

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 13 July 2016

**Public Authority:** Chief Constable of Hampshire Constabulary  
**Address:** Mottisfont Court  
Tower Street  
Winchester  
Hampshire  
SO23 8ZD

#### Decision (including any steps ordered)

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1. The complainant requested information concerning the application by Hampshire Constabulary (the police), when prosecuting alleged road traffic offences, of guidelines produced by the then Association of Chief Police Officers. The police relied on the section 14(1) FOIA exemption in refusing the request which was one of a set of overlapping and similar requests.
2. The Commissioner's decision is that the police applied the section 14(1) FOIA exemption to this request correctly and that there are no further steps to be taken.

#### Request and response

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3. On 22 September 2015, the complainant wrote to the police and requested information in the following terms:

*"1. Confirm that Fixed Penalty Notices such as referenced are processed in accordance with the appropriate ACPO Guidelines.*

*2. (a) The rank of the staff member(s) that carried out the determination required by ACPO 5.1*

*(b) The date of the determination*

*(c) The resulting determination*

*(d) The noted information that was considered warranting prosecution in this case*

*(e) The specific perceived danger(s) to (i) Pedestrians and/or property.*

*3. Such Manuals/guidelines or instructions that apply to the application of ACPO 5.1.*

*4. In the event that any automated decisions were made within the overall processing of this matter I ask that you provide the logic involved in any such decisions, the specific information that it applies to and the resulting decision and its effects."*

4. The Police refused the request relying on section 14(1) FOIA and confirmed its position on this and other similar requests in an internal review letter of 23 May 2016.

### **Scope of the case**

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5. The complainant contacted the Commissioner on 7 March 2016 to complain about the way his request for information had been handled. He explained that the police had stated that they dealt with road traffic offences in accordance with the speed enforcement policy guidelines 2011 - 2015 issued by the then Association of Chief Police Officers (the ACPO guidelines). He said however that the police had prosecuted him in a manner which he alleged was contrary to those guidelines. He said that he had raised a number of FOIA requests to evidence his concern. He believed these had been handled incorrectly by the police, who he said were largely using obfuscation to avoid confirming his concerns and stressed that no relevant information had been provided at any time to date.
6. The Commissioner considered whether or not the police had correctly relied upon the section 14(1) FOIA exemption.

### **Reasons for decision**

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7. 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"*

8. Section 14(1) of the FOIA allows a public authority to refuse to comply with a request that is vexatious. The term "vexatious" is not defined in the FOIA. The Upper-tier Tribunal considered the issue of vexatious

requests in the case of The Information Commissioner and Devon County Council vs Mr Alan Dransfield (GIA/3037/2011) and concluded that the term could be defined as *"manifestly unjustified, inappropriate or improper use of a formal procedure"*.

9. The *Dransfield* case identified four factors that may be present in vexatious requests:
  - the burden imposed by the request (on the public authority and its staff)
  - the motive of the requester
  - harassment or distress caused to staff
  - the value or serious purpose of the request.
10. Notwithstanding these indicators, all the circumstances of the case such as the background and history of the request must be considered in reaching a judgement as to whether or not a request is vexatious.
11. The Commissioner's guidance on vexatious requests suggests that the key question a public authority must ask itself is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress. Where this is not clear, the Commissioner considers that a public authority should weigh the impact on itself and balance this against the purpose and value of the request. In addition, where relevant, public authorities should take into account wider factors such as the background and history of the request.
12. The Commissioner considers that the background and history of the request are of particular significance in this case where there have been a number of previous connected information requests.
13. The complainant accepted that there had been other related matters but said that these had not been addressed to his satisfaction which was the reason for his persistence; he said that no relevant information had been provided. He drew attention to section 5 of the ACPO guidelines which said that police traffic law enforcement action to achieve compliance with speed limits should be proportionate to the risks posed to individuals and property. He believed that, in issuing a specified fixed penalty notice, the police had not acted in accordance with the ACPO guideline.
14. The police said that since September 2015 they had received from the complainant 12 FOIA requests all on the same subject in that they related to a specific fixed penalty notice and the police application of the ACPO guidelines. Refusal notices had been issued and, in addition, the police had conducted three relevant internal reviews of requests.

15. The police said that they had adopted a conciliatory approach. A senior manager had discussed the complainant's concerns with him at length in telephone conversations explaining how the force operated the processes around the issuing of fixed penalty notices.
16. The police added that no information was held about applying the relevant section of the ACPO guidelines other than the guideline itself which the complainant had already seen.
17. The police said that responding to the complainant's frequent and overlapping FOIA and other requests was taking up a disproportionate amount of time; there had been a time consuming and relentless submission of repeated requests on a single, specific subject area. They said that FOIA was being used improperly to continue to raise queries about a process which had already been clarified in detail. The police said that the continued submission of repeated requests was an improper use of the FOIA procedure which placed an undue burden on them.
18. The police added that there had been numerous lengthy and complex emails from the complainant with no coherency or clarity in terms of what was being requested. This resulted in staff having to devote considerable time and effort to reading and determining the exact nature of the requests. Sometimes it was impossible to discern the content of the requests because of the confusing presentation and language adopted and their often sarcastic and accusatory tone. The long and obtuse emails received by the force required considerable time to understand, which resulted in individuals being diverted from other important duties and activities. It was disproportionate and unreasonable for the police to continue to deal with repeated requests that lacked focus and precision. The police also believed that the complainant had submitted other requests under a pseudonym.
19. The police told the Commissioner that they had spent an extensive amount of time trying to respond to the complainant's requests on the same subject, his complaints had been fully considered and there was nothing further they could do to assist him. The police argued that the complainant was misusing FOIA in an effort to get a speeding conviction overturned but in ways that conferred no public benefit.
20. The police reaffirmed that they had dealt with a number of requests on the same subject and had outlined their position clearly and in depth. The complainant had been unwilling to accept their position on this matter or accept that there was no information held or steps the police could take which would bring the dispute to a close.

21. The police explained that they had provided the complainant with an explanation of the legal position which he had ignored. The complainant had been convicted by the court and had been given the opportunity to evidence his defence if he felt it was appropriate to do so at the time.
22. In determining the matter the Commissioner has seen that earlier connected requests from the complainant had been refused relying on the section 40(5) (personal information) FOIA exemption. Following other requests and connected correspondence the police had indicated that any further request on the same subject matter would be treated as vexatious and the section 14(1) FOIA exemption would be likely to be applied to it.
23. The Commissioner accepted that responding to the request and the related requests, including their complex and overlapping nature, had imposed a significant burden on the police and its staff.
24. He accepted that the wish to understand whether and how the police applied the ACPO guidelines gave the request a serious purpose but also decided that the motive of the request had been the personal one of seeking to overturn a conviction through FOIA requests rather than using the judicial process which had been available to the complainant but which he had not used. This substantially reduced the public interest value of the request
25. The Commissioner accepted that the tone and content of some of the complainant's communications had had the effect of causing a measure of harassment and distress to police staff.
26. The Commissioner's guidance on vexatious requests states that, in order to argue that a requester is demonstrating unreasonable persistence, a public authority must demonstrate that the requester is attempting to reopen an issue which has already been comprehensively addressed by it or has otherwise been subjected to some form of independent scrutiny.
27. In this matter, the police have engaged with the complainant and the issues he raised. The complainant has had his concerns addressed in reviews by the police and has had the opportunity to take his issues further with the relevant Police and Crime Commissioner and with the IPCC. The Commissioner decided that the complainant has demonstrated unreasonable persistence; he is satisfied that there is little if anything more that the police can do or say that will bring about a resolution.
28. The Commissioner believes that this is an example of a situation where a public authority is entitled to say "enough is enough" and that FOIA

does not oblige the police to devote any more of its resources to complying with a set of requests that are placing on them an undue and disproportionate burden. The finding of the Commissioner is, therefore, that the request was vexatious and that the police were not obliged to comply with it.

## Right of appeal

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29. 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)

30. 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.
31. 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**