

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 28 June 2017

Public Authority: Chief Constable of Humberside Police

Address: Priory Road
Kingston Upon Hull
HU5 5SF

Decision (including any steps ordered)

1. The complainant has requested the number of times the phrase "YOU CAN'T MAKE ME" appeared in police officers witness statements. Humberside Police relied on section 14(1) (vexatious requests) of FOIA.
2. The Commissioner's decision is that Humberside Police has applied section 14(1) of FOIA appropriately. However, the Commissioner considers that Humberside Police has breached section 10(1) of FOIA.
3. The Commissioner does not require Humberside Police to take any steps as a result of this decision.

Request and response

4. On 16 January 2016 the complainant wrote to HP and requested information in the following terms:

"1. I would like disclosing for the period commencing 2010 to date the number of times the following expression has appeared in a witness statement of an officer serving with Humberside police "YOU CAN'T MAKE ME" (with or without apostrophe).

2. Where occurrences have been found, I would also like disclosing the name of the officer who included the expression in the statement."

5. HP responded on 12 February 2016. It refused to provide the requested information citing section 12 (cost of compliance) of FOIA.

6. With regard to an internal review, it appeared that HP had not carried one out. The Commissioner contacted HP and asked it to do so.

Scope of the case

7. Initially the complainant contacted the Commissioner on 27 March 2016 regarding HP's failure to carry out an internal review. The Commissioner contacted HP and explained that it needed to carry out an internal review and closed the complaint.
8. The complainant contacted the Commissioner on 6 July 2016 and explained that he had not received the outcome of the internal review.
9. The Commissioner contacted HP and asked it to provide the complainant with the outcome of the internal review. There was some confusion as it appeared that HP had carried out an internal review but could not confirm whether it had sent the outcome of the review to the complainant.
10. HP sent the Commissioner a copy of the internal review dated 13 June 2016, on 11 April 2017, explaining that it realised it had not provided the complainant with a copy. HP had upheld its application of section 12. It apologised for the oversight, explaining that at the time of the internal review, it had already received in excess of 20 requests for internal reviews from the complainant.
11. Subsequently, during the Commissioner's investigation, HP confirmed that it was no longer relying on section 12, but was applying section 14(1) (vexatious requests) of FOIA to the request.
12. Given that HP is not relying on section 12, the Commissioner will not consider this any further. She will consider the application of section 14(1) and how the request was handled under FOIA.

Reasons for decision

13. Section 14(1) of FOIA states that section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious.
14. The term "vexatious" is not defined in the FOIA. The Upper Tribunal (UT) considered vexatious requests in the *Information Commissioner v Devon CC & Dransfield* (UKUT 440 (AAC), 28 January 2013). It commented that "vexatious" could be defined as the "*manifestly unjustified*,

inappropriate or improper use of a formal procedure". The UT's definition clearly establishes that the concepts of proportionality and justification are relevant to any consideration of whether a request is vexatious.

15. The UT also considered 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) harassment or distress of and to staff. It explained that these considerations were not meant to be exhaustive and also 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).

16. The Commissioner has published guidance on dealing with vexatious requests,¹ which includes indicators that may apply in the case of a vexatious request. However, even if a request contains one or more of these indicators it will not necessarily mean that it is vexatious.

17. When considering the application of section 14, the relevant consideration is whether the request itself is vexatious rather than the individual submitting it. A public authority can consider the context of the request and the history of its relationship with the requester, as the guidance explains:

"The context and history in which a request is made will often be a major factor in determining whether the request is vexatious, and the public authority will need to consider the wider circumstances surrounding the request before making a decision as to whether section 14(1) applies".

18. In some cases it will be obvious when a request is vexatious but in others it may not. The Commissioner's guidance states:

"In cases where the issue is not clear-cut, the key question to ask is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress".

Evidence from the parties

¹ <https://ico.org.uk/media/for-organisations/documents/1198/dealing-with-vexatious-requests.pdf>

19. HP explained that it considered that the present request of 16 January 2016 was vexatious for the purposes of section 14(1).
20. It explained that the complainant has submitted numerous requests to it since 2011 and that the volume had risen since it had applied section 14(1) to a request in 2014. HP provided the Commissioner with a copy of the 2014 request. The Commissioner notes that that request relates to fraud and contains offensive language.
21. In addition, HP explained that the complainant had made requests via Whatdothey know and has had his account suspended owing to the tone and often abusive manner of the requests and subsequent correspondence. It provided the Commissioner with examples.
22. HP also explained that there is a longstanding history of the complainant submitting requests in relation to the alleged non-payment of council tax. It considered that this was a civil matter but the complainant considered that it was a criminal matter and the HP had not proceeded correctly.
23. Furthermore, HP explained that the present request relates to the complainant having previously being arrested and charged with an offence. Two members of the public provided witness statements for the purposes of the criminal proceedings. The complainant believes that the arresting officer had incited at least one of the witnesses to make a false statement and that both witnesses had made false statements therefore committing perjury before the court. HP explained that the complainant believes he was "stitched up" and that the police were accomplices.
24. HP also explained that there had been an article in the Grimsby Telegraph on 12 January 2016, which referred to an incident where it was suggested that a police officer's witness statement included the phrase "you can't make me". HP explained that this was the same police officer who had arrested the complainant.
25. HP also referred to the indicators in the Commissioner's guidance. It explained that it considered that in this case the following applied:
 - Burden on the authority
 - Deliberate intention to cause annoyance
26. With regard to 'burden on the authority', HP explained that since the application of section 14 to a request in 2014, the number of requests from the complainant had increased and it was in receipt of approximately 76 requests that it knew were from him.

27. HP also explained that it considered that answering all of the complainant's requests and subsequent internal reviews would create a significant burden on it. HP pointed out that it was already striving to deal with the ever increasing demands of the FOIA. In addition, HP explained that the matters to which the present request stemmed from, was investigated at the time and the complainant had been updated.
28. Furthermore, HP argued that the time taken to deal with numerous complaints to the Commissioner and correspondence arising from the complaints resulting in two decision notices upholding its application of section 14(1) in 2014, also added a burden.
29. With regard to 'deliberate intention to cause annoyance' HP pointed to the unreasonable persistence of these requests and their tone, which it argued, aimed to cause annoyance to and harass it. It also explained that the complainant submitted requests under pseudonyms since the suspension of his Whatdotheyknow account. It provided the Commissioner with examples of pseudonyms and explained that they contained reference numbers from other requests the complainant had submitted or referred to other requests he had submitted. HP also explained that it had asked for identification in relation the requests using pseudonyms and had not received any.
30. In addition, HP explained that pseudonyms used by the complainant were created to cause annoyance to it; dealing with these requests also imposed a considerable burden on it.
31. HP also argued that the request had no value.

The Commissioner's view

32. The Commissioner acknowledges that there are many different reasons why a request may be vexatious, as reflected in her guidance. There are no prescriptive 'rules', although there are generally typical characteristics and circumstances that assist in making a judgement about whether a request is vexatious. A request does not necessarily have to be about the same issue as previous correspondence to be classed as vexatious, but equally, the request may be connected to others by a broad or narrow theme that relates them. A commonly identified feature of vexatious requests is that they can emanate from some sense of grievance or alleged wrong-doing on the part of the authority.
33. As the UT in *Dransfield* observed:

"There is...no magic formula – all the circumstances need to be considered in reaching what is ultimately a value judgement as to whether the request in issue is vexatious in the sense of being a

disproportionate, manifestly unjustified, inappropriate or improper use of FOIA”.

34. In her guidance, the Commissioner recognises that the FOIA was designed to give individuals a greater right of access to official information with the intention of making public bodies more transparent and accountable.
35. While most people exercise this right responsibly, she acknowledges that a few may misuse or abuse the FOIA by submitting requests which are intended to be annoying or disruptive or which have a disproportionate impact on a public authority.
36. The Commissioner recognises that public authorities must keep in mind that meeting their underlying commitment to transparency and openness may involve absorbing a certain level of disruption and annoyance.
37. In addition, the Commissioner also recognises that dealing with unreasonable requests can place a strain on public authorities' resources and get in the way of delivering mainstream services or answering legitimate requests. Furthermore, these requests can also damage the reputation of the legislation itself.

Was the request vexatious?

38. The Commissioner has considered HP's arguments regarding the information request.
39. As in many cases which give rise to the question of whether a request is vexatious, the evidence in the present case showed a history of previous information requests between the parties. Clearly in this case, HP considers that the context and history of previous requests received, strengthens its argument that the present request is vexatious.
40. The Commissioner notes HP's explanation regarding its application of section 14(1) to a request from the complainant in 2014. Although that request contained offensive language, she notes that the present request does not.
41. She also notes HP's explanation that the issue in relation to the present request had already been dealt with and the complainant had been updated.
42. The Commissioner has considered the wording of the request and considers that it could be classed as a random request. In her guidance, the Commissioner considers that random requests can also be called 'fishing expeditions' because the requester casts their net widely

in the hope that this will catch information that is noteworthy or otherwise useful to them.

43. The Commissioner does not consider that fishing for information is, in itself, enough to make a request vexatious. However, some requests may:
- Imposes a burden by obliging the authority to sift through a substantial volume of information to isolate and extract the relevant details;
 - Creates a burden by requiring the authority to spend a considerable amount of time considering any exemptions and redactions;
 - Encompass information which is only of limited value because of the wide scope of the request;
 - Part of a pattern of persistent fishing expeditions by the same requester.
44. If a request has any of these characteristics then the public authority may take this into consideration when weighing the impact of that request against its purpose and value.
45. In the present case, the Commissioner considers that the request would impose a burden on HP by obliging it to sift through a substantial volume of information to isolate and extract the relevant details.
46. The Commissioner also considered HP's argument that the request was of no value. In her guidance, she explains that she considers that if the information requested will be of little wider benefit to the public, then this will restrict its value. She considers that this is the case in this instance. Furthermore, the Commissioner also considers that the requested information would be of limited value because of the wide scope of the request. She therefore considers that the requested information is of very little, if any, value.
47. The Commissioner also considers that FOIA should not be used as a way to open up issues that have already been dealt with, in this case by the courts. She considers that it is clear that the complainant has a previous grievance with HP that is related to the present request.
48. On the basis of the evidence provided and taking into account the findings of the UT in *Dransfield* that an holistic and broad approach should be taken in respect of section 14(1), the Commissioner considers that the present request is a manifestly unjustified and improper use of the FOIA and is therefore vexatious for the purpose of section 14(1).

49. The Commissioner therefore considers that HP has applied section 14(1) appropriately.

Procedural matters

Section 10 - time for compliance

50. Section 10(1) of FOIA states that a public authority must comply with section 1(1)² promptly and no later than 20 working days following receipt of the request.
51. The Commissioner notes that HP initially relied on section 12 but during her investigation, it confirmed that it was no longer relying on section 12. Instead it confirmed it was relying on section 14(1). Therefore, she considers that HP has breached section 10(1).

Other matters

52. The complainant requested an internal review on 12 February 2016. HP confirmed that it had carried out a review on 13 June 2016 but it appears that it did not send the outcome to the complainant.
53. Part VI of the section 45 Code of Practice (the code) makes it good practice for a public authority to have a procedure in place for dealing with complaints about its handling of requests for information.
54. While no explicit timescale is laid down in the code, the Commissioner has decided that a reasonable time for completing an internal review is 20 working days from the date of receipt of the request for review. In exceptional circumstances it may be reasonable to take longer but in no case should the time taken exceed 40 working days.
55. The Commissioner notes that the internal review was carried out on 13 June 2016 which means that it took longer than 20 working days from receipt of the request for an internal review.
56. However, the Commissioner also notes HP's explanation regarding the volume of requests for internal reviews received from the complainant.
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² Section 1(1) states 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 the information communicated to him.'

She also notes that she has upheld its application of section 14 to the present request.

Right of appeal

57. 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

58. 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.
59. 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
Group Manners
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF