

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 15 December 2011

Public Authority: Chief Constable of Avon and Somerset
Constabulary

Address: PO Box 37
Valley Road
Portishead
Bristol
Avon
BS20 8QJ

Decision (including any steps)

1. The complainant has requested information which relates to a series of complaints which he made about the public authority. The public authority refused to provide the information on the grounds that the request was vexatious.
2. The Information Commissioner's decision is that the public authority was correct to find the request vexatious.
3. The Information Commissioner does not require the public authority to take any steps.

Background

4. The complainant was arrested by officers of the public authority in November 2009. During his arrest a taser was used. The complainant has made many complaints and information requests in connection with this arrest, both under the FOIA and the Data Protection Act 1998 (the "DPA"). Some of his complaints have been considered by the public authority's own Professional Standards Department (the "PSD") and the Independent Police Complaints Commission (the "IPCC").
5. The complainant advised the public authority that he requires the information requested as he is hoping it will support him making a new complaint to the IPCC. He specifically stated:

"I have spoken to the IPCC case officer who handled my complaint and according to this person any fresh evidence which comes to light under date of knowledge [sic] a new complaint can be made and this is the reason why I require Permanent Order No 3 to find out whether it was correctly implemented".

6. The complainant has previously been provided with a copy of the public authority's procedural guidance relating to "Taser Conducted Energy Device". The following extracts are from that guidance:

"2.3 Taser is issued to authorised firearms officers (AFOs) to provide an alternative force option to deal with an individual who is armed or otherwise so dangerous that the use of a firearm, by an officer, may be necessary.

2.4 Taser may also be issued alongside other personal safety tactical options where an AFO or other selected and specially trained officer is facing violence or threats of violence of such severity that they would need to use force to protect the public, themselves and/or the subject(s).

2.5 Officers issued with Taser should work as part of a 'unit', that is, at least two officers.

3.1 Taser will only be deployed in circumstances where officers have been authorised to carry firearms in accordance with Permanent Operational Order No 3, or, where the conditions of Para. 2.4 are met, authority has been granted by the Force Incident Manager or the Silver Commander..."

7. At the same time as investigating this complaint the Information Commissioner is considering a further complaint made by this complainant; the relevant reference number is FS50420658. The public authority has also deemed this further request to be vexatious.

Request and response

8. On 16 May 2011 the complainant wrote to the public authority and requested information in the following terms:

"When an officer's [sic] is authorised to carry a taser it must be deployed in accordance with Permanent Operation Order No 3. I am requesting a copy of Permanent Operation Order No 3 as a freedom of Information Request".

9. Following an acknowledgement, the public authority responded on 16 June 2011. It cited section 14(1) of the FOIA, stating that the request was vexatious.
10. Following internal review the public authority wrote to the complainant maintaining this view.

Scope of the case

11. On 1 August 2011 the complainant wrote to the Information Commissioner to complain about the way his request for information had been handled. He advised the Information Commissioner that he believed that disclosure of the withheld information: *"... would allow a fresh complaint to be made to the Independent Police Complaints Commission ..."*.
12. The Information Commissioner will therefore consider whether or not the request is vexatious.

Reasons for decision

13. Section 14(1) of the FOIA provides that a public authority is not obliged to deal with a request for information if the request is vexatious.
14. The Commissioner's approach to what constitutes a vexatious request is outlined in his guidance *'Vexatious or repeated requests'*. The guidance sets out a number of points to consider in determining whether a request is vexatious, namely that:
 - it would create a significant burden in terms of expense and distraction;
 - it is designed to cause disruption or annoyance;
 - it has the effect of harassing the public authority;
 - it can otherwise fairly be characterised as obsessive or manifestly unreasonable; and
 - it clearly does not have any serious purpose or value.
15. In establishing which, if any, of these factors apply, the Commissioner will consider the history and context of the request. In certain cases, a request may not be vexatious in isolation but when considered in context it may form a wider pattern of behaviour that makes it vexatious. The Information Tribunal upheld this approach in *Rigby v*

Information Commissioner and Blackpool, Fylde and Wyre Hospitals NHS Trust (EA/2009/0103), commenting that:

“it is entirely appropriate and indeed necessary when considering whether a request is vexatious, to view that request in context” (para 40).

The Commissioner recognises, however, that it is the request and not the requester that must be vexatious for section 14 to be engaged.

16. When investigating a public authority’s application of section 14(1), the Commissioner is also mindful of the Tribunal’s decision in *Hossak v the Information Commissioner* (EA/2007/0024). In that case, the Tribunal commented on the consequences of finding a request vexatious. It accepted that these are not as serious as those of determining vexatious conduct in other contexts and consequently, the threshold for vexatious requests need not be set too high.
17. In determining whether section 14 was applied correctly, the Commissioner has considered the evidence provided by the council and the complainant under each of the above headings, and the context and history of correspondence and contact up until the date of the request. He also notes that the arguments were provided by the public authority to support both this case and the other complaint which is referred to above.

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

18. When considering whether this factor applies, the Information Commissioner would expect a public authority to be able to show that complying with the request would cause a significant burden in terms of both costs and diverting staff away from their core functions.
19. The public authority directed the complainant to the Information Commissioner’s guidance concerning vexatious requests in order to explain its position. It advised him:

“It is important in such matters to consider the wider picture and so in respect of your current range of questions, it is clear that they are part of 21 requests, containing a total of 70 questions received over the past 15 months. These are in addition to various other correspondence and telephone enquiries to a number of departments, including 35 further Freedom of Information Act questions as a part of your current ‘Subject Access’ requests. The addition of these provide a total of 105 questions that effectively focus on obtaining information

surrounding an incident relating to yourself, which has already been the subject of complaint made to and considered by both the Constabulary Professional Standards Department and the Independent Police Complaints Commission. Further to this it was ordered by Taunton County Court that you discontinue your actions regarding 2 matters concerning this incident, and on an occasion the Professional Standards Department has had cause to term your request 'repetitious' and therefore is not communicating with you further regarding that matter.

The application of this exemption, under the terms of the Act is designed to protect forces from requestors that abuse freedom of information in an attempt to disrupt or impact on the delivery of public functions."

20. The public authority subsequently advised the Information Commissioner:

"... these last requests are the latest in a series that now does impose a significant burden on the Force. Public interest tests would need to be conducted in respect of the questions currently exempt by section 14. This as you know has a resource implication of staff in the FOI team and those officers that would need to be consulted. Further to the cost of compliance in the time that would need to be afforded to respond to him, and the magnitude if the costs already incurred to the Force as a whole answering questions and dealing with complaints, these requests would distract the FOI team from our other requests from individuals who have a right of access to information, and the other core functions and duties including making information which is in the public's [sic] interest available on our website. A consideration I have also taken ... is that should a response have been considered/provided to these requests this would not end the ongoing exchange, and further questions will be posed thereby imposing such a burden".

21. The public authority has provided evidence to support the amount of correspondence it has dealt with. The Information Commissioner is consequently satisfied that the public authority has spent a significant amount of time dealing with the complainant's requests on this matter, both by way of information requests and complaints, and he agrees that to continue to do so would create a significant burden.
22. The Information Commissioner also notes that when the public authority has in the past responded to the complainant's requests, this has elicited further requests. This can be directly evidenced in this

particular request as provision of the policy relating to the use of taser equipment has resulted in this particular request being made.

23. In this context, the Information Commissioner considers that, given the significant number of previous requests, compliance with the requests under consideration would create a significant burden in terms of expense and distraction. He further notes that a response from the public authority to the requests is unlikely to satisfy the complainant and it is probable that it will instead generate further requests and complaints – a factor which the complainant has already stated is his aim in trying to gather more information.

Could the requests fairly be categorised as obsessive?

24. An obsessive request is often a strong indication that the request is vexatious. Contributory factors can include the volume and frequency of correspondence and whether there is a clear intention to use the request to reopen issues that have already been addressed.
25. In the Information Commissioner's view, the test to apply here is one of reasonableness. In other words, would a reasonable person describe the request as obsessive or manifestly unreasonable? The Information Commissioner's published guidance states:

"A request may not be vexatious in isolation, but when considered in context (for example if it is the latest in a long series of overlapping requests or other correspondence) it may form part of a wider pattern of behaviour that makes it vexatious".

26. The public authority has advised the Information Commissioner that:

"In isolation each request could appear manageable, however when taking into account the volume and frequency of correspondence I believe this is indicative of obsessive behaviour. Whilst there is a fine line between persistence and obsession [the complainant]'s persistence I would characterise as obsessive and manifestly unreasonable, and are born from his unwillingness to accept the findings of his numerous complaints to the Professional Standards Department and IPCC. The volume and frequency of requests demonstrates a clear intention to use the requests to reopen issues and complaints already debated and considered. The pattern and volume also indicates that responding to the latest requests is unlikely to draw an end to this exchange and further requests for information will continue to be received".

27. The Information Commissioner notes that the complainant appears to be pursuing these requests in order to uncover any shortfalls in connection with his arrest and the public authority's use of a taser. Whilst the Information Commissioner cannot investigate these issues, he understands that the complainant is unhappy about the circumstances of his arrest and the use of the taser and believes it was flawed.
28. However, the Information Commissioner is mindful of the comments of the Tribunal in *Coggins v Information Commissioner* (EA/2007/0130). In this case the complainant was motivated by a desire to uncover a potential fraud. The Tribunal accepted that agenda "...amounted to a serious and proper purpose..." (para 22). However the Tribunal also found that:
- "...there came a point when the Appellant should have let the matter drop...there had been three independent enquiries...in the Tribunal's view [the complainant] was not justified in the circumstances to persist with his campaign" (para 25).*
29. The Information Commissioner understands that the complainant's several complaints around the circumstances of his arrest have been investigated by the public authority's own PSD and the IPCC. Some areas have been upheld, the majority have not. Explanations have been provided by both parties and the complainant has also been visited during the course of this investigation in an effort to resolve some of his complaints.
30. It is outside of the Information Commissioner's remit to make any investigation into or comment on the complainant's arrest or the circumstances surrounding it. However, he does consider that the public authority's position has been made clear to the complainant on several occasions. This has been done by its own PSD staff and also staff at the IPCC. Both the PSD and IPCC have spent some considerable time corresponding with the complainant and considering his allegations against the public authority – a small number of which were upheld. Given that the public authority's position is clear, as too is the IPCC's, and the findings have been clearly explained to the complainant, the Information Commissioner considers that it is indicative of obsessive behaviour for the complainant to continue to try to uncover ways of having his complaints reinvestigated more than a year after his arrest.
31. The public authority has provided the Information Commissioner with much of its correspondence with the complainant. The Information Commissioner notes that, prior to issuing its first vexatious refusal notice, it had received many other requests, as indicated above. The

Information Commissioner believes that the submission of requests at this frequency is evidence of obsessive behaviour.

Did the requests have the effect of harassing the public authority?

32. This factor takes into account the effect a request has had on a public authority, regardless of the requestor's intention. This is an objective test, based on whether a reasonable person would be likely to regard the request as harassing or distressing.

33. When initially refusing to comply with his request, the public authority advised the complainant:

"It is clear that the volume and frequency of your requests show a clear intention to use the Act to reopen issues that have already been debated and considered through the complaints processes and that in light of the above any reasonable person would regard the volume and frequency of your requests as harassing the authority, irrespective of whether that was your intention".

34. When seeking an internal review of its initial position the complainant stated:

"As you are aware I was tasered on the 22nd November 2009 and hold a copy of the tasing policy documentation. Permanent Order No 3, forms part of the tasing policy documentation. I have spoken to the IPCC case officer who handled my complaint and according to this person any fresh evidence which comes to light under date of knowledge [sic] a new complaint can be made and this is the reason why I require Permanent Order No 3 to find out whether it was correctly implemented".

35. The public authority has also advised the Information Commissioner that:

"The volume and frequency of the correspondence I feel to a reasonable person is demonstrative of harassing behaviour. The requests are relentless and obsessive, and the points raised in the above paragraph I feel establish that this course of communication has become distressing to staff".

36. The Information Commissioner's view is that public authorities should expect to be accountable for their actions as they are funded by public resources. He endorses the comments of the Tribunal in *Jacobs v Information Commissioner*_(EA/2010/0041), which found that:

"Public authorities and the individuals representing them must expect to be exposed to an element of robust and persistent questioning, sometimes articulated in fairly critical tones".

37. Although the complainant's requests are always presented in a polite manner, the Information Commissioner has considered the length of time that the council has been dealing with the complainant's requests, the nature of the enquiries, and the way that the complainant chooses to interpret and use the information he obtains. The Information Commissioner's view is that in this case, the culmination of criticisms and complaints levied at the council in relation to his arrest would have the effect of harassing the public authority. This is particularly the case where the complainant seeks to reopen issues which have already been considered through the correct channels.

Are the requests designed to cause disruption or annoyance?

38. The public authority has advised the Information Commissioner that:

"Whilst it is hard to establish if [the complainant]'s intentions are specifically designed to cause disruption or annoyance, the obsessive nature and burden as described above has established the effect of the process to comply with the requests would be disruptive. Together with the frequency and nature of these requests [the complainant] also contacts the Constabulary by telephone, and in some instances has been aggressive and has sworn at staff in a derogatory manor. I personally have received two calls from [the complainant], one of which he was polite, the other I was accused of perverting the course of justice. The data protection officers have received approximately 10 calls, again lengthy and to no further benefit. These lengthy conversations that reiterate what has already been stated cause a disruption to staff members. The persistence of [the complainant] in my opinion amounts to harassment and the tone sometimes taken by him and the volume of correspondence causes distress and annoyance to staff".

39. The Information Commissioner accepts, as shown above, that these requests created disruption and annoyance for the public authority. However, the Information Commissioner will also consider, when assessing this factor, whether a requestor intended to cause disruption or whether the requests were designed to do so.
40. The Information Commissioner understands that the complainant's primary purpose is to uncover information to support his theory that the public authority has acted inappropriately; he hopes this will provide him with an opportunity to raise fresh complaints. Given the volume of correspondence and the number of complaints that the

complainant has made – and hopes to continue to do so - the Information Commissioner doubts that the complainant would be unaware that his requests might cause annoyance to the public authority staff.

41. However, the Information Commissioner makes a distinction between cases where disruption or annoyance is the intended cause of the complainant, and cases where these are a potentially anticipated side effect. In this case, he does not consider that there is sufficient evidence to demonstrate that the complainant's actions are intended to cause disruption. Consequently the Information Commissioner has not given any weight to this factor.

Do the requests lack any serious purpose or value?

42. Whether a request has value is not usually of significance, given that the FOIA is not concerned with the motives of a requester, but rather with openness and transparency through the disclosure of information. However, the Information Commissioner acknowledges that should any authority be able to show that a request has no serious purpose or value, this may contribute to the justification for applying section 14(1).

43. The public authority has advised the Information Commissioner that:

"It is my firm belief that the questions raised by [the complainant] are solely for the purpose intended to re open issues and past complaints. There is no further tangible community benefit in disclosure of the sought documents or the time it would take to facilitate the applicants [sic] requests and future requests. I feel a reasonable person would identify these requests lacked serious purpose or value".

44. When the complainant wrote to the Information Commissioner he advised that he wished to be provided with the requested information as he believed '*any new information that comes to light*' would allow him to make a fresh allegation to the IPCC against the public authority. His concerns in relation to this request are that he wants to know why two taser officers were deployed to his house when he was arrested as he was unarmed and he believes the Operation Order will reveal some deficiency in the process.
45. The Information Commissioner understands that the IPCC has already considered complaints made by the complainant against the public authority concerning the use of taser and made no adverse comments. Furthermore, the Information Commissioner notes that the procedural guidance relating to use of taser, cited at paragraph 6 above, clearly

states that: *“Officers issued with Taser should work as part of a ‘unit’, that is, at least two officers”.*

46. The Information Commissioner has viewed the findings of the IPCC’s investigation into various complaints raised by the complainant against the public authority. He notes that some of these concern the use of a taser and that the related complaints were not upheld by the IPCC. Whilst he understands that the complainant does have a serious purpose in making the requests, ie he seeks to open up fresh routes to make further complaints, the Information Commissioner does not accept that the request would assist in this objective. The Information Commissioner concludes that the purpose behind the request is to enable the continued pursuit of a matter which has already been properly investigated, albeit not to the satisfaction of the complainant.

Conclusion

47. In its refusal notice the public authority stated:

“Having taken into account the context, history and circumstances of this case, together with the amount of correspondence received from you it is the Constabulary’s opinion that these requests are obsessive, impose a significant burden on the constabulary and lack any apparent serious purpose or value.

As we believe that the vexatious criteria are met in this case, we will not be responding to this or any further similar requests...”.

48. The Information Commissioner recognises that the complainant has genuine grievances concerning his dealings with the public authority. However, he believes that the public authority has properly demonstrated that the current request is unreasonable. This is because his requests have been submitted at a level that indicates obsessive behaviour, creates a significant burden on the public authority in terms of expense and distraction, and is obsessive in seeking to reopen issues that have already been substantively addressed. This pattern of behaviour has continued despite the public authority and the IPCC both having investigated his complaints.
49. Having considered all of the above, the Information Commissioner believes that section 14(1) of the FOIA was correctly applied in this case.

Right of appeal

50. 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

51. 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.
52. Any notice of appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

Jon Manners
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