

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 25 April 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 Northumbria Police's investigation into a murder attempt made on him in 1999, for which nobody has been charged.
2. The Commissioner's decision is that the request is vexatious and Northumbria Police was entitled to apply section 14(1) of the FOIA to refuse the request. She also considers that Northumbria Police was not obliged to issue a refusal notice in respect of the request, in accordance with section 17(6) of the FOIA.
3. The Commissioner does not require Northumbria Police to take any steps.

Request and response

4. On 30 January 2017, the complainant, referencing the investigation into the attempt on his life in 1999, wrote to Northumbria Police via the public *WhatDoTheyKnow* website, and requested information in the following terms:

*"It can be seen from the following legal case that the Crown is using voice recognition expert/s in other major crime investigations in other cases and other parts of the UK;
<http://www.newster.co/?news=2440009#news...>*

1. *Have Northumbria Police used voice recognition expert/s regards the June 1999 attempted murder case, the caller (van) answerphone message?*
 2. *Regards 1, if so have they been able to ID the caller on the answerphone message?*
 3. *Regards 1, 2 above. Do you now have any suspects regards the answerphone message (who, for whatever reason, has not been arrested and or questioned yet?*
 4. *Do Northumbria police have any evidence that the 17 June 1999, Whitley Bay attempted murder was related to terrorism?"*
5. Northumbria Police did not respond to the request.

Scope of the case

6. The complainant contacted the Commissioner on 2 March 2017 to complain that he had not received a response to the request.
7. During the course of the Commissioner's investigation, Northumbria Police explained that it considered the request to be vexatious within the meaning of section 14 of the FOIA, and that it had previously informed the complainant that requests on the subject of its investigation into the murder attempt on him would be deemed vexatious and would not be responded to.
8. The Commissioner considers the scope of the decision notice to be whether the request was vexatious within the meaning of section 14(1) of the FOIA, and if so, whether Northumbria Police was entitled by section 17(6) not to issue a refusal notice.

Reasons for decision

Section 14 – vexatious requests

9. 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.

10. 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.
11. 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.
12. 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).
13. 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.
14. 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.
15. 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 the attempt on his life in 1999 (for which

¹ GIA/3037/2011

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

nobody has been charged; Northumbria Police says that the case remains open).

16. It is Northumbria Police's position that the volume of the complainant's FOIA requests to it about the attempted murder investigation, 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.
17. The complainant's requests about the attempted murder investigation form a subset of a wider body of requests. At the time of this decision notice (and since 2010), of a total of 550 requests received by Northumbria Police via the online *WhatDoTheyKnow* website, 82 had been submitted by the complainant. He had also submitted multiple FOIA requests to Northumbria Police prior to 2010, which were not submitted via *WhatDoTheyKnow*.
18. The requests span a range of topics: information about the attempted murder investigation (including for 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.
19. The Commissioner notes that 12 of the 82 requests submitted by the complainant via the *WhatDoTheyKnow* website are for information about the attempted murder investigation. The most recent four are dated 5 January 2017, 30 January 2017 (the request under consideration here), 24 March 2017 and 1 April 2017. Northumbria Police has not responded to any of them.
20. The requests voice extreme dissatisfaction with the investigation, make allegations about the conduct of individual named officers, ask for assurances that the investigation will be progressed in a certain way and ask for specific information about evidence gathered.
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*. It said that these requests were made by the complainant, and also by associates acting on his behalf, as part of a campaign. 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:

"I advise that any requests under the Act that are received from you after 4.00pm on Friday 13th November 2009 which are related to those previously received from you will not be considered under the legislation. I confirm that any further requests made under the Act, received after the date given, for information relating to the incident in which you were shot on the 17th June 2009 [sic] and any subsequent information relating to investigation arising from the incident, associated legal proceedings, media related matters and any complaints made by yourself related to the incident and subsequent investigation will be categorised as Vexatious and will not be administered in any capacity."

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.
23. Nevertheless, it considered that these requests had been made as a direct result of the complainant's concerns about the handling of the attempted murder case and argued that it was relevant to take into account the volume and frequency of those requests when considering how requests about the attempted murder investigation should be dealt with. Most of the responses supplied to the complainant had subsequently been followed up by further requests for information, requests for clarification and requests for internal reviews. Any provision of information did not result in any discernible end point to the requests being reached.
24. Northumbria Police considered that the request under consideration here was part of a steady and persistent series of FOIA requests relating to a subject which had already been addressed, privately, with the complainant, in his capacity as the victim of the crime under investigation. 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, and in view of the information that had been imparted to him during the criminal investigation, could fairly be regarded as vexatious.
25. It considered that the time and effort to process and respond to his requests on this subject, when taken into account with the other 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

26. 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 (including publicly making defamatory remarks about the force and particular officers), as well as being a 'fishing expedition' for information which might be used against it.
27. 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.
28. 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.
29. 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 the fact that nobody has yet been charged with his attempted murder must be a genuine and pressing concern for the complainant and she acknowledges that he has a legitimate interest in understanding how the police investigation has progressed and why nobody has yet been charged.
30. The Commissioner has concluded that the request was made in pursuit of the complainant's ongoing concerns about the attempted murder investigation. She notes on that point that the complainant will be entitled, as a matter of procedure, to be privately briefed by Northumbria Police with such information as it is reasonably able to disclose about the investigation, without prejudicing it.
31. However, while it might be possible for Northumbria Police to discuss elements of the investigation with the complainant on a strictly confidential basis, this request would have no reasonable prospect of being answered under the FOIA. The request seeks specific information

which is pertinent to a live criminal investigation. The placing of that information into the public domain would be likely to prejudice that investigation. The requested information would in all likelihood be exempt from disclosure under a combination of sections 30 (investigations and proceedings conducted by public authorities) and 31 (law enforcement) of the FOIA, and the public interest would be likely to favour the maintenance of those exemptions, to avoid damage to law enforcement capabilities. Furthermore, the request is for information about a case directly concerning the complainant and is therefore his own personal data. It is highly likely that section 40(1) could also be applied to refuse the request.

32. 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 grievance against Northumbria Police.
33. She considers it clear that the complainant appears to be attempting to pursue his concerns about the attempted murder investigation through the FOIA regime, by way of the public WDTK website, and that by the volume and the defamatory tone of many of the requests, he is using it to embarrass and harass Northumbria Police.
34. The Commissioner considers that the FOIA is not an appropriate mechanism for addressing such concerns. There exist formal channels through which the complainant may have his grievances formally examined (such as by submitting complaints to Northumbria Police's Professional Standards Department and thence to the Independent Police Complaints Commission). The Commissioner considers that there is no public interest in them being played out in public, under the FOIA regime.
35. 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).

Section 17 – refusal of request

36. Section 17(6) of the FOIA allows a public authority not to issue a refusal notice when both the following conditions are met:
 - the public authority has already given the same person a notice explaining that a request is vexatious; and
 - it would be unreasonable to expect it to issue another one.
37. The Commissioner will usually only consider it unreasonable to expect a public authority to issue a further notice when it has previously warned

the requester that it will not respond to any further vexatious requests on the same or similar topics.

38. In this case, Northumbria Police provided evidence that it told the complainant in 2009 that further requests on, or relating to, the attempted murder investigation would be considered vexatious and would not be responded to, and it has drawn his attention to this notice several times since (the Commissioner has seen evidence that this was done in 2011 and more recently, in 2014). In light of this it says it would be unreasonable to expect it to have issued a further notice in this case.
39. The Commissioner notes that the complainant shows awareness of the notice that was issued in 2009, having referred to it in some of his requests as a "gagging order". She also notes that Northumbria Police has only declined to respond to requests about the attempted murder investigation. Requests on other subjects are considered individually and if deemed vexatious, they are responded to with a refusal notice under section 17(5) (and it is not the case that all requests the complainant makes are automatically deemed "vexatious").
40. Taking account of the all the above the Commissioner has decided that it was reasonable for Northumbria Police to apply section 17(6) to this request. The Commissioner accepts that Northumbria Police has given the complainant adequate warning that future requests for the same information would not be responded to and so it was not obliged to issue a further notice for this subject matter.

Other matters

41. The FOIA regime is not an appropriate mechanism by which a crime victim should find out information about the criminal investigation into that crime. The Commissioner would encourage the complainant and Northumbria Police to engage in private communication, outside of the FOIA, where the complainant is seeking access to information of that nature.

Right of appeal

42. 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

43. 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.
44. 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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