

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 15 February 2012

**Public Authority:** The Chief Constable of Thames Valley Police

**Address:** Thames Valley Police Headquarters  
Oxford Road  
Kidlington  
Oxfordshire  
OX5 2NX

#### Decision (including any steps ordered)

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1. The complainant requested information from Thames Valley Police (the Police) about the death of former weapons inspector, Dr David Kelly, in 2003. The Police refused to comply with these requests on the basis that they were vexatious.
2. The Commissioner's decision is that the Police were entitled to refuse to comply with these requests on the basis that they were vexatious.

#### Request and response

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3. The complainant sent the following requests, which focused on the circumstances surrounding the death of Dr Kelly, to the Police on 11 August 2011:

- 1. Who took the photograph that Lord Hutton referred to?*
- 2. Who took the photographs that Dr Shepherd referred to?*
- 3. Who took the photographs that Dominic Grieve referred to?*
- 4. What time was Mr McGee booked in/out of both cordons?*
- 5. Did Mr McGee attend the post mortem examination and take photographs?*

*6. In your most recent response did you detail the camera/photos taken Dr Hickey under the direction of Mr Green? (resulting in the photographs submitted as evidence RJG1)*

*7. Was the tent that was erected over Dr Kelly's body open at the head end of Dr Kelly's body? Is the tree near Dr Kelly's head visible to those inside the tent?*

*Another way that this may be established is for you to allow me to view all photographs/video of Dr Kelly's body at the scene before it was disturbed/undressed by the pathologist. If you are correct then I will surely agree with you'.*

4. The Police responded on 6 September 2011 and explained that the requests were being refused on the basis of section 14(1) of FOIA because they considered them to be vexatious.
5. The complainant contacted the Police and asked for an internal review of this decision.
6. The Police informed the complainant of the outcome of the internal review on 20 September 2011. The review also noted that the Police had taken into account similar requests it had received from other parties for similar information and it believed that the complainant was acting in concert with these parties in support of a campaign. It had therefore taken these future requests into account when determining whether the complainant's requests of 11 August were vexatious.

## **Scope of the case**

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7. On 27 September 2011, the complainant contacted the Commissioner in order to complain about the Police's decision to refuse his requests of 11 August 2011 on the basis that they were vexatious.

## **Reasons for decision**

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8. Section 14(1) of FOIA states that a public authority does not have to comply with a request if the request is vexatious.
9. Deciding whether a request is vexatious is a balancing exercise, taking into account the context and history of the request. In line with his published guidance the Commissioner believes that one or more of the following criteria have to be met for a request to be deemed vexatious:
  - Can the request fairly be seen as obsessive?

- Is the request harassing the authority or causing distress to staff?
  - Would complying with the request impose a significant burden in terms of expense and distraction?
  - Is the request designed to cause disruption or annoyance?
  - Does the request lack any serious purpose or value?<sup>1</sup>
10. The Police have argued that the complainant's requests which are the focus of this case meet three of the above criteria, namely they are obsessive; they lack any serious purpose or value; and complying with them would impose a significant burden in terms of expense and distraction. The Police have not sought to rely on the remaining two criteria.
11. The Police are satisfied that these three criteria are met simply if the complainant's requests of 11 August and his previous requests to it are taken into account. However, the Police believe that its decision to refuse the requests of 11 August as vexatious is given further weight because of the broader context within which these requests were submitted. According to the Police, this broader context is relevant for two reasons: Firstly, it demonstrates that the complainant was acting in concert with other individuals who have submitted numerous FOI requests to the Police and it should be able to take into account the impact on it of also responding to these related requests. Secondly, the comments allegedly made by the complainant on a number of social media websites about the death of Dr Kelly are further evidence of obsessive nature of the requests and the fact they had no serious purpose or value.
12. Therefore, before assessing whether any of the three criteria are met, the Commissioner has considered whether he accepts the Police's argument that the complainant was acting in concert with others in submitting these requests.

*Was the complainant acting in concert with others?*

13. The Commissioner recognises that there is nothing in FOIA which prevents the aggregation of requests from different requesters for the purposes of section 14. Furthermore, he is mindful that section 12 of

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[http://www.ico.gov.uk/for\\_organisations/guidance\\_index/~/\\_media/documents/library/Freedom\\_of\\_Information/Detailed\\_specialist\\_guides/VEXATIOUS\\_AND\\_REPEATED\\_REQUESTS.ashx](http://www.ico.gov.uk/for_organisations/guidance_index/~/_media/documents/library/Freedom_of_Information/Detailed_specialist_guides/VEXATIOUS_AND_REPEATED_REQUESTS.ashx)

FOIA makes specific provision for just such a process for the consideration of costs, where two or more requests have been made by different persons who appear to the public authority to be acting in concert, or in pursuance of a campaign. In the case of a refusal under section 12 as a result of the aggregation of multiple requests, it is for the public authority to show that the refused requests are connected and the Commissioner will consider the matter on its merits.

Accordingly, in circumstances such as this, the Commissioner takes the view that it is for the public authority to demonstrate, on a balance of probabilities, that the request is linked to other requests made by other individuals. If it can then the Commissioner will consider not just the requests submitted by the complainant but also the requests submitted by other individuals acting in concert as evidence of vexatiousness.<sup>2</sup>

14. In its submissions to the Commissioner, the Police explained that in its handling of these particular requests it had undertaken some research online focusing on social media sites concerning the death of Dr Kelly. In undertaking this research the Police had identified what it believed to be a number of contributions from the complainant.

15. The Police drew the Commissioner's attention to a Facebook group entitled 'Dr David Kelly and related matters of international importance'. It explained that one member of this group, 'Hampshire Hog', had added the following comment:

*'The Information Commissioner is currently making a decision into whether or not my foi request regarding the position of DK's body to TVP was vexatious'.*

16. The Police explained that it was unaware of any other individual with an outstanding complaint to the Commissioner about this subject and thus the online contributor known as 'Hampshire Hog' must be the complainant.

17. The Police noted that it had also received FOI requests about the death of Dr Kelly from three other members of this Facebook group. As none of these three members of the group used an online pseudonym – but rather their own names - the Police were confident that these three members of the group were the same three individuals it had also received requests from. (For the purpose of this notice, the

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<sup>2</sup> This approach accords with that taken in a number of previous decision notices, for example, FS50297312 involving the University of Salford.

Commissioner has referred to these individuals as individual A, individual B and individual C).

18. The Police also drew the Commissioner's attention to a post on the Facebook group from the contributor 'Hampshire Hog' in which he makes it clear that he was previously known online as 'Lancashire Lad'.
19. The Police explained that a contributor with the title 'LancashreLad' (sic) was a frequent and prolific contributor to the blogs [chilcotscheatingus.blogspot.com](http://chilcotscheatingus.blogspot.com) and [drkellysdeath-suicideormurder.blogspot.com](http://drkellysdeath-suicideormurder.blogspot.com). The Police acknowledged that 'LancashreLad' may be someone other than the complainant who had adopted a very similar name, but, given the context, such a possibility was so remote that it could be discounted. Furthermore, the Police noted that information provided to the complainant at 10:29 on 17 June 2011 was posted by 'LancashreLad' on [drkellysdeath-suicideormurder.blogspot.com](http://drkellysdeath-suicideormurder.blogspot.com) at 15:40 on the same day.
20. Thus the Police argued that the comments made by 'Hampshire Hog' and 'LancashreLad' can be attributed to the complainant and reasonably taken into account in assessing the application of section 14.
21. Furthermore, the Police emphasised the links between the complainant and the individuals A, B and C: not only were all four individuals members of the same Facebook group, but four individuals were also contributors to the aforementioned blogs.
22. As further evidence that these individuals were involved in a campaign involving the coordinated submission of FOI requests, the Police drew the Commissioner's attention to a number of comments by 'LancashreLad' on these blogs. In particular in relation to discussion of FOI requests, the Police highlighted the following comments:

*'Btw new foi's up on TVP site.'*<sup>3</sup> Made at 11:05, 4 July 2011.

*'Mysteriously the log obtained by Andrew had the video and stills info redacted, not so in the FOI response that I got... I've put in a foi regarding Coe, Shield plus another timings of when they were booked out of outer cordon.'*<sup>4</sup> Made at 12:54, 29 May 2011.

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<sup>3</sup> <http://drkellysdeath-suicideormurder.blogspot.com/2011/07/old-curving-scar.html>

<sup>4</sup> <http://drkellysdeath-suicideormurder.blogspot.com/2011/05/paul-chapman-was-asked-about-helicopter.html>

Addressed to another contributor '*I would resubmit your request if I were you. Sawyer and Franklin misled the inquiry relating to the timings that they attended the scene with regard to the ambulance crew attendance. Another question you could ask in a FOI is what time were the ambulance crew logged into the outer cordon.*'<sup>5</sup> Made at 09:34, 8 February 2011.

23. Before receiving these detailed submissions from the Police, the Commissioner invited the complainant to comment on the Police's position that submitting his requests had formed part of some coordinated action with others. The complainant argued that he had never acted in concert with any other individual or group regarding his interest in the circumstances of Dr Kelly's death. He explained that he was aware that others had a similar interest and concerns to him and had read the published FOI responses on the Police's site from others. However, he explained that his FOI requests had only been influenced by his own interest to 'learn the facts' surrounding Dr Kelly's death. The complainant argued that he had not asked FOI requests on behalf of anyone else nor had anyone asked FOI requests on his behalf and thus there had been no collaboration with regards to his FOI requests. The complainant suggested that as far as he was aware there was not a single campaign to ascertain 'the truth' regarding Dr Kelly's death but many. He was not linked formally or informally to any of them; rather the information he sought by submitting his requests was to satisfy his own interest in the matter.
24. The Commissioner has considered this issue carefully. Based upon the Police's submissions described above the Commissioner is satisfied, certainly on the balance of probabilities, that the online contributors 'Hampshire Hog' and 'LancashreLad' are both profiles used by the complainant. The Commissioner is also satisfied that the complainant can be linked to the individuals A, B and C by virtue of being part of the same Facebook group and because of their contributions and involvement of all four individuals in the blogs identified above.
25. However, simply because these four individuals share a similar interest in the circumstances surrounding the death of Dr Kelly and have discussed their views online, the Commissioner does not necessarily accept that this is sufficient evidence of them acting in concert for the purpose of section 14(1). Indeed, the Commissioner remains sympathetic to the idea that simply because individuals may have

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<sup>5</sup> <http://drkellysdeath-suicideormurder.blogspot.com/2011/02/1007-time-on-18th-july-2.html>

discussed topics of mutual interests, be it online or via other forums, subsequent decisions by these individuals to submit FOI requests may still very well be because of an individual's own reasons for doing so rather than to serve some sort of collective agenda.

26. Nevertheless, the Commissioner finds the three quotes highlighted by the Police at paragraph 22 do suggest some level of coordination between the four individuals in respect of submitting FOI requests to the Police. Whilst the Commissioner accepts that such evidence does not demonstrate a carefully coordinated plan, for example one individual suggesting to another 'you ask about topic x and I will ask about topic y', it does show some level of collaboration between the individuals and the requests that were submitted to the Police. The Commissioner is satisfied that this, when taking into account the further extensive online discussions about this topic between the individuals in question, demonstrates that for the purposes of section 14(1) the complainant can be said to have been acting in concert with individuals A, B and C.

*Would complying with the requests of 11 August impose a significant burden in terms of expense and distraction?*

27. The Police explained to the Commissioner that the complainant had submitted the following requests to it about the death of Dr Kelly:
- 16 April 2011: 10 requests, with a response provided on 12 May
  - 29 May 2011: 3 requests for clarification, response given on 17 June
  - 29 May 2011: 5 requests, response given on 17 June
  - 17 June 2011: 4 requests, response given on 11 July
  - 12 July 2011: 6 requests, response given on 8 August (with a warning that future requests may be treated as vexatious)
  - 11 August 2011: 7 requests, refused on basis of section 14(1)
  - 23 August 2011: 4 requests for clarification, response given on 6 September
28. The Police provided the Commissioner with copies of all of the above correspondence.
29. The Police noted that this correspondence demonstrated that leaving aside the requests that are the subject matter of this complaint, it had responded to 25 separate requests from the complainant plus 7 additional requests for clarifications arising from the original answers. The Police emphasised that many of the requests called for specific

information which required a detailed search of records distracting officers and staff from the Major Crime investigation team from their core duties. The Police noted that in the case of many requests the Police had involved the careful consideration of the exemptions contained within FOIA. The Police also emphasised that the complainant's previous correspondence with it showed that many of its answers to requests promoted requests for clarification – which resulted in an additional burden – as well as allegations of dishonesty, conspiracy and cover up on the part of the Police and its staff. The Police therefore argued that it could clearly be concluded that the complainant's requests had already imposed a significant burden on police officers and staff and that responding to the requests of 11 August 2011 would be likely to lead to further requests. In reaching this conclusion the Police explained that it had taken into account the decision of the Information Tribunal in *Betts v Information Commissioner* (EA/2007/0109) and the Commissioner's decision notice FS50382601.<sup>6</sup>

30. In relation to the requests submitted by the three linked individuals the Police explained that it had received and dealt with the following requests:
- From individual A it had received 28 requests containing a total of 128 questions leading to 3 internal reviews.
  - From individual B it had received 11 requests containing a total of 26 questions.
  - From individual C it had received 7 requests containing a total of 38 questions leading to 2 internal reviews.<sup>7</sup>
31. The Police also provided the Commissioner with copies of its correspondence with each of these individuals. The Police highlighted the fact that compiling responses to this significant number of questions was time-consuming and a distraction from other duties. The position

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<sup>6</sup><http://www.informationtribunal.gov.uk/DBFiles/Decision/i61/betts.pdf> and [http://www.ico.gov.uk/~media/documents/decisionnotices/2011/fs\\_50382601.ashx](http://www.ico.gov.uk/~media/documents/decisionnotices/2011/fs_50382601.ashx)

<sup>7</sup> Although the Police described the three individuals' correspondence in the terms set out above – i.e. x number of requests totalling y number of questions - the Commissioner understands that the Police's reference to the number of requests actually means the number of pieces of correspondence each individual sent the Police. In the Commissioner's opinion each single 'question' contained in a piece of correspondence is in itself a valid FOI request. Therefore in his opinion individual A submitted 128 requests, individual B 26 requests and individual C 38 requests.



had now been reached where each individual's request for information under FOIA on this subject had been treated as vexatious.

32. In the Commissioner's opinion, dealing simply with the complainant's requests of 11 August alone would be unlikely to impose a significant burden or distraction on the Police. This is because there are a relatively small number of requests, the majority of which ask for clearly identifiable pieces of information, and, as the complainant has indicated, if the answers to his specific requests cannot be provided he would be prepared to accept being provided with the video and photographs of Dr Kelly's body. As an aside, the Commissioner would observe that such information, given its sensitivity (particularly for Dr Kelly's family), would be unlikely to be disclosed under FOIA.
33. However, in line with his own guidance, the Commissioner has considered the wider context of the request to which section 14(1) has been applied. The complainant submitted a significant number of requests over a four month period. The Commissioner also recognises that a number of the Police's responses resulted in the complainant submitting further requests. Moreover, the Commissioner accepts that, given the very specific nature of the information sought, this would no doubt have resulted in the Police having to undertake detailed searches in order to fulfil the requests. Therefore the Commissioner accepts that if the Police responded to the requests of 11 August 2011 the complainant would be likely to submit further requests upon the same topic. Consequently when taking into account the pattern of requests submitted by this complainant, and the impact on the Police of dealing the complainant's earlier requests, the Commissioner accepts that responding to the requests of 11 August would be likely to impose a significant burden, in terms of both expense and distraction, on the Police.
34. Given the very similar nature and pattern of requests made by individuals A, B and C the Commissioner believes that if the burden placed upon the Police of dealing with these requests is also taken into account, this would provide further compelling evidence that complying with the requests of 11 August in their broader context would impose a significant burden on the Police.

*Do the requests of 11 August lack any serious purpose or value?*

35. The Police explained to the Commissioner that it accepted that the complainant genuinely appears to believe that there had been a conspiracy to cover up the circumstances of Dr Kelly's death, involving numerous police officers and staff, the security services, numerous politicians and government advisers, Lord Hutton, the Oxfordshire Coroner, various pathologists and other scientists and the Attorney

General. The Police also accepted that there would be a serious purpose and value in exposing such a conspiracy.

36. However, the Police argued that the question of serious purpose or value had to be considered objectively rather than according to the subjective belief of the person making the request. The Police suggested that if such an approach were not taken then a simple assertion by a requestor could give any request a serious purpose or value which on any objective level did not exist.
37. The Police suggested that the question of serious purpose or value in this case had to be assessed objectively against the background that the circumstances of Dr Kelly's death had been considered by a senior judge at a public inquiry, (Lord Hutton), and also more recently by the Attorney General. The Police argued that the complainant's apparently genuine, but subjective, belief had to be set against the clear and unequivocal conclusion reached by all those professionally charged with considering this case, namely that Dr Kelly took his own life.
38. In the particular context of the requests of 11 August, the Police argued that the complainant's view that the photographs he had asked about show that Dr Kelly's body had been moved more than once, in furtherance of a cover up, has to be set against the fact that the photographs have been made available to Lord Hutton, the Oxfordshire Coroner, an independent pathologist and the Attorney General.
39. For his part, the complainant also argued that his requests needed to be seen in their wider context which demonstrated why they should be seen as having a serious purpose and value (and indeed were not obsessive). He explained that he was of the view that the Police were involved in a criminal conspiracy surrounding circumstances concerning the death of Dr Kelly and it did not want to provide him with information that would provide evidence of its involvement in this alleged cover up. The complainant also explained that he believed that previous responses to his requests from the Police had been misleading and dishonest.
40. The Commissioner's agrees with the reasoning set out by the Police that in assessing whether a request has a serious purpose or value the question must be considered from an objective point of view. Thus the correct question for the Commissioner to consider in this case is whether a reasonable, independent person would consider the requests of 11 August to have a serious purpose or value?
41. The Commissioner does not dispute the strength of the complainant's views on this topic nor the sincerity with which he holds them. Furthermore, the Commissioner accepts that, given that the complainant believes the Police's responses to his earlier requests have been

misleading and/or dishonest, from the complainant's point of view, the specific requests of 11 August have the serious purpose of seeking clarity to previous responses.

42. However, when bearing in mind the need to take an objective approach when considering whether a request has a serious purpose or value, the Commissioner finds it difficult to conclude that the requests of 11 August could be said to have a serious purpose or value. He has reached this view in light of the Police's submissions summarised above. The Commissioner would also place particular weight on the fact that on 9 June 2011, after a lengthy review, the Attorney General announced that he did not intend to apply to the High Court for an inquest into the death of Dr Kelly. The Commissioner notes the length and detail of the reasons for this decision given by the Attorney General, especially the schedule of responses to the numerous issues that were raised during the review.<sup>8</sup> Set against this broader background whilst the Commissioner accepts that the complainant may have outstanding concerns regarding responses provided by the Police to earlier FOI requests, he finds it difficult to accept that continuing to submit further requests can be said have had a serious purpose or value from a purely objective point of view.

*Can the requests of 11 August fairly be seen as obsessive?*

43. The Police argued that the complainant's requests of 11 August, when viewed in the context of his previous requests, are clearly obsessive. To support this view the Police highlighted the number and nature of requests received. In particular the Police emphasised the way in which the requests were included in correspondence containing argument, rhetoric and repeated allegations of dishonesty, cover up and conspiracy on the part of the Police. (In his correspondence with the Police the complainant alleged that Police officers and others had conspired to pervert the course of justice in regard to the moving of Dr Kelly's body after it was found by the volunteer search team and before it was disturbed by the pathologist's team).
44. More broadly, the Police argued that the complainant's comments on the Facebook group and the two blogs were a further compelling demonstration of his obsession with the subject given the sheer volume and frequency of his comments. The Police suggested that the nature and tone of the content was also instructive.

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<sup>8</sup> <http://www.attorneygeneral.gov.uk/Publications/Pages/DrKelly.aspx>

45. The Commissioner's guidance in respect of identifying obsessive requests notes that relevant factors could include the volume and frequency of correspondence, requests for information the requestor has already seen, or a clear intention to use the request to reopen issues that have already been debated and considered. The guidance suggests that it will be easiest to identify an obsessive request where an individual continues with a lengthy series of linked requests even though they have independent evidence on the issue, e.g. reports available from an independent investigation. The more independent evidence available, the stronger this argument will be.
46. Following this approach, the Commissioner is satisfied that the complainant's requests of 11 August, when taking into account his previous requests, can be correctly described as obsessive. The Commissioner would particularly highlight the fact that complainant had already submitted a significant number of requests within four months, and furthermore as discussed in relation to the serious purpose criterion, there have been independent examinations of circumstances of Dr Kelly's death (Lord Hutton's and more recently the Attorney General's). In the Commissioner's opinion, even taking into account the complainant's concerns about the previous responses provided to him by the Police, for him to continue to submit requests on this topic in light of the findings of both Lord Hutton and the Attorney General, is evidence of what can be seen in the context of section 14 of FOIA as obsessive behaviour.
47. If the Commissioner took into account the complainant's comments on the various blogs – as the Police have invited him to do – he believes that such comments provide further evidence of the complainant's obsession with this particular topic. Such evidence supports the argument that the requests of 11 August 2011 are themselves obsessive.

### *Conclusion*

48. The Commissioner wishes to emphasise his conclusion that complying with the requests of 11 August can be correctly seen, viewed objectively, as placing a significant burden on the Police, being obsessive and having no serious purpose or value, in the context of only the complainant's previous requests to the Police. If the requests submitted by the three individuals whom the Commissioner believes were acting in concert with the complainant are taken into account, then he is satisfied that there is even more compelling evidence of these criteria being met.

## Right of appeal

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49. 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](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

50. 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.
51. 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** .....

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