

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 18 February 2015

**Public Authority:** Chief Constable of Cheshire Constabulary  
**Address:** Cheshire Constabulary HQ  
Oakmere Road  
Winsford  
CW7 2UA

#### **Decision (including any steps ordered)**

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1. The complainant has requested information about Cheshire Constabulary's engagement with a local community group. Cheshire Constabulary refused to comply with the request because it considered it vexatious under section 14(1) of the FOIA. The Commissioner's decision is that Cheshire Constabulary has correctly relied on section 14(1) of the FOIA to refuse the request. The Commissioner requires no steps to be taken.

#### **Background**

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2. Moulton and Davenham Community Safety Action Group ("MADSAG") was a subcommittee of the Parish Councils of Moulton and Davenham. It existed to give the local community input into community safety issues, with particular focus on crime, disorder and antisocial behaviour. Its bimonthly meetings were not open to the public because sensitive matters were frequently discussed. Villagers could raise issues of concern by speaking to a committee member or other relevant agency.
3. Membership of MADSAG was drawn from local schools, the police, the borough council, town and parish councils, leisure and sport services, community safety wardens, youth services, local businesses, the county council and Weaver Vale Housing Trust.
4. Cheshire Constabulary informed the Commissioner that MADSAG ceased to exist in May 2012.

## Request and response

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5. On 14 August 2014 the complainant wrote to Cheshire Constabulary via the What Do They Know website ("WDTK") and made the following request for information:

*"Official records pertaining to the M.A.D.S.A.G. Committee prove your Force permitted numbers of its different officers including PCSO [redacted] to sit as members of that Committee, please confirm the names and ranks of each officer. Please provide me copy of all M.A.D.S.A.G. related correspondence created by those officers to include all correspondence sent to and received from other Committee members and their related Agencies, all notes to include officer note book entries.*

*Please provide me copy of all M.A.D.S.A.G. related correspondence your Force exchanged with Cheshire West and Chester Council, Weaver Vale Housing Trust Ltd, Davenham Parish Council, Moulton Parish Council 2005 - 2013.*

*You will be aware the main function of M.A.D.S.A.G was to protect the Moulton and Davenham Communities from riotous and Anti-Social behaviour and as a result your Force retained copies of the Committees annual logs, please provide me copy of each Log 2005 - 2013."*

6. On 12 September 2014 Cheshire Constabulary responded. It refused to comply with the request, stating that it considered it to be vexatious within the meaning of section 14(1) of the FOIA.
7. The complainant requested an internal review and on 14 October 2014 Cheshire Constabulary sent him the outcome. It upheld its application of section 14(1), and also explained that it was not obliged to deal with the request because to do so would exceed the cost limits established under section 12(1) of the FOIA.

## Scope of the case

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8. The complainant contacted the Commissioner on 14 October 2014 to complain about the way his request for information had been handled. He stated that he was entitled to the information he had asked for.
9. The Commissioner has considered whether or not Cheshire Constabulary was entitled to rely on the vexatious provisions at section 14(1) of the FOIA.

## Reasons for decision

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10. Section 14(1) of the FOIA states that section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious.
11. The term "vexatious" is not defined in the FOIA. The Upper Tribunal considered the issue of vexatious requests in the case of *Information Commissioner v Devon CC & Dransfield* (UKUT 440 (AAC), 28 January 2013)<sup>1</sup>. 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.
12. In the *Dransfield* case, the Upper Tribunal also found it instructive to assess the question of whether a request is truly vexatious by considering four broad issues: (1) the burden imposed by the request (on the public authority and its staff); (2) the motive of the requester; (3) the value or serious purpose of the request; and (4) the harassment or distress of and to staff. The Upper Tribunal did however also caution that these considerations were not meant to be exhaustive. Rather it stressed:

*"the importance of adopting a holistic and broad approach to the determination of whether a request is vexatious or not, emphasising the attributes of manifest unreasonableness, irresponsibility and, especially where there is a previous course of dealings, the lack of*

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<sup>1</sup> <http://www.osspsc.gov.uk/Aspx/view.aspx?id=3680>

*proportionality that typically characterise vexatious request.”*  
(paragraph 45).

13. 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.
14. 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 requests<sup>2</sup>. 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 vexatious.

### **Evidence from the parties**

#### *The complainant*

15. When making his complaint to the Commissioner, the complainant stated that he had submitted a reasonable and legitimate request for information to Cheshire Constabulary. He did not submit arguments as to why Cheshire Constabulary was wrong in designating the request as vexatious. However, in a telephone call with the case officer he expressed the view that he was entitled to scrutinise Cheshire Constabulary's conduct in light of wider concerns he had about it, and that its refusal to comply with his request was in itself suspicious behaviour.

#### *Cheshire Constabulary*

16. Cheshire Constabulary stated that the request forms part of a wider pattern of enquiries, complaints and FOIA requests which the complainant has used to pursue personal grievances against the Constabulary and several local authorities. It was of the view that rather than being a genuine request for information, this was one in a series of requests whose primary purpose was to harass, irritate and to attempt to control it.

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[http://ico.org.uk/~media/documents/library/Freedom\\_of\\_Information/Detail\\_ed\\_specialist\\_guides/dealing-with-vexatious-requests.ashx](http://ico.org.uk/~media/documents/library/Freedom_of_Information/Detail_ed_specialist_guides/dealing-with-vexatious-requests.ashx)

17. In reaching its decision to classify the request as vexatious, it said it took into account the complainant's dealings with the Constabulary, including his FOIA requests (which at the time of writing numbered 36), and his voluminous correspondence with various officers and departments of the Constabulary. It said this was one of a number of FOIA requests submitted by the complainant regarding local Parish Councils, PCSOs, anti-social behaviour and fraud allegations.
18. It said that the complainant's interaction with the Constabulary is characterised by him stating things as fact which have either never happened or did not happen in the way he represents them. With regard to his interest in MADSAG, it said that the complainant's focus is his assertion that the local PCSO failed to engage properly with the committee and that the Constabulary under reported crime in the local area and failed to report to the committee on matters within the agreed terms of reference. The Constabulary said that these assertions are repeated in many of the complainant's postings on his own website and within his many FOIA requests posted on WDTK. It said that the complainant has misrepresented the true situation.
19. It referred the Commissioner to a specific allegation the complainant has publicly made that the PCSO detailed to attend MADSAG meetings systematically failed to do so, and that a number of complaints about her failure to engage properly had been submitted by concerned Parish Councils. The Constabulary said that in fact, the PCSO had been relieved of her duty to attend the meetings for operational reasons and that not only were the Parish Councils aware of this, but they had expressed disappointment with having to lose an exceptional officer. It stated that the written complaints referred to by the complainant do not exist. It also disputed the complainant's claim that incidents of crime in the local area had been under reported. It said that the complainant's understanding of what constitutes anti-social behaviour was not in accordance with the definition applied by the Constabulary when recording incidents.
20. The Constabulary had informed the complainant that further FOIA requests relating to these matters would not be responded to where they fulfilled the ICO's definition of "vexatious". However, it said that it maintained an objective approach to assessing his requests, and that it had not simply designated the complainant himself as "vexatious". It highlighted the fact that in this case it had asked a separate police force to conduct the internal review of its handling of the request. That independent review had upheld Cheshire Constabulary's handling of the request.
21. The Constabulary has pointed to the breadth of the request and argues that it lacks focus. This, it said, is evidence that the request lacks serious purpose and that it is effectively a fishing expedition for any

information which might assist the complainant to pursue his wider grievances.

22. Most importantly, it said that complying with the request would be unduly burdensome. It said that because MADSAG members were drawn from various sources, correspondence might be held in a variety of locations. It had carried out a sampling exercise of its email system. It used search terms relevant to the request and located in excess of 9,999 emails which might contain relevant information. Each email would need to be manually examined to ascertain whether it contained information described in the request. Assuming an average time of one email per minute, this would take in excess of 166 hours to complete and does not take account of relevant information which might be held in other locations.

### **The Commissioner's decision**

23. When reviewing the evidence and representations put to him, the Commissioner has had regard to his own guidance on vexatious requests and to the set of indicators he uses following the decision in *Dransfield*.
24. The Commissioner notes that if the complainant's request were to be taken in isolation, it would not necessarily be regarded as vexatious. However, in considering these matters, the Commissioner has regard to the context and history of the request. He is aware that the backdrop to the request is the complainant's longstanding dispute with the Constabulary and several local authorities over the sale (in the 1950s) and subsequent use of land adjoining his residence.
25. Since September 2012 the Commissioner has received 25 complaints from the complainant about the way in which the Constabulary and the local authorities with whom he is in dispute have handled his FOIA requests. The Commissioner has issued four decision notices. In each case he found the complaint to be "not upheld".
26. It appears to the Commissioner that many of the complainant's FOIA requests emanate from this central dispute and that, having exhausted all means of having the sale or use of the land examined, he is increasingly using the FOIA as a vehicle for venting his frustration at and publicising his discontent with these bodies.
27. The Commissioner notes Cheshire Constabulary's submissions about the frequency and tone of the complainant's wider communications with it, and particularly the complainant's allegations of misconduct and corruption which he has levelled publicly, through the WDTK website. The Commissioner notes that in this case, when the Constabulary refused the request, the complainant's initial response was not to ask for an internal review of the decision (which the refusal notice informed

him he was entitled to do), but to submit a communication through the WDTK website which levelled accusations of corruption, dishonesty and malfeasance against individual members of the Constabulary and other local public figures. (The Constabulary replied on 15 September 2014, asking him whether he required an internal review, and he then responded that he did.) The Commissioner considers the complainant to be sufficiently familiar with the WDTK platform to know this would be visible to anyone viewing his request on the website, and that it would also appear in response to internet searches. The Commissioner noted in a previous decision notice involving the complainant<sup>3</sup> that he appears to use WDTK as a platform for publicly airing his grievances, and this is another instance where WDTK appears to have been used in that way.

28. The Commissioner further notes that having asked the Constabulary to conduct an internal review on 15 September 2014 and while waiting for its outcome, on 2 October 2014 the complainant submitted an almost identical FOIA request to the Constabulary through the WDTK website. The Commissioner considers such behaviour to be unreasonable, given that the complainant knew that his original request was in the process of being reviewed and that he also knew that the proper procedure, if he was not happy with the outcome of that review, was to complain to the ICO. He considers that the time given over by Cheshire Constabulary to dealing with the second request had the effect of unnecessarily tying-up resources which would otherwise have been dealing with legitimate FOIA requests.
29. Cheshire Constabulary has demonstrated that it has expended significant effort in dealing with matters arising from the complainant's dispute with it and with his various FOIA requests, requests for internal review and complaints to the ICO. The Commissioner accepts that the time and resources that Cheshire Constabulary has devoted to dealing with the complainant have been considerable.
30. Most importantly, he has had regard to the estimate that Cheshire Constabulary has provided of the time it would take to comply with this request, an estimate he considers to be cogent and reasonable. He accepts that the diversion of 166 working hours to deal with this request could not be absorbed by the Constabulary without having a significant, disruptive effect on other areas of its work. He further notes that, if the Constabulary was not applying section 14(1), the costs to it of

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<sup>3</sup> [https://ico.org.uk/media/action-weve-taken/decision-notices/2014/1042614/fs\\_50551798.pdf](https://ico.org.uk/media/action-weve-taken/decision-notices/2014/1042614/fs_50551798.pdf)

complying with the request would appear to exceed the appropriate limit established under section 12 of the FOIA. Set in that context, the Commissioner considers that the request imposes a burden on Cheshire Constabulary to the point where it should not reasonably be expected to comply with it.

31. 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 Cheshire Constabulary and its individual members of staff. He has had regard to the Upper Tribunal's definition of vexatious (the "*manifestly unjustified, inappropriate or improper use of a formal procedure*") and considers the use of the request process to publicly air accusations (via the WDTK site) and the submission of an identical second request while the response to the first is still being processed to resonate with that definition. Most significantly, the Commissioner considers that the exemption set out at section 14 prevents an individual from placing an unwarranted drain on a public authority's resources.
32. Having considered all these points, the Commissioner is satisfied that Cheshire Constabulary is entitled to rely on section 14(1) to refuse the request on the grounds that it is vexatious.

## Right of appeal

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33. 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: 0870 739 5836

Email: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

34. 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.
35. 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**