

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 30 November 2009

Public Authority: Chief Constable of Kent Police
Address: Kent Police Headquarters
Sutton Road
Maidstone
Kent
ME15 9BZ

Summary

The complainant requested the details of two police officers in connection with an incident in May 2006 that led to his arrest and conviction and the details of cautions or convictions of a third party arrested and cautioned in the same incident. The public authority refused the requests under section 14(1) as they were considered vexatious. The Commissioner finds that the requests can be accurately characterised as vexatious owing to the burden of expense and distraction they would impose on the public authority, that they have the effect of harassing the public authority and individual members of its staff and that they are obsessive in nature. The public authority therefore applied section 14(1) correctly and is not obliged to comply with these requests. The Commissioner also finds, however, that the public authority failed to comply with section 17(5) in that it did not respond to the request within 20 working days of receipt.

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 7 October 2008 the complainant made the following information requests:

"Please inform me of the name, number and rank, probably constable, of the female officer who was on duty in Maidstone Road, Chatham, Kent on Saturday 6 May 2006 between 0200 and 0400 hours and conveyed an

arrested female to Maidstone Police Station. Her accompanying male PC's number and name is also required."

"Please provide me with a copy or details of the caution given to [name redacted]...at Maidstone Police station on Saturday 6 May 2006.

Please also provide copies or details of any other cautions or convictions of the above named female from the age of criminal responsibility up until present date including any pending convictions, charges."

3. The public authority responded to these requests on 24 November 2008, outside 20 working days. The requests were refused under section 14(1) as the public authority believed that they were vexatious. The public authority referred to the contact between it and the complainant since the complainant had, in 2006, been arrested by officers from the public authority and subsequently convicted of an offence. The public authority referred to a number of complaints that the complainant had made to it since that time, around 24 in total, some of which had been referred to the Independent Police Complaints Commission (IPCC) but had not been upheld. The public authority believed that the complainant was attempting to further his grievance stemming from his arrest and conviction through these information requests and that this meant that these requests were vexatious.
4. The complainant sent two letters dated 8 December 2008 to the public authority asking that it carry out an internal review. The public authority responded with the outcome of the review on 30 December 2008. This concluded that the request was vexatious and the refusal under section 14(1) was upheld.

The Investigation

Scope of the case

5. The complainant contacted the Commissioner on 5 February 2009. The complainant did not agree that his requests were vexatious, stating that the refusal by the public authority was, in fact, vexatious towards him. The complainant went on to say that he believed that the public had a right in general to the information he had requested and that he, in particular, should be provided with the information requested as the third parties referred to in his request were witnesses in relation to his arrest and conviction.

Chronology

6. The public authority was contacted by the Commissioner's office by telephone on 18 February 2009. The public authority was advised of the complaint and some issues concerning the chronology of the request and the internal review were clarified.

7. The public authority contacted the Commissioner's office on 2 March 2009 with further documentation relating to the complainant's request. Included with this were notes made by the staff member within the public authority who had carried out the internal review in which the reasoning for the internal review outcome was recorded.

Analysis

Substantive Procedural Matters

Section 14

8. The public authority refused the complainant's request under section 14(1). This provision provides that a public authority is not obliged to comply with a request if it is vexatious. The task for the Commissioner here is, therefore, to consider whether the requests quoted above can be accurately characterised as vexatious.
9. The Commissioner's published guidance on section 14(1) sets out the following five factors to take into account when considering whether a request is vexatious:
 - i. Whether compliance would create a significant burden in terms of expense and distraction.
 - ii. Whether the request is designed to cause disruption or annoyance.
 - iii. Whether the request has the effect of harassing the public authority or its staff.
 - iv. Whether the request can otherwise fairly be characterised as obsessive or manifestly unreasonable.
 - v. Whether the request has any serious purpose or value.
10. The public authority followed these factors when considering whether the complainant's request was vexatious and the Commissioner will use these factors in his analysis here.
 - i. Would compliance create a significant burden in terms of expense and distraction?
11. The argument of the public authority was that the requests would create a significant burden, in part due to the steps it would be necessary for it to take in order to comply with the Data Protection Act 1998. The public authority believed it would be necessary for it to contact each of the individuals specified in the request in order to comply with the data protection principles.
12. The Commissioner assumes that the public authority believed it would be necessary for it to secure the consent of each of these individuals to disclosure

for this processing of their personal data to be compliant with the first data protection principle. On this point the public authority should note that consent from the data subject is only one of the six conditions in Schedule 2 of the DPA, one of which must be fulfilled in order to comply with the first data protection principle. It is not the case that consent from the data subject is always a prerequisite for compliance with the first data protection principle. Neither is it the case that the public authority would necessarily have been obliged to secure consent from each of the third parties referred to in the complainant's request when complying with this request. The Commissioner does not, therefore, accept this argument as to why the request would create a significant burden.

13. The public authority has also argued that compliance with this request would be used by the complainant to extend his grievance, which would lead to expense and distraction to the public authority. Whilst there is no evidence that the complainant would make further information requests as a result of compliance with this request, the Commissioner does accept that, on the basis of the complainant having pursued his grievance against the public authority until this point, compliance with the request would be likely to result in further correspondence being sent to the public authority by the complainant. The Commissioner accepts that dealing with this correspondence would impose an administrative burden on the public authority that would lead to expense and distraction, although he makes no judgement as to the merits of the complainant's grievance.
14. The approach of taking into account the burden imposed through factors other than further information requests is in line with the approach taken by the Information Tribunal in *Mr G Betts v Information Commissioner* (EA/2007/0109) in which it stated:

"[compliance with the request would be] extremely likely to lead to further correspondence, further requests and in all likelihood, complaints against individual officers..." (paragraph 34)

- ii. Was the request designed to cause disruption or annoyance?
15. The public authority has not made this argument and so the Commissioner has not taken this factor into account here.
 - iii. Does the request have the effect of harassing the public authority or its staff?
16. The complainant has pursued his grievance with the public authority for a period of years since his arrest and conviction. The public authority has stated that he has made approximately 24 complaints to it, from which only one minor issue was upheld. The public authority has also stated that a number of issues raised by the complainant have been referred to the Independent Police Complaints Commission (IPCC) and that these complaints have not been upheld by the IPCC. Indeed, the public authority has stated that the IPCC has adjudged the continued complaints to be repetitious. In continuing to pursue his grievance against the public authority after this period of time and having repeatedly been

through the complaints procedures of the public authority and the IPCC, the Commissioner finds that these information requests do have the effect of harassing the public authority.

17. One of the requests in question here is for details of individual staff members within the public authority, suggesting that the complainant was seeking to personalise his grievance. As such, the Commissioner accepts that the request has the effect of harassing the staff members of the public authority referred to in the request.

iv. Can the request be fairly characterised as obsessive or manifestly unreasonable?

18. Of note here is that these information requests followed a number of attempts by the complainant to have his complaints against the public authority substantiated. The public authority has stated that, apart from one minor aspect, his approximately 24 complaints were not upheld, either by the Professional Standards Department of the public authority, or by the IPCC. The Commissioner also notes that the appropriate means for the complainant to dispute his conviction would have been to appeal the verdict of the Court. In seeking to pursue his grievance having repeatedly been through the complaint procedures of the public authority and the IPCC, and having had the option to appeal his conviction, the Commissioner considers that these requests can be fairly characterised as obsessive.

19. Further evidence of the complainant behaving in an obsessive and unreasonable manner is provided through the tone of his internal review requests of 8 December 2008. In these correspondences the complainant makes baseless accusations that the reason for the refusal of his requests is that the public authority *"has something to hide"* and that the public authority has *"lost"* the details of the police officers specified in his request. Taking the tone of the complainant's correspondence into account is in line with the approach taken by the Information Tribunal in *Mr R Coggins v Information Commissioner* (EA/2007/0130) in which it stated:

"The number of FOIA requests, the amount of correspondence and haranguing tone of that correspondence indicated that the Appellant was behaving in an obsessive manner." (paragraph 28)

v. Does the request have any serious purpose or value?

20. The public authority has argued that, as the complainant has exhausted the complaints procedures available to him and because of the nature of the information requested, these requests do not have any serious purpose or value. However, the Commissioner would anticipate that the complainant would argue that the requests are made for the purpose of pursuing his grievance against the public authority relating to his conviction, a purpose he undoubtedly would regard as serious and of value. Whilst an objective opinion might be that these requests have little value, on the basis that the complainant did have a serious purpose when making these requests and would have considered them to be of value, the

Commissioner does not accept that the request did not have any serious purpose or value.

Conclusion

21. The Commissioner concludes that the requests quoted above can be accurately characterised as vexatious. The basis for this conclusion is that compliance with these requests would be likely to create a significant burden in terms of expense and distraction for the public authority, that the requests had the effect of harassing both the public authority and individual members of its staff and that the requests can be fairly characterised as obsessive. Therefore, section 14(1) provided that the public authority was not obliged to comply with section 1(1) in relation to these requests.

Procedural Requirements

Section 17

22. The public authority failed to respond to the request within 20 working days of receipt. In so doing, the public authority did not comply with the requirement of section 17(5) that a Notice informing the requester that section 14(1) is believed to apply must be provided within the time period for compliance with section 1(1).

The Decision

23. The Commissioner's decision is that the public authority dealt with the requests for information in accordance with the Act in that the requests were accurately characterised as vexatious and, therefore, section 14(1) did apply. However, the Commissioner also finds that the public authority did not comply with section 17(5) in that it failed to respond to the requests within 20 working days of receipt.

Right of Appeal

24. 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.

25. 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 30th day of November 2009

Signed

**Anne Jones
Assistant Commissioner**

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

Legal Annex

Section 1

Section 1(1) provides that -

“Any person making a request for information to a public authority is entitled –

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him.”

Section 14

Section 14(1) provides that –

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

Section 17

Section 17(5) provides that –

“A public authority which, in relation to any request for information, is relying on a claim that section 12 or 14 applies must, within the time for complying with section 1(1), give the applicant a notice stating that fact.”