

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 18 February 2016

Public Authority: Chief Constable of Hertfordshire Constabulary

Address: Police Headquarters
Stanborough Road
Welwyn Garden City
Hertfordshire
AL8 6XF

Decision (including any steps ordered)

1. The complainant has requested information concerning offences committed in custody, use of Twitter, assaults on the police and complaints against police officers. Hertfordshire Constabulary (the 'Constabulary') found the request to be vexatious under section 14(1) of the FOIA. The Commissioner's decision is that the Constabulary was not entitled to refuse to comply with the request under section 14(1) of the FOIA and he requires it to take the following steps to ensure compliance with the legislation:
 - issue a fresh response to the request that does not rely on section 14(1).
2. The Constabulary must take this step within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

3. Following two earlier requests made on 5 October 2015 (see annex at the end of this notice), which were refused on the grounds that they were vexatious, on 25 October 2015 the complainant wrote to the

Constabulary with the following much reduced request containing elements from both of these:

"1. Number of detainees that were convicted of offences for crimes committed during custody?"

2. A copy of the guidance given to operators of the local Hertfordshire constabulary Twitter feeds?"

3. A copy of the guidance to serving officers of the Hertfordshire Constabulary on using social media in a private capacity?"

4. The numbers of officers in the entire county of Hertfordshire in the last 5 years that have suffered injuries inflicted on them by members of the public, please categorise in order of severity

5. Number of complaints investigated by the Professional Standards Department by officers serving the Borehamwood police team in the last 5 years".

4. The Constabulary responded on 16 November 2015. It stated that, as with the two earlier requests, it found the request to be vexatious.
5. The Commissioner has used his discretion and considered this complaint without an internal review.

Scope of the case

6. The complainant contacted the Commissioner on 20 November 2015 to complain about the way this request had been handled. He specifically complained that he had "*dramatically reduced*" his request to the five items above but that it had still been deemed to be vexatious.
7. The Commissioner has considered whether the Constabulary was entitled to find the request vexatious.

Reasons for decision

Section 14 – vexatious requests

8. 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. There is no public interest test.

9. The term "vexatious" is not defined in the FOIA. The Upper Tribunal (Information Rights) considered in some detail the issue of vexatious requests in the case of the *Information Commissioner v Devon CC & Dransfield*¹. 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.
10. 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) harassment or distress of and to staff.
11. 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 proportionality that typically characterise vexatious requests" (paragraph 45)
12. 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 requests². 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.
13. Although the complainant has only complained to the Commissioner about this latest request, which appears to be relatively straightforward to deal with in isolation, when determining whether or not a request is vexatious the Commissioner will take into account the background and history of dealings that a public authority has had with a complainant. This therefore includes the complainant's previous information requests

¹ GIA/3037/2011

² <https://ico.org.uk/media/for-organisations/documents/1198/dealing-with-vexatious-requests.pdf>

and correspondence, as well as, on this occasion, allegations raised by the complainant against the Constabulary and its officers.

14. In respect of wider context and history, the Constabulary has provided a summary of its recent dealings with the complainant to support its view that the request is vexatious. It has advised that its Professional Standards Department (PSD) are currently holding two complaints lodged by the complainant concerning a number of its officers and that these complaints are currently awaiting investigation pending a related court case involving the complainant and the Constabulary.
15. The five elements of this request all relate to the complaints the complainant has 'pending' with the Constabulary's PSD. The Commissioner understands that the PSD is currently unable to proceed with investigating his complaints as to do so would be *sub judice* because they relate to the impending court case.
16. The Constabulary's PSD had been maintaining a log of its contact with the complainant but found it could not cope with the amount of calls it was receiving because it was becoming "*a full time job*". As a result of this behaviour the complainant was therefore allocated a single point of contact into the Constabulary in October 2015.
17. The Constabulary has advised that, at the time of receiving this request, it had 2 members of staff dealing with FOIA requests, one of whom was in training; it currently only has one. It also advised that in dealing with the complainant's requests under both the FOIA and the Data Protection Act 1998 it estimates that it has already spent the equivalent of nine working days, three of which have been spent on the FOIA requests. It also advised that it had received a number of phone calls from the complainant in which he attempted to speed up his responses and also tried to find out what information he could expect to be given.

Is the request the request likely to cause a disproportionate or unjustified level of disruption, irritation or distress

18. The Commissioner believes that public authorities must bear in mind that meeting their responsibilities under the FOIA may involve absorbing a certain level of disruption and annoyance. However, if a request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress then this will be a strong indicator that it is vexatious.
19. In his guidance (see paragraph 58) the Commissioner states:

"A request which would not normally be regarded as vexatious in isolation may assume that quality once considered in context. An example of this would be where an individual is placing a significant

strain on an authority's resources by submitting a long and frequent series of requests, and the most recent request, although not obviously vexatious in itself, is contributing to that aggregated burden".

20. This latest request, although greatly reduced, obviously contributes to the Constabulary's overall burden of dealing with the complainant. The Constabulary has advised above that it has already spent approximately 3 days dealing with the complainant's FOIA requests and that it has also dealt with several phone calls from him 'chasing' a response.
21. However, whilst the Commissioner notes that the Constabulary has advised that it has spent 3 days working on the complainant's FOIA requests, he understands that this amount of time was taken because the Constabulary was preparing responses to the initial two requests prior to deciding to find them vexatious. The Commissioner does not therefore think that this fairly evidences that the burden has been placed on the Constabulary solely by the complainant. Rather it started to work on responding to the requests and then decided to change its position regarding how to deal with them. Whilst the Commissioner does not doubt that the Constabulary has indeed spent this amount of time in dealing with the requests, it must also be borne in mind that the complainant has not actually been provided with any information and, had it considered the requests to be vexatious on receipt, then it could have dealt with them very quickly rather than spending time trying to collate the relevant information.
22. Going on to consider any purpose behind the request, in *Commissioner vs Devon County Council & Dransfield [2012] UKUT 440 (AAC)*, (28 January 2013), Judge Wikeley recognised that the Upper Tribunal in *Wise v The Information Commissioner (GIA/1871/2011)* had identified proportionality as the common theme underpinning section 14(1) and he made particular reference to its comment that;

"Inherent in the policy behind section 14(1) is the idea of proportionality. There must be an appropriate relationship between such matters as the information sought, the purpose of the request, and the time and other resources that would be needed to provide it".

23. In the Commissioner's view a useful step for an authority to take when assessing whether a request, or the impact of dealing with it, is justified and proportionate, is to consider any evidence about the serious purpose or value of that request.

24. In this particular case the Constabulary has advised the Commissioner:

"We believe this information that [the complainant] is requesting will form part of his defence in relation to the charges against him and FOI is not the correct channel for him to obtain this information".

25. Whilst the 'purpose' behind the request is not clear from simply reading it in isolation, the Commissioner has spoken to the complainant and he is aware that he wants the information to assist him in his court case. He particularly requires the 'guidance' mentioned in parts (2) and (3), and advised the Commissioner that this information had been readily available from other forces that had already provided their related guidance to him. Via the Commissioner, the complainant also offered to reduce his request to include these two parts only, and the Commissioner therefore suggested to the Constabulary that disclosure of these could lead to an informal resolution of this complaint. However, the Constabulary did not accept this approach as it believed that it would be likely to lead to further requests.
26. In the complainant's view, the guidance requested has a direct bearing on his impending court case / PSD complaints and it is therefore obvious that there is a serious purpose behind the request, albeit that it is personal to the complainant himself.
27. Furthermore, at this stage the Commissioner is not convinced that the behaviour displayed by the complainant can be fairly described as being likely to lead to further requests. The complainant initially submitted two fairly lengthy requests, amounting to 43 parts in total. Rather than pursuing these, he significantly reduced his request to five parts only, and, during this investigation, he offered to further reduce this to two parts only. This does not persuade the Commissioner that the complainant has the intention of causing disruption or irritation, or indeed that his requests are burdensome.
28. Whilst the Commissioner notes that the complainant has been given a single point of contact because of the amount of contact he has made with the Constabulary in respect of his PSD complaints / court case, there is no evidence to suggest that this behaviour also relates to his FOIA requests. Raising complaints with a public authority about how they perceive they have been treated should not preclude someone from making a request under the FOIA and the Commissioner notes that there are only three requests which have been relied on by the Constabulary, two have which have not been pursued by the complainant. Whilst the complainant tried to speed up the processing of his requests by way of a number of phone calls, as mentioned above, public authorities must bear in mind that meeting their responsibilities

under the FOIA may involve absorbing a certain level of disruption and annoyance.

29. Whilst the Constabulary has obviously spent some considerable resources in dealing with the complainant's ongoing PSD complaints and court case, the Commissioner does not think that this should preclude him making a reasonable request under the FOIA. The request which the complainant has complained about is relatively simple and would not, in the Commissioner's view, appear to be onerous to deal with - although he notes that compliance with parts of it may well exceed the cost threshold based on their wording.
30. For the reasons set out above the Commissioner concludes that the complainant's request was not vexatious. Accordingly the Commissioner finds that section 14(1) is not engaged.

Right of appeal

31. 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

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

32. 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.
33. 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

Carolyn Howes
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Annex – two requests made on 5 October 2015

Request 1

1. *Total cost in £ of damage to property of Hertfordshire Constabulary by people detained during custody?*
2. *Number of instances of damage to property of Hertfordshire Constabulary by people detained during custody?*
3. *Number of detainees that were charged with offences for alleged committed during custody?*
4. *Number of detainees that were convicted of offences for crimes committed during custody?*
5. *In relation to a tweet posted on the official Borehamwood Police Twitter feed @BHAMWOODPOLICE on Sept 5th 2015 , details found in the attached file "name removed" , can you please name the employee of the constabulary who posted this message?*
6. *In relation to the same tweet mentioned in 5 please give the name of the employee of the constabulary who on the evening of Sept 7th deleted this post?*
7. *In relation to the tweet posted on the official Bushey Police Twitter feed @Busheypolice on Sept 19th 2015 , details find in the attached file "name removed" , can you please name the employee of the constabulary who posted this message?*
8. *In relation to the same post mentioned in 7 please give name of the employee of the constabulary that between September 19th and 21st 2015 retweeted this post on the Borehamwood Police Twitter feed @BHAMWOODPOLICE?*
9. *Between September 5th and September 7th please provide full list of all followers of the Borehamwood Police Twitter feed @BHAMWOODPOLICE?*
10. *In relation to 2 tweets posted on the official Bushey Police Twitter feed @Busheypolice on Sept 14th 2015 which contain images of awards given , (should be clear which images I refer) , and which were subsequently retweeted by Borehamwood Police Twitter feed @BHAMWOODPOLICE between September 14th and September 16th by an employee of the constabulary , can you please provide the details of that employee.?*
11. *Please provide your current number of followers on twitter of the @Busheypolice and @BHAMWOODPOLICE feed?*

12. *Name of the constabulary employee who posted a message between August 11th and 13th on BWOOD twitter feed that listed the [details removed] twitter handle. Unfortunately as I only have access to a iPad I can't attach it to this email. However I have email a which it is embedded in and I will forward it to you shortly subject "Item 12 Feargal FOI"?*
13. *A copy of the guidance to serving officers of the Hertfordshire Constabulary on using social media in a private capacity?*
14. *A copy of the guidance given to operators of the local Hertfordshire constabulary Twitter feeds?*
15. *How does the constabulary define "indirect contact" between people on people on Twitter.?*
16. *The policy of Hertfordshire constabulary on minors making complaints to Hertfordshire Constabulary?*
17. *The number of people arrested on the charge of common assault of a minor in the county of Hertfordshire in the last 5 years?*
18. *The number of people convicted by a court in Hertfordshire of the offence of common assault on a minor.?*
19. *The guidance issued by Hertfordshire constabulary to officers in how to deal with accusations of common assault by members of the public.?*
20. *The position of Hertfordshire constabulary on what are the criteria needed for there to be a suspicion of common assault against a minor.?*
21. *The total number of complaints made against the officers of Hertfordshire constabulary for each of the last five years?*
22. *The number numbers of officers find guilty of misconduct by the Hertfordshire constabulary in the last 5 years?*
23. *Of those officers found guilty please categorise their punishment for their misconduct?*
24. *How many people in the last 5 years have while being in the process of making a complaint against Hertfordshire constabulary been arrested ?*
25. *Of those people in item 23 how many were charged?*
26. *Of those people in item 23 how many were convicted of an offence?*
27. *In the last 5 years how many people were issued PIN's for alleging harassing a police officer?*

28. *What are the procedures and guidelines officers of the constabulary are expected to adhere too with in relation to dealing with offences of harassment ?*

Request 2

1. *The ethnic background in % terms of all officers of the Hertfordshire constabulary*
2. *The ethnic background in % terms of officers attached to Borehamwood police team*
3. *Number of officers suspended or sacked while attached to a police team operating in the Hertsmere area*
4. *The breakdown by seniority of all officers attached to the Borehamwood police team*
5. *Number of complaints investigated by the Professional Standards Department by officers serving the Borehamwood police team in the last 5 years.*
6. *Full crime statistics for the Borehamwood area*
7. *Total cost in £ for the running of policing in Borehamwood, please categorise areas of expenditure*
8. *The numbers of officers in the entire county of Hertfordshire in the last 5 years that have suffered injuries inflicted on them by members of the public, please categorise in order of severity*
9. *Same as 8) , only limit the answers to officers serving in Hertsmere*
10. *The total number of man days lost in the last 5 years due to injuries inflicted on members of the constabulary by the public in the entire Hertfordshire police force*
11. *The number of man days lost in the last 5 years due to injuries inflicted on members of the constabulary serving in Hertsmere by members of the public*
12. *Total number of people interviewed under caution BUT NOT UNDER ARREST at Borehamwood police station in the last 2 years*
13. *Total number of visits for each of the last 2 years by Duty solicitors to the Borehamwood police station.*
14. *The number of officers based in Hertsmere trained in dealing with child abuse cases, only include those who have received formal training*

15. *The number of officers based in Hertsmere who have received training in how to deal with and understand stalking.*

16. *The number of search and seize operations conducted by officers in Hertsmere in the last 2 years broken down by crime category*

... Happy to discuss the reasoning behind any of the questions, which believe me are genuine questions about the way the police operate in Hertsmere