

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 20 April 2018

Public Authority: Chief Constable of Lancashire Constabulary
Address: Saunders Lane
Hutton
Preston
PR4 5SB

Decision (including any steps ordered)

1. The complainant requested various information in furtherance of an on-going dispute with Lancashire Constabulary. Lancashire Constabulary refused the request as vexatious under section 14(1) of the FOIA.
2. The Commissioner's decision is that the requests were vexatious and so section 14(1) of the FOIA meant that Lancashire Constabulary was not obliged to comply with them.

Request and response

3. The complainant made the following information requests to Lancashire Constabulary:

6 July 2017

"When recording a complaint, Lancashire Constabulary must first make a decision of whether the complaint is Local Resolution or Local Investigation..."

What is the process for making the decision?

What is the police process for rectifying a decision 'made in error'.

Who is the ultimate authority for overlooking PSD to ensure they have not abused the power to give an incorrect classification.

To clarify, an LR (Local resolution) complaint has outcome of misconduct against the officer involved so it is believed that this is a 'default' by PSD in an attempt to avoid misconduct or criminal charges being brought against officers where possible.

Local Resolution complaints do not have the right to appeal to the IPCC. Who is the correct authority to report this abuse of process and what is the correct format to raise it."

8 July 2017

*"The number of active Lancashire Constabulary Informants on the records over the last 5 years (by year)
How much money has been paid to Informants over the last 5 years.(by year)
Where does this money come from.
Who authorises how much money is given to any specific Informant.
What are the guidelines for providing protection to informants or reducing sentences."*

9 July 2017

"What authority would be required to install CCTV in [a public toilet] that is used by adults and children?

What protection would be provided to vulnerable adults and children using such public toilets.

Are the ICO aware of this incident and if so, what justification would be provided."

9 July 2017

"If a police officer resigns from the police during a time when a complaint is open against them or involves them, what are the legal guidelines about them being held to account?

I understand the law was changed to stop officers leaving or to hold them to account after they leave. Please can you provide me with details about such policies including the dates of implementation.

Please can you also provide me with legal guidelines or policies including data protection policies for any police officer that leaves the force in any way, to retain ANY information relating to previous victims

of crime or complainants during the time they were a serving police officer. This includes victims' names, addresses, contact details, details of references to past complaints, crimes or reference numbers.

Please can you tell me the process for reporting any ex police officer for holding any such information."

10 July 2017

"Please can you provide me with your policies regarding officers who have open complaints recorded against them being any way involved of having access to incidents and decision relating to the same complainant(s)."

4. All of these requests were refused on the basis that they were vexatious under section 14(1) of the FOIA.

Scope of the case

5. The complainant contacted the Commissioner on 30 October 2017 to complain about the refusal of his information requests. The complainant set out why he believed that his requests had a serious purpose and were not vexatious.

Reasons for decision

Section 14

6. Section 14(1) of the FOIA states that a public authority is not obliged to comply with a request for information if it is vexatious. The term "vexatious" is not defined in the FOIA. The Upper Tribunal considered the issue of vexatious requests in the case of *Information Commissioner v Devon CC & Dransfield* (UKUT 440 (AAC), 28 January 2013). In that case the Upper Tribunal defined a vexatious request as one that is a "*manifestly unjustified, inappropriate or improper use of a formal procedure*". The Tribunal's definition establishes that the concepts of proportionality and justification are relevant to any consideration of whether a request is vexatious.
7. In the Commissioner's view, the key question for public authorities to consider when determining if a request is vexatious is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress.

8. The reasoning from Lancashire Constabulary as to why the requests above were vexatious related to its wider dealings with the complainant. It stated that its correspondence with the complainant dated back to 2006 and that at various points since 2006 the complainant had come to the attention of the police. These dealings between Lancashire Constabulary and the complainant had led to the complainant having various grievances about the police.
9. Following his various dealings with the police, the complainant had carried out what Lancashire Constabulary characterised as a campaign. That campaign had included complaints about Lancashire Constabulary – it stated that since 2013 the complainant and his wife had made 71 complaints – and a large volume of correspondence, to the extent that Lancashire Constabulary believed that the complainant was placing a disproportionate burden upon it. That correspondence included a number of information requests, with Lancashire Constabulary stating that it had received three information requests from the complainant during the financial year 2016 / 17 and a further 13 during 2017 / 18, although only those made by the date of the most recent of the requests quoted above would be relevant here. Lancashire Constabulary believed that the requests above were all made as part of the complainant's campaign against the Constabulary and against individual officers within it.
10. Lancashire Constabulary also cited the complainant's behaviour in its dealings with it as a further basis for the requests above being vexatious. Lancashire Constabulary pointed to the complainant's tendency to target individuals within the force, rather than restricting his campaign to the Constabulary as a single corporate entity. It referred in particular to the complainant's online postings, including allegations about individual officers and former officers from the force being publicly aired.
11. Turning to the complainant's reasoning as to why his requests were not vexatious, the complainant described the background to his dealings with Lancashire Constabulary, stating that this stemmed from an incident in which Lancashire Constabulary had not taken action in relation to a report of a crime he had made because, the complainant believed, the alleged perpetrator was a police informant. The complainant confirmed that he had made a number of complaints against Lancashire Constabulary, but stressed that his position was that all of these were justified.
12. The complainant acknowledged that his requests were related to his wider dissatisfaction with the Constabulary and stated that the requested information would potentially be used in pursuit of remedies for what he considered failings by the Constabulary. He also indicated

that he did not believe that the number of information requests he had made was excessive.

13. Moving to the Commissioner's view on whether the complainant's requests were vexatious, the position of Lancashire Constabulary can be summarised under two headings. First, that in the context of the wider dealings between the complainant and Lancashire Constabulary the requests above imposed a significant and disproportionate burden upon it. Secondly, that the complainant's conduct was harassing towards Lancashire Constabulary and individual officers within it.
14. The position of the complainant was that he acknowledged that his dealings with Lancashire Constabulary had been extensive and that his requests were made as part of and in furtherance of those dealings, but that this was justified. He also argued that his requests were not excessively numerous and that they had a serious purpose.
15. The Commissioner's view is that the complainant's dealings with the Constabulary have gone beyond normal persistence, and that these dealings have imposed a burden on the Constabulary. She also believes it to be the case that compliance with the requests above would be unlikely to result in any cessation of the complainant's contact with the Constabulary; on the contrary, it would likely extend it.
16. However, this burden would not in itself render these requests vexatious if that burden could be shown to be proportionate. The complainant's reasoning as to why that burden is proportionate is that he is legitimately pursuing the police for wrongdoing. The Commissioner notes that there is some evidence that the complainant is at least somewhat justified in carrying out his campaign. The evidence for this is that Lancashire Constabulary has stated that some of the complaints made by the complainant have been upheld and officers have been given "*words of advice*" as a result, albeit this has been the outcome in a small proportion of the many matters raised with the Constabulary by the complainant. Lancashire Constabulary also stated that of 14 recorded complaints that the complainant referred to the Independent Office for Police Conduct (IOPC), five of these appeals were upheld. One of six appeals to the IOPC relating to non-recording of complaints was also upheld.
17. This evidence that the complainant been partly justified in his pursuit of Lancashire Constabulary weakens the argument that the requests above were vexatious. However, the second main strand of reasoning by the Constabulary was the complainant's conduct in his dealings with it. In particular, they referred to the complainant's tendency to target individuals within Lancashire Constabulary and to publicise his allegations against them.

18. On this point, the Commissioner notes the existence of a website, which appears to be the work of the complainant. This website reports allegations against a number of named individuals, including current and former Lancashire Constabulary officers. The Commissioner regards the existence of this website as a significant factor weighing towards the requests above being vexatious. Whatever the extent to which the complainant was justified in his pursuit of Lancashire Constabulary, the Commissioner's view is that publicising allegations against named individuals was a level of adverse commentary that went beyond what the Constabulary and its staff should have been expected to tolerate. She is also of the view that to the extent that the requests above would be utilised in a continuation of that behaviour, this would be a misuse of the FOIA.

19. Turning to the conclusion, the Commissioner regards this as a finely balanced case. Whilst she has recognised that the requests in question were made as a part of a process undertaken by the complainant that has imposed a burden on Lancashire Constabulary and that compliance with these requests would be likely to result in an increase to that burden, she is also of the view that the complainant has been somewhat justified in his actions. However, that this justification is at most only partial and taking into account the complainant's actions in airing allegations against named individuals and the possibility that compliance with these requests would contribute to further behaviour of this kind, in the Commissioner's view tips the balance of the factors towards vexatious. The Commissioner's finding is, therefore, that the requests above were vexatious and so under section 14(1) of the FOIA Lancashire Constabulary was not obliged to comply with them.

Right of appeal

20. 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: <http://www.justice.gov.uk/tribunals/general-regulatory-chamber>

21. 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.
22. 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

Ben Tomes
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