

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

### **Decision notice**

**Date:** 5 August 2015

**Public Authority:** Chief Constable of Avon and Somerset  
Constabulary

**Address:** Force Headquarters  
PO Box 37  
Valley Road  
Portishead  
Bristol  
BS20 8QJ

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

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1. The complainant made a series of requests for information over a very short period of time to Avon and Somerset Constabulary ("the Constabulary") about its injury on duty ("IOD") award review. The Constabulary considered that all the requests were vexatious and relied on section 14(1) of the FOIA to refuse to comply with them.
2. The Commissioner considers that the requests were vexatious and that section 14(1) was correctly engaged.
3. The Commissioner requires no steps to be taken.

#### **Background**

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4. Where a police officer has to leave the police service because of injuries sustained on duty they may be offered an IOD pension and an additional award to compensate them for any potential loss of future earnings. The award is calculated on a case by case basis and comprises a gratuity and a monthly payment. The gratuity is banded on a scale of one to four, with four being the highest.
5. Both the pension and the award are paid for life, but regulations make provision for a review of the award by the police force concerned to ensure that the correct banding still applies over the life of the award, which can cover many years. Where significant changes have taken

place which affect an individual's potential earnings, the banding may be increased or decreased as appropriate.

6. In 2014, following the publication of new Home Office guidance on the issue, the Constabulary took a decision to review the IOD awards it paid to its former officers. The decision has proved controversial among the former officers who have been subject to the review. The Constabulary says that awards may be increased as well as decreased, according to individual circumstances. However, many former officers are concerned that they will only be disadvantaged by the review.

## **Requests and response**

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7. Between 30 January 2015 and 23 February 2015, the complainant submitted 80 requests for information under the FOIA, comprising more than 300 questions. The requests covered a range of topics; only four asked for information directly related to the IOD award review.
8. On 25 February 2015, the Constabulary issued a single refusal notice in respect of all of the requests on the grounds that they were vexatious within the meaning of section 14(1) of the FOIA. It invited the complainant to work with the Constabulary in refining his requests down to a manageable level and said that it would endeavour to assist if he had a question about a specific topic.
9. The complainant requested an internal review and the Constabulary upheld its decision on 6 March 2015. It reiterated its invitation to work with the Constabulary's FOIA Officer to refine the requests to a manageable level, and also said that there might be other approaches to obtaining information better suited to the topics that concerned him.

## **Scope of the case**

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10. The complainant contacted the Commissioner on 11 March 2015 to complain about the Constabulary's decision to designate his requests for information as vexatious. He said he required the information in order to pursue legitimate concerns he had about the Constabulary's IOD award review.
11. In his complaint to the Commissioner the complainant included copies of four requests he had submitted to the Constabulary between 25 February 2015 and 9 March 2015. The complaints about these requests were submitted for the Commissioner's consideration before the statutory time for compliance had elapsed and so, in line with the

provisions at section 50(2), the Commissioner was not obliged to consider them.

12. During the course of the investigation the Commissioner tried to achieve an informal resolution between the complainant and the Constabulary, whereby the complainant agreed to waive his pursuit of the majority of the requests in exchange for the Constabulary responding to 26 of them. The Constabulary agreed to withdraw its application of section 14 in respect of one request, regarding a medical procedure, and it responded to the complainant on that one point (the Commissioner has therefore excluded that particular request from the scope of this decision notice). However, the Constabulary maintained that the remaining requests were still exempt under section 14. Therefore, the matter falls to be resolved formally, via a decision notice.
13. Since the Commissioner is being asked to consider the designation of multiple requests as vexatious by reference to one another, he considers that the appropriate time to determine whether the requests are vexatious is the time of the initial refusal notice. This means he has assessed the situation as it was on 25 February 2015, and has done so in respect of the full number of requests received by the Constabulary at that time.
14. The scope of the Commissioner's investigation is therefore whether the Constabulary was entitled to rely upon section 14(1) to refuse to comply with the complainant's remaining 79 FOIA requests. Those requests are reproduced in annex A of this decision notice.

## Reasons for decision

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### Section 14(1)

15. 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.
16. The FOIA does not define the term vexatious, but it was discussed before the Upper Tribunal in the case of *Information Commissioner vs Devon County Council & Dransfield* [2012] UKUT 440 (AAC), (28 January 2013)<sup>1</sup>.

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

17. In that case the Upper Tribunal defined a vexatious request as one that is a "*manifestly unjustified, inappropriate or improper use of a formal procedure*". The Tribunal made clear that the decision of whether a request is vexatious must be based on the circumstances surrounding the request.
18. 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 of, or distress to, staff.
19. The Upper Tribunal cautioned 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 proportionality that typically characterise vexatious request*" (paragraph 45).
20. 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.
21. The Commissioner has also 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's view*

22. The complainant is a former police officer who is subject to the Constabulary's IOD award review. He is aware that other former officers have submitted FOIA requests to the Constabulary, about the IOD award review. It is his view that the Constabulary is routinely designating any requests for such information as vexatious within the meaning of section 14(1), to impede scrutiny of the process.
23. He says he made his requests so as to assess the legality of the award review. He believes the review breaches sex discrimination legislation because there is a disparity in the ratio of males versus females affected, and is in contravention of Police Regulations. He also believes that the review is being conducted against a general background of misspending by the Constabulary, which renders any cuts to awards made to injured former officers grossly unfair.
24. Additionally, the complainant has made an allegation that he was wrongfully arrested by the Constabulary. He says that some of his requests were made in furtherance of these concerns.

### *The Constabulary's view*

25. The Constabulary argued that the requests are vexatious when considered together and that it should be entitled to rely on section 14(1) of FOIA to refuse to comply with them. It argued that the sheer volume of them imposed a significant burden on its staff and resources and was evidence of a primary intention to disrupt and interfere with the Constabulary's operations, rather than a genuine desire for most of the information requested.

### *Would compliance with the request create a significant burden in terms of expense and distraction*

26. The Constabulary explained that it received the complainant's 79 requests on an almost daily basis, within a four week period, via its online FOIA request form. It noted that the first request was received after the complainant was mistakenly blocked from interacting with the Constabulary's Twitter feed (this was subsequently rectified) and his first two requests addressed the Constabulary's use of Twitter. The Constabulary received the last request within less than 20 working days of the first. It considered that it was appropriate to consider the burden of the requests as a whole because there was an overlap of time when they all needed to be answered.

27. It explained that its FOIA team comprises three full time equivalent posts. The role of the team is to process any FOIA requests received by the Constabulary, from receipt to response. The FOIA team engages with the relevant business leads across the Constabulary to obtain the information requested.
28. At the time it received the complainant's requests the Constabulary was already experiencing a spike of FOIA requests relating to its IOD review. The majority of the requests (161) were received between January 2015 and June 2015. In February 2015, the Constabulary calculated that requests for information relating to the IOD award review amounted to 49% of all requests received (it calculated that the complainant's requests alone accounted for 26% of its on-hand workload). It also calculated that it was experiencing a 44% increase on requests compared with the same time the previous year. It stated that overall, during the last year it had received the second highest number of FOIA requests for a police force in England and Wales, with only the Metropolitan Police receiving more.
29. The FOIA team was overwhelmed by the number of requests it received, both from the complainant and other requesters, to the extent that it had to enlist the help of colleagues in other departments to simply keep up the logging process. Overtime had to be authorised to catch up on the publication log. The volume of requests distorted the ability of the FOIA team to process other FOIA requests not connected with the IOD award review within the statutory time limits.
30. The Constabulary said that, prior to its application of section 14, other business areas were also seriously affected by the influx of requests. Its Occupational Health Unit, which delivers care, treatment and support to employees, had to divert 30 man hours per week to dealing with the requests that impacted upon it. This directly impacted on the delivery of its core services; appointments were not made and follow ups were not taking place. This was a matter of considerable concern to the Force Medical Officer. The Constabulary also noted that the HR unit was adversely affected, with overtime having to be commissioned just to catch up on core work.
31. The Constabulary argued that the effort required to comply with the complainant's requests (many of which contained multiple questions) by passing them to the appropriate departments to retrieve relevant information, would be so grossly oppressive in terms of the strain on the Constabulary's time and resources that it could not reasonably be expected to comply with the request no matter how legitimate the subject matter or valid the intentions of the requester (although it reiterated its willingness to work with the complainant on specific matters of concern).

*Motive of the requester and purpose and value of the requests*

32. The Constabulary suspected that the complainant's requests, and those of the other requesters which formed the sudden "spike", were submitted as part of a concerted campaign to disrupt its work. It pointed to discussions on the IOD Pensioners' Association (public) Facebook group<sup>3</sup> in which former officers were actively encouraged to submit FOIA and DPA requests to the Constabulary. It said that this informal campaign was known to the complainant, pointing to comments he had made on the Facebook page which referenced the Constabulary's treatment of the requests as vexatious and expressed the hope that this might work in the group's favour. It believed that the majority of his requests were made with the primary intention of adding to and exacerbating the burden upon it, with the intent that its FOIA team should be swamped and no longer be able to comply with its legislative requirements towards other service users.
33. The Constabulary had asked the complainant to reduce the number and range of his requests, but he had categorically refused, stating "*I can't help the number of FOI's that I have sent, I'm that sort of intense person*".
34. He had further explained to the Constabulary the reasons for his requests:
- "Many were made in connection with my arrest last year and are needed to show that officers acted unlawfully at the time and have acted unethically since.*
- Many were made in connection with the PCC's rather misguided approach to saving money whilst spending money on questionable things.*
- Many were made to find out information about other issues wrong with the police force both current and historical.*
- It might be that you can not see the sole reason for my requests as I am asking for a number of reasons, all of them of equal importance".*
35. The Constabulary accepts that the complainant has a legitimate interest in the IOD award review. It has offered to liaise with the complainant to

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<sup>3</sup> <https://www.facebook.com/pages/IODpaorg/421461824680086>

refine his requests on this specific topic, an offer which the complainant has not taken up. It says that it remains open to assisting the complainant to address his concerns about the matter.

36. With regard to the complainant's concerns about his arrest last year, the Constabulary maintains that he is attempting to re-open a matter which has been investigated and concluded. Following his arrest, the criminal case against him was discontinued. He subsequently submitted a number of complaints about the arrest and the arresting officers. These were fully investigated following the Constabulary's formal complaints procedure. His complaints were not upheld. The Constabulary says that he has exhausted its complaints procedure and is now seeking to re-open the matter by other routes.
37. The Constabulary also rejects the complainant's arguments that some of the requests are necessary to inspect the Constabulary's financial probity. It says that the Constabulary's budget is subject to rigorous external scrutiny, with all expenditure over £500 published on the internet. It finds the burden to it of answering such requests to be disproportionate in view of the level of external scrutiny its spending is subject to.
38. The Constabulary pointed to the range of information asked for across the 79 requests as evidence that the vast majority of requests were not made in good faith. It has set out the scope of the requests in annex B to this decision notice. It says that it is difficult to see how many of the requests could further his concerns in any way (for example, "*How many FOI requests over the last 5 years have been wrongly titled FIO requests?*"; "*...how much has the force spent monthly on toilet rolls at the police headquarters over the last 5 years?*"). Many could fairly be characterised as a fishing expedition for information which might be used against the Constabulary.

*Do the requests have the effect of harassing the Constabulary or its staff?*

39. The tone of the correspondence, while by and large civil, was occasionally hostile and combative. In particular, the Constabulary drew attention to an incident whereby the complainant attended his local police station to lodge a formal complaint that in designating his requests as vexatious, the Constabulary FOIA officer had committed criminal misconduct in a public office. In subsequent correspondence with the officer he warned her that he would be making a formal complaint to the IPCC and that the offence carried a prison sentence. He concluded:



*"I'm sure that everyone (your supervisors and those in charge from other departments who were meddling away in the background) have told you not to worry and you were just carrying out their instructions, but please remember under the law you are the one that is liable for your actions".*

40. The email could fairly be characterised as menacing in tone.
41. A significant number of requests were concerned with the Avon and Somerset Police and Crime Commissioner, and asked for a wide range of information. Some of the requests could fairly be considered personally intrusive and harassing (for example, wanting to know which Constabulary staff attended her wedding and what advice she had received about securing her private residence and personal safety). Some contained imputations of inappropriate conduct (for example, *"Have any processes been put in place to make sure that the PCC does not share business sensitive data with her family or give contracts to businesses linked to her family and their own business interests?"*).

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

42. In reaching a decision, the Commissioner has considered the case of *Independent Police Complaints Commissioner v The Information Commissioner*<sup>4</sup> in which the Tribunal observed that:

*"A request may be so grossly oppressive in terms of the resources and time demanded by compliance as to be vexatious, regardless of the intentions or bona fides of the requester. If so, it is not prevented from being vexatious just because the authority could have relied instead on s.12".*

43. He has also had regard to a more recent Court of Appeal decision, in *Dransfield v IC & Devon County Council / Craven v IC & DECC*<sup>5</sup>. In the Court of Appeal decision it was held that the costs of complying with *"an extremely burdensome request"* could be the basis for concluding that a request was manifestly unreasonable under the EIR; it also concluded that this was the case under FOIA with regard to section 14. While the Constabulary has not set out the actual costs to it of complying with the complainant's requests, the Commissioner is mindful of its representations as to the percentage of its time that the complainant's

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<sup>4</sup> EA/2011/0222, 29 March 2012

<sup>5</sup> [2015] EWCA Civ 454

requests account for, and of the fact that the 79 requests contain over 300 questions.

44. When considering whether a request constitutes a significant burden on a public authority the Commissioner also endorses the Tribunal's approach where it is "*not just a question of financial resources but also includes issues of diversion and distraction from other work...*"<sup>6</sup>.
45. The Commissioner has determined that in this instance, the burden to the Constabulary of complying with the requests is grossly oppressive in terms of time and resources.
46. The volume of requests submitted by the complainant can be regarded as a tactic to place pressure on the Constabulary in order to interfere with the IOD awards review. The Commissioner notes that the complainant acknowledged to him during the investigation that the sheer volume of requests was likely to be problematic for the Constabulary to deal with. In any event, the view of the Commissioner is that, whatever his motivation for making them, the number of requests made by the complainant in that short period was grossly excessive.
47. Having looked at the arguments supplied by both the complainant and the Constabulary, the Commissioner also finds that the diversity of the requests and the number of questions contained within them would have caused work that is, in this instance, burdensome, for no clear benefit. The complainant seems intent on examining obscure elements of the Constabulary's spending and characteristically asks for figures which are unlikely to be readily to hand and which would require significant work to extract from wider budgetary spending. He does not ask for policy documents or procedures or even minutes of specified meetings, which might be more readily retrievable. The Commissioner is therefore satisfied that as the requests would have contributed to a significant distraction from the Constabulary's information management functions that the requests can be considered to constitute a "*significant administrative burden*"<sup>7</sup>.
48. The Commissioner recognises that in some circumstances, the importance of the information that has been requested will outweigh any factors that support a public authority's application of section 14(1). In

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<sup>6</sup> Welsh v IC [EA/ 2007/0088], paragraph 25

<sup>7</sup> Coggins v Information Commissioner [EA/2007/0130], paragraph 27

this case, the Commissioner does not doubt that some of the requested information is important to the complainant.

49. However, the Commissioner finds that the requests have little obvious connection to the complainant's professed concerns, and agrees with the Constabulary that it is hard to see how his concerns would be progressed by them being answered. Quite often the information requested appears random and fragmented (for example "*I understand that every year electrical items have to be Pat Tested. Can I have the details of all the items that have been PAT Tested over the last 3 years in the offices of the PCC*").
50. Objectively speaking, the Commissioner considers that the value of the requested information is not enough to outweigh the burden and drain on the Constabulary's resources that would occur if it were to comply with the requests. He further considers that there is little wider public interest in the disclosure of the requested information that would outweigh any factors to support the application of section 14(1).
51. The Commissioner notes that the complainant has indicated to him that he has further requests that he wishes to submit. The Commissioner considers that the complainant's requests are unlikely to conclude until the Constabulary has discontinued its IOD award review. As this will not be achieved through use of the FOIA, there is a potential for unceasing requests to be submitted by the complainant. He considers that the potential for further requests supports the Constabulary's view that answering these requests would constitute a significant burden in both expense and distraction, for no wider benefit.
52. Taking all the above into account, the Commissioner finds that the requests constitute a significant burden in terms of expense and distraction and is satisfied that the Constabulary was correct to apply section 14(1) of the FOIA to them.

## **Other matters**

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53. The Constabulary has repeatedly emphasised its willingness to work with complainant to help refine his requests to a manageable level. The Commissioner would therefore encourage the complainant to liaise with the Constabulary if he intends to submit to it further requests for information. The complainant should also note that the Commissioner's view is that the volume and frequency of the requests covered in this notice was entirely unreasonable and he would suggest that the complainant might like to reflect on this when considering future potential freedom of information requests.

## Right of appeal

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54. 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)

55. 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.
56. 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**