

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 30th October 2008

Public Authority: The Chief Constable of Cheshire Constabulary
'The Constabulary'
Address: Cheshire Constabulary Headquarters
Oakmere Road
Winsford
Cheshire
CW7 2UA

Summary

The complainant made a request for seven pieces of information relating to the Constabulary's coat of arms and logo, the use of these; its policies regarding the recording of conversations; and for information about the Constabulary's internet domain and service provider. The request was made during an on-going dispute between the complainant and Constabulary. During the course of the dispute members of the Constabulary were the subjects of several complaints. The complainant also made a significant number of information requests under the Freedom of Information Act 2000 (the Act) and the Data Protection Act. The Constabulary refused the complainant's request under section 14 of the Act on the grounds that it was vexatious. It was drawn to this conclusion by the complainant's stated intent to use the requested information to assist him in setting up a website publicising his grievances. The Commissioner has examined the complainant's previous contact with the Constabulary. He considers that this request, together with the history of complaints and other information requests, constitutes a significant burden to the Constabulary. He also considers that the intent behind the request would have the effect of harassing the Constabulary. The Commissioner has concluded that the Constabulary's application of section 14 was appropriate and does not uphold the complaint.

The Commissioner's Role

1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

Background to the Request

2. The complainant is a director of a company of Loss Adjustors. Loss Adjustors are able to obtain information from police forces under a memorandum of understanding between the Association of Chief Police Officers (ACPO) and the Association of British Insurers (ABI). This is commonly referred to as the ACPO/ABI MOU. The ACPO/ABI MOU provides two routes for obtaining police information. These are referred to as Appendix 'D' and Appendix 'E' applications. Appendix 'D' applications attract a fee of £75, whilst Appendix 'E' applications do not attract a fee providing they are accompanied by sufficient evidence supporting a suspicion of fraud.

In January 2006 the complainant made an application to the Constabulary for information under Appendix 'E' of the ACPO/ ABI MOU. This was refused on the basis that he had failed to supply sufficient evidence to support his suspicion of fraud. The application was not made under the provisions of the FOI Act, however it is the Constabulary's practice for its Data Protection and FOI staff to deal with them. The decision to refuse the application was reviewed by the Constabulary's Freedom of Information Officer and up-held. In February 2006 the FOI Officer telephoned the complainant to discuss his complaint. This telephone conversation gave rise to a an official complaint against the FOI Officer, a number of requests for information under the Freedom of Information Act and subject access requests under the Data Protection Act.

Some of the actions taken by the Constabulary during the investigation of the complainant's allegations against the FOI Officer resulted in further complaints and further information requests.

In August 2006 the Constabulary's Professional Standards Department concluded its investigation of the complainant's allegations and determined them to be unsubstantiated. The Complainant subsequently made an appeal to the Independent Police Complaints Commission (IPCC), who upheld the Constabulary's decision. At this point the complainant's original complaint had expanded to include complaints against other officers of the Constabulary involved in the investigation of the appeal. These included two Superintendents and a Detective Inspector.

During the following months the complainant continued to correspond with the Constabulary. He made further complaints against police staff which related to the foregoing events and the investigations. He also made a number of subject access request and requests for information relating to these matters. Additionally, the complainant made further requests for information in respect of unrelated matters.

The Request

3. On 6 February 2007 the complainant made the following request for information:

'... please advise your constabulary's: registered trade marks / logos (if any) together with their patent office reference.

Claim to copyright of the Cheshire Police crest / logo.

Policy with regard to usage of trade marks logos (if any).

Policy with regard to usage of the words 'Cheshire Police'.

The above should be considered in relation to the internet; the displaying of words and representations as opposed to use on correspondence. There is no intention to 'pass off'. If necessary, please consider this a further application under the Freedom of information Act.'

4. The Constabulary responded to this request on 6 March 2007. The complainant was informed that the Constabulary did not have any trade marks registered with the patent office. He was also told that the use of the coat of arms, making up the main part of the police logo, is restricted to authorised bodies and was given by letters patent by Royal Prerogative. The Constabulary outlined in some detail the effect of this grant. The complainant was also informed that the Constabulary did not have policies relating to the use of any trade mark or logo, or one which covers the use of the term 'Cheshire Police'. It informed the complainant that it did have a procedure which it followed in respect of trade marks and logos and that it would take action against anyone 'holding themselves out as Cheshire Police or supplying goods and services that they claimed were Cheshire Police'.
5. On 7 March 2007 the complainant made a further request for information:

'Concerning the coat of arms making up part of the Constabulary's logo:

- A. 'Please provide a copy of the relevant prerogative, evidence of the existence of same – the document'.*
- B. 'Please confirm that the remaining part of the logo is not the subject of any restriction'.*

Concerning the policy/procedure the Constabulary has regarding the use of its trademarks/logos:

- C. 'Please provide the procedure in place'.*
- D. 'Please provide the procedure adopted for the recording of conversations to include, but not be restricted to, the systems used, the application throughout the Constabulary and the extent of use, terminals selected, whether all calls are recorded etc. The information should include details*

of the supplier, the contractor and costs. Please ensure that I am provided the tender process correspondence and copies of the tendering process, tenders submitted and ultimate selection process'

E. 'Details of all intent documents owned or operated by Cheshire police'.

F. 'The details of your web supplier. The information should include details of the supplier, the contractor and costs. Please also ensure that I am provided the tender process correspondence and copies of the tendering process, tenders submitted and the ultimate selection process'.

G. 'I am also experiencing some difficulty with your constabulary's application of the #repetition# get out clause that enables the dismissal of a complaint. I believe there will exist a definition or guidance for the use of this section – policy or procedure. I ask to be provided all information relating to this.

The above should be considered as applications under the FOI'

6. The Constabulary responded to the complainant's request on 2 April 2007. The Constabulary informed him that his request was refused under section 14 of the Freedom of Information Act 2000, as his request had been deemed a vexatious request. The Refusal Notice outlined the Constabulary's considerations in arriving at this decision.
7. The complainant wrote to the Constabulary on 13 April 2007 in response to its Refusal Notice. The complainant informed the Constabulary that he wanted to appeal its decision not to supply the information he had requested.
8. On 16 May 2007 the Constabulary completed its internal review. The Constabulary's Assistant Chief Officer concluded that he was satisfied with the decision not to provide the requested information. He considered the request to be vexatious and therefore its refusal was reasonable in all the circumstances of the case.

The Investigation

Scope of the case

9. On 30 August 2007 the complainant contacted the Commissioner to complain about the Constabulary's application of section 14 to his request dated 7 March 2007. This is the request that is the subject of this decision notice. The complainant specifically asked the Commissioner to consider the two phrases used by the Constabulary in its refusal notice. The following phrases were cited as evidence to support the application of section 14 of the Act:
 - 'By your own admission you regard these matters as *relatively minor issues*'.

- 'You have made clear your intention and *explicitly state* that it is your intention to cause Cheshire Constabulary the maximum inconvenience through this request'.

The Commissioner has considered whether the Constabulary was correct to refuse to comply with section 1(1) of the Act in relation to the 7 March 2007 request on the basis that it was vexatious. When doing so he has considered the statements used by the Constabulary to support its reliance on section 14 that the complainant has highlighted as a matter of particular concern.

Chronology

10. On 13 May 2008 the Commissioner telephoned the Constabulary to discuss whether there would be any potential in seeking an informal resolution in this matter. The Constabulary considered this to be a valid approach but thought it would be extremely problematic due to the history of complaints made by the complainant and the volume of correspondence which had passed between the parties.
11. On 23 May 2008 the Commissioner wrote to the Constabulary to enquire about its application of section 14 to the complainant's request. The Constabulary was asked to provide a chronology of its involvement with the complainant in terms of the requests he had made and also the correspondence associated with these requests and his complaints. The Constabulary was asked to focus on the level of burden caused, or potentially caused, by the request and to provide evidence of this. It was also asked to refer to the Commissioner's guidance notes on section 14 and to provide evidence in support of one or more of the criteria he uses to assess whether a public authority has appropriately deemed a request vexatious.
12. Before making its final response to the Commissioner's enquiries the Constabulary invited the caseworker to visit its headquarters to view a lever-arch file and four box files containing paper-based evidence. The Constabulary provided its formal response on 20 June 2008 and the visit took place on 11 July.
13. On 16 July 2008 the Commissioner telephoned the complainant to explain his approach to cases involving the application of section 14. The complainant was given an indication of the factors which the Commissioner would take into account and was told that his decision would relate solely to his request for information, not to the substance of his complaints against the police. The complainant was invited to consider withdrawing his complaint or whether he would like a formal Decision Notice. He was also invited to provide the Commissioner with his arguments in rebuttal of the Constabulary's refusal under section 14. The Commissioner provided the complainant with his guidance notes on section 14 and with two recent Information Tribunal decisions.
14. On 16 July 2008 the complainant responded to the Commissioner's telephone call and email.

Analysis

Section 14

15. Section 14(1) provides that –

“Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious”.

16. The Commissioner has produced Awareness Guidance 22 as a tool to assist in the consideration of what constitutes a vexatious request. This guidance explains that for a request to be deemed vexatious, the request must impose a significant burden on the public authority and:

- clearly not have any serious purpose or value;
- be designed to cause disruption or annoyance;
- have the effect of harassing the public authority; or
- could otherwise fairly be characterised as obsessive or manifestly unreasonable.

17. When considering the Constabulary's reliance upon section 14(1), the Commissioner has had regard to the Information Tribunal's decision in *Mr J Welsh -v- the Information Commissioner EA/ 2007/0088*. In that case, the Tribunal spoke of the consequences of determining a request vexatious. It pointed out that these are not as serious as those of finding vexatious conducts in other contexts and therefore the threshold for vexatious requests need not be set too high. The Tribunal also examined the Commissioner's approach to vexatious requests and opted for caution in elevating its two-stage test into a necessary sequence. In this case the Commissioner has considered the extent to which any or all of the criteria above apply..

Significant Burden

18. In the case of *Welsh v the Information Commissioner* mentioned above, the Tribunal stated that “in most cases, the vexatious nature of a request will only emerge after considering the request in its context and background. As part of that context, the identity of the requester and past dealings with the public authority can be taken into account' (paragraph 21 of its decision). The Commissioner has therefore taken into account the complainant's previous interaction with the authority when making a determination of whether the request represents a significant burden to a public authority. This means that even if the request appears reasonable in isolation, it may be vexatious if it demonstrates a continuation of behaviour which is obsessive and/or represents a significant burden when considered collectively.

The Complainant's Previous Behaviour

19. The focus of this Decision Notice is the complainant's request of 7 March 2007 and the Constabulary's application of section 14 to it. This request flowed directly from the complainant's application for data under the ACPO/ABO MOU and his subsequent complaint about the Constabulary's FOI Officer on 17 February 2006.
20. The complaint concerning the FOI Officer relates to an allegation of rudeness to the complainant and of her abrupt termination of a telephone call. An attempt to informally resolve this complaint was made and resulted in a further complaint against a Superintendent and to more requests for information.
21. The Constabulary now commenced its investigation of the complainant's allegations and made arrangements for officers of another force to take his statement. The complainant took exception to this and complained about the Constabulary's use of another Police Force. He also made further requests for information relating to this procedure and for details of the information the Constabulary passed to the other force. There were a significant number of information requests under the FOI Act and the Data Protection Act. These can be characterised as an attempt to further his case against the Constabulary.
22. On 22 August 2006 the Constabulary concluded its investigation of the complainant's allegations and informed him that these were unfounded. This led the complainant to make an appeal to the Independent Police Complaints Commission (IPCC) which upheld the Constabulary's decision.
23. On 3 September 2006 the complainant made a new subject access and further requests for information. He sent four A4 pages containing 17 requests under the Data Protection Act, 5 requests under the FOI Act, relating to his existing complaints, and a further request regarding an un-related matter. The information disclosed to the complainant resulted in still more lengthy correspondence, particularly in relation to information withheld from him, which was not considered to be his personal data. The complainant also made a complaint against the Data Protection Officer who dealt with his enquiries.
24. The complainant continued to correspond with the Constabulary into January of 2007. He made further requests for information relating to his business needs and also to his on-going complaints.
25. On 26 January 2007 the complainant asked 14 further questions under the FOI Act concerning his complaints against the Constabulary.
26. The Constabulary wrote to the complainant advising him that it would not enter into future correspondence in relation to this matter. In this letter of 2 March 2007, the Constabulary used the phrase '*relatively minor issues*' purportedly quoting the complainant, that is:

"you yourself admitting that the nature of the complaints are '*relatively minor issues*'".

27. At this point the complainant made his request for information dated 7 March 2007 which is the subject of this decision notice.
28. The Constabulary used this phrase again in another letter, dated 2 April 2007, sent to the complainant in response to one of his FOI requests. This prompted further telephone contact with the Constabulary. One of these calls resulted in the Constabulary's Director of Performance Development termination of the conversation. This action led the complainant to raise a new complaint with the IPCC.
29. The IPCC asked Cheshire Constabulary to investigate this new complaint.
30. The Commissioner has given careful consideration to the foregoing history. It is clear that the substantive request arose from a complaint described by the complainant as a 'relatively minor matter'. Flowing from this complaint there was substantial two way correspondence, at the complainant's instigation, and a series of further information requests and more complaints. The effects of the complainant's correspondence, and of his interaction with police staff, can fairly be described as imposing a significant burden on the Constabulary. The Commissioner has taken this view for the following reasons:
31. Between 25 July 2005 and 24 April 2007 the complainant made 10 requests for information. Each request consisted of between 1 and 14 separate requests for information. A great deal of police time was spent dealing with these requests and with complainant's associated correspondence. Still more time was spent on the investigations of his various complaints involving the Constabulary and the Independent Police Complaints Commission. The Constabulary estimates that 463 hours of police time has been spent on activities related to the complainant's issues. This amounts to a substantial financial expenditure in terms of the salaries of police officers and support staff.
32. In its decision in *Betts v The Information Commissioner (EA/2007/0109)*, the Information Tribunal considered it was reasonable for the public authority to consider its past dealings with the complainant, particularly in relation to its experience of answering one request which would likely lead to still further requests. This had the effect of perpetuating the requests and adding to the burden placed on the authority's resources. The Tribunal said:

'...it may have been a simple matter to send the information requested in January 2007, experience showed that this was extremely likely to lead to further correspondence, further requests and in all likelihood complaints against individual officers. It was a reasonable conclusion for the Council to reach that compliance with this request would most likely entail a significant burden in terms of resources.'
33. The burden placed on the Constabulary was exacerbated by the need for the officers and staff, the subjects of the complaints, to be withdrawn from further contact with the complainant during the course of each investigation. This meant that the small team of people involved with information requests was made still smaller. The Constabulary has continued to address the complainant's requests

under the ACPO/ABI MOU throughout the period of the complaints, even though the department dealing with them was now effectively under-staffed.

Other characteristics of a vexatious request

Does the request have a serious purpose or value?

34. The Constabulary does not contend that the complainant's request is without serious purpose or value. The Commissioner accepts the complainant's purpose is to highlight that Cheshire Constabulary have allegedly made false statements and have been uncivil to a member of the public. He also accepts that the request shows that the complainant has some regard to copyright infringement and a desire to avoid claims of passing off. The Commissioner would however point out that the complainant could give effect to his intention without using the Constabulary's coat of arms, badge or logo.
35. The Commissioner has taken guidance from the decision of the Tribunal in *Coggins v the Information Commissioner (EA/2007/130)*: The Tribunal felt that this agenda of appellant "...amounted to a serious and proper purpose..." (para 22). However the Tribunal also said 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 it [the complainant] was not justified in the circumstances to persist with his campaign..." (para 25). The Commissioner believes the circumstances are similar in this case, taking into account the investigations that have already taken place and is therefore drawn to conclude that the substantive request has no serious purpose or value.
36. The complainant asked the Commissioner to consider two statements made by the Constabulary in its refusal of his request. The first statement the complainant challenges is:
- 'By your own admission you regard these matters as *relatively minor issues*'.
37. The complainant concedes that he referred to his original complaint as a 'relatively minor issue'. He asserts that he has never stated that his complaints were 'relatively minor issues'. The Commissioner asked the Constabulary for evidence of the complainant's use of this term. The Commissioner can confirm that complainant used this exact phrase in a letter to the Chief Executive of Cheshire Police Authority, dated 14 January 2007. The complainant wrote:

'I thought it only reasonable to bring the issues to your attention. Incivility on the phone, obstruction (with regard to releasing data) and attempts to coerce me to adopt a complaints process that I did not agree with, are relatively minor issues Even failing to acquire basic evidence did not surprise me. However, the making of false statement and permitting these to be made are quite different and matters I will not let rest. I will do my utmost to air the issues and ensure others do not fall victim of Cheshire's cavalier and apparently untruthful behaviour.'

38. Notwithstanding the complainant's use of this phrase, the Commissioner accepts that he was referring to the initial complaint and the circumstances surrounding this. It is clear to the Commissioner that the complainant viewed his subsequent complaints as being more serious. Nevertheless, the Constabulary was justified in using this phrase in its refusal notice. It was used as one of its reasons for applying section 14 and the Commissioner accepts it was correct in doing so. The Commissioner considers the Constabulary's other reasons for the application of this section to be more compelling.

Does the request have the effect of harassing the police?

39. He agrees with the Constabulary that the effect of the substantive request is of harassing the force in general and of harassing its current and former employees. The Constabulary has stated to the Commissioner that at least one member of staff has stated that she was the victim of harassment.
40. The Commissioner is satisfied that the request is part of a campaign which has already caused harassment to the police. He accepts the Constabulary's argument that the request is part of an on-going campaign with the aim of causing further harassment.
41. The following statement made by the complainant gave rise to the second reason for the Constabulary's refusal of the request and to the complainant's subsequent challenge.

'It is not my intention to 'pass off' – the last thing I wish to be is mistaken for your constabulary. It may assist you, to ensure the relevant information is released, to be aware that it is my intention to register a domain under which to post information concerning the inability of your constabulary to provide accurate statements. I wish to highlight my plight and protect people from Cheshire police staff whose witness statements are not worth the paper they are written on. The practice of lying appears to be condoned by senior officers. I also have other issues with the complaints process and staff that I wish to air publicly. I shall be posting conversations, or extracts of, together with correspondence which, by its nature, contain the logos referred to.'

42. The Constabulary's refusal stated:

'You have made clear your intention and *explicitly state* that it is your intention to cause Cheshire Constabulary the maximum inconvenience through this request'.

43. The Commissioner has found no statement made by the complainant where he 'explicitly' states his intention of causing maximum inconvenience through his request. It is apparent that the complainant's statement has been characterised by the Constabulary as having that intention, but on the evidence provided the Commissioner cannot agree with this characterisation.

Can the request be characterised as obsessive or manifestly unreasonable?

44. The complaints which brought about the substantive request for information have been brought to a conclusion by the Constabulary and the IPCC. The complainant is not content to accept that these matters are resolved. His continued correspondence has had the effect of keeping his concerns alive despite them having been addressed by an independent body. As noted above in *Coggins v The Information Commissioner (EA/2007/0130)*, at paragraph 25, the Information Tribunal took the view that the complainant was not justified, in the circumstances of that case, to persist with his campaign, and should have let the matter drop. In this case, the complainant is trying to bring his matters to the attention of the general public via his website. He has no regard the burden his requests cause the Constabulary nor any consideration that they distract the Constabulary from its legitimate business. He is not content to let this matter drop, even though it has been considered by the police themselves and by the IPCC. The Commissioner considers that this case is analogous with the Coggins case and the complainant's pursuit of the Constabulary has reached the point where the request of 7 March 2007 is both obsessive and manifestly unreasonable.
45. For the reasons outlined above, the Commissioner agrees with the Constabulary that the complainant's request of 7 March 2007 is correctly characterised as a vexatious request. In arriving at this decision, the Commissioner has had regard to the Information Tribunal's decision in *Mr J Welsh -v- the Information Commissioner EA/ 2007/0088*. In that case, the Tribunal spoke of the consequences of determining a request vexatious. It pointed out that these are not as serious as those of finding vexatious conducts in other contexts and therefore the threshold for vexatious requests need not be set too high. The Commissioner's decision in this case rests on the complainant's request satisfying the significant burden element of his test and more than one of the other characteristics.

The Decision

46. The Commissioner's decision is that the public authority dealt with the request for information in accordance with the Act.

Steps Required

47. The Commissioner requires no steps to be taken.

Other matters

48. The complainant asked the Commissioner to investigate how the Constabulary applied the term 'repetition' to his complaints. The Commissioner agreed to include this matter in his investigation because the Commissioner uses the complainant's correspondence as a measure of determining whether the substantive request causes or caused a significant burden for the Constabulary. A view has to be taken in respect of whether the complainant was justified pursuing his complaints through this correspondence, against the Constabulary's use of these letters and questions in support of its application of section 14.
49. The complainant's initial complaint to the Constabulary was made in respect of a (a now former) member of its support staff. She is alleged to have been rude to the complainant and to have abruptly terminated a telephone call. The Constabulary investigated this complaint and found it to be unfounded. This decision was then appealed to the IPCC who concurred with the Constabulary. The deputy Chief Constable wrote to the complainant informing him that the matter was closed and advised him that there would be no future dialogue regarding his complaints.
50. The complainant did not accept that his complaint had been dealt with properly. He was dissatisfied with the outcome of the investigations and complained that they were conducted in a 'blinker fashion' which allowed 'those individuals interviewed to make false statements'.
51. He complained to the Constabulary again, alleging that its staff had 'lied, wrote intentional falsehoods or subsequently knows these statements to be lies and has done nothing to correct them.'
52. The Constabulary, having already determined the matter closed, informed the complainant that his new allegations were a repetition of this earlier complaint. The complainant made a new complaint to the IPCC.
53. The IPCC agreed with the Constabulary's 'repetition' stance and informed the complainant that it too would not be responding to any further correspondence regarding his complaint.
54. The complaint argues that his complaint concerning the alleged false statements could not be considered as a repetition of the one he made against the support officer. He makes this assertion based on the fact that the alleged false statements were made after his initial complaint against the officer.
55. The IPCC's letter informing the complainant of its decision contained its reasons for this. He was told that the focus of his new complaint, namely the alleged false statements, was considered as part of the original investigation against the support officer.

56. The Commissioner accepts that the alleged false statements occurred after the event which brought about the initial complaint. He understands that the statements flowed from the initial complaint and that they were taken into consideration during that investigation. The Commissioner has no evidence which suggests that the statements were not considered or that they were accepted without question of their accuracy or otherwise. He concludes that the Constabulary and IPCC came to the same but independent decision to determine the matter closed on the basis that it had been properly investigated. The use of the term 'repetition' appears to be justified because the second complaint was in reality a continuance of the first complaint.

Right of Appeal

57. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal
Arnhem House Support Centre
PO Box 6987
Leicester
LE1 6ZX

Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@tribunals.gsi.gov.uk.
Website: www.informationtribunal.gov.uk

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.

Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is served.

Dated the 30th day of October 2008

Signed

**Steve Wood
Assistant Commissioner**

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

Legal Annex

Section 1

General right of access to information held by public authorities

Section 1 of the Act provides that:

- (1) 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 that information communicated to him.
- (2) Subsection (1) has effect subject to the following provisions of this section and to the provisions of sections 2, 9, 12 and 14.

Section 14

Vexatious or repeated requests

Section 14 of the Act provides that:

- (1) Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious.
- (2) Where a public authority has previously complied with a request for information which was made by any person, it is not obliged to comply with a subsequent identical or substantially similar request from that person unless a reasonable interval has elapsed between compliance with the previous request and the making of the current request.