

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 14 October 2015

Public Authority: Chief Constable of Cheshire Constabulary
Address: Cheshire Constabulary HQ
Oakmere Road
Winsford
CW7 2UA

Decision (including any steps ordered)

1. The complainant has requested information about the costs of the "We're Here" initiative, a series of published statements setting out Cheshire Constabulary's commitment to good policing. The Constabulary refused to comply with the request because it considered it to be vexatious under section 14(1) of the FOIA.
2. The Commissioner's decision is that the Constabulary has correctly relied on section 14(1) of the FOIA to refuse the request. The Commissioner requires no steps to be taken.

Request and response

3. On 1 April 2015 the complainant submitted the following request for information to the Constabulary via the What Do They Know ("WDTK") website¹, a website for submitting and archiving FOIA requests:

"Yesterday Cheshire Chief Constable Simon Byrne and Cheshire Crime and Police Commissioner John Dwyer announced yet another Constabulary campaign to win back the trust of we the Cheshire people by announcing the 'WE'RE HERE' Project - a promise to act

¹ <https://www.whatdotheyknow.com/>

like a professional Police force at long long last.

...

Please provide me a full breakdown of the Cheshire tax payers money which Mr Byrne and Mr Dwyer wasted on this already failed project."

4. The Constabulary responded on 30 April 2015. It said that it was not obliged to comply with the request because it was vexatious within the meaning of section 14(1) of the FOIA. It said that in view of previous requests and correspondence from the complainant it would no longer respond to requests which met the definition of "vexatious".
5. On 30 April 2015 the complainant requested an internal review. He reiterated his entitlement to the information and stated:

"...you continue to refuse each request I submit in full knowledge should I complain to the Information Commissioner he will not process my complaint... Sir that makes yourself and the Commissioner ... Bullies!"
6. The Constabulary did not respond to the request for an internal review.

Scope of the case

7. The complainant contacted the Commissioner on 1 May 2015. Referring to the Constabulary's application of section 14 to refuse six requests he had submitted, of which this complaint was one, he accused the Constabulary of effectively "blacklisting" him from making FOIA requests.
8. In view of the Constabulary's application of section 14(1) to previous, similar requests from the complainant, the Commissioner considered it would be unproductive to require the complainant to wait until the Constabulary completed an internal review before accepting his complaint for investigation. He has instead used his discretion and considered the complaint in the absence of an internal review.
9. The Commissioner has considered whether the Constabulary was entitled to rely on the vexatious provisions at section 14(1) of the FOIA.

Reasons for decision

10. Section 14(1) of the FOIA states that section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious.
11. The term "vexatious" is not defined in the FOIA. The Upper Tribunal considered the issue of vexatious requests in the case of *Information Commissioner vs Devon County Council & Dransfield* [2012] UKUT 440 (AAC), (28 January 2013)².
12. In that case the Upper Tribunal defined a vexatious request as one that is a "*manifestly unjustified, inappropriate or improper use of a formal procedure*". The Tribunal made clear that the decision as to whether a request is vexatious must be based on the circumstances surrounding the request.
13. In the Dransfield case, the Upper Tribunal also found it instructive to assess the question of whether a request is truly vexatious by considering four broad issues: (1) the burden imposed by the request (on the public authority and its staff); (2) the motive of the requester; (3) the value or serious purpose of the request; and (4) the harassment or distress of and to staff.
14. The Upper Tribunal cautioned that these considerations were not meant to be exhaustive. Rather, it stressed "*...the importance of adopting a holistic and broad approach to the determination of whether a request is vexatious or not, emphasising the attributes of manifest unreasonableness, irresponsibility and, especially where there is a previous course of dealings, the lack of proportionality that typically characterise vexatious requests.*" (paragraph 45).
15. In the Commissioner's view the key question for public authorities to consider when determining if a request is vexatious is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress.
16. The Commissioner has identified a number of "indicators" which may be useful in identifying vexatious requests. These are set out in his

² <http://www.osscsc.gov.uk/Aspx/view.aspx?id=3680>

published guidance on vexatious requests³. The fact that a request contains one or more of these indicators will not necessarily mean that it must be vexatious. All the circumstances of a case will need to be considered in reaching a judgement as to whether a request is vexatious.

Evidence from the parties

The complainant

17. The complainant complained to the Commissioner about the way the Constabulary had dealt with six of his FOIA requests, of which this was one. In support of the complaints, the complainant stated only that the Constabulary was engaging in bullying and blacklisting tactics. He did not explain to the Commissioner why he considered the application of section 14 to be inappropriate.
18. The Commissioner invited the complainant to provide more information about his purpose and motivation for requesting the information he had asked for. He asked him to clarify any aims he hoped to further and the public interest he considered that would be served by the Constabulary disclosing the information. He also asked the complainant whether he considered the Constabulary had acted improperly, and for any evidence or reasons to support his belief. The Commissioner explained that any submissions the complainant wished to make on these points would be considered alongside the Constabulary's submissions. The complainant acknowledged receiving the Commissioner's letter but failed to provide any response to the questions.

Cheshire Constabulary

19. The Constabulary stated that the request forms part of a wider pattern of enquiries, complaints and FOIA requests which the complainant has used to pursue personal grievances against it. The Constabulary considered that it was evident from the volume of requests (which imposed a significant burden on its staff and resources) and from their combative and frequently defamatory tone, that the complainant's

³ <https://ico.org.uk/media/for-organisations/documents/1198/dealing-with-vexatious-requests.pdf>

primary intention was to disrupt the Constabulary's operations and damage its reputation.

20. With regard to the set of indicators referred to in paragraph 16, above, the following criteria appear to be met:
- the request imposes a burden on the Constabulary;
 - the request contains unfounded accusations;
 - the complainant submits frequent or overlapping requests; and
 - the complainant has no obvious intent to obtain information.
21. The Constabulary therefore found the request vexatious within the meaning of section 14(1) of the FOIA.

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

22. The Constabulary gave some wider background to its interactions with the complainant. Since October 2010 the complainant had submitted 65 FOIA requests to it (28 having been received in 2015). The complainant also submitted voluminous correspondence outside of the FOIA regime. A search of inbound email traffic from the complainant's personal email account to various points within the Constabulary found 186 emails received between September 2013 and May 2015. The Constabulary was therefore expending significant resources in dealing with the complainant's stream of complaints, accusations and FOIA requests.
23. Whilst compliance with the request on its own would not necessarily create a significant burden, the cumulative effect of dealing with it alongside the complainant's other requests was increasingly having an impact on the Constabulary's resources. The Constabulary considered that the complainant was monopolising the Freedom of Information unit's time and resources, and that this was having an impact on the delivery of its service to other service users.

Motive of the requester and purpose and value of the request

24. The Constabulary considered that the request was made in bad faith. It said that the wording of the request was unnecessarily combative and was clearly written to be read by a wider audience than just the Constabulary. It argued that the purpose of request was not to obtain the requested information, but to publicly attack the Constabulary.

Does the request have the effect of harassing the Constabulary or its staff?

25. The Constabulary considered the request was typical of the complainant's pattern of publicly making unsupported allegations of wrongdoing and corruption. It considered that the tone of a significant proportion of the complainant's requests and correspondence was personal in nature and implied both high-level, systemic corruption and personal incompetence by individual officers and civilian staff, allegations which the complainant had not substantiated (in this case the request was unnecessarily disparaging about the work of the Constabulary). Of particular note was the fact that the requests were made via the WDTK website, and thus were publicly viewable. The Constabulary had commented in the Commissioner's investigation of another complaint submitted by the complainant that he had a pattern of using FOIA requests to making inflammatory remarks and allegations, and that it believed that increasingly he used the WDTK mechanism primarily for this purpose. It believed that this was an abuse of the FOIA mechanism and was completely unreasonable.
26. It considered the complainant was habitually using the FOIA mechanism in an attempt to bully and harass the Constabulary and its staff, in furtherance of a personal grievance, which would neither be addressed nor furthered by the disclosure of the information he asked for.
27. The Constabulary acknowledged that it had designated many of the complainant's other requests as vexatious. However, it said that it maintained an objective approach to assessing his requests, and that it had not simply designated the complainant himself as "vexatious".

The Commissioner's decision

28. The Commissioner notes that, taken in isolation, the complainant's request would not necessarily be regarded as vexatious within the meaning of section 14. However, in considering this matter, the Commissioner has had regard to the context and history surrounding the request.
29. Since September 2012 the Commissioner has received 12 complaints from the complainant about the way in which the Constabulary has dealt with his FOIA requests. He has also viewed many more FOIA requests that the complainant has submitted to the Constabulary on the WDTK website.
30. The Commissioner considers that at least some of his FOIA requests originate from a dispute between the complainant, the Constabulary and

several local councils. The nature of the dispute was outlined in decision notice FS50551798⁴ and will not be repeated here.

31. The Commissioner considers it reasonable to conclude from the tone and content of many of the complainant's wider requests, and the information posted on a website that he maintains, that he is increasingly using the FOIA mechanism as a vehicle for venting frustration and publicising his discontent with these bodies.
32. It should be noted that in July 2015 Cheshire West and Chester Council, against whom the complainant has engaged in a similar pattern of behaviour, succeeded in having an anti-harassment injunction made against him. The Commissioner has noted the High Court judge's comments about the complainant, when giving the judgement:

*"It appears to me that he has become obsessed and perhaps even exhilarated by his ability to cause distress by repeating long dead allegations over and over again. By accusing each new recipient of corruption if they do not immediately do whatever it is he asks of them, he widens the scope of his campaign to include people who have nothing to do with it. He has long since ceased to apply any rational judgment of any kind in deciding what to do. On the evidence as it stands now, it appears probable to me that he simply wants to cause harm. I consider that it is likely that he is succeeding."*⁵

33. The Commissioner also considers it pertinent that the First-tier Tribunal, when considering appeals by the complainant against two decision notices, observed that he made unsubstantiated allegations and stated as fact things which had not occurred. It has also commented on his apparent desire to create "a scandal" out of what appeared to be genuine errors⁶.

⁴ https://ico.org.uk/media/action-weve-taken/decision-notices/2014/1042614/fs_50551798.pdf

⁵ <http://www.bailii.org/ew/cases/EWHC/QB/2015/2141.html>

⁶ EA/2015/0065 and EA/2015/0052

34. The Commissioner has had regard to the Constabulary's submissions about the frequency and tone of the complainant's communications with it, and particularly the complainant's allegations of misconduct and corruption which he has levelled at it publicly, through the WDTK website. The Commissioner notes that in this case the request contained imputations about the conduct and effectiveness of the Constabulary. However, the complainant failed to supply any information in support of his concerns when asked to do so by the Commissioner. This information was requested by the Commissioner to give the complainant the chance to counter the Constabulary's arguments that he was acting in bad faith (and he was informed of this) but he did not engage with the Commissioner's request.
35. The Commissioner noted in decision notice FS50551798 that the complainant appears to view the WDTK website as being as much a platform for publicly airing grievances and allegations as it is a means for accessing official information, and this appears to be another instance where WDTK may have been used for that purpose. The Commissioner considers it relevant to note here that the complainant's WDTK account is currently suspended, "*...following persistent abuse of our service*".
36. The Commissioner considers that the complainant would be fully aware that the comments and allegations he posts about the Constabulary will be seen by users of the WDTK website and that they may be returned in internet search results. Taking the above into account and in view of the wider background to the matter, the Commissioner is minded to agree with the Constabulary that the primary purpose of the request is not to obtain information but to publicly attack the Constabulary. He also considers that the complainant's behaviour could fairly be described as obsessive and having the effect of harassing the Constabulary and its staff.
37. The Constabulary has demonstrated to the Commissioner that it has expended significant resources in dealing with matters arising from the complainant's various FOIA requests, requests for internal review and complaints to the Commissioner. The Commissioner accepts that the time and resources that the Constabulary has devoted to dealing with the complainant have been considerable and that this inevitably reduces the amount of time that can be given over to dealing with other requesters' requests.
38. The Commissioner considers that the exemption set out at section 14 prevents an individual from imposing an *unwarranted* level of disruption, irritation or distress on a public authority. He has considered whether there are any mitigating factors which might justify requiring the Constabulary to comply with the request.

39. As noted in paragraph 34, above, the complainant was specifically asked to submit information which might inform this point, but failed to do so. The Commissioner has therefore looked at all the available evidence and does not consider that sufficient weight can be placed on any serious purpose served by the request to justify the level of disruption, irritation and distress it imposes on the Constabulary and its individual members of staff. In reaching this decision he has had regard to the Upper Tribunal's definition of vexatious (the "*manifestly unjustified, inappropriate or improper use of a formal procedure*").
40. Taking all the above into account, the Commissioner is satisfied that the Constabulary is entitled to rely on section 14(1) to refuse the request on the grounds that it is vexatious.

Other Matters

41. In his request for an internal review (paragraph 5, above), the complainant commented that the Information Commissioner would not process his complaints. He has made the assertion that the Commissioner is deliberately ignoring his complaints several times, both to the Commissioner and publicly, via comments posted on the WDTK website.
42. In one instance, the Commissioner notes that the specific complaint cited by the complainant as having been ignored had actually been dealt with by a decision notice which the complainant had previously acknowledged receiving.
43. The Commissioner has several times invited the complainant to provide him with details of all the complaints he considers have been ignored, but he has not done so. Instead, the complainant has repeated his allegations on the WDTK website.
44. The Commissioner has carefully checked the many complaints the complainant has submitted to him and has found no instances of a complaint not receiving a response in line with his complaint investigation policy.⁷

⁷ <https://ico.org.uk/media/report-a-concern/documents/1043094/how-we-deal-with-complaints-guidance-for-complainants.pdf>

Right of appeal

45. 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: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

46. 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.
47. 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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