

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 22 October 2009

Public Authority: Lancashire Constabulary
Address: Police Headquarters
Saunders Lane
Hutton, Preston
Lancashire
PR4 5SB

Summary

The complainant made a request for detailed information about a now redundant mobile safety camera site and especially the weather conditions and presence of sun visors in vehicles against which tickets were issued. He also made a significant number of information requests under this Act about the operation of this site. The Constabulary refused the complainant's request under section 14 of the Act as vexatious. The Commissioner upheld the Constabulary's application of section 14 and dismissed the complaint.

The Commissioner's Role

1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

The Request

2. On 28 September 2007 the complainant asked the Constabulary for the following information in accordance with section 1 of the Act.

'As the site will no longer be used I request under the FOIA the DATES and TIMES for ALL speeding tickets issued at Earby, Sough A56 (outside park) in 2003, 2004, 2005 and 2006 including if possible the direction of travel.'

3. On 24 October 2007 the Constabulary replied to the complainant's information request. It informed him that this request would exceed the costs limits of the Act

and would not be provided under section 12. It informed him that this was the case because the only way it could obtain the requested information would be to view all the tapes in real time. It indicated that this would be impossible to do within the 18 hours allowed under the Fees Regulations. It offered to look into creating a fees notice should the complainant desire to pay for the work required to answer the request. It told the complainant that this was likely to be a large amount and asked for him to confirm if he wanted an estimate.

4. On 30 October 2007 the complainant responded to the Constabulary. He indicated that he wanted to narrow the request so that it was within the costs limit and offered an approach so that this could be done. He asked:

'I thought that you would have had details on a database to print out. This not being so I request a sample approach, a subset of what was requested which will be more efficient on resources and still give me workable information.

*What I propose you do is to look at the following tapes if they exist (I know this exists****) in the order below. This is to be done for 4 tapes if they are 3 hours long or 6 tapes if they are 2 hours long.*

First

*2005 Sunday November 13th, 20th****, 27th.*

2004 Sunday November 14th, 21st, 28th.

2005 Sunday November 6th.

2004 Sunday November 7th.

2003 Sunday November 16th, 23rd, 30th.

2003 Sunday November 9th.

Then any tape occurring 2005 between 13 to 27 weekdays (not Sundays) and 2004 any tape occurring between 1 and 28 weekdays (not Sundays) /

Last

The information can be noted down in the following form

Tape date

Note Sunny 'S' or Dull 'D'.

Positive offence towards Kelbrook 'TK – Number'.

Positive offence towards Earby 'TE- Number'.

Eg.

20/11/05

S

TK 5.

TE 3.

Next tape.'

5. On 1 November 2007 the Constabulary acknowledged the complainant's new email. It informed him that it was possible to undertake in part the task suggested

by the complainant. It informed the complainant that it was unable to quantify how long it would take to locate, retrieve and view all the tapes. But if the complainant wanted it would undertake to work up to the costs limit in 'real time' once confirmation was received that the complainant was happy with the arrangement. It also informed the complainant that tapes over three years old were destroyed in accordance with its retention and disposal schedule and this meant the 2003 and perhaps the 2004 tapes he had requested would have been destroyed.

6. On 1 November 2007 the complainant responded to the Constabulary. He informed the Constabulary that if there were some overrun beyond the 18 hours that he will pay for this subject to an estimate from the police of the amount.

'A re-jigged time schedule discounting 2003 follows.

First

*2005 Sunday November 13th, 20th****, 27th.*

2004 Sunday November 14th, 21st, 28th.

2005 Sunday November 6th.

2004 Sunday November 7th.

2005 January 16th, 23rd and 30th.

Then any tape occurring 2005 between 13 to 27 weekdays (not Sundays) and 2004 any tape occurring between 1 and 28 weekdays (not Sundays).

Last

The method of recording is as before.'

7. On 8 November 2007 the complainant emailed the Constabulary to ask for the estimate to enable the information request to go ahead. On 9 November 2007 the Constabulary responded with a spreadsheet that included some data about historical tapes found at the central ticketing office. This information for 23 days contained the number of offences on a specific day and which direction they were in. It could not provide the directions for two of the dates because the tapes had been mislaid. It also said that to provide viewing information about the tapes was likely to take 80 hours and cost £2000.

8. On 11 November 2007 the complainant wrote to the Constabulary. He informed it that:

'You appear to have missed the point. The dates sequence that was given by myself was in order of importance, trying to keep most factors constant and analysing the tapes along certain parameters. The method is also verifiable as the four or six evidential tapes analysed by the police depending on length can be produced in court to check that the data is correct. At no time have I asked for all 23 dates in question to be analysed only the first 4 or 6 that exist on the given dates. I ask that the analyses are carried out in the way I have outlined. Could you please provided [sic] me with the estimated cost of the work I have asked for.'

9. He also sent a second email on 11 November 2007 indicating that he was making 'a new FOI' request:

'I have realised that I had not included whether or not the vehicle which had a positive offence was in sunny conditions, dull conditions or bright conditions when a positive offence took place and if the sun visor was down or up in my last FOI request. I have been unable to locate a suitably close weather station for sunlight data that keeps discrete daily records. The tapes are therefore the only source of this information...'

He then repeated the dates he selected on 1 November 2007 while adding the two additional data sets that he now required:

'Note Sunny 'S'. Indeterminate 'I'. Dull 'D' for each positive offence.

*For cars travelling towards Kelbrook note visor position as follows
Sun visor up 'su' and sun visor down 'sd.'*

10. On 28 November 2007 the Constabulary informed the complainant that this new request was vexatious in accordance with section 14 of the Act. It informed the complainant:

'We feel that in responding to your previous requests we have acted within our legal responsibility/ duty to assist applicants to our utmost ability. It is felt that further requests relating to the weather or to the use of a sun visor have no real significant purpose. When a person is caught speeding, the use of a sun visor or a change in the weather will not negate ones [sic] liability. As such, we feel that the requesting of such data serves no purpose except to harass the Constabulary. Therefore at present we feel that your request meets the ICO's definition of 'vexatious'. However rather than refusing your request straightaway, we feel it would be appropriate to give you the opportunity to prove that this is not the case. As a result, please can you outline to us why the request for weather or the use of sun visors has a 'real' purpose, as this would help us appreciate the value of your request.'

It also provided the complainant with a link to the Commissioner's Awareness Guidance and informed him that the statutory twenty days may be 'amended' whilst it was seeking his clarification.

11. On 2 December 2007 the complainant objected to the suggestion that the request was vexatious. He stated:

'In reply to your latest email the question of vexatious requests is again a spurious argument.

To begin with you have so far not complied with any of my previous requests. My previous requests were not regarded as vexatious.

My current request is made to supersede previous requests due to local sunshine data being unavailable from local sources. As in any investigation one runs into problems.

The request here is to enable me to examine the available [sic] data to ascertain the causal factors involved in speed ticket acquisition [sic] at the Earby site. (This is a tool which in my opinion should be being used by the police to uncover key causal factors and prevent waste of resources and identify effective counter measures)....

If I wish to investigate these factors I am perfectly at liberty to do this.

I have even switched to a low cost sampling regime to bring the cost of the request within the FOI boundaries, or as near to this as possible without compromising the study.

As to any relevance to a court case, this is not a consideration which is relevant to the allowing or refusal of a FOI request. Further it is not your place to decide what is and what may not be judged to be relevant by a Crown Court, High Court, Magistrates' court or Judicial Review. This territory is exclusively the right of a court to decide as it is dependent on interrelated factors and special circumstances.

I would be obliged to let me have a reply as soon as possible, with an assessment of the cost of the latest FOI request over and above 450pound limit.'

12. On 13 December 2007 the Constabulary issued a refusal notice. This stated that it was relying on section 14 of the Act. It informed the complainant that it felt that the request 'inadvertently' fell within the categories of vexatious requests identified in the email of 28 November 2007. It also informed the complainant that the request was burdensome on the Constabulary. It advised him that if the data was essential for his case then he should obtain a court order for it.
13. On 22 December 2007 the complainant wrote to the Constabulary. He explained in some detail the research techniques he was engaging in. He informed the Constabulary that he had narrowed his request and is trying to:

'legitimately produce a fast method of checking camera sites using FOI legislation to ensure that temporary enforcement sites have been carefully checked before being used. The method could be used by the police to do a check after a month to uncover problems. Further a full check would be more likely as there would be a way to retrospectively check for psychological or [sic] subliminal problems at a site which would adversely affect motorists to their disadvantage. In my own case I wish to do this.'

'I think this is a proper use of the legislation, to encourage transparency and fair play (the salting of beer and subliminal advertising are illegal for similar reasons).

In light of your letter and the further explanation I have given above, I wish the matter to go to an internal review as I contest any slur that I am trying to harass

the police. In reality it is in fact the other way round. You are using your far larger resource base to involve me in contention of your making and hamper the uncovering of evidence.'

14. On 11 January 2008 the Constabulary acknowledged this request for internal review. On 15 February 2008 it conducted its internal review. It reiterated its opinion that the request was vexatious, since it informed the complainant that it felt that the research had no serious purpose or value (with discernable public benefit), since vehicles are manufactured to specifications that would prevent them from fitting equipment that might be dangerous. If a sun visor obstructed the view to the driver this would be deemed unsuitable to general road safety. It told the complainant that if a Court Order was issued then it would disclose the information at that time.

The Investigation

Scope of the case

15. On 24 December 2007 the complainant contacted the Commissioner to complain about the Constabulary's application of section 14 to his request. Section 14 of the Act concerns vexatious or repeated requests. The complainant specifically asked the Commissioner to consider:

- that he was **not** vexatious and his requests followed a natural pattern:

'to work with what the police can supply, have security of authenticity or can produce a method of checking sites a little after onset of enforcement and at a time after enforcement has ceased at temporary sites.'

16. The complainant focussed on the latest request dated 11 November 2007. The Commissioner is limited to determining whether the Constabulary have handled this request within the Act. As he is looking at section 14 in this case, he will assess the request within its context as detailed above and in particular to focus on its evolution.

Chronology

17. On 5 March 2008 the Commissioner wrote to the complainant in order to clarify the scope of his complaint. On 18 March 2008 the complainant sent the Commissioner a graph plotting speed against time for a video tape he had obtained as part of his court proceedings. He informed the Commissioner that his intent was to investigate the reason for a pattern he had identified in the data set.
18. On 6 May 2008 the complainant visited the case officer without an appointment. He used this opportunity to inform him of the detail of his concerns about this case and to deliver by hand a letter about the delays in the first case.

19. On 16 May 2008 the Commissioner wrote to the complainant and advised about how the investigation would progress. On 10 June 2008 the Commissioner updated the complainant on the progress of the investigation.
20. On 10 June 2008 the Commissioner wrote to the Constabulary and asked detailed questions about the application of section 14 to this request. The Constabulary was asked to provide a chronology of its involvement with the complainant in terms of the requests he had made and also the correspondence associated with these requests and his complaints. The Constabulary was asked to focus on the level of burden caused, or potentially caused, by the request and to provide evidence of this. It was also asked to refer to the Commissioner's previous guidance on section 14 and to provide evidence in support of one or more of the criteria he uses to define vexatious requests. He invited the Constabulary to address some of the complainant's arguments and also to provide evidence of why it regarded this request as being vexatious.
21. On 28 July 2008 the Commissioner received a detailed response from the Constabulary. It provided him with a full index and chronology of the request from its perspective, detailed responses about the application of section 14 and the guidelines that were in operation at the time about mobile safety cameras.
22. On 6 August 2008 the Commissioner asked a series of more specific questions about the details contained in the initial response.
23. On 2 October 2008 the complainant asked the Commissioner to ensure that the tapes were retained for the purposes of his investigation. The Commissioner wrote to the Constabulary to ensure that they were.
24. On 27 August 2008 the complainant emphasised his purposes in obtaining the information and also provided additional evidence. He felt that the public interest was in placing this information in the public domain so that the Constabulary is visibly accountable for its actions. He expressed his reservations about the evidential process in relation to mobile enforcement units and that he felt that natural justice would mean that the evidence should be available to the public.
25. On 4 November 2008 the Constabulary wrote to the Commissioner and provided detailed answers to his specific questions. It also informed the Commissioner that it would keep the tapes that it held, which it had not destroyed previously for the purposes of the Commissioner's investigation. On 5 November 2008 the Commissioner telephoned the Constabulary for further information, which was provided to him on 5 December 2008.
26. On 12 November 2008 the complainant wrote to the Commissioner about his general complaint and the Commissioner replied on 14 November 2008.

Findings of fact

27. The complainant has made a number of requests about a specific mobile safety camera enforcement site after it caught him speeding. The Commissioner is

- aware that the Constabulary have received five requests about this site including this one which has been amended a number of times as detailed above.
28. The Commissioner has also investigated a previous complaint from the complainant about the total number of annual tickets issued at the same camera site. This case was closed under the Commissioner's robust policy because the Constabulary had provided the requested information prior to his investigation.
 29. The site in question had been made redundant by the Council at the time of the request. This is why the exemptions of section 31 and section 38 were not relied upon by the Constabulary in responding to requests about this site. The Commissioner has been informed that this is an ongoing assessment process which means that the site may operate again should the partnership believe that it meets the correct objectives in helping road safety.
 30. There has been a subsequent Crown Court case about the validity and legality of the ticket that was issued by this site and this found in favour of the Constabulary.
 31. The Commissioner has spent some time considering what information is held by the Constabulary in order to assess the application of the exclusion. He has found that the Constabulary holds three types of recorded information about speed camera offences from temporary enforcement units.
 32. The first is the video record of the offence, this is held on tapes. The second is COGNOS which contains relevant information about the Notice of Intended Prosecution but does not contain information about direction, weather or about sun visors. The third is a CD of photos of each offence. For each offence there are three appropriate photos – one is a close up picture of the car, the second a photograph of the offence with a date and time and the third a picture of the registration mark of the car. The information on the CDs could not answer the question about sun visors in at least one of the two directions and the weather is not determinable in the photos. Therefore in order to process the request the Commissioner is looking at, the Constabulary would be required to go back to the videos.

Analysis

Section 14 - Vexatiousness

33. Section 14(1) is an exclusion that provides that –

“Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious”.
34. When assessing vexatiousness the Commissioner adopts the view of the Information Tribunal decision in *Ahilathirunayagam v Information Commissioner's Office* [EA/2006/0070] (paragraph 32); that it must be given its ordinary meaning

of being likely to cause distress or irritation. The enquiry is an objective one, so the likely effect would be that on a reasonable public authority. This objective approach has been recently confirmed to be correct by the Tribunal in *Gowers v Information Tribunal and London Camden Borough Council* [EA/2007/0114] (paragraph 27).

35. The Commissioner has recently revised Awareness Guidance 22 as a tool to assist in the consideration of what constitutes a vexatious request. He notes that he asked the Constabulary to frame its arguments with his previous guidance in mind in this case. The new guidance can be found at the link below:

http://www.ico.gov.uk/upload/documents/library/freedom_of_information/detailed_specialist_guides/awareness_guidance_22_vexatious_and_repeated_requests_final.pdf

36. This guidance explains that for a request to be deemed vexatious the Commissioner will consider the context and history of the request, as well as the strengths and weaknesses of both parties' arguments in relation to some or all of the following five factors, to reach a reasoned conclusion as to whether a reasonable public authority could refuse to comply with the request on the grounds that it is vexatious:

(1) whether compliance would create a significant burden in terms of expense and distraction;

(2) whether the request is designed to cause disruption or annoyance;

(3) whether the request has the effect of harassing the public authority or its staff;

(4) whether the request can otherwise fairly be characterised as obsessive; and

(5) whether the request has any serious purpose or value.

37. The Constabulary has indicated in its arguments to the Commissioner that it believes that conditions (4), (1) and (5) are satisfied by this request and this led it to the conclusion that this request was vexatious. The Commissioner has looked at them in turn.

Can the request fairly be characterised as obsessive?

38. The public authority informed the Commissioner that this was its major argument. It cited part of the Commissioner's guidance that stated:

'where a request concerns an issue or dispute which has already been fully addressed or investigated by the public authority (regulatory body/ or court) and is therefore closed, it may be seen to be obsessive.'

It informed the Commissioner that it felt the issue about the siting of the camera was already thoroughly addressed by the national guidelines.

39. In this case the complainant was caught for speeding, which led to his prosecution and subsequent appeal about the ticket. The Commissioner is aware that the complainant has written over 200 letters about this specific offence. The Commissioner has analysed the time taken over a single issue (the validity of the speeding ticket) and concluded that there is a lack of proportionality in using the Act multiple times to investigate every aspect of the site and this contributes to the request being obsessive.
40. He is satisfied that Lancashire Constabulary have provided helpful responses in other requests made by this complainant about the speeding ticket site and that there has been a significant burden on their resources, in trying to allay the complainant's concerns. He is also satisfied that it is likely that, even if the information were provided, it would not be adequate for the complainant. While he recognizes that there may be a fine line between persistence and being obsessive, he has found that the request is obsessive in this instance.
41. He therefore finds in favour of the Constabulary on this factor. This factor is the one on which he places the greatest weight.
42. When considering whether the request is obsessive the Commissioner's approach is also to consider whether the information request can also be seen to be manifestly unreasonable. In this instance the Commissioner also feels that the request is manifestly unreasonable. He believes that this is the case because of the nature of what has been requested. He does not feel that it is possible to determine whether the weather was 'sunny', 'intermediate' or 'dull' as the categories are open to interpretation and do not have a consistent definition. The Commissioner feels that there is such elasticity in the categories that effectively the information loses the purpose that it was asked for. This may have been an issue that improved advice and assistance could have remedied but in this case those weather requirements are essential for the purpose of the complainant's request and he moved to add them separately on 11 November 2007.

Does the request place a significant burden on the Constabulary in terms of expense and distraction?

43. When analysing this factor the Commissioner invited the Constabulary to quantify the time burden that this request has caused. The Constabulary has indicated to the Commissioner that while it does not record directly the time taken it can formulate a reasonable estimate of the time taken to look at the request. From this information the Commissioner is satisfied that there was a level of burden that was readily attributable to this request.
44. The Commissioner can also go beyond financial costs and look to the issue of the diversion and distraction from other work. This approach is in line with the past Tribunal decision of *Welsh v Information Commissioner* [EA/2007/0088] (paragraph 27).
45. In making a determination of whether the request represents a significant burden to a public authority, the Commissioner will have regard to the extent to which a complainant's request represents a continuation of behaviour. Even if the request

appears reasonable in isolation, the previous behaviour of the requester can be taken into account if placing the request in context will allow it to be justifiably judged as unreasonable. This approach is in line with past Tribunal decisions including *Hossack v Information Commissioner* [EA/2007/0024] (paragraph 12) and *Welsh v Information Commissioner* (paragraph 21).

The Complainant's Previous Behaviour

46. The focus of this Decision Notice is the complainant's request of 11 November 2007 and the Constabulary's application of section 14 to it. However, the Commissioner does not feel that it would be fair to only look at the amended request in isolation from its history.
47. The complainant has also made other requests to the Constabulary about this camera site (outside Sough Park in Kelbrook). He has asked for the following information on different occasions.
 1. Annual totals of NIPs issued from 1998 at the site (27/04/2007).
 2. Full session video tape taken at the site on 20/11/05 (11/05/2007).
 3. The eye site records of officers generally and the officer on duty (11/05/2007).
 4. The specifications used by Lancashire Constabulary to convert a Vauxhall Estate car for use as a police dog handler's car that may have been used by the officer on duty on the date of his ticket (09/10/2007).
48. The Commissioner has considered in detail the evolution of the request and acknowledges that the complainant has been reasonable in attempting to narrow down his request so that it falls within the cost limit. He also acknowledges that the Constabulary had failed to correctly identify the parameters of this modified request and had assumed that the burden would have been greater than it would be. He also notes that the Constabulary has induced an additional burden in not providing adequate advice and assistance in relation to the earlier request for information. The Commissioner has considered this issue in more detail in the other matters section in paragraph 69 of this notice.
49. The Commissioner has considered whether there would have been a less burdensome possibility of providing either the tapes themselves or the photos, so that the complainant could conduct his own analysis and thereby reduce the burden on the Constabulary. His view is that the tapes and the photos would be exempt under section 40(2), as the provision of them would expose sensitive personal data of third parties and there are no conditions in Schedule 3 of the Data Protection Act 1998 (the DPA) that would be satisfied. The Commissioner has checked a sample of the photos to be sure of this conclusion. He has considered the complainant's view that the number plates are inadequate to identify the people who commit the offence and he disagrees. This is because of the Road Vehicles (Registration and Licensing) Regulations 2002. This provision enables a member of the public to access information from the Drivers and

Vehicle Licensing Agency (DVLA) about the registered keepers of motor vehicles when they have 'reasonable cause' to do so. It would therefore be possible for the complainant with the number plate data to ascertain the individuals that had been speeding.

50. In balancing the factors, the Commissioner considers that, even without the extra correspondence that was produced by its error, there is a significant burden placed on the police in terms of expense and distraction. He therefore finds in favour of the Constabulary on this factor. In this instance he is not placing great weight on this factor because the arguments are finely balanced.
51. The Commissioner is also aware that the complainant has written upwards of 200 letters to various public authorities about this enforcement site. While the Commissioner is entitled to take into account the workload of other authorities in dealing with the same issue covered by the request, he has chosen not to do so.
52. The Commissioner also notes that an independent body (the Crown Court) found against the complainant after a six day hearing. It dealt with every point raised by the complainant before going on to reject each one in turn. However, in this case he does not feel that the court case can influence this determination as it was after the request for information. The Commissioner is including this paragraph to ensure that it is on the record that he has placed no weight on this factor despite the Constabulary's submissions to him about it.

Does the request have any serious purpose or value?

53. The Constabulary has in its internal review claimed that this request does not have a serious purpose or value, and has maintained its position when responding to the Commissioner's enquiries. It has contended that the road safety regulations would mean that sun visors would not be fitted if it was proven that they affected the vision of the driver. It also believed that the complainant did not have a serious purpose in requesting the recorded information.
54. It further contended that the issue of safety camera deployment should be left to professionals and that in this area there was legislation enforcing mandatory guidelines in operation. These are set out in a Department for Transport Circular. It also provided the Commissioner with the relevant guidelines. Further it contends that the Association of Chief Police Officer's (ACPO) speed enforcements guidelines provide a level of flexibility to account for any unusual circumstances (such as the speedometer being inaccurate).
55. It also informed the Commissioner that the device itself was used in accordance with the Operator's Guidelines contained in the operating manual and with ACPO's guidelines.
56. The complainant argued that he did have a serious and important purpose for requesting the information from the Constabulary. He told the Commissioner that he wanted to ensure that the camera was used in compliance with the guidelines. He also argued that natural justice considerations meant that this information should be available in the public domain.

57. The Commissioner has looked at the process used by the Constabulary to see if there are any additional considerations. He was informed that the camera calibrates itself automatically when it is switched on. The operator then performs confidence checks before and after use. This takes the form of a Morning and Evening Check which is a Distance Confidence check and also an on-site alignment check which is recorded on the tape prior to enforcement. Also prior to enforcement it informed the Commissioner that it conducts a Dynamic Risk Assessment to ensure that it is safe to enforce in this area. Further, it also explained to the Commissioner how it handles the evidence in this sort of case and that there is a detailed process that is followed.
58. The Commissioner believes the arguments are finely balanced in relation to this factor. The Commissioner can see the merit in providing an additional layer of independent accountability for mobile enforcement unit sights. However, he has not been convinced that the information requested would provide a meaningful additional layer of accountability. He has also considered when making this judgment that the Home Office have provided type approval to the said unit and that there are built in validity checks within it. While it is important that the public has faith in the internal processes of the Constabulary he once again does not see how this information would enhance understanding. He therefore finds in favour of the Constabulary on this factor.
59. The Commissioner has also considered his other criteria:

Was the request designed to cause disruption or annoyance?

60. The Commissioner has analysed the correspondence and notes that the tone is committed but generally cordial. He also believes that the requestor was genuinely wanting the information that he had requested and not trying to cause disruption or annoyance in this case. He notes the behaviour of the complainant in attempting to narrow the request was an effort to reduce the workload and this does not appear to be the action of someone wanting to cause disruption.
61. He also notes that in the correspondence the Constabulary indicated on 13 December 2007 that the request was 'inadvertently vexatious'. In its responses during the investigation the Constabulary indicated to the Commissioner that this was intended to soften the impact of the word vexatious. In any event the Commissioner is not satisfied that this request was designed to cause disruption or annoyance to the Police, as the complainant lacked this intent. He therefore finds in favour of the complainant on this factor.

Does the request have the effect of harassing the Constabulary or its staff?

62. In cases where section 14 is used to refuse a request, the Commissioner considers that it is appropriate for a public authority to have regard to the identity of the requestor and to the purpose of the request.
63. The Commissioner is aware that Lancashire Constabulary has received a number of requests about the speed camera site from this complainant. He feels that the

requests are effective in communicating the complainant's deep dissatisfaction about the ticket. He is particularly aware that the request about the eyesight of the officer concerned directly connects his general grievance with a member of the police force.

64. The Commissioner is satisfied that the pattern of behaviour connected with this request has had the effect of harassing the Constabulary, although he does not believe that this was the intention of the complainant. He therefore finds in favour of the Constabulary on this factor, although he has not placed a great weight on it.

Could a reasonable public authority refuse to comply with the request on the grounds that it is vexatious?

65. The Commissioner notes that, in *Hossack v Department for Work and Pensions* (EA/2007/0024), the Information Tribunal pointed out that the threshold for finding a request for information vexatious need not be set too high, as the consequences are much less serious than the finding of vexatious conduct in other legal contexts (see paragraph 11 of the decision).
66. Having considered this case in detail the Commissioner has come to the conclusion that it was reasonable for the public authority to have concluded that this request was vexatious. He is unconvinced that the request for information would provide any additional accountability; he also believes that the request is obsessive, that overall the request has no serious purpose or value and that it has had the effect of harassing the Constabulary.

The Decision

67. The Commissioner has concluded that the Constabulary handled this request in accordance with the Act.

Steps Required

68. The Commissioner requires no steps to be taken.

Other matters

Advice and assistance

69. The Commissioner will not find a breach of section 16 when he determines that the request is vexatious. However he believes that the Constabulary's handling of this matter prior to the new freedom of information request on 11 November 2007

was defective, in that it failed to provide adequate advice in response to the initial request on 24 October 2007.

70. The Commissioner believes that it should have indicated the information that it held that could be provided within the cost limit and invited the complainant to narrow his request. This may have prevented the development of this complaint. It would also have been likely to have significantly reduced the burden that the Constabulary have experienced.
71. The Commissioner is also concerned by the lack of clarity in the assistance provided by the Constabulary on 9 November 2007 when it provided a spreadsheet of information and a response without linking it to the detail of what was asked for in the request.

Understanding what recorded information is held

72. The Commissioner was concerned that the fact that the CD was held of the photographs of the offences was not apparent during the original handling of the request. He therefore emphasises the need for the Constabulary to be certain about what information is held when answering requests for information.

Internal review delay

73. Section VI of the Code of Practice (provided for by section 45 of the Act) makes it desirable practice that a public authority should have a procedure in place for dealing with complaints about its handling of requests for information. As he has made clear in his 'Good Practice Guidance No 5', the Commissioner considers that these internal reviews should be completed as promptly as possible. While no explicit timescale is laid down by the Act, the Commissioner has decided that a reasonable time for completing an internal review is 20 working days from the date of the request for review. In exceptional circumstances it may be reasonable to take up to 40 working days.
74. The Commissioner does not consider that the Constabulary has provided evidence to show that there were exceptional circumstances in this case, and he notes in any event that the Constabulary did not seek to explain to the complainant the length of time that the review had taken. The complainant's internal review request was made on 22 December 2007 but he was not sent the decision until 15 February 2008, 37 working days later. The Commissioner does not consider that any factors have been demonstrated which would justify this length of time to deal with what was a relatively straightforward freedom of information request.

Right of Appeal

75. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal
Arnhem House Support Centre
PO Box 6987
Leicester
LE1 6ZX

Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@tribunals.gsi.gov.uk.
Website: www.informationtribunal.gov.uk

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.

Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is served.

Dated the 22nd day of October 2009

Signed

**Gerrard Tracey
Assistant Commissioner**

**Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Legal Annex

Freedom of Information Act 2000

Section 14: Vexatious or repeated requests

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

(2) Where a public authority has previously complied with a request for information which was made by any person, it is not obliged to comply with a subsequent identical or substantially similar request from that person unless a reasonable interval has elapsed between compliance with the previous request and the making of the current request.

Section 16: Duty to provide advice and assistance

(1) It shall be the duty of a public authority to provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made, requests for information to it.

(2) Any public authority which, in relation to the provision of advice or assistance in any case, conforms with the code of practice under section 45 is to be taken to comply with the duty imposed by subsection (1) in relation to that case.

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Section 2: Sensitive personal data

In this Act "sensitive personal data" means personal data consisting of information as to—

- (a) the racial or ethnic origin of the data subject,*
- (b) his political opinions,*
- (c) his religious beliefs or other beliefs of a similar nature,*
- (d) whether he is a member of a trade union (within the meaning of the [1992 c. 52.] Trade Union and Labour Relations (Consolidation) Act 1992),*
- (e) his physical or mental health or condition,*
- (f) his sexual life,*
- (g) the commission or alleged commission by him of any offence, or*
- (h) any proceedings for any offence committed or alleged to have been committed by him, the disposal of such proceedings or the sentence of any court in such proceedings.*