

Freedom of Information Act 2000 (FOIA)

Decision Notice

Date: 26 October 2011

Public Authority: Chief Constable of Lancashire
Constabulary

Address: Police Headquarters
Saunders Lane
Hutton
Preston
PR4 5SB

Decision

1. Lancashire Constabulary refused to comply with the complainant's information requests on the grounds that they were vexatious. The Commissioner's decision is that Lancashire Constabulary has breached the FOIA by incorrectly refusing the requests as vexatious.

Steps ordered

2. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Respond to the requests in accordance with the FOIA by either disclosing the information specified in each of the requests, or respond with a valid reason for not disclosing this information.
3. The Constabulary must take the steps required within 35 calendar days of the date of this Notice. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

4. On 15 December 2010, the complainant wrote to Lancashire Constabulary (the Constabulary) and requested information in the following terms:

"[in relation to a meeting between the Chief Constable and the Deputy Chief Constable that took place on 7 November 2008 at which the Lancashire Police Authority response to the complainant was discussed]

All internal correspondence or external correspondence used or produced during or after this meeting.

All internal information in relation to the decisions made at this meeting.

All notes or minutes as regards the content or conduct of this meeting.

All correspondence or internal information relevant in any way to this meeting including the 'draft response to [name redacted]' that was shared with the Chief Officer and his Deputy at this meeting.

All objections to any content of the draft response and evidence of any alterations and how these requirements were recorded for subsequent action.

Please include all internal emails, faxes, file notes, letters, scribbled notes, minutes and all other recorded information in relation to this meeting.

All internal notes and memos, transcriptions of telephone conversations, records of meetings or discussions generated internally as a result of or due to this meeting.

All other internal information that Lancashire Constabulary knows about or discovers during their consideration of this request.

All correspondence sent to any other persons due to this meeting or in the aftermath of this meeting via email, letter, phone transcript or via any other medium."

5. The Constabulary responded on 21 January 2011. It refused the requests on the grounds that they were vexatious.
6. Following an internal review the Constabulary wrote to the complainant on 4 March 2011. It stated that the refusal of the requests on the grounds that they were vexatious was upheld.

Scope of the case

7. On 21 April 2011 the complainant contacted the Commissioner to complain about the refusal of his requests.

Reasons for decision

8. Section 14(1) of the FOIA states that a public authority is not obliged to comply with a request that is vexatious. The task for the Commissioner here is, therefore, to decide whether the requests made by the complainant were vexatious.
9. The Commissioner's guidance on section 14 of the FOIA sets out five criteria to follow when considering whether a request is vexatious:
 - whether compliance would create a significant burden in terms of expense **and** distraction
 - whether the request is designed to cause disruption or annoyance
 - whether the request has the effect of harassing the public authority or its staff
 - whether the request can otherwise fairly be characterised as obsessive or manifestly unreasonable
 - whether the request has any serious purpose or value

The Constabulary has followed these criteria when setting out why it believes these requests to be vexatious. This analysis covers which of these criteria are met, taking into account the arguments provided by the Constabulary.

Would compliance with the requests create a significant burden in terms of expense and distraction?

10. The Constabulary has argued that this criteria does apply and has stated the following in support of this argument:

“Clearly the length of time which has been invested in [the complainant] and his complaints over the years is severely disproportionate [and the complainant] has placed a drain on the public sector purse and a burden on the individuals who are required to deal with him.”

11. The Constabulary has not, however, provided any evidence in support of these assertions. It has not, for example, provided details of the number of requests received from the complainant, or details of the amount of staff time / cost spent on these requests.
12. The Constabulary has also suggested that compliance with these requests would be likely to lead to the complainant making further information requests based upon the information disclosed. The Commissioner is aware that the complainant has made many information requests to the Constabulary through having received complaints about the responses to those requests. He also recognises that compliance with these many requests is likely to have resulted over time in the imposition of a significant burden upon the public authority.
13. The Commissioner notes that the complainant has pursued contact with the public authority over a number of years and that none of the responses that the complainant has received to his many information requests has resulted in the cessation of his requesting. Given these factors, the Commissioner accepts that compliance with these requests would result in a significant burden upon the public authority in that the pattern of the complainant’s previous behaviour indicates that it is likely that the complainant would make further requests based on the responses to these requests. This criteria for finding a request vexatious is therefore met.

Was the request designed to cause disruption or annoyance?

14. The Constabulary has acknowledged that these requests were not intentionally designed to cause disruption or annoyance, but it has argued that these requests nevertheless do have that result.
15. This criteria concerns requests that were *purposefully intended* to disrupt or annoy. That the requests in question may inadvertently have this result is not relevant here and so this criteria is not met.

Do the requests have the effect of harassing the public authority or its staff?

16. The Constabulary has referred to the wording and tone of the correspondence in which the complainant requested an internal review and to a letter sent from the complainant to the Chief Constable on 3 February 2011. The Commissioner does not consider the letter to the Chief Constable to be relevant as this postdated the request. As for the correspondence in which the complainant requested an internal review, the Commissioner notes that the tone and presentation of this is somewhat intemperate, but does not believe that this alone is a sufficient basis on which to characterise the request as harassing.
17. The Constabulary also refers to the Information Tribunal having accepted that a request made by the complainant to a different public authority did have the effect of harassing that public authority. The Commissioner does not accept, however, that the tone of the complainant's correspondence with a different public authority, or the conclusion of the Tribunal in relation to that correspondence, is relevant here. Therefore, the Commissioner does not believe that the requests in this case had the effect of harassing the public authority or its staff.

Can the requests otherwise fairly be characterised as obsessive or manifestly unreasonable?

18. The Constabulary has argued that these requests were obsessive as indicated by them being the latest in a lengthy

succession of linked requests. The Constabulary believed that the complainant had pursued his issues with it past the point where it was reasonable for him to continue to do so as the substantive issues that he had raised had been resolved.

19. A description provided by the Constabulary of the chronology of the complainant's issues is relevant here in that it suggests that these issues were not resolved at the time of the request. The complainant raised an issue about the Constabulary with the Independent Police Complaints Commission, which remitted this issue back to Lancashire Police Authority for investigation. The Police Authority asked Cheshire Constabulary to conduct this investigation, which was ongoing at the time of the Constabulary's response to the Commissioner's office.

20. That the issues raised by the complainant with the Constabulary were ongoing at the time of the request casts doubt on the suggestion that it would be reasonable to characterise his requests as obsessive. The Constabulary has acknowledged that the complainant was entitled to continue to pursue his issue with it at the time of the requests, but has argued that this was only as a result of a "technicality". The view of the Commissioner is that the precise basis on which the complainant was entitled to pursue this issue is not relevant here; what is relevant is that the requests related to an issue that was not yet resolved.

21. The public authority has asserted that this issue being ongoing "*does not detract*" from the argument that his requests are obsessive. The Commissioner does not agree with this; his view is that this means that it could not be said that the complainant was continuing to pursue this issue beyond the point at which it was reasonable to do so. These requests cannot, therefore, be fairly characterised as obsessive, meaning that this criteria does not apply.

Do the requests have any serious purpose or value?

22. The Constabulary has again referred under this factor to the complainant's issues having been considered by the time of the requests. However, as noted previously, the chronology provided by the Constabulary suggests that these issues remained live at that time.

23. The Commissioner would not, therefore, agree with any suggestion that these issues had been addressed and resolved by the time of the requests, or that the request lacked a serious purpose or value on this basis. The Commissioner finds, therefore, that this criteria does not apply.

Conclusion

24. The Commissioner has found that one of the criteria applies in that it would be reasonable to expect that these requests would lead to a significant burden upon the Constabulary due to the likelihood that compliance would lead to further requests being made. He does not believe, however, that this is a sufficient basis on which to conclude that these requests were vexatious.
25. Whilst the Commissioner is aware that the complainant has made many information requests to the Constabulary over a period of several years, and has also been in wider correspondence with it for a similar period, the Constabulary has not provided sufficient evidence relating to this history to support its claim that this meant that the requests were vexatious. The Commissioner would stress that a public authority will be given a single opportunity to make its case to his office; in general the Commissioner's office will not revert to the public authority for further argument after this initial opportunity.
26. The decision of the Commissioner is that the complainant's requests were not vexatious. The Constabulary is now required to disclose the information requested, or provide a valid reason for why this information will not be disclosed.
27. The Commissioner also notes that the Constabulary failed to respond to the requests within 20 working days of receipt. It should ensure that this delay is not replicated in future.

Right of appeal

28. 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: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

29. 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.
30. 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 26th day of October 2011

Signed

**Gerrard Tracey
Principal Policy Advisor
Information Commissioner's Office
Wycliffe House
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Wilmslow
Cheshire
SK9 5AF**