

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 18 September 2012

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

Decision (including any steps)

1. The complainant has requested information that relates to complaints he has made. The public authority has stated that the request is vexatious under section 14(1) of the FOIA. The Information Commissioner finds the request to be vexatious and, furthermore, he considers that any information would be the complainant's 'personal data'. This is because any information held would all relate to complaints he has made and it is therefore also exempt by virtue of the exemption at section 40(1). The exemption provided by section 40(5)(b)(i) should therefore have been applied which means that the public authority was not required to confirm or deny whether it holds any information under the Act. The Information Commissioner does not require the public authority to take any steps.

Background

2. The complainant has had a long-standing dispute with the public authority which dates back to the early 1990s. At that time the complainant wanted the public authority to take action against the BBC in relation to a story which attracted much media attention. His various complaints and this request stem from that original dispute.
3. In a letter from Devon and Cornwall Police Authority (the 'police authority') dated 29 November 2011, the complainant was advised:

"The review of your complaints file considered all the correspondence with the [police] Authority which you have already received from us or you were the author of the correspondence.

The main complaint file that was reviewed is that owned by Devon and Cornwall Constabulary (rather than the [police] Authority) and we are not therefore obliged, or indeed allowed, to disclose that to you ourselves".

4. The review was provided to the complainant by the police authority. It is dated 22 June 2011, the actual review work having been undertaken on 19 April 2011, and sent to the complainant on 24 June 2011.
5. The complainant's subsequent request to the public authority makes direct reference to the police authority's letter of 29 November 2011 and what he terms a *"faked report about me"* and a review of records on 11 April 2011. The Information Commissioner is unaware of a report but is aware of the review which was undertaken on 19 April 2011. He has therefore surmised that the request is in relation to the review of 19 April 2011 as the further wording of the request fits with that review.
6. The outcome of the review, which was also written up by a member of police authority staff, was provided in full to the complainant in an effort to assist him (not under the terms of the Act). The first part of the review clarifies that all documentation within the complainant's 'police complaints file' was examined in order to understand:
 - what complaints the complainant had made;
 - what action had been taken by the police as a response to these complaints;
 - how the complaints were finalised;
 - any involvement by the Independent Police Complaints Commission;
 - what resolution the complainant was seeking.
7. Within its review it also stated:

"The length of time for which [the complainant] has been corresponding is also of relevance when considering processes. The Police Complaints authority was replaced by the Independent Police Complaints Commission (IPCC) in April 2004. Both bodies have considered [the complainant]'s complaints on different occasions and neither have found any grounds for action".

8. Although the dates provided by the complainant in his request do not precisely match those on the review, his request cites the second sentence of the above paragraph. The Information Commissioner therefore concludes that the review is indeed the basis of his request.
9. In line with its retention guidelines, much of the complainant's early correspondence has been destroyed; the complainant has been previously advised regarding this.

Request and response

10. As a follow up to the letter referred to above, on 3 December 2011 the complainant wrote to the public authority and requested information in the following terms:

"I regret that it is necessary to write to you again in respect of an unlawful refusal on the part of the police authority to provide requested evidence. I enclose a copy of a letter from the chairman of the authority dated 29 November 2011.

As you are aware, the authority faked a report about me. This faked report included a review of constabulary records on 11 April 2011. I believe that the authority was assisted in its review by [name removed] and / or other members of the constabulary's staff. The report was published on 24 June 2011 and a copy sent to your to your goodself. You have confirmed that, like me, you have rejected that report with good and proper reason(s).

The authority has failed to provide any evidence to back the false claims and lame allegations made within its report of 24 June 2011 and, as a consequence, I requested that this false report be withdrawn. The authority has refused to do so.

There is of course no reason why the authority should not disclose the documents it claims to have seen and it is legally obliged to do so. Given the reticence of the authority's chairman to comply with his legal obligations, I regret I must request copies of the documents that he insists were shown to authority staff on 11 April 2011 from you.

It appears that these documents were not directly part of any complaint made by me, but were more likely copies of correspondence between a commissioner of the IPCC ... and the constabulary. The professional standards department has claimed to be fully aware of these documents and the police authority

claims that they were in the possession of the constabulary on 11 April 2011.

I appreciate that the claims made by the police authority now conflict with those made by the constabulary consequent to my letter to you of 07 September 2011, but I am sure that you will agree that clarity concerning the documentation is essential.

I have double checked the authority's claim with the IPCC, which informs me that it has no record of these alleged documents, so I ask you again to provide me with copies of the documents to which the police authority is eluding [sic] when it states in its report:

'The Police Complaints Authority was replaced by the Independent Police Complaints Commission (IPCC) in April 2004. Both bodies have considered [the complainant]'s complaints on different occasions and neither have found any grounds for action''.

11. In its response the public authority advised that it was treating this request as vexatious. It also advised:

"You have previously been told ... that information that relates to a specified individual, in this case you are requesting information that relates to yourself, cannot be provided or even confirmed as being held under the Freedom of Information Act".

And:

"Despite all responses to your correspondence from different areas of this Constabulary, you have continued to send letters that are substantially similar and that repeat earlier comments made by yourself. Your requests on the subject of [event redacted] and any information remotely associated with this media story to include any work conducted by officers within the Professional Standards Department as a result of your correspondence stemming from that investigation are causing a considerable burden to this organisation in terms of distraction".

12. On 22 January 2012 the complainant advised the public authority that he had not received the requested information as a result of an earlier request made under the terms of the Data Protection Act 1998 (the "DPA") so he was requesting the information under the FOIA. He also queried why, if the information were available under the DPA, it had not previously been provided.

13. On 27 January 2012 the public authority advised the complainant that an earlier request made under the terms of the DPA had pre-dated the correspondence forming the basis of this request so a new request would need to be made.
14. Following further correspondence, the public authority wrote to the complainant on 2 February 2012 to advise that it would undertake an internal review of his request. This was provided on 23 March 2012. The public authority maintained its previous position that the request was vexatious.

Scope of the case

15. On 27 March 2012 the complainant contacted the Information Commissioner to complain about the way his request for information had been handled. He confirmed that he wished the Information Commissioner to consider whether or not the request was vexatious.
16. Based on the wording in the correspondence above, the Information Commissioner considers the request to refer to any information held within the complainant's police complaint file which is related to the IPCC.
17. The complainant has also raised issues which fall outside the Information Commissioner's jurisdiction.

Reasons for decision

18. The public authority has expressed to the Information Commissioner that it specifically wishes him to consider the request under section 14(1) of the FOIA rather than any other exemption. However, whilst the Information Commissioner will not proactively seek to consider different exemptions in all cases before him, in cases where personal data is involved the Commissioner believes he has a duty to consider the rights of data subjects. These rights, set out in the DPA, are closely linked to article 8 of the Human Rights Act and the Commissioner would be in breach of his obligations under the Human Rights Act if he ordered disclosure of information or confirmation/denial without having considered these rights, even where the exemption has not been cited. Therefore, although the public authority has only cited section 14(1), the Commissioner believes he should first consider section 40 in this particular case.

Section 40 – personal information

19. Under section 40(1) information that is requested that constitutes the applicant's 'personal data' is exempt information. This exemption is absolute and requires no public interest test to be conducted. In addition, in relation to such information public authorities are not obliged to comply with the obligation to confirm or deny whether they hold the requested information, by virtue of section 40(5)(a).
20. After careful consideration of the wording of the request, and following further enquiries with the public authority, the Information Commissioner is satisfied that the complainant is, or would be, the subject of all of the information requested. This is because the information he has requested consists only of correspondence concerning complaints he has raised (this is evidenced in the letter to him from Devon and Cornwall Police Authority referred to at paragraph 3 above). Therefore, the information would identify him, be linked to him and would relate to issues involving his interaction with the police. The Information Commissioner considers that he is a 'data subject' within the meaning of the section 40(1) exemption and therefore this information would be his personal data. Further, since confirming that the information was held would disclose to the world at large that he as a named individual had made a complaint, the public authority should have refused to confirm or deny holding the information by reference to section 40(5)(a) of the FOIA.

Section 14(1) – vexatious requests

21. 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.
22. The Information Commissioner's guidance explains that the term 'vexatious' is intended to have its ordinary meaning and there is no link with legal definitions from other contexts (eg vexatious litigants). Deciding whether a request is vexatious is a flexible balancing exercise, taking into account all the circumstances of the case. When assessing whether a request is vexatious, amongst other issues the Information Commissioner considers the following questions:
 - whether compliance would create a significant burden in terms of expense and distraction;
 - whether the request is designed to cause disruption or annoyance;
 - whether the request has the effect of harassing the public authority or its staff;
 - whether the request can otherwise fairly be characterised as obsessive or manifestly unreasonable;

- whether the request has any serious purpose or value.
23. It is not necessary for all of the above criteria to be met but, in general, the more criteria that apply, the stronger the case for arguing that a request is vexatious. It is also the case that some arguments will naturally fall under more than one heading.
 24. The Information Commissioner's guidance advises public authorities to take into account relevant factors which could include the volume and frequency of correspondence; the use of hostile, abusive or offensive language; an unreasonable fixation on an individual member of staff; or mingling requests with accusations and complaints.
 25. 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 Commissioner recognises, however, that it is the request and not the requester that must be vexatious for the exclusion to be engaged.
 26. In correspondence with the Information Commissioner, the public authority has advised that it wishes to rely on the first, fourth and fifth bullet points listed above.
 27. In its refusal notice the public authority explained to the complainant:

" The reason that I have decided that your request is vexatious is because you have been told on many occasions by members of the Professional Standards Department, Assistant Chief Constable Taylor and the Police Authority that they will no longer correspond with you as any attempt to assist is followed by further correspondence from yourself expressing your dissatisfaction with the response provided.

You have previously been told by this Unit that information that relates to a specified individual, in this case you are requesting information that relates to yourself, cannot be provided or even confirmed as being held under the Freedom of Information Act 2000. Therefore, you should not have any expectation of receiving the information you have requested through a request under the Freedom of Information Act.

The Police Authority conducted a thorough review in July [sic] 2011 of all information still held relating to yourself and provided a clear report to you in a letter dated 16 July 2011 [sic] detailing the review and the results of those discussions".

28. It further advised him:

"Under the Freedom of Information Act I have a duty to advise and assist you with regards to making requests under the Act, but I'm afraid I cannot see how any advice would be accepted by you. I am more than willing to advise you on requests regarding any other subject, but cannot provide further advice in relation to this request.

Despite all responses to your correspondence from different areas of this Constabulary, you have continued to send letters that are substantially similar and that repeat earlier comments made by yourself. Your requests on the subject of [event redacted] and any information remotely associated with this media story to include any work conducted by officers within the Professional Standards Department as a result of your correspondence stemming from that investigation are causing a considerable burden to this organisation in terms of distraction.

I regret the strength of my language and apologise that I've felt it necessary to use it. I have very little hope that this will resolve the matter and fully expect you to reply to this response, but no member of the Freedom of Information Unit will correspond with you any further on this matter.

Should you wish to make a request that is on a completely unrelated subject we will progress it in the usual manner".

Whether compliance would create a significant burden in terms of expense and distraction

29. When considering whether this factor applies, the Information 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.

30. In support of this argument the public authority advised the complainant as follows:

"In simply going through all the relevant documentation (again) in order to evidence response to this letter I spent 10 hours and this does not include the time spent drafting this letter. I wouldn't hesitate in guessing that 100s of hours have been spent in dealing with your correspondence prior to my involvement over the years".

31. The complainant countered this saying:

"Any expense and distraction caused is of the constabulary's own making. If it had not adopted the stalling tactics that it is, it would not incur any of the said expense or distraction. The consequences for my family and me of the constabulary's behaviour is that our health and wealth have been destroyed. Our careers were destroyed. Our lives have been a misery for the last 20+ years. Our financial losses are in excess of £3M. Fighting the constabulary has been a major distraction and expense, causing much distress".

32. The public authority has further advised the Information Commissioner:

"Dealing with one of [the complainant]'s letters often involves several different areas of the Constabulary and amounts to an unbalanced level of distraction from other duties. The burden [the complainant]'s correspondence causes is not just felt by the Freedom of Information Unit. Historically, as touched upon earlier, [the complainant]'s correspondence has resulted in work being conducted by all levels of the Professional Standards Department, the Chief Officers Group, specifically Assistant Chief Constable Sharon Taylor and all levels of the Information Management Department, which contains the Data Protection and Freedom of Information Units. Many of his letters are also copied in to other organisations including the IPCC and the Information Commissioner's Office.

Continued correspondence with [the complainant] exacerbates a situation that cannot be resolved because as stated previously, our Constabulary cannot do anything more for him".

33. Having considered the evidence provided by the public authority, the Information Commissioner accepts that to continue to correspond with the complainant on issues related to events that commenced some twenty years ago creates a significant burden in terms of expense and distraction.

Whether the request can otherwise fairly be characterised as obsessive or manifestly unreasonable

34. The Information Commissioner's guidance states:

"A request may not be vexatious in isolation, but when considering 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 which makes it vexatious."

35. In support of this argument the public authority advised the complainant as follows:

"Due to the number of times you have been reminded of the Constabulary's position in this matter and your persistence in continuing to send correspondence to the Chief Constable your requests are considered obsessive. You have been corresponding with the Constabulary for over 2 decades and have yet to be satisfied".

36. The complainant countered this saying:

"No, because it is alleged by the police authority that the constabulary has not provided all the requested information in compliance with the requirements of both the Data Protection Act 1998 and the Freedom of Information Act 2000. The constabulary would, no doubt, claim that the authority is a law abiding organisation, so why should it object to providing the information that the authority says exists within the constabulary's files?"

37. The public authority has also advised the Information Commissioner as follows:

Over the two decades [the complainant] has been in contact with the Constabulary this organisation has taken every new allegation or complaint within his numerous correspondences seriously as per our duty. Investigations have been conducted and the results of those have been communicated to [the complainant], some details of these can be found in the chronology contained within my Decision Log^[1]. This only refers to information that is still held by the Constabulary as most documentation has been destroyed through normal retention/destruction practices. Reviews of these investigations carried out by Constabulary and Police Authority members have concluded and [the complainant] was informed of the results. The volume of investigations handled on behalf of [the complainant] and the level of involvement from high ranking officers and staff within our organisation amounts to a disproportionate cost and distraction in comparison to the general level of contact made with any one member of the public.

¹ This has been provided to the Information Commissioner.

It is clear from the volume of correspondence received by this organisation and the other organisations whose correspondence with which our Chief Constable has been copied in to that [the complainant] is persistently preoccupied by his perceived victimisation by the BBC. Despite numerous letters from different officers and staff within this Constabulary explaining that there is nothing further that can be done, [the complainant] continues to revisit allegations made, but not progressed at his request, or insist on reopening previously concluded investigations. [The complainant] is fixated on his unsubstantiated victimisation and in most correspondence complains of the stress and anxiety that continued correspondence with our organisation has caused. That said, [the complainant] has been informed that the usefulness of all existing evidence has been exhausted through every channel available within the Professional Standards Department and the Police Authority complaints procedures. Having been informed of this [the complainant] persists in requesting further work to be conducted by the Constabulary on his behalf".

38. In view of the history and context in which the request was made, the Information Commissioner accepts that the request can fairly be characterised as obsessive.

Whether the request has any serious purpose or value

39. In support of this argument the public authority advised the complainant as follows:

"As I have said previously, you have been told what information we hold, what we have done in response to your correspondence each time and that there is nothing further that we can or are willing to do. Therefore, you can have no expectation that anything new would result from this latest request. I am convinced that you feel your letters have a serious purpose and value, but considering even if I were to supply the requested information (assuming I can work out what it is you're requesting) it would not help your case due to its age, I cannot agree with this view".

40. The complainant countered this saying:

"As dishonesty appears to be so ingrained within the culture of the constabulary, its staff simply do not recognise wrong doing. Any breaches of the law by constabulary personnel are covered up. The exposure of such criminal behaviour within a police force and by senior officers is clearly in the public interest.

The constabulary has failed to justify its allegation of vexatious behaviour, an allegation which, in itself, is vexatious and a further example of the 20+ years of harassment that I and my family has [sic] endured from the constabulary and the authority”.

41. By itself, whether a request does or does not have value is not of significance given that freedom of information legislation is not concerned with the motives of an applicant, but in promoting transparency for its own sake. However, the Information Commissioner acknowledges that should a public authority be able to show that a request has no value or purpose, this may help bolster the application of section 14(1) when taken together with other supporting factors.
42. The Information Commissioner considers the request to be part of an ongoing campaign by the complainant and his determination to reopen matters that have already been deliberated on by the public authority and other parties. Its police authority reviewed any complaints made by the complainant, against both itself and the public authority, and provided the results to the complainant. The complainant has been advised by the police authority that:

“The events at the beginning of [the complainant]’s correspondence occurred in the early 1990s. It should be noted that much of the early correspondence (both that owned by the authority and the Police) is no longer available as it has been destroyed in line with file retention policies. Papers older than 2006 are available where [the complainant] has written again within the six year disposal period. The Authority has no paperwork in relation to [the complainant] prior to the recent letters in 2011 (other than an FOI request and thank you letter from [the complainant] in 2006). Similarly the Force complaint files (held by the Professional Standards Department) only date from 1 May 2003 when [the complainant] wrote to the Police complaints Authority (PCA). [The complainant] has previously been informed of established practice relating to the retention of documents.

The length of time for which [the complainant] has been corresponding is also of relevance when considering processes. The Police Complaints Authority was replaced by the Independent Police Complaints Commission (IPCC) in April 2004. Both bodies have considered [the complainant]’s complaints on different occasions and neither have found any grounds for action. The IPCC ruled in 2009 that [the complainant]’s appeal to them as

invalid on the grounds that no complaints against the police had been made”.

43. In a different case where there was an allegation of wrongdoing by a different public authority, the Tribunal (EA/2007/0130) found that, even where a request has serious purpose, *“there came a point when the Appellant should have let the matter drop ... there had been three independent enquiries ... in the Tribunal’s view it was not justified in the circumstances to persist with his campaign”*. The Information Commissioner likens this particular case to that one in that allegations made by the complainant have been taken as far as reasonably practicable by independent bodies but without being able to reach a resolution to the complainant’s satisfaction.
44. Another point considered by the Information Commissioner is that responding to this request in isolation would appear to have been a relatively straightforward matter that could, as mentioned above, have been properly dealt with under the terms of the DPA. He has therefore looked at the pattern of previous requests to consider whether the latest request supports the presence of a serious purpose.
45. In this case there is a long history of correspondence. Complaints raised by the complainant have been considered by various parties, but not to the complainant’s satisfaction. It seems to the Information Commissioner that any responses offered by the public authority are subsequently challenged by the complainant thus feeding an ongoing chain of correspondence.
46. As mentioned above, the Information Commissioner again notes that the police authority provided the complainant with a copy of the review it had undertaken into all his complaints. Since receiving this and after making the request that is the subject of this case, the complainant has again written to the public authority referring to the review as a ‘false report’. He has also stated that he believes this request has been deemed ‘vexatious’ by the public authority as an attempt: *“to cover up criminal activity within, not only the constabulary, but also within the police authority”*, adding: *“Vexatious: said of a law action: brought on insufficient grounds, with the intent of merely annoying the defendant”*. Since raising this complaint with the Information Commissioner the complainant has copied him into several pieces of correspondence which he has since sent to the public authority which seek to raise further complaints.
47. The Information Commissioner has concluded that whilst the initial requests for information on this subject matter may have had serious purpose or value, this most recent request would not result in the

provision of any information that has not already been provided to the complainant or that is not available to him via the access rights afforded to him under the terms of the DPA (which he has exercised both prior to this request and since). The Information Commissioner therefore agrees with the public authority that there is little if any value to be gained in responding to this particular request and he therefore concludes that it is unlikely to have any serious purpose or value.

Conclusion

48. Taking all the relevant matters into account, including the history and context of the request, the Information Commissioner has found that the number and strength of the factors in favour of applying section 14(1) are of sufficient weight to make the request vexatious.

Other matters

49. Although they do not form part of this decision notice the Information Commissioner wishes to highlight the following matters.
50. The Information Commissioner has been advised by the public authority that it has received a further request under the terms of the DPA which postdates this request. That has been processed as a separate item and the complainant is entitled to make a separate complaint to this office seeking an assessment under the terms of the DPA if he is unhappy with the response.

Right of appeal

51. 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
Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

52. 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.
53. 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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