

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 6 September 2011

Public Authority: Independent Police Complaints Commission
Address: 90 High Holborn
London
WC1V 6BH

Summary

The complainant made two requests for information about IPCC managed investigations. The public authority refused the requests on the grounds that they were vexatious and cited section 14(1). The Commissioner finds that these requests were not vexatious and so the public authority was incorrect to refuse to comply with them. The public authority is now required to either disclose the requested information, or provide valid alternative reasons for why it will not disclose this information.

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. The complainant made the following request on 17 March 2011:

(i) *"Please may I have copies of all IPCC managed investigation reports for the years 2008, 2009 and 2010."*

3. The complainant also made the following information request on 17 April 2011:

(ii) *"You have recently provided me with a redacted managed investigation report found here:*

<http://www.whatdotheyknow.com/request/co...>

May I please have all the following in relation to this case:

- 1. Evidence considered as part of this case*
- 2. Case file notes*
- 3. IPCC case management plan*
- 4. Correspondence between Met Police and IPCC staff relating to this case*
- 5. Legal advice - if any related to this case".*

4. The public authority responded to this on 1 June 2011, outside 20 working days from the receipt of both requests. The requests were refused under section 14(1) of the Act as the public authority considered them to be vexatious.
5. The complainant responded to this on 3 June 2011 and requested an internal review. The public authority responded with the outcome of the internal review on 29 June 2011. The conclusion of this was that the refusal under section 14(1) was upheld.

The Investigation

Scope of the case

6. The complainant contacted the Commissioner's office initially on 13 May 2011. At this stage the complaint related to the failure by the public authority to respond to the requests.
7. Following the responses to the requests and the internal reviews, the complainant contacted the Commissioner's office again on 10 July 2011 in relation to request (i), and on 18 July 2011 in relation to request (ii). The complainant confirmed at this stage that he was dissatisfied with the refusal of his requests and wished the Commissioner to consider if section 14(1) had been cited correctly.

Chronology

8. The Commissioner's office contacted the public authority in connection with these cases on 25 July 2011. At this stage the public authority was asked to respond with further explanations for the citing of section 14(1).
9. The public authority responded to this on 4 and 18 August 2011. These responses provided further reasoning for the refusal of the requests.

Analysis

Substantive Procedural Matters

Section 14

10. The public authority has cited section 14(1) in response to the complainant's requests. This provides that a public authority is not obliged to comply with a request if it is vexatious. The Commissioner's published guidance on section 14(1)¹ provides the following five factors that should be taken into account when considering whether a request can be accurately characterised as 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.
11. The Commissioner's analysis here is based upon these factors and his conclusion on how many of these apply in relation to the complainant's requests. The Commissioner has taken into account the representations of both the complainant and the public authority when forming this conclusion. Whilst the issue here is whether the *requests*, rather than the *requester*, are vexatious, the wider context of the dealings between the public authority and the complainant may be relevant where these suggest that the pattern of the contact between the complainant and the public authority means that these requests can be fairly characterised as vexatious.

Would the requests impose a significant burden in terms of expense and distraction?

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http://www.ico.gov.uk/for_organisations/freedom_of_information/information_request/reasons_to_refuse.aspx

12. The public authority has advised that the information falling within the scope of request (i) consists of 438 investigation reports. It has stated that compliance with this request would involve reviewing the content of each of these reports and it has provided an estimate of the time that would be taken in doing so. This estimate suggests that compliance with this request would be burdensome and that it would be a distraction from the core work of the public authority.
13. If the concern of the public authority related only to the time that would be taken in complying with this request, it would have been more appropriate for it to cite section 12(1) and refuse the request on cost grounds. However, the Commissioner accepts that section 14(1) is relevant where the concern of the public authority is about the burden of the request both in terms of cost *and* of diverting staff away from the core functions of the public authority.
14. This approach is in line with that taken by the Information Tribunal in the case of *Welsh v the Information Commissioner* (EA/2007/0088) in which it stated that the issue of whether a request represents a significant burden is:

"...not just a question of financial resources but also includes issues of diversion and distraction from other work..." (paragraph 27).

15. In this case the public authority has argued that the task of reviewing each of the investigation reports would divert staff away from their core functions for a considerable period of time. On the basis that the public authority has stated that it would be necessary to review 438 investigation reports in order to comply with this request, the Commissioner finds that request (i) would impose a significant burden in terms of expense and distraction.
16. The argument of the public authority on this point in relation to request (ii) concerns less the burden imposed by compliance with this request, rather it argues that compliance with this request would be likely to lead to further requests that would impose a burden. The Commissioner notes evidence provided by the public authority that this request is part of a pattern whereby the complainant uses the response to a request as a basis on which to make further requests. He also notes the approach of the Tribunal in the case of *Betts v the Information Commissioner* (EA/2007/0109) of taking wider correspondence into account when stating that responding to that request would be:

"...extremely likely to lead to further correspondence, [and] further requests..." (paragraph 34).

17. The public authority has stated that the complainant has made 6 requests on the subject of managed investigations prior to making the requests in question in this case. Whilst the complainant has argued that his requests are due simply to an interest in the work of the public authority, this does not change that the evidence from the public authority suggests that request (ii) is part of a pattern of a number of closely related requests made during a short period. On the grounds that the previous pattern of the complainant's behaviour suggests that responding to this request would be likely to lead to further related requests, the Commissioner accepts that request (ii) would cause a significant burden.

Were the requests designed to cause disruption or annoyance?

18. As the public authority has made no representations on this factor, this has not been taken into account here.

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

19. The public authority argues that these requests do have the effect of harassing it and it has cited the previous behaviour of the complainant in support of this. The public authority has referred to the number of requests made to it by the complainant; 25 during approximately 2 years. It has also cited other behaviour by the complainant. This has included negative comments made by the complainant about the public authority online and the participation by the complainant in an attempt to evade the cost limit in relation to information held by the public authority that was coordinated via the website: www.whatdotheyknow.com.
20. The Commissioner notes the regularity and number of requests made by the complainant to the public authority. He also notes the comments made by the complainant about the public authority previously and the evidence that he was an active participant in a campaign designed to deprive the public authority of its ability to legitimately rely on section 12(1) of the Act in relation to specific information. Whilst the personal views of the complainant towards the public authority are not relevant in themselves, where these views are expressed publicly and appear to impact on the behaviour of the complainant towards the public authority, they become relevant. On the basis of these representations from the public authority about the behaviour of the complainant towards it, the Commissioner finds that these requests would have the effect of harassing the public authority.

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

21. The public authority has argued that the behaviour of the complainant means that his requests could be fairly characterised as obsessive. The public authority has pointed to the tendency of the complainant to make further requests based on the response to previous requests and to evidence that he follows the progress of other requests made to the public authority via www.whatdotheyknow.com. The public authority has also questioned the value of some of the information requested by the complainant and has suggested that his pattern of behaviour indicates that it is unlikely that it will be possible to resolve his concern about the public authority and so he will continue to make requests.
22. In previous cases the Commissioner has found that requests are obsessive where the evidence suggests that the requester has pursued a specific personal grievance with the public authority beyond the point where it would be reasonable to do so. That is not the case here. Instead, whilst the complainant appears to hold a generalised low regard for the public authority and this was the original motivator for his requests, he does not appear to be pursuing any specific grievance with the public authority with which he could be said to have become obsessed. Neither does the Commissioner believe that the evidence available suggests that the complainant is pursuing his more general concern with the public authority to the point that his interest in the public authority could be said to be obsessive.
23. If the complainant were to continue to pursue his requests with the public authority to the point where the sheer number and regularity of these had become manifestly unreasonable, it may be that, even in the absence of any specific grievance held by the complainant about the public authority, it would be fair to characterise these requests as obsessive. The Commissioner does not, however, believe that this point has yet been reached and so also does not believe that it would fair to characterise these requests as obsessive.

Do the requests have any serious purpose or value?

24. The representations made by the complainant as to why his requests are not vexatious are of most relevance to this factor. The complainant has argued that his requests do have a serious purpose in that they stem from an interest in the work of the public authority. The complainant argues that the work of the public authority is of considerable public interest and has also pointed to what he argues is a significant body of dissatisfaction with the work of the public authority.

25. The Commissioner agrees with the complainant that there is a legitimate public interest in the work of the public authority. In the absence of evidence that the complainant is pursuing his requests for any ulterior motive, the Commissioner does not believe it would be accurate to characterise his requests as lacking any serious purpose or value.

Conclusion

26. Based on the representations provided by the public authority, it is apparent that the major reasoning of the public authority for refusing the requests in question as vexatious is that these follow a large number of other requests made by the complainant over the preceding two years. The Commissioner accepts that where an individual makes an unreasonably large number of requests, or continues to pursue requests with the same public authority over an unreasonably lengthy period of time, that responding to these requests becomes a drain on the resources of the public authority, it would be legitimate to refuse these requests as vexatious. However, whilst recognising that the complainant has made a sufficiently high number of requests to the public authority that the requests in question in this case can be fairly characterised as harassing the public authority, the Commissioner does not believe that the point has yet been reached where, on this basis alone, these requests should be considered vexatious. This is particularly the case given that the Commissioner has recognised that these requests do have a serious purpose.
27. It has also been recognised that request (i) would, in itself, impose a significant burden on the public authority due to the volume of information requested. Where this is the primary concern, however, it may be more appropriate for the public authority to consider section 12(1).
28. Whilst the Commissioner accepts, and the complainant should note, that the point could be reached where the volume of requests made by the complainant to the public authority means that it may be appropriate to characterise a particular request as vexatious, the view of the Commissioner is that this point has not yet been reached, particularly given the serious purpose of these requests. The conclusion of the Commissioner is, therefore, that these requests were not vexatious and so should not have been refused under section 14(1).

Procedural Requirements

Section 17

29. In failing to respond to the requests with a refusal notice within 20 working days of receipt, the public authority did not comply with the requirement of section 17(5).

The Decision

30. The Commissioner's decision is that the public authority did not deal with the requests for information in accordance with the Act in that it inaccurately characterised the requests as vexatious and, therefore, incorrectly refused to comply with these requests under section 14(1).

Steps Required

31. The Commissioner requires the public authority to take the following steps to ensure compliance with the Act:
- either disclose the requested information, or issue a refusal notice compliant with section 17 setting out alternative reasoning to that given previously for why these requests will not be complied with.
32. The public authority must take the steps required by this notice within 35 calendar days of the date of this Notice.

Failure to comply

33. 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.

Other matters

34. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern.
35. As noted above, the Commissioner recognises that, if the complainant continues to make information requests to the public authority, there may come a point at which it would be legitimate to refuse a request made to it by the complainant on the grounds that it is vexatious due to the number of requests that the complainant had made by that point. The complainant should be aware of this and be aware that the public authority has to expend resources on responding to his requests. For further guidance on how to use the right of access to information provided by the Act in a responsible manner, the complainant should

see the Commissioner's published guidance "*The ICO charter for responsible freedom of information requests*".²

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http://www.ico.gov.uk/for_the_public/official_information/~/_media/documents/library/Freedom_of_Information/Practical_application/ITS_PUBLIC_INFORMATION_FOI%20CHARTER_FINAL.ashx

Right of Appeal

36. 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@hmcts.gsi.gov.uk

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

37. 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.
38. 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 6th day of September 2011

Signed

**Jon Manners
Group Manager
Information Commissioner's Office
Wycliffe House
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Wilmslow
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SK9 5AF**

Legal Annex

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(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(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."