

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 22 August 2012

Public Authority: Chief Constable of West Mercia
Address: PO Box 55
Worcester
WR3 8SP

Decision (including any steps)

1. The complainant has requested information about Hagley Partners and Communities Together ("PACT"). The public authority refused the request on the grounds that it was vexatious. The Information Commissioner's decision is that the public authority breached the FOIA in providing a late response but that it was correct to find it vexatious. He does not require the public authority to take any steps.

Background

2. The Information Commissioner has previously made a related decision in February 2012 (FS50413998) which can be found on his website¹.

Request and response

3. On 29 December 2011 the complainant wrote to the public authority and requested information in the following terms:

"1. Following the Hagley PACT street survey conducted on 6 October 2011, on which date did the Hagley PACT meet, and which representatives of local councils and police were present."

¹http://www.ico.gov.uk/~media/documents/decisionnotices/2012/fs_50413998.ashx

2. *Which issues were raised by the public during that street survey and how many times was each issue raised?*
3. *Which 3 PACT priorities were taken forward from that PACT panel meeting?*
4. *How are those PACT priorities now being advertised e.g. in noticeboards, Hagley Village News, via the PACT link on the HCA website?"*

4. On 3 February 2012, the public authority advised the complainant that, in line with previous correspondence, it was treating this request as vexatious under section 14(1) of the FOIA.
5. On 9 February 2012 the complainant sought an internal review.
6. The public authority responded on 26 March 2012. It maintained its view reiterating:

"As advised, we will consider section 14(1) exemption in relation to any requests that you submit regarding crime or policing in Hagley".

Scope of the case

7. On 19 March 2012 the Information Commissioner first received a complaint from the complainant as he had not at this point received an internal review. This was subsequently provided to him and the complainant later confirmed that he wished the Information Commissioner to consider:
 - the length of time taken to provide a response;
 - whether or not this request was vexatious;
 - the length of time taken to provide an internal review.
8. The Information Commissioner has referred to the length of time to conduct an internal review in *"Other matters"* at the end of this notice.
9. The complainant also raised other concerns which the Information Commissioner cannot consider by way of a decision notice.

Reasons for decision

Timeliness

10. Section 10(1) of FOIA provides that a public authority should comply with section 1(1) within 20 working days. Section 1(1)(a) initially requires a public authority in receipt of a request to confirm whether it holds the requested information.
11. The request was submitted on 29 December 2011 and the complainant did not receive a response until 3 February 2012. The Information Commissioner therefore finds that the public authority has breached section 10(1) by failing to comply with section 1(1)(a) within the statutory time period.

Section 14 – vexatious requests

12. Section 14(1) of the FOIA provides that a public authority is not obliged to deal with a request for information if the request is 'vexatious'. The Information Commissioner's approach to what constitutes a vexatious request is outlined in his guidance "*Vexatious or repeated requests*". The guidance sets out a number of points to consider in determining whether a request is vexatious, namely that:
 - it would create a significant burden in terms of expense and distraction;
 - it is designed to cause disruption or annoyance;
 - it has the effect of harassing the public authority;
 - it can otherwise fairly be characterised as obsessive or manifestly unreasonable; and
 - it clearly does not have any serious purpose or value.
13. In establishing which, if any, of these factors apply, the Information Commissioner will consider the history and context of the request. In certain cases, a request may not be vexatious in isolation but, when considered in context, it may form a wider pattern of behaviour that makes it vexatious. The Information Tribunal upheld this approach in *Rigby v Information Commissioner and Blackpool, Fylde and Wyre Hospitals NHS Trust* (EA/2009/0103), commenting that: "*it is entirely appropriate and indeed necessary when considering whether a request is vexatious, to view that request in context ...*" (para 40).
14. The Information Commissioner recognises, however, that it is the request and not the requester that must be vexatious for section 14 to be engaged.

15. When investigating a public authority's application of section 14(1), the Information Commissioner is also mindful of the Tribunal's decision in *Hossak v the Information Commissioner* (EA/2007/0024). In that case, the Tribunal commented on the consequences of finding a request vexatious. It accepted that these are not as serious as those of determining vexatious conduct in other contexts and, consequently, the threshold for vexatious requests need not be set too high.
16. In determining whether section 14 was applied correctly, the Information Commissioner has considered the evidence provided by the public authority both in relation to the earlier case mentioned above and the context and history of further correspondence up until the date of this request. He also notes that the public authority had previously advised the complainant that it would cite this exclusion in respect of any requests for information about "*crime or policing in Hagley*" and that it would not treat requests on other subject matters as 'vexatious'.
17. The public authority was able to evidence that it was only treating requests on this specific subject matter as vexatious as it had dealt with, and disclosed the information requested for, three unrelated requests made by this complainant since finding this particular request to be vexatious.
18. It also provided the following evidence to the Information Commissioner:

"Evidence to support West Mercia Police (WMP) position on this matter was supplied for case FS50413998 and I would be grateful if that evidence could also be used in this case in addition to further submissions that I have collated from July 2011 (the date of the case related to the last Decision Notice). [The complainant] has continued his obsessive and persistent contact with WMP and the impact that this is having on WMP employees and their ability to carry out core policing responsibilities continues to be detrimental and time consuming.

Further examples of contact that WMP has had with the applicant since July 2011 is shown below and this continues to evidence the pattern of his unreasonable behaviour.

- During the period 1st July 2011 - 20th June 2012 [the complainant] has made a further 108 calls to our Call Management Centre (CMC) regarding incidents pertaining to Hagley, the subject matter of these calls are all related to those referred to in A/Supt [name removed]'s letter of 08/07/11 (copy

previously provided) in which she advises that further pursuance of these subjects is not useful and are the same subjects that the Local Policing Team (LPT) will no longer address with him:

Parking - 60

Litter - 12

Alcohol misuse and ASB - 11

Criminal Damage/Graffiti - 4

Scrap dealers/vehicle nuisance - 4

Miscellaneous - 4

Chasing responses to the above - 13

- During the period 1st July 2011 - 20th June 2012 [the complainant] has sent 72 e-mails personally to Sergeant [name removed] in the Professional Standards Department. Professional Standards have recorded 29 complaints from him and these are mostly Direction and Control matters. [The complainant] continues to e-mail Sgt [name removed] and others within the Professional Standards Department on an almost daily basis.

- On 28th February 2012 the force had to take the decision to ban [the complainant] from using our Facebook site facility. The decision to ban [the complainant] was taken as a result of repeated questions on the topics of local policing arrangements in Hagley, which have been answered on numerous occasions by local officers, North Worcestershire TPU command, and in the most recent instance, during the Chief Constable's web chat. [The complainant] did not accept that the answers we had given were satisfactory (his perception) and therefore continued to repeat them. He has also made several postings making specific references and allegations against West Mercia personnel, as well as a number of misleading statements about local policing arrangements and/or communications we have previously had with him. Our Corporate Communications Department also had to remove a number of posts that could be seen to be defamatory about an individual Inspector.

The Corporate Communications Department tried to engage constructively with [the complainant], and have advised me that he was the single most frequent poster on our page and has received the most replies of any of our 4,900+ Facebook fans but they have been unable to satisfy him with answers. They have advised that on four or five occasions, the tone and frequency of his posts have also drawn adverse comment from other members of the public. And it reached the stage where the time and resource required to deal with [the complainant]'s posts was entirely disproportionate with the benefit gained from doing so

and was having an affect on the ability of the Corporate Communications to provide a good service to the wider public. Between the period 4th August 2011 - 30th September 2011 [the complainant] submitted 49 posts on our Facebook page."

19. Based on his previous decision notice along with the additional evidence provided by the public authority, and taking account of the fact that this request relates to the same subject matter as the previous request, the Information Commissioner concludes that this request is also vexatious.

Other matters

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

Internal review

21. 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.
22. 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.

Right of appeal

23. 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

24. 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.
25. 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
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