

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 8 July 2014

Public Authority: The Chief Constable of Cambridgeshire
Address: Constabulary Headquarters
Hinchingsbrooke Park
Huntingdon
PE29 6NP

Decision (including any steps ordered)

1. The complainant has requested the Cambridgeshire Constabulary ("the police") incident file, and other information including the identities of any police officers involved, recording an incident that is said to have taken place in June 2004. The information request related to what has become a long running family dispute and to proceedings arising in connection with that dispute.
2. The police refused the request under section 14(1) of the FOIA considering it to be vexatious. The Commissioner's decision is that the request is vexatious and that the police applied section 14(1) correctly. He does not uphold the complaint or require the police to take any action.

Background

3. The complainant has been in dispute with some other members of his family and with the police since 2011 over a series of allegations of fraud, breach of trust and theft relating to the administration of the estate and financial affairs of a deceased elderly relative ('the family dispute'). The allegations concern the redrafting of wills and the withdrawal of money using an Enduring Power of Attorney.
4. The complainant says that a High Court action is in progress in relation to the dispute between family members. He also says that some of the information requests have been for information that he believes could assist his case in the litigation.
5. The police have investigated successive allegations of misconduct by the complainant against individual police officers. The complainant has made

formal complaints to the police Professional Standards Department (PSD). The PSD's investigations did not support the allegations made. The complainant has, on several occasions, exercised his right of appeal to the Independent Police Complaints Commission (IPCC). The police said that the substance of the complaints to the IPCC had not been upheld; it was not being required to take any action as a result of the latest IPCC complaint and no action was being taken against any police officer arising from it.

6. The Commissioner has on record a total of 25 expressions of concern from the complainant on connected matters regarding FOIA and other information issues; these were concerns about responses from the police and some other public authorities. The Commissioner has issued decision notices regarding seven of these. The most recent decisions concern connected complaints by the complainant against the police, and are those with the Commissioner's references FS50479480 and FS50481517. This decision notice should be read in conjunction with those notices. In both of those cases, the Commissioner found that the police had applied section 14(1) FOIA correctly. The complainant appealed the Commissioner's decisions to the First-tier Tribunal (Information Rights) and has since sought to appeal its decisions to the Upper Tribunal.

Request and response

7. On 14 December 2013, the complainant wrote to the police and requested information in the following terms:

I hold evidence that the late [name and address redacted] directly or indirectly reported an alleged crime or crimes to Cambridgeshire Constabulary on or about 17th June 2004.

I am informed that [named officer, name redacted and here referred to as "officer A"] was one of the investigating officers who recorded the alleged crime(s) on or about 17th June 2004.

1. Please provide me by email with the Incident Number, Rank, Collar and Surnames of any other police officer or police employee involved in that specific incident or any other follow up incidents.

2. Please provide me by email with a copy of the Witness Statement provided to [officer A] or any other police officer or police employee by the late [name redacted] on or after that date.

3. Please provide me by email with a copy of the complete Incident File.

Should you require clarification on any point or require me to resubmit my request please feel free to contact me by email.

8. The police responded on 8 January 2014 saying that, by virtue of the section 14(1) FOIA exemption, it would not comply with the request which it regarded as vexatious.
9. Following an internal review the police told the complainant on 4 March 2014 that the FOIA exemption had been properly applied. The police added that further related information requests would be deemed to be vexatious and would not receive either acknowledgement or response.
10. On 13 March 2014 the police wrote to the complainant to report the outcome of a related complaint against officer A. The police said that an action plan had been agreed with the complainant. As part of this plan, the police investigating officer had contacted officer A, who has now left the force. Officer A had said that he could not now recall the alleged incident in 2004. Other related matters were addressed by the police investigating officer and were also reported to the complainant on 13 March 2014 under separate cover.

Scope of the case

11. The complainant contacted the Commissioner on 5 March 2014 to complain about the way his request for information had been handled. He said that the information requested was urgently required as evidence in his High Court proceedings and was linked to his appeal to the Upper Tribunal.
12. The Commissioner considered the application by the police of the section 14(1) FOIA exemption.

Reasons for decision

13. 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. There is no public interest test.
14. The term "vexatious" is not defined in the FOIA. The Upper Tribunal recently considered the issue of vexatious requests in the case of the

Information Commissioner v Devon CC & Dransfield (UKUT 440 (AAC), 28 January 2013). The Tribunal commented that vexatious could be defined as the “*manifestly unjustified, inappropriate or improper use of a formal procedure*”. The Tribunal’s definition clearly establishes that the concepts of proportionality and justification are relevant to any consideration of whether a request is vexatious.

15. In the Commissioner’s view, the key question for public authorities to consider when determining if a request is vexatious is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress.
16. The Commissioner has identified a number of “indicators” which may be useful in identifying vexatious requests. These are set out in his published guidance on vexatious requests¹. The fact that a request contains one or more of these indicators will not necessarily mean that it must be vexatious. All the circumstances of a case will need to be considered in reaching a judgement as to whether a request is, or is not, vexatious.

Evidence from the parties

17. The complainant told the Commissioner that the family dispute related to the estate of two deceased family members, the second of whom had died in 2009. He said that there had to date been no grant of probate or issue of letters of administration; there had however been protracted and very costly legal proceedings. He drew the Commissioner’s attention to the Commissioner’s decisions, regarding connected information requests to other public authorities, Commissioner references FS50328157 and FS50328160.
18. The complainant told the Commissioner that he had been denied access to records of his deceased family members by the police and other public authorities. He said he was concerned at the steeply rising costs of the connected litigation which was being pursued with a view to resolving the family dispute. He said that if he had received the information he was seeking from the police and some other public authorities, the matter could have been resolved and the estate administered.

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http://www.ico.org.uk/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/dealing-with-vexatious-requests.ashx

19. The complainant added that, in his other proceedings, disclosure requests were inherently more expensive to action and harder to get off the ground although the courts had directed that there should be standard disclosure and inspection. He said that his requests under FOIA were relatively inexpensive and were being used by him to establish whether the police held relevant information and sometimes to elicit that information. He acknowledged that FOIA information requests were subject to some exemptions and did not entitle him to original documents; he submitted that section 14 FOIA was not relevant in this matter. He said that he believed that the withheld information was essential to his proceedings in the Upper Tribunal and the High Court.
20. The police reminded the Commissioner of his previous investigations into the connected complaints against it by this complainant (his references FS50481517 and FS504790480), and that the outcome of those complaints had been that the police reliance on section 14(1) FOIA had been upheld by both the Commissioner and, on subsequent appeal, the First-tier Tribunal (Information Rights).
21. The police said that the complainant had made a number of complaints regarding various individuals who have had dealings with him and about officers' handling of his allegations regarding individuals, in particular, other family members. It added that these complaints had been investigated by its PSD.
22. The police provided the Commissioner with details of nine FOIA requests received from the complainant since January 2012, seven of them on connected matters. The Commissioner noted that the other two requests had indirectly related to these matters.
23. When the request for an internal review had been received the police said that it had considered not responding but, as no forewarning had been given, it had considered the appeal by way of an independent review before deciding that its response that the request was vexatious had been correct. The police said that they did however plan to rely upon sections 17(5) and 17(6) FOIA with respect to any future connected information requests.
24. In evidence to the Commissioner, the police said that it had had to restrict the complainant to contacting the police, other than in emergency, by post or email, due to the distress, anxiety and stress that had been caused to members of its staff from telephone contact with him. The unreasonable persistence of his calls, along with their number and tone, had had the effect of causing harassment and distress to some of its staff. The police had provided him with a designated point of contact with its PSD to handle his complaints against it. The police

regarded this as amounting to a deliberate intention to cause annoyance.

25. The police reminded the Commissioner that he had found two previous requests to be vexatious, decisions that the First-tier Tribunal had subsequently upheld. There had been numerous complaints to the police PSD and appeals to the IPCC; these had often followed a scattergun approach with tangential points following a main complaint and leading to confusion.
26. The police said that, on the face of it and seen in isolation, the request could not in itself be considered to be overly burdensome. However when seen within the context of the burden already being imposed by his related issues with the police, the complaint was a significant addition to an already unreasonably heavy burden that was being placed on them.
27. The police said that they considered the request was designed to cause disruption and was being used to pursue the family dispute and to avoid the costs associated with obtaining disclosure in other proceedings. The police had offered advice and tried to make sure that the complainant was aware of the correct route for obtaining the information he needed to progress his proceedings in the courts.
28. The police believed the request to have been obsessive following, as it did, other information requests and complaints from the complainant when the outcome of their consideration of his requests and complaints was not favourable to him.
29. The police were sceptical as to whether the request had any serious purpose. They said that it was intended to elicit information with regard to other proceedings and was therefore not the correct route to follow. He had been given advice by the police about that but had not followed it and had continued to make inappropriate FOIA information requests.
30. The police added as an aside that, even if they were to address the information request as submitted, any information disclosed would be likely to be heavily redacted. This was because FOIA disclosures are made 'to the world' and, in that context, the police would be likely to rely upon the exemptions set out in sections 31 and 40 of FOIA.

The Commissioner's decision

31. When reviewing the evidence and representations put to him, the Commissioner had regard to his own guidance on vexatious requests and to the set of indicators he uses following the decision in *Dransfield*.

32. The Commissioner noted that, if the request were to be taken in isolation, then it would not necessarily be regarded as vexatious. However, in considering these matters, the Commissioner has regard to the context and history of a request. He has seen the effect of past requests and complaints from this complainant, also largely relating to the family dispute. He has seen that the effort expended by the police in dealing with them has already been grossly oppressive in terms of the strain on time and staff resources. Set in that context, the request imposed a burden on the police to the point where they could not reasonably be expected to comply with it.
33. The Commissioner noted the police evidence about the frequency and tone of the complainant's previous communications with them. He accepted that this has gone beyond what its staff should reasonably expect to receive and has had the effect of causing distress.
34. The Commissioner considered whether the request amounts to unreasonable persistence by the complainant. He saw that aspects of the matters raised by the complainant have already been comprehensively addressed, firstly by the police and its PSD, and then by the IPCC. The actions of the police have been vindicated by these investigations. The Commissioner has seen that the family dispute lies at the heart of all the complainant's dealings with the police and that this is being addressed in other proceedings. The Commissioner noted the complainant's attempt to use FOIA requests to elicit information which he can then use in other proceedings at a lesser cost. However, the Commissioner does not regard this as a proper use of the FOIA legislation.
35. In considering whether there has been a deliberate intention to cause annoyance, the Commissioner has noted the effect that his communications have had on police staff and the restrictions placed on his channels of communication with the police. In the Commissioner's view, if the complainant did not consciously set out to cause annoyance then he appeared to have been reckless as to the effect the frequency and tone of his communications, including this information request, was having on the recipients.
36. The Commissioner has seen evidence of the effort that the police have expended in dealing with matters arising from the family dispute and with the complainant's requests, complaints and appeals. He accepted that the level of effort required from the police has already been disproportionate.
37. In this case the Commissioner does not consider that sufficient weight can be placed on any serious purpose served by the request to justify

the disproportionate burden of disruption, irritation and distress it imposes on the police and its individual members of staff.

38. The Commissioner therefore considers that the police are entitled to rely on section 14(1) to refuse the request on the grounds that it is vexatious.

Right of appeal

39. 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: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

40. 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.
41. 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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