



**IN THE FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
[INFORMATION RIGHTS]**

Case No. EA/2014/0116

ON APPEAL FROM:

**Information Commissioner's
Decision Notice No: FS50518328
Dated: 23 April 2014**

Appellant: JULIAN NETTLEFOLD

Respondent: INFORMATION COMMISSIONER

Heard at: Field House, Breams Buildings, London, EC4A 1DZ

Date of hearing: 27 August 2014

Date of decision:

**Before
CHRIS RYAN
(Judge)
and
MELANIE HOWARD
STEVE SHAW**

Attendances:

The Appellant appeared in person.
The Respondent did not appear and was not represented.

Subject matter: Vexatious or repeated requests s.14

Cases: Information Commissioner v Devon CC and Dransfield [2012]
UKUT 440 (AAC)

DECISION OF THE FIRST-TIER TRIBUNAL

The appeal is allowed in part and the Decision Notice dated 23 April 2014 is substituted by the following notice:

Public Authority: **The Chief Constable of Sussex**

Complainant: **Julian Nettlefold**

Decision:

The Public Authority should, within 35 days of the date of this Substituted Decision Notice, either disclose to the Complainant the information requested in Request Three and Request Four (both as defined in Reasons for Decision below) or provide the Complainant with a detailed statement of any exemption on which it intends to rely in order to refuse disclosure.

REASONS FOR DECISION

Introduction

1. The Appellant has appealed to this Tribunal from a Decision Notice issued by the Information Commissioner (on 23 April 2014 under reference FS50518328) (“the Decision Notice”), in which the Information Commissioner concluded that the Chief Constable of Sussex Police (“Sussex Police”) had been entitled to reject requests for information on the ground that they were vexatious under section 14 of the Freedom of Information Act 2000 (“FOIA”).
2. All of the requests arise out of the Appellant’s dissatisfaction with enquiries made by the Sussex Police and the Coroner’s office, which led to the Coroner concluding that the Appellant’s son, Harry Nettlefold had committed suicide at Beachy Head on 27 August 2011.

Relevant Law

3. FOIA section 1 imposes on the public authorities to whom it applies an obligation to disclose requested information unless certain conditions

apply or the information falls within one of a number of exemptions set out in FOIA. Section 14 provides that section 1 “*does not oblige a public authority to comply with a request for information if the request is vexatious*”. The term “*vexatious*” is not defined in the FOIA but guidance on its meaning and application was given by the Upper Tribunal in *Information Commissioner v Devon CC and Dransfield* [2012] UKUT 440 (AAC) (“*Dransfield*”). The guidance included the view that the term meant that an information request could be refused if it represented a “*manifestly unjustified, inappropriate or improper use of a formal procedure*”.

The Requests for Information and the Information Commissioner’s investigation of the Appellant’s complaint about its refusal.

4. The requests are set out below:
 - a. Request dated 21 June 2013 (“First Request”) – the Appellant asked “*if Sussex Police obtained a Court Order to monitor the telephones of [himself and a named third party]*”.
 - b. Request dated 23 June 2013 (“Second Request”) – “*Were the two uniformed Sussex Policeman (sic) in Court armed at the inquest into the death of Harry Nettlefold in June 2012?*” Other questions followed, all dependent on the first request being met with an affirmative response. For the reasons given below it is not necessary for us to consider those further questions.
 - c. Request dated 15 July 2013 (“Third Request”) – “*Full details of the calls made from Harry Nettlefold’s telephone 07734996452 on August 27th 2011. Where was the call made from and where was it received by [name redacted]*”
 - d. Request dated, also, on 15 July 2013 (“Fourth Request”) – “*Full details of the ANPR Serial 1699 of 27/08/2011 at 10.08pm noted by Sussex Police at 10:12 pm as quoted in the Sussex Police Investigation Report into the death of Harry Nettlefold page 7 of 11, headed vi.*” We understand that the Request concerned the Automatic Number Plate Recognition equipment installed near the approaches to Beachy Head.

5. The papers made available to us in an agreed bundle of documents demonstrate that:
 - a. Sussex Police sent a formal acknowledgement to the Appellant on 16 July 2013, referring to one or both of the requests submitted on 15 July 2013 (Third and Fourth Requests). But we have seen no detailed response to either of those Requests.
 - b. On 24 June 2013 Sussex Police formally acknowledged receipt of the Second Request (recording that it was received on 24 June 2013) and then, on 12 August 2013, sent a more detailed response in the following terms:

"I write in connection with your request for information dated 24 June 2013 concerning the inquest into the death of Harry Nettlefold.

Sussex Police is not required to respond to your request as it has been considered a 'Vexatious or Repeated Request' that falls within Section 14(1) of the Freedom of Information Act 2000.

The reason for this decision is that your request is considered to be obsessive in terms of the volume and frequency of requests with the clear intention to use the request to reopen issues that have already been debated and fully investigated.

I shall therefore not respond to any further requests relating to this matter..."

6. The documentation provided to us included no record of any further response to the Appellant from the Sussex Police.
7. Following a complaint by the Appellant to the Information Commissioner about the way in which his information requests had been handled the Information Commissioner carried out an investigation. By a letter to the Information Commissioner dated 7 January 2014 Sussex Police answered a number of questions posed during the course of that investigation. The letter stated that, following the inquest, the Appellant had *"repeatedly made complaints to the Coroner, the case officer, our complaints department and senior officers within the organisation"* but provided no more detail or supporting evidence in respect of the course of dealings with the Appellant. The letter then commented on each of the Requests as follows:
 - a. First Request. There was no legal requirement for a court order although a Home Office warrant would be needed under the Regulation of Investigatory Powers Act for any telephone intercept and other specific authority would be needed to access data about when and where calls had been made. The letter went on *"...we believed the information to be sensitive for operational reasons (section 31 of the FOIA) and Personal Information as defined by the [Data Protection Act 1998] and therefore exempt under Section 14 of the FOIA."*
 - b. Second Request. The Sussex Police wrote, in respect of this Request that it had refused it *"on the ground that these continued requests and challenges to the lawful judicial process are vexatious. This was not just from an FOIA perspective, but also from the case officers and our complaints department."*
 - c. Third Request. The response characterised the Request as relating to *"information relating to an alleged call made from Mr Nettlefold's deceased son's phone to a third party"*. It seems, therefore, to have addressed only the second part of the Request. As to that it stated that *"this relates to a sensitive policing tactic but importantly is personal information of the other*

party named in the request.” The response then appeared to give some consideration to the first part of the Request in that it went on to say *“In any event details of all calls relating to Harry were presented in papers to the Coroner for the inquest.”*

- d. Fourth Request. The Sussex Police relied upon the reference in the Request to the Police Investigation Report to demonstrate that the information in the Request had already been released to the Appellant. Then, turning to what the Request actually sought, it stated *“The serial itself is investigative material and retained for purposes of the coroners (sic) investigation (Section 30 of the FOIA)”*.

8. The argument that the Sussex Police had been justified in refusing the Requests concluded in the following terms:

“We believe that taking into account the numerous repeated requests, complaints and challenges made by Mr Nettlefold to a wide range of both Sussex Police staff but also other organisations show an overall pattern of behaviour justifying our decision. I would add that from an FOIA perspective this decision was not made merely because of the requests quoted in your letter but also in light of previous ones....Constant attempts to reopen the investigation or challenge outside of the judicial process is clearly in our view obsessive.”

9. The Sussex Police letter went on to set out reasons why the exemption provided by FOIA section 30 (information held for the purpose of certain investigations) applied to some or all of the Requests, but it abandoned those arguments when the Information Commissioner subsequently sought clarification, in an email of 3 February 2014, in the following terms:

“Is the bottom line here that, for all four requests, because they relate to the suicide and inquest are now regarded as exempt under s14(1) FOIA essentially as being obsessive for the reasons you give?”

To which the Sussex Police responded, in an email of 24 February 2014, confirming:

“...Sussex Police is relying on s14(1) FOIA in relation to all four requests as being obsessive. This is in relation to the subject of the requests, the death of the applicant’s son, and not the applicant himself. This is evidenced by our response to an unconnected request made by Mr Nettlefold on 30 June 2013”

10. The letter from the Sussex Police letter dated 7 January 2014 could be read as arguing that it would be vexatious to pursue a request for information that was claimed to be exempt. The point was not repeated in the letter of 24 February 2014 and we have concluded that the Sussex Police, wisely, did not pursue it further.

11. We were provided with no other documentation recording the Information Commissioner’s investigation.

The Decision Notice

12. The Decision Notice set out the redacted text of all the Requests for Information and recorded the response of the Sussex Police to the Second Request and its view that it regarded “...*the information requests as obsessive in terms of the volume and frequency of requests, with the clear intention to use the information to reopen issues that had already been debated and fully investigated.*” Nothing was said in respect of the content of the other Requests. However, the Decision Notice does record that the Sussex Police explained that it did not undertake an internal review (as would normally be the case if a refusal was challenged) because, in its view, it would serve no useful purpose. We infer that the same argument was, or would have been, raised to explain the absence of any response to the First, Third and Fourth Requests, but we have no clear information on that in either the Decision Notice or the materials presented to us by the parties.
13. The Decision Notice also records that the Sussex Police informed the Information Commissioner that, by reference to the Second Request, it held no record of a deployment of armed officers at the court hearing referred to in the Request. However, there is no finding of fact to that effect set out in the Decision Notice and no explanation as to whether it would have justified refusal either under section 14 or on the ground that the Sussex Police did not hold the requested information at the relevant time.
14. The Information Commissioner based his Decision Notice firmly on the guidance provided by the Upper Tribunal in *Dransfield*. He identified the key question as being whether the request was likely to cause a disproportionate or unjustified level of disruption, irritation or distress. He concluded that the resources needed to comply with the Requests would present a significant but not overwhelming burden but that the Requests were neither abusive nor aggressive in tone and that there was no evidence that the Appellant “*intended to cause disruption or distress to the police and other relevant public authorities, or to harass individual members of their staffs.*” The Information Commissioner proceeded on the basis that, in light of those findings, it was necessary to weigh the impact on the Sussex Police of complying with a request against its purpose and value. The Information Commissioner also noted that this assessment should be undertaken against the background and history of the dealings between the parties.
15. As to the purpose and value of the Requests, the Information Commissioner recorded the Appellant’s concern that the circumstances surrounding the death of his son had not been properly investigated and that a degree of persistence in his questioning was therefore justified. The Information Commissioner accepted that there was a serious purpose and value to the information requests which the

Appellant had submitted but that, agreeing with the arguments put to him by the Sussex Police, they represented an attempt to reopen issues that had already been investigated and had been pursued with unreasonable persistence. On that basis he concluded that the serious purpose of the Requests did not outweigh their impact in terms of *“the continuing pattern of a disproportionate and unjustified level of disruption, irritation or distress to the public authority”*. The Sussex Police had therefore been entitled to reject the Requests in reliance on FOIA section 14.

The Appeal to this Tribunal

16. The Appellant’s appeal against the Decision Notice was filed on 12 May 2014.
17. Appeals to this Tribunal are governed by FOIA section 58. Under that section we are required to consider whether a Decision Notice issued by the Information Commissioner is in accordance with the law. We may also consider whether, to the extent that the Decision Notice involved an exercise of discretion by the Information Commissioner, he ought to have exercised his discretion differently. We may, in the process, review any finding of fact on which the notice in question was based. As indicated above, in the present case those findings of fact are in places obscure and difficult to apply to the particular information requests the Information Commissioner was required to consider.
18. The Appellant challenged the finding against him under FOIA section 14 in general terms but relied on the following two pieces of evidence in support of his argument that he was justified in pursuing his pursuit of further information.
 - a. The first item was an extract from an Investigation Report prepared by the Sussex Police (“the ANPR Report”) which included a section preceded by the following introduction:

“In relation to Mr Nettlefold’s specific complaints against officers, a further review of the police investigation has confirmed that the following enquiries were conducted by Sussex Police officers and Coroner’s Officer, [name redacted]”

Paragraph vi in the section of the report which followed was in these terms:

“Police failed to utilise ANPR to track the travel route or to locate Harry’s car: The ANPR system was utilised to confirm when Harry may have arrived at Beachy Head. This is noted in serial 1699 of 27/08/2011 at 10:08pm, the result of which is noted at 10:12pm.”
 - b. The second item of evidence relied on by the Appellant consisted of a copy of a bill for Harry Nettlefold’s mobile phone together with a triangulation map said to have been provided by the Sussex Police at Harry Nettlefold’s inquest. The bill recorded the mobile phone having been used at 20:32 and 20:45 on 27 August

2011. The triangulation map includes just one entry in respect of that phone, which read:

"20:30 Harry's phone connects with a mast near Rye Tennis Club (40KM from Beachy Head)."

19. The Appellant's Grounds of Appeal stated that the first item showed that the ANPR equipment was operating on the night in question and the second demonstrated that Harry Nettlefold could not have been at Beachy Head at the time he is said to have died.
20. On 9 June 2014 the Information Commissioner filed a Response. He asserted at this stage that the Sussex Police communication of 12 August 2013 had been a refusal of all of the Requests. This is in contrast to the stance adopted previously and recorded by the Information Commissioner in his Decision Notice (paragraph 12 above). Beyond that the Response made no attempt to address the points made in the Notice of Appeal by reference to the evidence referred to above, but simply reiterated the findings of fact recorded in the Decision Notice and the Information Commissioner's reasoning, as also set out in that document, for reaching the decision he did. The Response repeated what the Sussex Police had told the Information Commissioner during his investigation about other requests and complaints made by the Appellant, but did not provide any further evidence on the point.
21. Neither party to the Appeal applied to have Sussex Police joined as a party. The Appellant exercised his right to have the Appeal determined at a hearing, rather than on the papers. The Information Commissioner opted not to attend the hearing, although he participated in the preparation of the bundle of documents to which we have referred.
22. The Appellant addressed us at some length during the hearing. In the process he presented a great deal of allegation and arguments that were said to support his concerns about the adequacy of the investigations carried out by the Sussex Police and the Coroner's office. We have no way of evaluating either the accuracy of his assertions of fact or the strength of the arguments based on them. All that we can say, on the basis of what we have heard, is that there has either been extensive and surprising failures on the part of the authorities involved in the incident that occurred at Beachy Head on 27 August 2011, or the Appellant's search for more information is obsessive and irrational.

Our determination

23. As we have indicated, we have been forced to approach our determination of this appeal with very little evidence on either side. It would not be appropriate for us to rely on the wide ranging statements made by the Appellant during the hearing as evidence on which, without further support and verification, we should rely. And, as we have indicated above in the course of analysing the Decision Notice

and the investigation which preceded it, we were presented with surprisingly undeveloped evidence to support the assertion that the Requests form part of an extensive history of obsessive questions and complaints. It is also apparent from that analysis that we have found it difficult to determine how the Information Commissioner applied the principles he derived from *Dransfield* to each of the Requests, given his apparent concentration on the Second Request, as referred to in the response from the Sussex Police dated 12 August 2013.

24. We may, however, rely on the following, non-contentious points:
- a. It is agreed between the parties that the Appellant's concern is the conduct of the inquest and the investigation which preceded it.
 - b. It is accepted by the Information Commissioner that, at least at the outset, this represented a serious purpose.
 - c. The Information Commissioner has determined that the Sussex Police would not have been entitled to refuse disclosure on the basis that an excessive burden would have been placed on it or that the Appellant had behaved in a manner that was likely to distress those with whom he had contact.
 - d. The Appellant has conceded that, in addition to the Requests, he has sent the Sussex Police a number of information requests and communications on the same broad subject matter.
25. The guidance set out in *Dransfield* requires us to balance the seriousness of the Appellant's purpose against the reasonableness and persistence of the Appellant in pursuing each of the Requests. We take each in turn:
- a. First Request. During the hearing the Appellant identified the third party named in the First Request as a business colleague of his. He was not able to convince us during the hearing that the Request had a credible connection with the serious purpose which the Information Commissioner had found to exist. Without that justification, and taking into account the Appellant's concession as to the number of previous requests, we think that it would be disproportionate to require the Sussex Police to respond to it. It therefore falls within the scope of FOIA section 14 and the Sussex Police were entitled to reject it.
 - b. Second Request. Although the Information Commissioner has, in the course of his Decision Notice, indicated that the answer to the first part of this Request would be in the negative (and that the remaining parts would therefore fall away) we have to make our decision on the ground of the refusal presented to us and the supporting evidence, such as it is. The Appellant spent some time during the hearing seeking to persuade us of a connection between his belief that armed police had been present in court on the occasion in question, his concern that this represented an attempt to prevent him pursuing his investigations and the subject matter of those investigations. We concluded that any

connection that might exist was too remote to render the pursuit of the enquiries set out in the Request reasonable and proportionate. Sussex Police had therefore been entitled to refuse the Request.

- c. Third Request. In this case we are faced with an element of evidence (in the form of the triangulation map and the mobile phone bill referred to in paragraph 18(b) above). Together they create a prima facie direct connection with the events of the night of 27 August 2011. As we have indicated the explanation given to the Information Commissioner by Sussex Police in respect of this particular line of enquiry was unsatisfactory and the point was not addressed in the Information Commissioner's Response in this Appeal. There may well be other reasons why some parts of the Request, or the whole of it, should not be answered but, viewed on the basis of just the evidence presented to us on this appeal, we conclude that Sussex Police did not make out its case to the Information Commissioner for treating the Third Request as vexatious.
- d. Fourth Request. We have concluded that there is again a connection between the Request and the Appellant's concerns. The issue was not addressed in either the Decision Notice or the Information Commissioner's Response. The explanation given to the Information Commissioner by the Sussex Police was unhelpful in referring back to the Police Investigation Report when, as was evident from the language of the Request itself, the Appellant already had that information but wished to see the detail of "Serial 1699". Given the obtuse language of the Report quoted in paragraph 19(a) above we do not think that further pursuit of the issue was unreasonable or an inappropriate use of the FOIA machinery. We have found it difficult to discern the meaning in the Report of "*utilised to confirm when Harry may have arrived at Beachy Head*". It would have been straightforward enough for the Sussex Police to have confirmed either that the ANPR system recorded Harry Nettlesford's vehicle in the vicinity or that it did not. In the absence of any clarification either in the documents or at the hearing, we are unable to conclude that Sussex Police made good its claim to the Information Commissioner that this Request was vexatious.

26. In light of the above we conclude that the Sussex Police was entitled to reject the First Request and Second Request on the ground that they fell within section 14, but that it has not established that the Third Request and Fourth Request were. The Sussex Police should therefore, within 35 days of the date of this decision, either disclose the

information requested in the Third Request and the Fourth Request or set out its detailed grounds for claiming that the requested information is covered by one or more of the exemptions set out in the FOIA.

27. Our decision is unanimous.

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Judge C Ryan
2014