

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 14 October 2010

Public Authority: Northumbria Police
Address: North Road
Ponteland
Newcastle upon Tyne
NE20 0BL

Summary

The complainant asked Northumbria Police ("the public authority") to provide information about the relationship between the police and the RSPB. As the subject matter was deemed to be the same as a number of previous requests, the public authority refused using the exclusion under section 14(1). Having considered this request, alongside further requests and complaints made by the complainant, the Commissioner has decided that the public authority was correct to refuse the request on the basis that it was vexatious under section 14(1) of the Freedom of Information Act 2000 ("the FOIA").

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.

Background

2. The complainant's request is part of a long running dispute that he has had with Northumbria Police. He was committed to Crown Court over 10 years ago and was sentenced to 18 months imprisonment. His Indictment contained 13 counts relating to the Control of Trade in Endangered Species (Enforcement) Regulations 1985. The matter was

subject to an appeal against sentence but was dismissed. The complainant has maintained his innocence and has continually striven to prove this. Internal investigations by both the police and the IPCC have not found in his favour and he remains convinced that there has been a 'cover up'.

3. The complainant sent in several complaints to the Commissioner at the same time. These included three complaints against this public authority. The other related complaints are covered by Decision Notices FS50274648 and FS50308744, which are issued at the same time as this notice. The earliest request is considered in the Decision Notice FS50274648 and this therefore contains more detail than either this notice or FS50308744. The requests in each case have been deemed vexatious by the Commissioner.
4. The Commissioner has also viewed evidence of eight further complaints which the public authority has investigated in its Professional Standards Department ("PSD"), one of which post-dates this request. Of these complaints, six referred directly to the complainant's criminal conviction and his belief that it is unfounded. All of these six were also forwarded to either the Police Complaints Authority (the "PCA") or the Independent Police Complaints Commissioner (the "IPCC"), which replaced the PCA. None were found to be substantiated by any party.

The request

5. The complainant sent following request to the public authority on 29 April 2009:

"Reference; Payments to the RSPB by the police.

Do the police pay the Royal Society for the Protection of Birds for their 'assistance' in any respects? For example investigating potential infringements of the law. If the police do pay public money to the RSPB could I please see they accounts for the last two years that relate to payments to the RSPB?

Could I have a copy of the binding codes of conduct in relation to how the police supervise the way the RSPB handle evidence that has been seized by the police under the power of a search warrant?

Could I also see the codes of conduct that allows the person who has had his property seized to check the evidence to support his defence?

I only want the specific sections that relate to my requests for information."

6. Having previously declared requests on his own court case, avian genetics and its work with the RSPB as being 'vexatious' the public authority made no response.

The investigation

Scope of the case

7. On 7 September 2009 the complainant contacted the Commissioner to complain about the way his request for information had been handled. He advised the Commissioner as follows:

"Reference; My Information requests that are being ignored on the information request website WHATDOTHEYKNOW.

Please find enclosed numerous information requests to Northumbria Police, the CPS, the Ministry of Justice and Animal Health that are being ignored or I have requested an internal inquiry and I have now waited long enough for the information requested. Please investigate the information requests on my behalf to secure the information requested".

8. This included several complaints about requests made to this public authority. The Commissioner advised the complainant that he would consider whether or not three of these were 'vexatious'.

Chronology

9. On 15 April 2010 the Commissioner wrote to the complainant to advise him that he was commencing his investigation. The complainant telephoned the Commissioner on receipt of his letter and accepted the scope set down by the Commissioner.
10. The Commissioner commenced his enquiries with the public authority on 26 April 2010.

Analysis

Substantive procedural matters

Exclusion – section 14(1)

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

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

12. When assessing vexatiousness the Commissioner adopts the view of the Information Tribunal (the “Tribunal”) decision in *Ahilathirunayagam v Information Commissioner’s Office* [EA/2006/0070] (paragraph 32); that it must be given its ordinary meaning so would be likely to cause distress or irritation. The enquiry is based on objective standards. This has been reaffirmed by the Tribunal in *Gowers v Information Tribunal and London Camden Borough Council* [EA/2007/0114] (paragraph 27). The Commissioner has developed a more detailed test in accordance with his guidance but it is important to understand that it has developed from these general principles and they guide him in applying his test.

13. When considering what evidence can be considered when making this determination, the Commissioner endorses the Tribunal’s consideration of this point in *Mr J Welsh v the Information Commissioner* [EA/2007/0088] (paragraph 21) where it stated:

“In most cases, the vexatious nature of a request will only emerge after considering the request in its context and background. As part of that context, the identity of the requester and past dealings with the public authority can be taken into account. When considering section 14, the general principles of FOIA that the identity of the requester is irrelevant, and that FOIA is purpose blind, cannot apply. Identity and purpose can be very relevant in determining whether a request is vexatious. It follows that it is possible for a request to be valid if made by one person, but vexatious if made by another; valid if made to one person, vexatious if made to another”.

14. The Commissioner has therefore taken into account the complainant’s previous interaction with the public authority when determining whether the request can be correctly characterised as vexatious. This means that even if the request appears reasonable in isolation, it may be vexatious if it demonstrates a continuation of behaviour which is

obsessive and/or represents a significant burden when considered collectively.

15. The Commissioner has issued Awareness Guidance 22 as a tool to assist in the consideration of what constitutes a vexatious request. 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.
16. When considering the public authority's reliance upon section 14(1), the Commissioner has had regard to the Information Tribunal's decision in *Mr J Welsh v the Information Commissioner* [EA/2007/0088] (at paragraph 26). In that case, the Tribunal spoke of the consequences of determining a request vexatious. It pointed out that this is not as serious as a finding of vexatious conduct in other contexts and therefore the threshold for vexatious requests need not be set too high.
17. The public authority has advised the complainant that any requests he makes which relate to his own court case, avian genetics and its work with the RSPB will be classed as 'vexatious'. This request clearly relates to the same subject matter. For the same reasons as he set out in his Decision Notice FS50274648 the Commissioner has decided that this request is also 'vexatious'.

Section 17 – refusal of request

18. It is important that public authorities receive protection from meritless applications under the Act. The Commissioner considers this to be the intention of including section 17(6) in the Act. This states that a public authority is not required to provide a refusal notice where:

“(a) the public authority is relying on a claim that section 14 applies,

- (b) the authority has given the applicant a notice, in relation to a previous request for information, stating that it is relying on such a claim, and*
- (c) it would in all the circumstances be unreasonable to expect the authority to serve a further notice under subsection (5) in relation to the current request."*

19. In this case, the public authority is relying on section 14; it has previously provided a refusal notice which states that it is relying on such a claim; and the Commissioner believes that, in all the circumstances, it would be unreasonable to expect the public authority to issue a separate notice regarding this request. He believes that this is the case because he has already determined that a previous request about the underlying subject matter is vexatious, which renders the issuing of a further notice unreasonable. He has therefore concluded that section 17(6) has been appropriately applied to this request.

The Decision

20. The Commissioner's decision is that the public authority dealt with the request for information in accordance with the Act.

Steps required

21. The Commissioner requires no steps to be taken.

Right of Appeal

22. 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,
Arnhem House,
31, Waterloo Way,
LEICESTER,
LE1 8DJ

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 sent.

Dated the 14th day of October 2010

Signed

**Jon Manners
Group Manager**

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

Legal annex

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 17 - refusal of request

- (1) A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which—
 - (a) states that fact,
 - (b) specifies the exemption in question, and
 - (c) states (if that would not otherwise be apparent) why the exemption applies.
- (2) Where—
 - (a) in relation to any request for information, a public authority is, as respects any information, relying on a claim—
 - (i) that any provision of Part II which relates to the duty to confirm or deny and is not specified in section 2(3) is relevant to the request, or
 - (ii) that the information is exempt information only by virtue of a provision not specified in section 2(3), and
 - (b) at the time when the notice under subsection (1) is given to the applicant, the public authority (or, in a case falling within section 66(3) or (4), the responsible authority) has not yet reached a decision as to the application of subsection (1)(b) or (2)(b) of section 2,
the notice under subsection (1) must indicate that no decision as to the application of that provision has yet been reached and must contain an estimate of the date by which the authority expects that such a decision will have been reached.
- (3) A public authority which, in relation to any request for information, is to any extent relying on a claim that subsection (1)(b) or (2)(b) of section 2 applies must, either in the notice under subsection (1) or in a separate notice given within such time as is reasonable in the circumstances, state the reasons for claiming—

- (a) that, in all the circumstances of the case, the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing whether the authority holds the information, or
 - (b) that, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.
- (4) A public authority is not obliged to make a statement under subsection (1)(c) or (3) if, or to the extent that, the statement would involve the disclosure of information which would itself be exempt information.
- (5) 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.
- (6) Subsection (5) does not apply where—
- (a) the public authority is relying on a claim that section 14 applies,
 - (b) the authority has given the applicant a notice, in relation to a previous request for information, stating that it is relying on such a claim, and
 - (c) it would in all the circumstances be unreasonable to expect the authority to serve a further notice under subsection (5) in relation to the current request.
- (7) A notice under subsection (1), (3) or (5) must—
- (a) contain particulars of any procedure provided by the public authority for dealing with complaints about the handling of requests for information or state that the authority does not provide such a procedure, and
 - (b) contain particulars of the right conferred by section 50.