

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 11 April 2018

**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 about briefings provided to Staffordshire Police staff on Operation Kalmia. Staffordshire 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 found that the request was not vexatious and therefore that Staffordshire Police was not entitled to refuse to comply with it under section 14(1) of the FOIA.
3. The Commissioner requires Staffordshire Police to take the following steps to ensure compliance with the legislation.
  - Issue a fresh response to the request, which does not rely on section 14(1).
4. Staffordshire Police must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

## Background

---

5. Operation Kalmia was an investigation which was managed by the then Independent Police Complaints Commission ("IPCC"). According to its website:

*"The investigation looked at disclosure issues prior to the 2008 trial of five men for the murder of Kevin Nunes in Staffordshire in 2002 – and how a protected witness was dealt with by Staffordshire police".<sup>1</sup>*

6. The investigation concluded in March 2016.
7. Prior to making the request which is the subject of this decision notice, the complainant had made a series of requests for information to Staffordshire Police about Operation Kalmia and related matters. On 2 March 2017, in response to an earlier request, Staffordshire Police sent him a written warning of its intention to refuse to comply with further requests for information about Operation Kalmia. It cited the volume and frequency of his requests on the subject as its grounds for applying section 14(1) of the FOIA. The complainant asked Staffordshire Police to reconsider this approach a number of times, but Staffordshire Police maintained its position.

## Request and response

---

8. On 22 March 2017, the complainant wrote to Staffordshire Police via the public "*WhatDoTheyKnow*" website<sup>2</sup> and requested information in the following terms:

*"...please provide the following information.*

*1. A copy of all internal memos and updates published on the force intranet, or in any internal magazine or newsletter which was circulated to the officers and staff members of Staffordshire Police for the purpose of updating them on Operation Kalmia, (both the actual investigation and the outcome of CPS decisions, IPCC recommendations and any other related matters)."*

---

<sup>1</sup> <https://policeconduct.gov.uk/news/ipcc-concludes-managed-investigation-staffordshire-police>

<sup>2</sup> <https://www.whatdotheyknow.com/>

9. Staffordshire Police responded on 4 April 2017 and refused to comply with the request on the grounds that it was vexatious within the meaning of section 14(1) of the FOIA. It told him:

*"You have bombarded Staffordshire Police with your frequent requests/correspondence. Since the 17 November 2014 Staffordshire Police have received 30 Freedom of Information requests from you and six complaints from the ICO. You frequently do not refer to reference numbers and because you have submitted a large number of Freedom of Information requests on the same topic it causes confusion. A great deal of time and effort has been spent in answering your letters and this has diverted our resources from dealing with requests for information from other members of the public. Every time you are provided with information this leads to further requests for information. Your communications with Staffordshire Police are causing a huge burden and a disproportionate and unjustified level of disruption, irritation and distress to Staffordshire Police and to individual members of staff."*

10. The complainant requested an internal review the same day, and Staffordshire Police responded on 8 May 2017. Upholding its decision to apply section 14(1), it commented that the complainant had submitted 10 requests relating to Operation Kalmia in the period March 2016 – May 2017 and that information had been disclosed in each case, with redactions made where information was exempt from disclosure under the FOIA. It said that the complainant had, on occasion, submitted requests for information already disclosed to him. It said that his pattern of requesting information on the same theme placed a burden on Staffordshire Police and diverted resources away from dealing with other requests. It also said that each request appeared to lead the complainant to submit a further request. It reiterated that further requests "on the same theme" would be refused under section 14(1) of the FOIA.

### **Scope of the case**

---

11. The complainant contacted the Commissioner on 2 October 2017 to complain about the way his request for information had been handled. He disputed Staffordshire Police's decision to designate the request as "vexatious".
12. The Commissioner has considered in this decision notice whether Staffordshire Police was entitled to rely on section 14 of the FOIA to refuse to comply with the request.

## Reasons for decision

---

### Section 14 - vexatious or repeated requests

13. 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. There is no public interest test.
14. The term 'vexatious' is not defined in the FOIA. The Upper Tribunal considered the issue of vexatious requests in the case of the Information Commissioner v Devon County Council & Dransfield<sup>3</sup>. The Tribunal commented that the term 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.
15. 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.
16. 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).
17. The Commissioner has published guidance on dealing with vexatious requests<sup>4</sup>. That guidance includes a number of indicators that may apply in the case of a vexatious request. The fact that a request contains one or more of these indicators will not necessarily mean that it must be

---

<sup>3</sup> <https://www.judiciary.gov.uk/judgments/info-commissioner-devon-county-council-tribunal-decision-07022013/>

<sup>4</sup> <https://ico.org.uk/media/for-organisations/documents/1198/dealing-withvexatious-requests.pdf>

vexatious. All the circumstances of the case will need to be considered in reaching a judgement as to whether or not a request is vexatious.

18. 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.
19. Sometimes it will be obvious when a request is vexatious, but sometimes it may not. In that respect, the Commissioner's guidance states:

*"In cases where the issue is not clear-cut, the key question to ask is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress".*

#### *The complainant's view*

20. In a detailed submission to the Commissioner, the complainant disputed that the request was vexatious. He said that he was a former police officer and that he had knowledge of the matters investigated by Operation Kalmia. He noted that although concluded, a final investigation report had yet to be published. He understood that the IPCC wanted to publish it but that it was considering representations against this, from third parties. He suspected that Staffordshire Police was trying to halt its publication.
21. The complainant said that he had concerns about corruption in Staffordshire Police which he had reported through formal channels, several years ago, and had not been satisfied with how they were dealt. More recently, he had attempted to highlight his concerns by making a series of FOIA requests via the *WhatDoTheyKnow* website. He said that his requests had attracted significant media attention which he believed Staffordshire Police was trying to suppress by designating them as vexatious.
22. The complainant disputed that his usage of the FOIA was excessive or unreasonable. He maintained that since 2014 he had made only 14 FOIA requests, ("*...two of which I withdrew almost immediately*"), which averaged one every three months. He believed that the statistics quoted by Staffordshire Police failed to take account of the fact that its own poor handling of his requests (including failures to respond within the statutory timescale) had often made further correspondence with it, or with the Commissioner, necessary, and that his complaints had often resulted in information being disclosed.
23. With regard to this request, the complainant observed that it was straightforward and that compliance with it would not be unduly

onerous; the requested information would be held on the force intranet and printed in internal circulations published to all staff. He observed that Staffordshire Police had spent more time trying to defend its refusal of the request than it would have taken to comply with it.

24. As to the serious purpose of the request, the complainant said:

*"As I outlined earlier in this document, Staffordshire Police sought for a number of years to hide the extent of wrongdoing. In some cases those investigated were then promoted others were secretly awarded commendations by the Chief Constable and the author of the Costello Report that lead to the appeal courts action. The content of the internal memos and updates, will demonstrate the attitude of the Staffordshire Police executive officers toward the investigation and how they want staff to view it".*

#### *Staffordshire Police's view*

25. It was Staffordshire Police's position that the complainant had used his requests for information about Operation Kalmia as a vehicle for pursuing his personal dissatisfaction with the way his own complaints about the force had been handled. It considered that he had engaged in overly frequent and complicated correspondence which dominated its FOIA resources. Requests, when answered, frequently generated further requests and correspondence, and it believed that he sometimes invoked the internal review mechanism unnecessarily, by not allowing it 20 working days in which to respond to a request before requesting an internal review on the grounds of delay. It said that his behaviour had caused *"...a huge burden and a disproportionate and unjustified level of disruption, irritation and distress to Staffordshire Police"*.

26. Staffordshire Police said that until September 2016, there were 1.8 full time equivalent ("FTE") posts in the unit responsible for dealing with FOIA requests, rising to 3.8 FTE posts from September 2016. Between 14 November 2014 and 31 December 2017 it told the Commissioner that it received 3,699 FOIA requests. Of these, 15 were requests for information from the complainant. It provided the Commissioner with a breakdown of the requests and the dates they were received, together with the dates that consequent requests for internal reviews were received. It said the complainant's requests were,

*"...on a recurring theme which are often complicated and confusing. He has also instigated six complaints from the ICO and although he suggests that his internal reviews and ICO complaints were due to timeliness it still takes time to investigate the causes of any delay. He has not been satisfied with the ICO responses and so there are currently two first tier tribunals ongoing. This means that the Central Disclosure Unit have to constantly revisit the work that has already*

*been carried out to answer the ICO and support the legal team that have been employed to assist with the tribunals”.*

27. As to the impact of the requests on its service provision, it said that staff in the FOIA department were sometimes diverted from dealing with other FOIA requests to collate information and meet with legal services, senior officers and civil case handlers regarding the complainant's requests. Despite an increase in staff it had been unable to keep up with the demand of new requests due to the work involved in revisiting work surrounding the complainant's requests. As a consequence, a significant number of late responses had been made to other requesters.
28. Furthermore, staff in other business areas, such as information security, were sometimes diverted from dealing with security matters, to trawl through emails at the request of the FOIA team, and this had also led to subject access and FOIA responses to other requesters, being delayed.
29. Staffordshire Police also referred the Commissioner to approaches for information that the complainant had made outside of the FOIA. It said that he had made a subject access request under the Data Protection Act 1998 which had created a significant amount of work. It also said that the complainant had also sent extensive correspondence to Staffordshire Police's Executive team, which followed the familiar pattern of him querying every response he received, triggering further work.
30. Staffordshire Police said that the frequency of the complainant's requests, invariably followed up by internal reviews and complaints to the Commissioner, had caused real and unnecessary distress to the FOI team. It said:

*"Due to his personal grudge his persistence against SP is relentless and disheartening to the FOI team...The team generally feel that whatever they do to assist him he is not satisfied and never will be as he is using FOI as a way of venting his dissatisfaction towards the handling of investigations by SP."*
31. Staffordshire Police also believed the complainant was working in concert with two other individuals, from whom it had subsequently received requests for the same information, which it had also refused as vexatious. It said that one of the requesters was a former police officer and the other a journalist who had written several newspaper articles about matters relating to Operation Kalmia, and that these articles contained direct and extensive quotes from the complainant.
32. In conclusion, Staffordshire Police painted a picture of a serial requester who dominated its FOIA resources and for whom there was no realistic prospect that his requests would cease, as every response appeared to generate new requests. It attributed no serious purpose to the requests themselves, considering that his motive in making them was chiefly to

harass Staffordshire Police, because he was dissatisfied with the way concerns he had raised about police corruption had been dealt with. It considered that the public interest in transparency regarding Operation Kalmia was satisfied by the information that Staffordshire Police and the IPCC had already placed in the public domain, although it did not direct the Commissioner to where this information could be found.

*The Commissioner's view*

33. There are many different reasons why a request may be vexatious. There are no prescriptive 'rules', although there are generally typical characteristics and circumstances that assist in making a judgement about whether a request is vexatious. A request does not necessarily have to be about the same issue as previous correspondence to be classed as vexatious, but equally, the request may be connected to others by a broad or narrow theme that relates them. A commonly identified feature of vexatious requests is that they can emanate from some sense of grievance or alleged wrong-doing on the part of the authority.
34. As the Upper Tribunal in Dransfield observed:

*"There is...no magic formula – all the circumstances need to be considered in reaching what is ultimately a value judgement as to whether the request in issue is vexatious in the sense of being a disproportionate, manifestly unjustified, inappropriate or improper use of FOIA".*
35. In her guidance on dealing with vexatious requests, the Commissioner recognises that the FOIA was designed to give individuals a greater right of access to official information with the intention of making public bodies more transparent and accountable.
36. While most people exercise this right responsibly, she acknowledges that a few may misuse or abuse the FOIA by submitting requests which are intended to be annoying or disruptive, or which have a disproportionate impact on a public authority.
37. The purpose of section 14 of the FOIA is to protect public authorities and their employees in their everyday business. In her guidance, the Commissioner recognises that dealing with unreasonable requests can place a strain on public authorities' resources and get in the way of delivering mainstream services or answering legitimate requests.
38. However, the Commissioner also recognises that public authorities must keep in mind that meeting their underlying commitment to transparency and openness may involve absorbing a certain level of disruption and annoyance.



*Was the request vexatious?*

39. The Commissioner considered both the complainant's position and Staffordshire Police's arguments regarding the information request in this case.
40. As in many cases which give rise to the question of whether a request is vexatious, the evidence in the present case showed a history of engagement. Clearly in this case Staffordshire Police considered that the particular context and history of the request strengthened its argument that it was vexatious.
41. In reaching a decision in this case, the Commissioner has balanced the purpose and value of the request against the detrimental effect on the public authority. She has also considered, in light of the dealings between the complainant and Staffordshire Police, whether, at the time, the request crossed the threshold of what was reasonable.
42. The complainant has explained that he believes that corruption at Staffordshire Police has, and continues to be, covered up, and that his requests are part of an attempt to highlight these matters, about which he has great concern. He disputes that they are, in themselves, burdensome to comply with.
43. Staffordshire Police believes the request was motivated by the complainant's wider grievances against Staffordshire Police and therefore that the request had no serious motive or purpose beyond continuing the complainant's established pattern of disruptive behaviour for its own sake.
44. Following the factors identified in Dransfield, set out in paragraph 15, the Commissioner firstly considered the extent to which the request imposed a burden on Staffordshire Police.
45. A request which would not normally be regarded as vexatious in isolation may assume that quality once considered in context. Where an individual is placing a significant strain on a public authority's resources by submitting a long and frequent series of requests, the most recent request, although not obviously vexatious in itself, may contribute to that aggregated burden.
46. The requester's previous pattern of behaviour may also be a relevant consideration. If the public authority's experience of dealing with his previous requests suggests that he won't be satisfied with any response and will submit numerous follow up enquiries no matter what information is supplied, then this evidence could strengthen any argument that responding to the current request will impose a disproportionate burden on the authority.

47. This is essentially Staffordshire Police's position. It supplied no evidence that complying with the request in isolation would cause a disproportionate or unjustified level of disruption, but rather that when viewed as part of an ongoing pattern of requests and follow-up correspondence, the request placed an unreasonable burden on the force. It also suggested that a response to this request was likely to lead to further communications and more requests for other information on related matters from the complainant, with a further consequential burden on its staff.
48. The complainant does not dispute that he has corresponded frequently with Staffordshire Police. However, he says that much of the work his requests have created for Staffordshire Police has been due to its own failure to respond to them within the statutory timescales.
49. Section 10(1) of FOIA provides that a public authority should comply with a request for information made under section 1(1) of the FOIA within 20 working days.
50. From the request breakdown it provided to the Commissioner, it is evident that Staffordshire Police failed to comply with this statutory obligation for nine of the complainant's 15 requests. On three occasions the complainant requested an internal review examining the delay in responding shortly after the statutory period had elapsed, but on six occasions he did not request an internal review until no response had been received more than two months after submitting the request. Following on from this, the Commissioner was forced to write to Staffordshire Police instructing it to respond to the complainant's requests on three occasions. Despite Staffordshire Police's claim that he sometimes did not allow it the full 20 working days before accusing it of delay, the data it provided to the Commissioner showed no instances of the complainant requesting an internal review within 20 working days of making the request.
51. The Commissioner considers that a public authority should be mindful to take into account the extent to which oversights on its own part might have contributed to a request, or associated correspondence, being generated. She has therefore disregarded Staffordshire Police's arguments about the work created by internal reviews for late responses, and the complaints to her about them, when considering the burden to it of dealing with the complainant's requests.
52. The Commissioner therefore looked at the frequency of the requests themselves, and whether they crossed the line of what could be considered reasonable. Having analysed the data supplied by Staffordshire Police, she agrees with the complainant's assertion that at the point his request was refused, he had submitted 14 requests under

the FOIA over the course of 28 months. This can be broken down as follows:

- 2014 (from November onwards): 1 request
- 2015 (whole year): 2 requests
- 2016 (whole year): 9 requests
- 2017 (to March 2017): 2 requests

53. With specific regard to the frequency with which the requests were submitted, 10 requests were made more than a month apart, and four less than a month apart (in one instance two requests were made on the same day, for the others, the gap was at least 10 days). While the complainant is clearly a regular requester, the Commissioner does not consider that this level of requesting, on its own, meets the threshold for being a disproportionate or unreasonable use of the FOIA mechanism. She therefore considered whether there were other aggravating factors which should be taken into account when determining whether the request was vexatious.
54. Staffordshire Police did not refer the Commissioner to the specific content of the other requests the complainant submitted, beyond saying that they were "*often complicated and confusing*". The Commissioner therefore conducted a sampling of seven of the complainant's other requests on the *WhatDoTheyKnow* website, to establish whether the content and construction of the requests made them onerous to comply with.
55. The Commissioner noted that the majority of the complainant's requests commenced with a preamble, setting out context for the request, and that the questions asked, while sometimes detailed, were clearly expressed and sought specific information (in at least three cases, "stand alone" documents, such as policies and procedures, were requested, which did not require the collation of information from various sources). She therefore did not agree with Staffordshire Police's assessment that the requests were "*often complicated and confusing*" although she did acknowledge that in some cases further work would undoubtedly be necessary to establish whether the requested information was exempt from disclosure under the FOIA.
56. Finally with regard to burden, the Commissioner has considered whether the complainant could be considered to have taken up a disproportionate amount of Staffordshire Police's FOIA resources. She notes that Staffordshire Police said it received 3699 FOIA requests between November 2014 and December 2017. Of those requests, 15 were from the complainant (he submitted a further request in 2017, after the one under consideration in this decision notice). His requests

therefore constitute 0.4% of all FOIA requests received during that period.

57. While not doubting the pressure that Staffordshire Police's FOIA team is under to process the FOIA requests it receives, the Commissioner does not consider that Staffordshire Police has demonstrated that the complainant's requests constituted a grossly oppressive burden to it or that, according to the data it supplied, at 0.4% of the requests received, they were a disproportionate use of its FOIA resources.
58. Following the factors set out in paragraph 15, in respect of Dransfield, the Commissioner then looked to the motive of the requester, and the value and purpose of the request, to assess whether they pointed to the request being vexatious. Staffordshire Police has argued that the complainant is persistently seeking to reopen matters that have been settled by investigations conducted by it and by the IPCC, and that this is unreasonable. While section 14 of the FOIA exists to shield public authorities from unreasonable demands, it is not intended to block access to certain topics of information, except insofar as provided by the terms of individual non-disclosure exemptions. The fact that investigations have been completed and no wrongdoing found should not act as an automatic bar to requesting information about those investigations, unless other aggravating factors are present.
59. Where a complainant is persistently requesting the same information, section 14(2) (repeated requests) of the FOIA provides grounds for refusing subsequent requests. Similarly, section 12 of the FOIA also provides grounds for refusing a request where the estimated costs of complying exceed a prescribed limit. However, Staffordshire Police has not argued that either is the case here.
60. The Commissioner has considered whether there is any serious purpose behind the request. In doing so, she has assessed the value of the information requested and whether it was a reasonable request to make. The Commissioner notes that by Staffordshire Police's own admission (see paragraph 9, above), the complainant's requests often resulted in the disclosure of information. She further notes that one of the complaints referred to the ICO resulted in the disclosure of information which the Commissioner considered had been withheld incorrectly<sup>5</sup>.
61. Taking a wider view, she accepts that there is a degree of media interest in the matters covered by Operation Kalmia, as evidenced by the coverage it has received in the local newspaper. There is also a public

---

<sup>5</sup> See FS50646644

interest in transparency regarding investigations of police conduct. Furthermore, Staffordshire Police recently announced a formal review into the murder of Kevin Nunes (the incident which was central to the matters investigated in Operation Kalmia).

62. In view of the fact that an investigation report of Operation Kalmia had not been published at the time of the request the Commissioner considers these points lend weight to the view that the request was a reasonable one to make. She therefore considers that there was a serious purpose and value for the request and that it cannot reasonably be said to have been designed merely to cause disruption or annoyance.
63. The Commissioner then considered whether the request was designed to harass or cause distress to Staffordshire Police or its staff. The tone adopted by a requester can be an aggravating factor which tips the balance of a request from being reasonable to vexatious. However, unreasonableness of tone is a factor which is entirely absent from this case. In the correspondence seen by the Commissioner, the complainant's manner has consistently been polite and business-like. She is therefore satisfied that the request cannot realistically be considered to have been designed to harass or cause distress to Staffordshire Police or its staff.
64. The Commissioner has borne in mind the central reason for section 14, which is to protect a public authority and its staff from requests which cause a disproportionate or unjustified level of disruption, irritation or distress or which dominate its administrative resources. She is not satisfied that Staffordshire Police has demonstrated that this request meets these criteria. While she acknowledges that the complainant's requests have created work and inconvenience, she does not currently consider that the frequency or number of the requests are excessive, given the time period they were submitted over. Further, she notes that a significant proportion of work that it has cited to the Commissioner has been created through its own failure to adhere to statutory timescales. She considers that the requests can be shown to have a serious underlying purpose (although that is not to say that the information they request should necessarily be disclosed) and that they were not designed to harass or monopolise the FOIA service provision.
65. Taking all the above into account, the Commissioner's decision is that Staffordshire Police was not entitled to rely on section 14(1) of the FOIA to refuse to comply with this request.

## Right of appeal

---

66. 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)

67. 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.
68. 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**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**