

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 13 September 2016

Public Authority: Chief Constable of Staffordshire Police
Address: Police Headquarters
PO Box 3167
Stafford
ST16 9JZ

Decision (including any steps ordered)

1. The complainant requested information relating to the outsourcing by Staffordshire Police of their staff pensions provision to a private sector contractor. Having answered previous connected requests, the police refused these requests relying on the section 14(1) FOIA exemption on the grounds that they were likely to cause a disproportionate and unjustified level of disruption, irritation and distress.
2. The Commissioner's decision is that Staffordshire Police acted correctly in relying on the section 14(1) FOIA exemption. However she also found that the police had delayed their initial response to the request for far too long.
3. The Commissioner does not require Staffordshire Police to take any steps to ensure compliance with the legislation.

Request and response

4. On 24 December 2015, the complainant wrote to the police and requested information in the following terms:

" Under the provisions of the above act I require Staffordshire Police to disclose all and any communications or written notes or 'Minutes' from meetings including those electronically generated and records of telephone calls made to or received from the Home Office or any other Government Department regarding the issues surrounding the transfer of information, Sensitive, or Highly Sensitive Personal Information,*

'Data' to private companies for the purposes of Pension administration or management.

*** Under the FOIA I require Staffordshire Police to disclose all and any communications including those electronically generated and records of telephone calls made or received from the Home Office or any other Government Department regarding the transfer of or delegation of the 1987 PPR/S to private control, administration or management.*

**** The process of outsourcing police pensions was undertaken with public money and is therefore of 'Public Interest' Under the FOIA please provide the following information:*

a. What is the cost to the public purse for the implementation of outsourcing Police Pensions; specifically the cost of the contract itself between SP and Mouchel-Kier.

b. Any additional costs to the public purse associated with the outsourcing policy.

***** During the course of the above process SP obtained 'Legal Advice' from external lawyers (name redacted) this advice was obtained with public money and therefore is in the public interest. Please provide the cost to the public purse to obtain this advice and the date or dates the advice was obtained."*

5. On 4 May 2016, and after a considerable delay, the police responded saying that the request was vexatious and was refused relying on the exemption at section 14(1) FOIA. The decision was confirmed on 23 May 2016 following an internal review by the police.

Scope of the case

6. On 6 June 2016 the complainant contacted the Commissioner to complain about the way his request for information had been handled. He explained that he considered that the police were treating his requests, which he believed were specific and focused, as vexatious because they did not wish to disclose information about their conduct associated with the process of transferring administration of the police pension scheme to a named contractor (the contractor).
7. The Commissioner considered the reliance of the police on section 14(1) FOIA with regard to the arguments put forward by both parties and the wider context of the request.

8. She noted that the third information request overlapped heavily with another earlier request which her predecessor has considered and on which he had already issued a decision notice; the notice in that matter (ICO reference FS50587942) has been appealed to the First-tier Tribunal (Information Rights) (the Tribunal).
9. In addition, the police put forward supporting arguments for citing the section 43(2) FOIA exemption (commercial interests) in the case of the third and fourth parts of the request. However in view of her decision on the section 14(1) FOIA exemption, the Commissioner did not proceed to consider the section 43 exemption.

Reasons for decision

Sections 10 and 17

10. Sections 10(1) and 17(1) FOIA require that a response to an information request is sent within 20 working days of receipt of the request. In this case Staffordshire Police did not respond within 20 working days of receipt of the request and in so doing breached the requirements of sections 10(1) and 17(1) of the FOIA.

Section 14 – vexatious requests

11. Section 14(1) FOIA states that

"Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious".

12. 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) (Dransfield)* and concluded that the term could be defined as *"manifestly unjustified, inappropriate or improper use of a formal procedure"*.

13. 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.

14. 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.
15. 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.
16. 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.
17. The complainant acknowledged that he had raised other connected matters but said that these had not been addressed to his satisfaction.

The police

18. The police confirmed to the Commissioner that complying with the request would cause them a disproportionate and unjustified level of disruption, irritation and distress. They said that since March 2015 the complainant had 'bombarded' them with frequent requests and correspondence about his concerns with the transfer of the police pension scheme to a contractor (the contractor), they instanced nine other connected matters, some overlapping, the cumulative effect of which had been to impose a 'huge' burden on the police.
19. The police said that the time spent dealing with these matters had had the effect of diverting resources away from providing services to other members of the public. The complainant's requests had already caused a disproportionate and unjustified level of disruption, irritation and distress to the police and had caused considerable stress and distress to a number of individual members of staff. A substantial amount of information had been provided but further related requests were still being made.
20. They said that an appeal to the Tribunal by the complainant was pending; this had arisen from a previous ICO matter, reference FS50587942. The Tribunal matter too was itself proving to be resource intensive.
21. The police said that the correspondence and the continuing series of requests had originated from a complaint relating to the transfer of

some of the complainant's personal information to the contractor to enable it to administer the payment of police pensions. The police said they had already provided the complainant with a large volume of material, including his personal pension information, which extended to two box files. However the provision of information had simply led to further connected information requests. One of his earlier requests had been for legal advice provided to the police regarding the transfer. This had been refused on legal professional privilege grounds; the complainant had responded by asking for the costs of obtaining the advice.

22. The police said that the process of assembling the correspondence with the Home Office, and redacting sensitive information, would absorb very many hours of staff time. The police added that it was important to note that the volume and nature of the complainant's correspondence had already placed a very heavy burden on police resources.

The complainant

23. The complainant told the Commissioner that the police were being 'cras' and simply describing his requests as vexatious because they did not wish the information to be disclosed due to their conduct associated with the pension transfer process. He said that he had not instigated the pension transfer process and had only submitted requests for information related to the process or as the result of information disclosed in police documentation. He had never requested information other than that associated with these issues and denied making an excessive number of information requests.
24. The complainant said that the police had instigated the pension transfer to the contractor without any consultation with their stakeholders. He explained his belief that the pension transfer to the contractor had breached the statutory duty of the Chief Constable to administer the scheme with the result that the police were in unlawful administration of police pensions.
25. The complainant added that the Home Office had been involved in the pension transfer process so it was not unreasonable to question or seek information relating to the Home Office participation in the process. If the police were in unlawful administration of the police pensions then it followed that the public purse had been placed at risk. The police were attempting to prevent scrutiny of the process they employed and there was, in his view, an overwhelming public interest in putting the information into the public domain.
26. He said that his requests had not been excessive but had been proportionate to the issues involved and to the circumstances and

conduct of the police who appeared to have created work and problems by attempting to withhold information. He said that the police appeared to consider their actions to be 'state secrets' and were determined to prevent the truth emerging because they had acted unlawfully. He said he was only asking for information which any member of the press would ask for.

The Commissioner

27. The burden on the police in this matter arises principally from the resources and staff time that they have been spending on addressing the complainant's information requests. With regard to the Home Office correspondence the police would need to spend considerable staff time on identifying and redacting exempt information from the emails prior to disclosure. The costs provision (section 12 FOIA) cannot be claimed on the basis of time spent applying exemptions. However, the Commissioner's published guidance on section 14(1) FOIA allows for the possibility that a request can be refused as vexatious on the basis of the time that would be taken in addressing it (<https://ico.org.uk/media/for-organisations/documents/1198/dealing-with-vexatious-requests.pdf>).

The Commissioner's guidance states that:

"an authority is most likely to have a viable case where:

- *The requester has asked for a substantial volume of information*
AND
- *The authority has real concerns about potentially exempt information, which it will be able to substantiate if asked to do so by the ICO* **AND**
- *Any potentially exempt information cannot easily be isolated because it is scattered throughout the requested material."*

28. The Commissioner's guidance also states that the Commissioner considers *"there to be a high threshold for refusing a request on such grounds"* and that she *"would expect the authority to provide us with clear evidence to substantiate the claim that the request is grossly oppressive"*.
29. The Commissioner considered whether the requests had a serious purpose or value and considered that they did. However disclosures already made and other requests under consideration already went a long way to addressing this and severely diminished the value that responding positively to his further requests would add.
30. The Commissioner noted that, when delays occurred, there had been instances of abusive or aggressive language being used when the complainant's frustration had led to the tone of his correspondence

degenerating and to unfounded accusations being levelled against individual members of staff which had caused them distress. He had failed to appreciate that the volume and frequency of his own requests had itself been a causative factor in these delays.

31. The Commissioner considered the history of information requests by the complainant and the evidence the complainant had himself provided to her about his concerns with the issue of what he saw as the wrongful pension transfer by the police to a third party. She decided that, taken as a whole, his behaviour went far beyond making simple information requests to a point which amounted to unreasonable persistence and was evidence of obsessive behaviour. The complainant was discontented with the police decision to make the transfer and was using a stream of information requests to pursue the substantive issue of his perceived grievance in a way that amounted to an abuse of the process provided by Act.
32. The Commissioner had regard for the decision of her predecessor in his decision notice of 18 February 2016 (ICO reference FS50587942) in finding that a previous set of information requests made on 1 June 2015 had been vexatious. Those requests overlapped with the complainant's 24 December 2015 information request.
33. In conclusion, the Commissioner has accepted the evidence from the police that addressing the information request would impose a significant burden on them. As to whether the request was nevertheless of such value that this burden would be proportionate, the Commissioner's view is that it would not. Whilst the Commissioner accepts that there may be a degree of value in this request, she considered that any value further disclosure might add to the public understanding of the matter would not be proportionate to the burden and distress that would be placed on the police. The decision of the Commissioner is therefore that the requests viewed as a whole were vexatious and that the police were not obliged to comply with them.

Third part of the request

34. The third part of the request – for the costs of the transfer contract – overlaps heavily with a previous request by the complainant made on 1 June 2015. In response to that earlier request, the police have already disclosed to the complainant a redacted copy of the pension transfer contract, the redactions include the redaction of financial information. In the earlier decision notice (reference FS50587942), the then Commissioner had decided that parts of the then request had been vexatious and that the costs of the contract had been correctly withheld by the police relying on the section 43(2) FOIA exemption. The current Commissioner has made no further findings about that earlier matter.

Right of appeal

35. 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

36. 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.
37. 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

Andrew White
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