complaints to Facebook." And that; "I have been informed that contact with Facebook is done within the Facebook web-site and is not recorded by the Force, nor is it required to be." Is it not the case that facebook would require proof and or further information from NP (or others), that facebook would also be writing back to NP concerning such reports? If not, any tom, dick or harry could report anything to facebook. Please supply all the information sent to and received from facebook regarding 1, 2, 3 and 4 above.*

*5. Are NP saying that when they report to facebook regards 1, 2, 3 and 4 above that they do not keep any record at all of such report/s. Are they also saying that they do not enter into any type of correspondence with facebook regards above. Moreover, are NP saying they never contact facebook by telephone or by email?"*

11. On 6 September 2011 the public authority advised the complainant that it was treating his request as 'vexatious' under section 14(1) of the FOIA. On the same day the complainant asked for an internal review.
12. On 25 November 2011 the public authority provided its internal review. It advised that future requests, on various subject matters, would be deemed as vexatious. However, it concluded that these requests were not vexatious and it advised him as follows:

*"I note that you have submitted three previous requests on the same subject to Northumbria Police on the same subject. What I will say is that your request with Northumbria Police reference number 538/11 which was responded to on the 9th August 2011, it absolutely comparable to this request.*

*At that time, Northumbria Police provided a response in full to you and I can confirm that this response is correct and accurate.*

*However, to assist, I will answer the question posed in your original request.*

1. *No information is held by Northumbria Police. This information is not recorded.*

2. *No information is held by Northumbria Police. This information is not recorded.*
3. *No information is held by Northumbria Police. This information is not recorded.*
4. *I note your question here refers to the information that would be required from Northumbria police by Facebook to support claims in the matters you detail above. As previously advised, Northumbria Police makes any referrals via the Facebook website and their reporting procedure. No information is held within Northumbria Police on any reports made and you will need to contact Facebook with regards to their processes in respect of proof that they require from organisations or individuals making such reports to them.*

*It is open to any individual or organisation to make referrals to Facebook with regards to complaint or copyright using their online reporting facility.*

5. *I confirm again, that Northumbria Police make no record of those referrals made to Facebook with regard to complaints of any nature, including copyright. No information is held with regards to any correspondence from Facebook including letter and email. There is no information held in respect of any telephone calls made to Facebook by Northumbria Police”.*

13. The complainant originally passed this case to the Information Commissioner on 18 November 2011. His complaint was, at that time, that the public authority had not provided an internal review. However, the internal review was subsequently completed, so the Information Commissioner advised the complainant that he was unable to take the case forward unless the complainant supplied his grounds of complaint following this internal review. The complainant initially refused to do so, expecting the Information Commissioner to peruse the lengthy correspondence on this (and several other complaints) on his behalf. The Information Commissioner declined to do so and closed his original complaint.
14. There is considerable further correspondence which can be followed on the WDTK website.

### **Scope of the case**

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15. On 8 February 2012 the complainant contacted the Information Commissioner again to outline his complaint. The Information

Commissioner clarified with the complainant that the following were the issues he wished to have addressed:

- whether the public authority has hidden, concealed or destroyed the information requested,
  - the length of time taken to provide an internal review,
  - whether the request is vexatious.
16. The Information Commissioner is unable to consider the first two issues by way of decision notice; however, he is able to consider whether or not the public authority 'holds' any information which he will do below.
17. The Information Commissioner has referred to the length of time to conduct an internal review in "*Other matters*" at the end of this notice.
18. Following its internal review the public authority has not relied on section 14 so the Information Commissioner will not consider it in the body of this decision notice. However, in light of the complainant's inclusion of the issue within the scope of the complaint, he has provided some information in "*Other matters*" at the end of this notice.
19. The complainant also raised other issues which fall outside of the Information Commissioner's remit.

## Reasons for decision

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### Section 1 – general right of access

20. Section 1(1) of Freedom of Information Act 2000 states that:

*"Any person making a request for information to a public authority is entitled—*

*(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and*

*(b) if that is the case, to have that information communicated to him."*

21. The effect of section 1(1)(a) and (b) is that a public authority is under a duty to confirm to a requestor whether or not it holds the requested information, and if it does, to provide it to the requestor unless it can rely on one of the Act's exemptions.
22. In determining whether a public authority holds requested information, the Information Commissioner makes enquires that will satisfy the civil

standard of proof. That is, on the balance of probabilities, whether the public authority holds the requested information.

23. In deciding where the balance of probabilities lies, the Information Commissioner questioned the public authority as to how it would handle this type of information and any procedures it had in place for recording it. He also considered any other information or explanation offered by the public authority which was relevant to the complaint.
24. Within its responses on the WDTK website the public authority has explained to the complainant that any complaints about copyright made to Facebook will be made by individuals who have observed possible copyright breaches and have gone on to report these via its own reporting tool<sup>2</sup>. The Information Commissioner was also advised that:

*"Any member of the public, including those employed by Northumbria Police are able to report a possible copyright infringement. A member of Northumbria Police may report an incident of possible copyright infringement if they feel it appropriate and they believe copyright has been breached in some way. Northumbria Police have no process or policy in place for such matters."*

*"Examples of infringements, would be where a member of staff has found that the Northumbria Police logo has been used by another organisation or individual on a public facing website such as Facebook".*

25. The Information Commissioner also asked the public authority about how it would 'follow up' on any reported incidents if these were not actually recorded in any formal manner. He was advised:

*"I can confirm that such incidents are not recorded within Northumbria Police. If an individual felt that there had been a copyright breach, for example on Facebook, they would contact Facebook via the on-line facility that they provide. Should any further action be needed, it would be dealt with by the Force Legal Department".*

26. When asked about any searches it had undertaken to locate information the public authority advised:

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<sup>2</sup> [https://www.facebook.com/help/contact\\_us.php?id=208282075858952](https://www.facebook.com/help/contact_us.php?id=208282075858952)



*"Information was sought from the Corporate Communications Department in order to locate information held within the scope of the request. This Department employs a web services team who would ordinarily submit on-line reports to Facebook with regards to copyright infringement.*

*We did not contact all staff within Northumbria Police. Northumbria Police employs in excess of 4,000 staff and although they could all be contacted by email, it would be an onerous task, exceeding the cost threshold to ascertain those which provided information which would be relevant to the request made".*

27. The Information Commissioner notes that in his correspondence the complainant has made a statement that the public authority would not need to contact all staff - thereby not agreeing with any reliance on the cost limit - saying:

*"This of course is poppycock as NP will not have made many complaints to facebook. Moreover, I have since learned that one department alone deals with such complaints made to facebook by NP".*

28. However, as they are able to do so without any policy to guide their actions, the Information Commissioner believes that members of staff may have reported relevant incidents directly to Facebook via the process mentioned above. Accordingly, without contacting all staff – which could be readily achieved by email – he does not accept that the public authority is able to state with any certainty that no further information is held. When he put this to the public authority it replied:

*"... it is possible that a member of staff has indeed made an online report to facebook about a breach and has recorded that they have done that."*

It also explained:

*"If a member of staff had reported a breach to Facebook, I would expect them to revert this report to the Legal Department or our Web Team. It would be extremely unlikely for any individual to take it upon themselves to report such a breach without consulting either the Legal Department or the Web Team prior to them making the report. There is no policy or instruction available to staff advising on how to deal with copyright breach.*

*Furthermore, I am advised by the Training Department that this is not covered in any training that they undertake".*

29. As stipulated above, the Information Commissioner must determine whether or not any further information is held on the balance of probabilities. The public authority has no policy for dealing with the matters connected with this request yet states that any member of staff has the potential to report infringements to Facebook. Therefore, the Information Commissioner thinks it would be a reasonable step for the public authority to ask its staff whether any such report has been made. Without such an enquiry to evidence its position the Information Commissioner does not accept that, on balance, it is possible to state that no further information is held.
30. The Information Commissioner notes that the public authority has also cited section 12 in relation to this information so he will now go on to consider its application.

### **Section 12 – cost of compliance exceeds appropriate limit**

31. Section 12 of FOIA states that a public authority is not obliged to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit.
32. When considering whether section 12(1) applies, the authority can only take into account certain costs as set out in statutory instrument number 3244 - *"The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004"* ("Fees Regulations").
33. Paragraph 4(3) of the Fees Regulations states:

*"In a case in which this regulation has effect, a public authority may, for the purpose of its estimate, take account only of the costs it reasonably expects to incur in relation to the request in -*

  - (a) determining whether it holds the information,*
  - (b) locating the information, or a document which may contain the information,*
  - (c) retrieving the information, or a document which may contain the information, and*
  - (d) extracting the information from a document containing it".*
34. The Fees Regulations state that the appropriate cost limit is £600 for central government, legislative bodies and the armed forces; and £450 for all other public authorities, which includes police forces. This £450 limit is equivalent to 18 hours' work.
35. During his investigation the public authority advised the Information Commissioner:

*"... contacting all staff within Northumbria Police to ascertain whether anyone holds any information would exceed the appropriate limit. The initial request to all staff would not be onerous, as this could be undertaken using an all user email. However, with Officers and staff it would be difficult to capture everyone within the time limits available under the legislation due to holidays, sickness and rest days. Following us sending the request we would then need to collate responses received from individuals and re-request from any non responders. In order for individuals to assess whether they hold any notes or record of any notification to Facebook, they would probably need to interrogate emails or notebooks. Northumbria have 6049 staff and I have calculated that 2 minutes would be needed per person, to assess and provide a response to the all user email. Accordingly this would take 201.63 hours, clearly exceeding the cost threshold."*

36. The Information Commissioner understands that a short email would not take long to draft and that this could readily be sent to all staff. He does not accept the public authority's position above that all staff would need to interrogate their emails or notebooks as he believes that they would know immediately whether or not they had made a report to facebook; therefore, he does not agree that it would take every member of staff 2 minutes to ascertain this. However, he does accept that all staff would need to read any email which was sent to them and understand what was required. Even if a response were not required - and the quickest way to deal with the search would probably be to instruct staff only to reply if they had reported an incident to Facebook - the Information Commissioner thinks that 30 seconds per member of staff is a reasonable estimate for them to read and understand what is being sought. This element of the search for information alone would exceed 50 hours which, in itself, would therefore exceed the appropriate limit.
37. Accordingly, although he does not agree that the public authority can state with any certainty that it does not hold any further information, the Information Commissioner accepts that in order to ascertain whether or not this is the case would exceed the appropriate limit, and he therefore does not require such a search to be made.

### **Other matters**

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38. Although they do not form part of this decision notice the Information Commissioner wishes to highlight the following matters.

### *Internal review*

39. Part VI of the section 45 Code of Practice makes it desirable practice that a public authority should have a procedure in place for dealing with complaints about its handling of requests for information, and that the procedure should encourage a prompt determination of the complaint. As he has made clear in his '*Good Practice Guidance No 5*', the Information Commissioner considers that these internal reviews should be completed as promptly as possible. While no explicit timescale is laid down by the Act, the Information Commissioner has decided that a reasonable time for completing an internal review is 20 working days from the date of the request for review. In exceptional circumstances it may be reasonable to take longer but in no case should the time taken exceed 40 working days.
40. The Information Commissioner does not consider this case to be 'exceptional', so is concerned that it took over 20 working days for an internal review to be completed.

### *Vexatious requests*

41. The public authority has not relied on section 14 so the Information Commissioner has not considered it in his analysis above. However, he thought it would be useful to provide the following information.
42. The Information Commissioner has produced specialist guidance on vexatious requests which can be found on his website<sup>3</sup>. This includes the following extract:

***"Refusing the request***

*If you decide that a request is vexatious or repeated, you must issue a refusal notice to the requester within 20 working days. The refusal notice should state that you are relying on section 14(1) or 14(2) and give details of your internal review procedures and the right to appeal to the ICO.*

*However, section 17(6) says you will not need to issue a new refusal notice if:*

- *you have already given the same person a refusal notice for a previous vexatious or repeated request; and*
- *it would be unreasonable to issue another one.*

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<sup>3</sup>[http://www.ico.gov.uk/upload/documents/library/freedom\\_of\\_information/detailed\\_specialist\\_guides/awareness\\_guidance\\_22\\_vexatious\\_and\\_repeated\\_requests\\_final.pdf](http://www.ico.gov.uk/upload/documents/library/freedom_of_information/detailed_specialist_guides/awareness_guidance_22_vexatious_and_repeated_requests_final.pdf)

*Refusing a request as vexatious or repeated is particularly likely to lead to an internal review or an appeal to the ICO. Whether or not you issue a refusal notice, you should therefore keep written records clearly setting out the procedure you followed and your reasons for judging the request as vexatious or repeated, so that you can justify your decision to us if necessary”.*

43. It is clear to the Information Commissioner that the public authority is 'preparing' itself for future requests which relate to specific subject matters; this is in line with the guidance he has issued above. The Information Commissioner considers it good practice for the public authority to outline to the complainant that the requests he is making may ultimately result in them not being acknowledged as they are considered to be vexatious.

## Right of appeal

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44. 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: 0300 1234504  
Fax: 0116 249 4253  
Email: [informationtribunal@hmcts.gsi.gov.uk](mailto:informationtribunal@hmcts.gsi.gov.uk)  
Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

45. 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.
46. 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 .....**

**Jon Manners  
Group Manager  
Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**