

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 11 July 2017

Public Authority: Chief Constable of Northumbria Police
Address: Northumbria Police Headquarters
Middle Engine Lane
Wallsend
Tyne & Wear
NE28 9NT

Decision (including any steps ordered)

1. The complainant has requested information about any complaints Northumbria Police may have received about its deputy chief constable. Northumbria Police refused to comply with the request, on the grounds that it was vexatious within the meaning of section 14(1) of the FOIA.
2. The Commissioner's decision is that Northumbria Police was entitled to rely on section 14(1) to refuse to comply with the request. No steps are required.

Request and response

3. On 21 September 2016, the complainant wrote to Northumbria Police via the public *WhatDoTheyKnow* website and requested information in the following terms:

"I would like you to supply me with information on all complaints made against Winton Keenen when he was ACC and during his period as DCC.

I would like to also know;

1. *How many complaints were made against DCC Keenen while he was Assistant Chief Constable.*

2. How many complaints were made against DCC Keenen since he has been Acting DCC and while DCC.

I would like the data broken into date order and I am requiring it to include all complaints, even those that were not recorded.

3. Details of outcome of each complaint and any action taken against Winton Keenen.

I do not wish for you to disclose any personal data relating to Winton Keenen, the information I am requesting relates to his position in a public office while acting as a Chief officer."

4. Northumbria Police responded on 18 October 2016. It would neither confirm nor deny whether it held the requested information, citing the exemption at section 40(5) (Personal information) of the FOIA.
5. Following an internal review, Northumbria Police wrote to the complainant on 10 January 2017. It upheld its decision to apply section 40(5).

Scope of the case

6. The complainant contacted the Commissioner on 13 January 2017 to complain about the way his request for information had been handled. He wished to challenge the application of section 40(5) to refuse the request.
7. During the course of the Commissioner's investigation, Northumbria Police revised its position with regard to the request. It withdrew its reliance on section 40(5) and instead cited section 14(1) (Vexatious request) as its reason for refusing to comply with the request.
8. Following the combined cases of the Home Office v Information Commissioner (GIA/2098/2010) and DEFRA v Information Commissioner (GIA/1694/2010) in the Upper Tribunal, a public authority is able to claim a new grounds for refusing a request, either before the Commissioner or the First-tier Tribunal, and both must consider any such new claims.
9. The Commissioner has therefore considered Northumbria Police's application of section 14(1) to refuse to comply with the request.

Reasons for decision

Section 14(1) – vexatious requests

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. The section is not subject to a public interest test.
11. 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 & Dransfield¹. 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) harassment or distress of and to staff.
13. 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).
14. The Commissioner has published guidance on vexatious requests². That guidance includes a number of indicators that may apply in the case of a vexatious request.

¹ GIA/3037/2011

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

15. As discussed in the Commissioner's guidance, the relevant consideration is whether the request itself is vexatious, rather than the individual submitting it. However, a public authority may also consider the context of the request and the history of its relationship with the requester when this is relevant.
16. In relation to the background and history to the request, the Commissioner understands that the complainant has been in contact with Northumbria Police for many years regarding his dissatisfaction with its investigation into an attempt on his life in 1999 (for which nobody has been charged; while Northumbria Police initially categorised the attempt as gangland related, it later conceded this was not the case, and apologised to the complainant. It says that the case remains open).
17. From this central dispute, the complainant has expressed wider concerns about Northumbria Police. He persistently accuses Northumbria Police of corruption, in trying to conceal the truth about the way it has dealt with him over the years, and he makes these accusations frequently and publicly. An internet search of his surname together with "Northumbria Police" brings up multiple blogs, information requests and postings alleging cover ups, incompetence, smear campaigns and corruption by Northumbria Police.
18. It is Northumbria Police's position that the complainant's dissatisfaction with the way it handled the attempted murder investigation has escalated into voluminous and obsessive correspondence which dominates its FOIA resources with requests and these, when answered, frequently generate further requests. It says that the volume of the complainant's FOIA requests, his habit of submitting repeated and overlapping requests and their often defamatory and accusatory tone have transcended what would be proportionate in the circumstances, and have become manifestly unreasonable and burdensome in terms of the resources that need to be allocated to deal with them.
19. At the time of this decision notice (and since 2010), of a total of 565 FOIA requests received by Northumbria Police via the online *WhatDoTheyKnow* website, 83 had been submitted by the complainant, eight since January 2017. He had also submitted multiple FOIA requests to Northumbria Police prior to 2010, which were not submitted via *WhatDoTheyKnow*.
20. The requests span a range of topics: information about the attempted murder investigation (including details of evidence, tactics and also peripheral elements such as press releases and expenses incurred); information about Northumbria Police's handling of the complainant's requests for information; and requests about the expenses, conduct and public comments made by and about individual Northumbria Police

officers. Many of the requests are phrased in a way which implies misconduct and wrongdoing by Northumbria Police.

21. As mentioned above, Northumbria Police also received multiple requests for information about the attempted murder investigation prior to 2010, which are not on *WhatDoTheyKnow*. On 13 November 2009 it informed the complainant in writing that it considered these requests to be vexatious, and that it would not henceforth be responding to similar such requests from him.
22. The complainant continued to submit FOIA requests to Northumbria Police after the above notice was issued, albeit his requests for information about the attempted murder investigation subsided. More recently, Northumbria Police said his requests had covered subjects including complaints, discipline policies, procedures, statistics and incidents involving similar circumstances (to the complainant's case) as well as other matters. Nevertheless, it considered that these requests had been made as a direct result of the complainant's discontent with the handling of the attempted murder case and that he was using the FOIA, and particularly the facility provided by *WhatDoTheyKnow*, to publicly air his grievances and to harass, defame and discredit Northumbria Police.
23. Northumbria Police considered that the request under consideration here was part of a steady and persistent series of FOIA requests and that answering it offered no prospect of satisfying the complainant and would not result in the requests stopping. It acknowledged that an individual request may not be vexatious in isolation, but when considered in the context of a long series of overlapping requests or other correspondence it may form part of a wider pattern of behaviour that makes it vexatious. It considered his request, when taken in context with the many other requests received from him, could fairly be regarded as vexatious.
24. Northumbria Police also cited what it considered to be the complainant's habit of personally targeting senior police officers involved in investigations relating to him. Referring to a previous instance involving another senior officer, it said:

"That named Officer was the target of a campaign from this requestor and was the subject of eight separate FOI from those classed as working in concert regarding [the complainant's] issues. [The complainant] used these requests along with other websites to further his campaign against this other named Officer. It is now clear that [the complainant] is launching a similar campaign against Mr Keenen as he has now submitted a number of requests specifically about Mr Keenen.

It is clear that [the complainant] targets Senior Officers who become involved in his issues with Northumbria Police."

25. On that point, the Commissioner notes that she considered a complaint about a request for similar information about the other named officer, by the complainant, under decision notice reference FS50435641³.
26. In setting out its full case, Northumbria Police said:

"[The complainant] has submitted a large volume of requests and many of these requests are overlapping and often mix accusations and have become manifestly unreasonable and burdensome, in terms of the resources required to deal with them.

The requests [the complainant] submits regarding Officers form a small part of a large volume of requests submitted by him. Many of [the complainant's] requests mix accusations and are placed into a public arena in an effort to further his grievances against Northumbria Police.

It is clear that [the complainant] has issues with Officers that have dealt with him and uses public facing arenas to air these grievances. A simple internet search brings back multiple entries specifically about Mr Keenen and in my view it is clear from the type and nature of the data available in such searches that [the complainant] is using the FOIA arena to further this campaign against Mr Keenan."

27. It considered that the time and effort to process and respond to the complainant's requests placed a significant burden on its available resources for dealing with FOIA requests, that the continued approaches were unreasonable and that the public comments made by the complainant amounted to harassment of Northumbria Police and its staff.

The Commissioner's position

28. The Commissioner notes the background to this case. For many years Northumbria Police has dealt with persistent requests for information from the complainant. Many of the requests could fairly be characterised as being a vehicle for the complainant to publicise his dissatisfaction with Northumbria Police (she notes, for example, that the complainant has annotated the *WhatDoTheyKnow* record for this request, with a

³ https://ico.org.uk/media/action-weve-taken/decision-notices/2012/744018/fs_50435641.pdf

detailed account of his concerns about other issues, not directly related to this request).

29. The Commissioner acknowledges the impact on Northumbria Police's administrative resources of dealing with the complainant's request, when considered alongside the voluminous nature of the other requests regularly submitted by him. She accepts that this has caused a significant level of disruption and irritation to it and that dealing with them means that it runs the risk of impacting on service levels afforded to other people who make FOIA requests.
30. Having looked at the pattern of the complainant's requests, the Commissioner also considers that any response given by Northumbria Police would not be the end of the matter and would be likely to lead to follow-up requests from the complainant. She is of the view that this would extend the life of the complainant's use of the FOIA to address his grievance with Northumbria Police.
31. The Commissioner has considered whether there is any serious purpose or value for the requested information and, if the request was complied with, would it satisfy this purpose. She recognises that one of the driving factors for the complainant's discontent with Northumbria Police is the fact that nobody has yet been charged with his attempted murder, and that this must be a genuine and pressing concern for the complainant. However, disclosure of the requested information would do nothing to address that point.
32. The complainant clearly has other grievances about his treatment by Northumbria Police, which have led him to publicly question its competence and integrity. The disclosure of information about complaints made against a senior officer might therefore be in the public interest in that context. However, where individual officers' behaviour is called into question, there are official channels and procedures through which this should be investigated and addressed (via the force Professional Standards Department or referral to the Independent Police Complaints Commission). These referrals ensure that serious or systematic misconduct is identified and dealt with appropriately and the Commissioner is satisfied that the public interest in scrutiny of senior officers is, to a very large degree, served by these procedures.
33. In view of this, the Commissioner considers that the request for information has no wider value or purpose beyond the complainant's public pursuit of his personal grievance against Northumbria Police.
34. She considers it clear that the complainant appears to be attempting to pursue his grievances through the FOIA regime, by way of the public *WhatDoTheyKnow* website and that by the volume and the tone of many

of the requests and accompanying correspondence, he is using it in an attempt to embarrass and harass Northumbria Police.

35. The Commissioner considers that the FOIA is not an appropriate mechanism for pursuing such concerns. If the complainant has concerns about how Northumbria Police has dealt with the investigation into the attempt on his life, there exist formal channels through which he may have his grievances formally examined (outlined in paragraph 31, above). The Commissioner considers that there is no public interest in them being played out in public, under the FOIA regime.
36. Taking all the above into account, the Commissioner considers that the request meets the Tribunal's definition of "*manifestly unjustified, inappropriate or improper use of a formal procedure*" and that it was vexatious within the meaning of section 14(1).

Right of appeal

37. 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

38. 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.
39. 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

Samantha Bracegirdle
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