

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

**Date: 06 September 2010**

**Public Authority:** Lancashire County Council  
**Address:** Chief Executive's Office  
Christchurch Precinct  
County Hall  
Preston  
Lancashire  
PR1 8XJ

### Summary

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The complainant requested information about confidentiality policies, information concerning data subjects' providing consent and anything else the public authority thought suitable. The public authority applied section 14(1) to the request. It explained that in its view the request was vexatious. It maintained its position in its internal review. The Commissioner has considered this case carefully and has determined that a reasonable public authority could find the request for information vexatious. He therefore upholds the application of section 14(1) and dismisses the complaint. He also found that the public authority has correctly relied on section 17(6). The Commissioner requires no remedial steps to be taken.

### The Commissioner's Role

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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

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2. This request is between the same parties as a previous case with reference number FS50204940. The Information Commissioner found that the complainant's earlier requests were vexatious. The

Commissioner notes that the requests in that case were for a similar class of information with the focus being on the public authority's policies about sharing data with other authorities. The First Tier Tribunal (Information Rights) (the Tribunal) has recently considered the previous case and agreed with the Commissioner. The Tribunal reference was EA/2009/0080 and its decision can be found at the following link:

[http://www.informationtribunal.gov.uk/DBFiles/Decision/i387/Wise%20v%20IC%20Decision\\_aa.pdf](http://www.informationtribunal.gov.uk/DBFiles/Decision/i387/Wise%20v%20IC%20Decision_aa.pdf)

3. The grounds of appeal in FS50204940 were lengthy. However, there were four themes that the Commissioner regards as relevant to his consideration of this latter request:
  1. The complainant did not intend to harass the public authority or cause distress to its staff;
  2. The complainant did not intend to impose a significant burden in terms of expense and distraction on the Council;
  3. The requests had a serious purpose; and
  4. He believed that he had only made a single request prior to his requests being declared vexatious and that the Commissioner had erred in saying that the history of the requests led them to be correctly characterised as vexatious.
4. The Commissioner will consider the impact of these submissions in the analysis section of this Notice.
5. In brief the sequence of requests has resulted from an allegation being made in 2006 concerning the complainant. A police investigation found no evidence to substantiate this allegation, Social Services at the public authority were informed but no further action was taken. Following this, the complainant complained to Lancashire Constabulary about their handling of the matter. This complaint was considered by the Independent Police Complaints Commission ("the IPCC") who decided not to pursue the complaint further.
6. Following the above, the complainant contacted the public authority on many occasions, mainly via email, in connection with the allegation referred to above, particularly concerning contact between Lancashire Constabulary, Social Services at the public authority and the IPCC. The complainant initiated the public authority's complaints procedure, raising a variety of concerns about the public authority's involvement in the matter including whether the public authority had inappropriately

communicated false information to Lancashire Constabulary. It is the alleged communication that has led to the complainant's interest in the requested information in this case.

## The Request

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7. On 12 March 2009 the complainant made a request for information:

*'I refer to The Information Governance Framework in the Information Sharing Guidance for practitioners and managers (October 2008)*

*The Information Governance Framework in the Information Sharing Guidance for practitioners and managers (October 2008) states at Information sharing governance frameworks at 4.8 "An information governance framework would be expected to include".*

***'Privacy, confidentiality, consent (service users)** The organisation should have in place a range of processes and documentation for service users, such as 'Privacy/Confidentiality Statement', 'Fair Processing Notice', 'Consent' and 'Subject Access.' Relevant staff within the organisation must understand these processes and be able to access documentation where required.*

*Please supply via the FOIA 2000 the documents for services users as indicated at 1,2, 3 and 4 below:*

- 1. LCC's Privacy/Confidentiality statement or the Council's relevant/similar document.*
- 2. LCC's Fair Processing Notice.*
- 3. LCC's 'Consent' documentation.*
- 4. And any other relevant documents that LCC feels are applicable under 'Privacy/Confidentiality' consent for service users.'*

8. On 30 March 2009 the public authority explained that it held no such policies and that its previous responses were accurate and appropriate. It explained that the recent requests must also be considered to be vexatious as in its view their purpose was simply to cause unnecessary inconvenience and expense. It explained that it now believed that section 17(6) applied and that the public authority was not required to give notice of its reasons for the refusal of future requests including the

request dated 12 March 2009. It explained that it was open to the complainant to use his right of appeal to the Information Commissioner's Office.

## The Investigation

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### Scope of the case

9. On 20 May 2009 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider the following points:
  - *He was very concerned that databases maintained by the public authority such as Contact Point were not totally transparent in regards to data sharing.*
  - *The information was in his view vital to the public.*
  - *The public authority has only managed to respond appropriately to one of his previous requests (about expenses of Councillors).*
  - *That he does not believe that he is vexatious or causing problems to the public authority.*
  - *That he only wants the information.*
10. On 24 July 2009 the complainant confirmed that he was satisfied the scope of the investigation was only to look at the handling of the request dated 12 March 2009. Therefore the Commissioner will decide whether the public authority complied with the obligations imposed by the Act in respect to that request. The Commissioner did not receive this email until the 15 December 2009 and this led to some delay in respect to this case.
11. The complainant also raised other issues that are not addressed in this Notice because they are not requirements of Part 1 of the Act. In particular there is no scope for the Commissioner to explore the underlying issue of information sharing in his role as Regulator of the Act. He is limited to only considering the operation of the Act. He also cannot provide any comment about the substantive complaints about underlying matters that the complainant remains unhappy about.

12. He can confirm that the Commissioner has undertaken assessments under section 42 of the Data Protection Act (DPA) in respect to other data protection issues raised by the complainant. These assessments are a separate legal process from the consideration of a complaint under section 50 of the Act and shall not be considered further in this Notice.

## **Chronology**

13. 23 July 2009: The Commissioner emailed the complainant. He summarised the correspondence and asked for the complainant to confirm the scope of the case. He also asked for the complainant to present his arguments about why he believed information was held in this case.
14. 15 December 2009: The complainant asked the Commissioner to provide an update about this case. The Commissioner confirmed that because he had not received a response to the original email he had closed the case.
15. On the same day the complainant wrote to the Commissioner. He explained that the email was sent on the 24 July 2009 and he was surprised that the Commissioner had not received it. He provided a copy of the email that had been sent.
16. Finally, the Commissioner confirmed that he would reopen his investigation now the scope was confirmed and would make further enquiries of the public authority.
17. 17 December 2009: The Commissioner wrote to the public authority. He explained the scope of his investigation and asked for it to provide arguments about why this request was vexatious. He also asked for it to clarify whether it was relying on the same arguments as FS50204940 and for it to account for the time period between the two requests.
18. On the same day the Commissioner wrote to the complainant. He explained that he proposed to consider the grounds of appeal in FS50204940 (summarised in paragraph 3 above) as arguments about why this request was not vexatious and asked for him to provide any further arguments. He asked if possible for the complainant to structure his arguments around the factors in his guidance.
19. On 7 January 2009: The public authority sent its submissions about what recorded information that it held in respect to the request and why it believed that this particular request was vexatious.

20. 19 and 20 January 2009: The complainant provided the Commissioner with three emails and attachments. These explained his position in detail and were structured against the factors in his guidance. These arguments will be discussed further in the analysis below. He also explained that in his view this request was different to FS50204940 as it concerned more general concerns than simply his original complaint. However, he explained that the original complaint was in his view very serious.
21. 20 January 2009: The complainant wrote again to the Commissioner to raise different issues about his own personal data. The Commissioner responded on the same day to explain that this issue did not relate to this case and to explain his general view on how the different regimes connect together. The complainant responded to explain that he was dissatisfied with the general view on how the regimes connect together and that he would request the Commissioner to conduct a separate assessment in respect to these new issues.
22. 15 April 2009: The First Tier Tribunal (Information Rights) decision was promulgated in respect to FS50204940<sup>1</sup>. The Tribunal is the Commissioner's appellate body and while this related to an earlier request of the complainant its verdict is persuasive in relation to the issues it explored. The Tribunal has the power to overturn the Commissioner on both issues of fact and law. It supported the Commissioner's position in respect to this first case.
23. 20 April 2009: The Commissioner received further submissions by the complainant about why the Tribunal decision in his view favoured his position in this case and asked for the Commissioner to take further factors into account such as the real need for transparency and accountability.
24. 26 April 2009: The Commissioner received further submissions by the complainant.
25. 27 April 2009: The Commissioner acknowledged their receipt. The complainant explained that the Commissioner should be sure to take into account that the request was made in the 'context of trying to bring to account serious dishonesty and misconduct from a public authority.'
26. 27 June 2009: The Commissioner received further submissions about why the complainant believed that the public authority had acted inappropriately in respect to the central matter.

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<sup>1</sup> EA/2009/0080 discussed in paragraph 2 above.

## Findings of fact

27. The public authority has received at least ten requests for information from the complainant that preceded the request that is the subject of this case. He has provided a summary of what was asked for in those requests that he believes relate to this request and has not included numerous subject access requests that have also been made:
- (i) 6 July 2007: Request for a copy of the procedure used by Social Services as regards preparing the file notes etc. in relation to contact from outside agencies about children or any other person.
  - (ii) 25 July 2007: Request for copy of Policy regarding disclosure of personal data.
  - (iii) 17 August 2007: Request for information about Lancashire Constabulary's policies regarding disclosure of information.
  - (iv) 8 October 2007: Complainant asks 16 written questions to enable him to pursue his complaint [all of which were answered].
  - (v) 27 October 2007: Complainant asks 110 written questions to enable him to pursue his complaint [these were not individually answered].
  - (vi) 29 January 2008: Request for information about the training of complaints officers.
  - (vii) 5 May 2008: Request for information about written procedures, protocols and policies about information sharing.
  - (viii) 23 July 2008: Six requests for information about the operation of those policies, training, audit and monitoring of personal data.
  - (ix) 12 August 2008: Five requests about information sharing agreements with Lancashire County Council.
  - (x) 21 August 2008: Nine requests about the level of training of complaints officers, the handling of his complaints, their accountability, interviewing and quality control of them.
  - (xi) 27 August 2008: Request about how a specific individual handled his complaint.

- (xii) 27 August 2008: Another request for information about how a specific individual handled his complaint and how it was managed.
- (xiii) 20 February 2009 – request for information about what was on its publication scheme in respect to information sharing.

## Analysis

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### Exclusion

28. Section 14(1) is an exclusion that provides that –

*“Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious”<sup>2</sup>.*

29. When assessing vexatiousness the Commissioner adopts the view of the Information Tribunal (the ‘Tribunal’) decision in *Ahilathirunayagam v Information Commissioner’s Office* (EA/2006/0070) (paragraph 32); that it must be given its ordinary meaning so would be likely to cause distress or irritation. The enquiry is based on objective standards. This has been reaffirmed by the Tribunal in *Gowers v Information Tribunal and London Camden Borough Council* (EA/2007/0114) (paragraph 27). The Commissioner has developed a more detailed test in accordance with his guidance but it is important to understand that it has developed from these general principles and these guide him in applying his test.
30. The Commissioner also endorses the Tribunal’s consideration of this point in *Mr J Welsh v the Information Commissioner* (EA/ 2007/0088) (paragraph 21) where it stated:
- ‘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. When considering section 14, the general principles of FOIA that the identity of the requester is irrelevant, and that FOIA is purpose blind, cannot apply. Identity and purpose can be very relevant in determining whether a request is vexatious. It follows that it is possible for a request to be valid if made by one*

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<sup>2</sup> All sections of the legislation referred to in this Notice are provided in full in the legal annex that is attached to the bottom of it.



*person, but vexatious if made by another; valid if made to one person, vexatious if made to another.'*

31. The Commissioner has taken into account the complainant's previous interaction with the public authority when determining whether the request can be correctly characterised as vexatious. This means that even if the request appears reasonable in isolation, it may be vexatious when considered in context. The public authority has acknowledged that in this case the request by itself may not be vexatious, but argues that it is vexatious within its context. It argues that it should be entitled to maintain this line as this request related to the underlying complaint that had already been dealt with numerous times previously.
32. The Commissioner has issued 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 Commissioner will consider the context and history of the request as well as the strengths and weaknesses of both parties' arguments in relation to some or all of the following five factors to reach a reasoned conclusion as to whether a reasonable public authority could refuse to comply with the request on the grounds that it is vexatious:
  - (1) whether compliance would create a significant burden in terms of expense and distraction;
  - (2) whether the request is designed to cause disruption or annoyance;
  - (3) whether the request has the effect of harassing the public authority or its staff;
  - (4) whether the request can otherwise fairly be characterised as obsessive; and
  - (5) whether the request has any serious purpose or value.
33. When considering the public authority'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)(at paragraph 26). 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 conduct in other contexts and therefore the threshold for vexatious requests need not be set too high.

34. The public authority has indicated in its arguments to the Commissioner that it believes that all the factors may be relevant in this request and this led it to the conclusion that this request was vexatious. The Commissioner has looked at each of these factors in turn.

*Does the request constitute a significant burden in terms of expense and distraction?*

35. When considering this element of his test the Commissioner endorses the Tribunal's approach in *Welsh* (in paragraph 27). It stated that whether a request constitutes a significant burden is

*"...not just a question of financial resources but also includes issues of diversion and distraction from other work..."*

36. The Commissioner therefore expects a public authority to show that complying with the request would cause a significant burden both in terms of costs and also diverting staff away from their core functions.

37. The Tribunal in the case of *Gowers v the Information & London Borough of Camden* (EA/2007/0114) emphasised that previous requests received may be a relevant factor:

*'...that in considering whether a request is vexatious, the number of previous requests and the demands they place on the public authority's time and resources may be a relevant factor'* (paragraph 70 of its decision).

38. It is also necessary for the Commissioner to take into account the complainant's previous interaction with the public authority when making a determination of whether the request represents a significant burden to a public authority as noted above. This means that even if the request does not impose a significant burden when considered in isolation, it may do so when considered in context.

39. The public authority asked for the Commissioner to take into account the following arguments about the request's context, which the Commissioner considers to be relevant to the burden of the request:

- The public authority has been in continuous correspondence with the complainant about the complaint he has about the sharing of data from March 2007. The volume of correspondence that has been received on this matter is considerable and can be both long and complex.

- The complainant has also made a large number of requests for information. A summary of thirteen of those requests that preceded this one can be found in the findings of fact section above.
- The Commissioner has determined a previous case about requests (vii) to (xii) in FS50204940. This decision found that to the extent that the information is not personal data the requests were vexatious within the meaning of section 14(1) because for amongst other things they constituted a significant burden. The First Tier Tribunal (Information Rights) has also considered those requests and has found the same.
- The substantial matter that has been made has been through its complaints process, the Regulator (the Information Commissioner in an Assessment under the DPA) and is now being considered by the Local Government Ombudsman.
- The named social workers that were involved in the substantive complaint have also been reported by the complainant to the General Social Care Council (GSCC) who did not uphold his complaints.
- The public authority believes that it is important to present a consistent line in relation to requests that relate to the sharing of data from the complainant as any other position would lead to considerable further correspondence and further resources would be required.
- It explained that its complaints process had also reached the view that it would not correspond further with the complainant in respect to the central complaint.

40. The complainant disagreed with the public authority's view about this factor. He explained:

*'I dare say that if LCC had been in any way honest as regards my concerns then it would have been very distracting and may have imposed a significant burden But this only to their lack of integrity, honesty and probity. This because their blatant and significant misconduct would have been exposed for all to see. However I certainly never intended to do so and if this did result it was purely LCC's own fault.*

*I only want to address this briefly and rely on the documents that you mention in FS50204940 and the additional documentation*

*that I will provide with this complaint. However the answer to this point is no because I was merely attempting to address significant and deliberate misconduct at LCC that involved abusing the private and confidential personal data of a young child. LCC has lied to me for over two years and in doing so they have deliberately withheld information that may have highlighted and evidenced their wilful dishonesty and misconduct [information redacted]. In FS50204940 LCC consistently lied to me and withheld their full knowledge of the actual nature of the disclosures made and the involvement in this of a senior manager namely [individual redacted]. Indeed throughout the ICO's investigation in FS50204940 LCC withheld their knowledge of the truth of the matters from the ICO and therefore misled the ICO as well as me.'*

41. The arguments he referenced from FS50204940 that the Commissioner considers relevant are:
- 1. The complainant did not intend to impose a significant burden in terms of expense and distraction on the Council; and*
  - 2. He believed that he had only made a single request prior to his requests being declared vexatious and that the Commissioner had erred in saying that the history of the requests led them to be correctly characterised as vexatious.*
42. In respect to the first point intent is not required. The Commissioner considers whether there has been a significant burden in terms of expense and distraction. It is an objective test, so the question to be asked is, can a reasonable public authority consider the request in its context to be a significant burden in terms of expense and distraction?
43. In respect to the second point the Commissioner does not agree that the complainant's requests were found vexatious on making his second request. The Commissioner believes that this is incorrect. The complainant had made several requests for information to the public authority before his request was declared vexatious. The first request was declared vexatious was request (vi) in the illustrative schedule above. The Commissioner believes that the fact he did not refer to the Act in those previous requests is of no assistance to him: a request for information which meets the criteria under section 8 of the Act is a request for information irrespective of whether the requester refers to the Act or not. The only requirements for a valid request are a name, an address (that could be an email address) and a description of the information requested.

44. When considering the facts the Commissioner is satisfied that a great deal of the public authority's time has already been spent dealing with previous requests and with complainant's associated correspondence. He finds that the request is connected to the previous requests and in this context, it creates a significant burden. The request dated 12 March 2009, taken in the context of the hours spent dealing with the previous correspondence about the complaint and the resulting distraction from the public authority's core purposes, would impose a significant burden in terms of both expense and distraction.
45. The Commissioner has considered the reasoning in the Tribunal decision of *Coggins v Information Commissioner* [EA/2007/0130] about what constitutes '*a significant administrative burden*' and is satisfied that the requests in this case if dealt with without utilising section 14(1) would have contributed to a '*significant distraction from its core functions*' (paragraph 27 of its decision).
46. The Commissioner has also considered in this determination the approach of the Information Tribunal in *Betts v The Information Commissioner* (EA/2007/0109), where the Tribunal indicated that it would be 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.'*
47. The Commissioner has examined the pattern of the requests and has no doubt that this was what was happening in this case. He believes that the public authority has demonstrated that the complainant when unhappy with any response received from a public authority will continue to correspond in an effort to sway the public authority to respond in a manner more to his liking. It must therefore be accepted that although the public authority 'may' be able to provide a response to the complainant on this one issue, it would seem reasonable for the public authority to consider that compliance would lead to further correspondence, thereby imposing a significant burden.

48. Assessing all the circumstances of the case the Commissioner has found that the particular request in its context would impose a significant burden in terms of expense and distraction for the reasons outlined above. He therefore finds in favour of the public authority on this factor. The Commissioner finds that this is a significant factor in favour of applying section 14(1). He notes that the Tribunal in the complainant's previous case with the public authority came to the same conclusion.

*Was the request designed to cause annoyance and disruption?*

49. The public authority confirmed that it believed that this particular request appeared to it to be made with the intent to cause it annoyance and disruption. It explained that it believed that the fourth part of the request was left deliberately vague to compel it to re-enter correspondence with the complainant about the central matter as it required clarification that would be very difficult to obtain.
50. In addition it explained that the pattern of the requests showed that the complainant would request an internal review whatever the response that he received. He evidenced this by relying on the request dated 19 February 2009 where it explained that the model publication scheme framework did not specify specific policies should be in a publication scheme, but that it was prepared to supply the information sharing templates. Within fifteen minutes the complainant responded branding the response 'laughable', the publication scheme not 'fit for purpose' and commenting that the public authority 'hasn't got the slightest clue what its officers are up to'. It explained that the pattern shows provides detailed evidence about why it believes that the chief motives are to cause annoyance, disruption and harassment.
51. The complainant argued that his request was not designed to cause annoyance and disruption. He explained:

*'I dare say that if LCC had been in any way honest as regards my concerns then it would have been very disruptive and annoying. This [is] because their blatant and significant misconduct would have been exposed for all to see. However I certainly never intended to do so and if this did result it was purely LCC's own fault'.*

He then repeated the second paragraph quoted in paragraph 40 above omitting the last sentence.

52. The Commissioner notes that this factor relates to the complainant's intention at the time of making the request and can be difficult to prove. The Commissioner has received the arguments above and does understand how the public authority gained the impression from comments made by the complainant that it was the complainant's intention to cause annoyance and disruption. However, the Commissioner does not believe that the evidence is adequate to find in the public authority's favour on this factor. The Commissioner notes that the complainant has a long standing interest in the Council's data protection policies and may want to ensure that the events he alleged occurred do not occur again. He believes that the complainant's intent was to determine whether there is new information and if so, to receive it and not to annoy and disrupt the public authority in this case.
53. The Commissioner therefore believes that this factor does not support the application of section 14(1) in this case.

*Did the request have the effect of harassing the public authority or its staff?*

54. The complainant contends that there is no evidence of any of his requests having the effect of harassing the public authority or its staff and that he did not intend to do so. He explained:

*'I dare say that if LCC had been in any way honest as regards my concerns then it would have been very harassing. This [is] because their blatant and significant misconduct would have been exposed for all to see. However I certainly never intended to do so and if this did result it was purely LCC's own fault.'*

He then repeated the second paragraph for the burden point above omitting the last sentence.

55. The argument he referenced from FS50204940 that the Commissioner considers relevant is:
- The complainant did not intend to harass the public authority or cause distress to its staff.
56. The Commissioner notes that intent is not required for his test. The complainant has also asserted that the requests for information have been polite. While the Commissioner accepts that the requests on their own (as distinct from other correspondence from the complainant) do not reveal any language which may be intended to harass or cause distress, this is not the nature of the test. The test is an objective one and whether the request in its context would have the **effect** of harassing a reasonable public authority.

57. The public authority claimed that the volume of previous correspondence and its nature led to its staff being harassed unnecessarily. In addition, it has provided the Commissioner with two bundles of correspondence highlighted to show occasions when the public authority considered that the complainant had adopted an aggressive, accusatory and harassing tone in correspondence relating to this matter. The evidence shows that the complainant's correspondence was littered with many examples of language which would have had the effect of harassing its staff. The complainant frequently wrote to the public authority accusing it at various times of misconduct, lying, negligence, corruption, incompetence, being sleazy and arrogant, engaging in illegal activities, and deliberately failing to keep proper records.
58. The Commissioner believes that the comments of the complainant require illustrating to confirm their nature and why they would have the effect of harassing the public authority's staff. He has therefore included a number of examples:
- 18 October 2007: 'I am afraid that this is the best example of 'PULL THE OTHER ONE I HAVE ENCOUNTERED' and I do quite enjoy Beadle's About. However if Lancashire County Council persist in this crass attempt at a cover up and suspiciously corrupt conspiracy then matters will become much, much worse'.
  - 19 August 2008: 'Lancashire County Council have unlawfully invaded [information redacted]...Further all your internal investigations have been a corrupt whitewash with self serving self preservation at its heart... The honesty, integrity and lawfulness of a large public authority is being impugned by a vexatious troublemaker and nothing is done about it. Why not?... premeditated and deliberate misconduct at the public authority.
  - 26 August 2008: 'If this continuing childish intransigence and unlawfulness continues, with the attendant ignorance of the Commissioner's guidance....'
  - 20 February 2009: 'Quite frankly your response is laughable...'
  - 10 December 2009 [in not accepting an apology that resulted from the complaint process]: 'Can I please confirm that I will not be accepting the apology contained therein because the body corporate as a whole is a lying, self serving and corrupt sham? This is one thing that the body as a whole has in common with [name of three individuals] etc etc'.



59. As is clear from the above, the complainant often wrote in such a way that would have had the effect of harassing any reasonable public authority. The Commissioner notes from inspecting the correspondence that many of the complainant's emails and letters were long, involved and that some comments were highlighted in bold, underlined or written in capitals (as above) to accentuate certain comments. Additionally, the complainant often made very serious allegations, singling out individual officers and threatened to take legal action. The complainant's comments generally tended to indicate that the Council would not be able to satisfy him and that his behaviour would continue to escalate. In the Commissioner's view, these factors would have increased the harassing effect of the correspondence.

60. The Tribunal in EA/2009/0080 explained that it rejected the complainant's arguments that the public authority's actions provide justification for this level of accusatory and abusive correspondence. IT explained:

*'[The complainant] has addressed the Tribunal at length in relation to his underlying complaints. Whilst it provides the context of his case, it is not material to the decision because it is not the Tribunal's role to determine the merits of these. The Tribunal observes that the complaints have been investigated numerous times, apologies offered and record keeping methods strengthened. We are satisfied that in the context of such provocative correspondence even a politely worded information request would add to the distress and harassment encompassed within [the complainant]'s campaign against the Council and its staff.'*  
(At paragraph 31)

61. The Commissioner endorses the above paragraph. He also believes that the request implies he is attempting to reopen issues that have already been dealt with in the appropriate channels and therefore this also has the effect of harassing the authority. Indeed the complainant has made it clear through his behaviour that the complainant will continue to make further requests where they relate to the handling of his grievance. In addition as the Tribunal commented in his earlier case the complainant gave the impression that there was no way of satisfying him and his behaviour would continue to escalate. The Commissioner therefore believes that this factor also supports the application of section 14(1) in this case and he has believes it is right to place considerable weight upon it.

*Can the request be characterised as obsessive?*

62. The public authority indicated that given the volume, frequency and nature of the requests and correspondence that it believed that this request was obsessive. The Council stated that the complainant had submitted a large amount of correspondence to the Council since March 2007. The Commissioner has seen a selection of the complainant's correspondence both before the requests considered in FS50204940 and after that request and before this request dated 12 March 2009. He notes from this evidence that the complainant contacted the Council at regular intervals multiple times within the same month. As well as the frequency of the contact, the Commissioner notes that over the period of time in question, the complainant's correspondence had been voluminous. The evidence also showed that the complainant had made a number of other requests for information from the Council before the Council took the decision to refuse the requests which are the subject of this investigation. It is the Commissioner's view that this level of contact was indicative of the complainant's obsessive approach.
63. It is clear to the Commissioner that this request stems from his original concern about communication that the Council had had with Lancashire Constabulary and the IPCC. The Commissioner's experience has shown that many of the requests he has previously found to be obsessive have been set in the context of a longstanding grievance or dispute. He acknowledges that a request will not necessarily be vexatious because a complainant has sent a series of correspondence and requests in relation to a background grievance. In some cases, it will be possible to justify the contact as reasonable persistence.
64. The evidence shows that the complainant was very concerned about contact which he believed had occurred between Lancashire Constabulary, the IPCC and the Council relating to the allegation made about him. This is entirely understandable. When he approached the Council about this matter, it initially stated that it had no evidence that there had been such contact. It is only when the complainant approached Lancashire Constabulary and the IPCC independently to obtain details of the contact that the Council conceded that there had in fact been contact. Again, it is understandable that the complainant would wish to pursue this matter to establish the precise details of the contact and to complain about the Council's initial failure to confirm that this contact had in fact occurred. However, the question for the Commissioner is not whether the complainant was ever justified in pursuing the matter in general, it is whether the requests he made were obsessive by the time he made them in view of what had already happened by then.

65. The Commissioner notes that the Council demonstrated its willingness to engage with the complainant over many months as it was in contact with the complainant from March 2007 onwards. The Council responded to all of the complainant's information requests prior to the requests which are the subject of this complaint and provided the information it held with the exception of a request on 29 January 2008 which the Council considered was vexatious. The Commissioner also notes that in October 2007 the Council met with the complainant in person to discuss his concerns at which point the complainant submitted a list of 16 questions. In its detailed stage 1 response dated 12 October 2007, the Council responded to all of the complainant's questions. In brief, it concluded that it had not breached the DPA by communicating information inappropriately or falsely. It explained the circumstances of the communication and what was said and offered to clarify this with the relevant parties. The Council also acknowledged that it failed to establish that there had been contact initially and it apologised for this.
66. The Council also held an Appeals and Complaints Committee Hearing on 10 December 2007 at which the complainant was permitted to attend and personally make his own representations, having provided the Council with a list of a further 110 questions. Following this, the Committee set out its position. It apologised again for the Council's failure to establish that the disputed contact had occurred. It noted that the complainant had made a complaint to the ICO alleging that the Council had breached the DPA which had not been upheld. It stated that it was a matter for the complainant whether he wished to contest the Commissioner's view and that it would be inappropriate for the Council to comment any further. The Council also acknowledged that its record keeping on this occasion had been deficient and it stated that it would be stressing to the relevant department the importance of good record-keeping. It made it clear that the complainant had now exhausted the Council's complaints procedure. It stated that if the complainant remained dissatisfied he could consider contacting the Local Government Ombudsman ("the LGO").
67. As already mentioned in the above paragraph, by this time the complainant had been provided with the outcome of a separate complaint considered by the Commissioner relating to the complainant's allegation that the Council had breached the DPA. The Commissioner's conclusion was that there was no strong likelihood that the Council had breached the DPA. The Council also explained to the Commissioner that in January 2008, the General Social Care Council decided not to pursue a complaint made by the complainant relating to three social workers involved in this matter.

68. Despite the above, the complainant continued to submit regular emails to a variety of Council staff members, including councillors and the Chief Executive. He also made the requests which have formed the subject of this complaint. Having considered the nature of the complainant's contact with the Council, it was the Commissioner's view that there was no reasonable prospect of being able to satisfy the complainant in this case. Indeed, the evidence tends to show that engagement with the complainant often only served to generate further questions and allegations. As an example, following the outcome of stage 1 of the Council's complaints procedure in which the complainant was supplied with responses to the 16 questions he had posed, the complainant submitted a further 110 questions.
69. The complainant contends that his request for information is not obsessive. To summarise:
1. He never contacted the public authority about the substance of his main complaint after he referred the first case to the Commissioner.
  2. This complaint was left with the Commissioner and was not chased up by him either with the public authority or the Commissioner.
  3. He believes that LCC would not have replied to any of his requests whatever the circumstances and his request had a clear and justified purpose.
  4. He merely wants the misconduct to be addressed properly as in his view the public authority was dishonest.
  5. He feels fully exonerated from other evidence he has obtained in his general complaint that FS50204940 was not vexatious and attached evidence of why he believes this
  6. That he believes that the evidence that he has now obtained has revealed serious impropriety and this should be considered.
70. The first two points are not relevant to the necessary considerations of this case. That is whether the request dated 12 March 2009 can be characterised as obsessive.
71. In respect to point 3, the public authority explained that it has been prepared to respond to requests of a different nature. The Commissioner has considered previously the public authority's handling

of a request by the complainant about the expenses of two County Councillors. It explained that it provided a vast amount of information and undertook over 22 hours work with regard to it. It did not rely on the complainant being vexatious. The result was that the complainant accused its staff of being ignorant and the public authority of having no idea of what expenses had been claimed. However, he did not dispute that he had received some information that was relevant to his request. The Commissioner finds that the complainant's statements about the public authority failing to reply to any of his requests were not justified.

72. In respect to the last three points the Commissioner believes that these relate to the complainant's substantive complaint and not this information request which asks for current policies and procedures about information sharing. It is not in his jurisdiction to investigate further matters about the substantive complaint.
73. The Commissioner believes that the right to access information is very important, but also that it is important that public authorities are able to use their resources to effectively carry out their functions. The Commissioner believes that public authorities should be able to rely on section 14(1) where a sequence of requests that have already been dealt with becomes a continuous burden on the public authority's resources.
74. The Commissioner has concluded that a number of factors support the Council's position that the requests were obsessive in this case; the frequency and volume of contact from the complainant stemming from the same grievance, the evidence of the Council's reasonable engagement with the applicant in an attempt to resolve the problems, the fact that the complainant continued to send correspondence and requests to the Council despite the outcome of two complaints to other organisations and the Council's clear statement that it could not assist the complainant any further and the indication that there was no reasonable prospect that the Council would be able to satisfy the complainant. The Commissioner accepts that at times there is a thin line between obsession and persistence and each case should be determined on its own facts. In the circumstances, the Commissioner does not consider that the complainant's contact with the Council in relation to this matter could be described as reasonable persistence and he has concluded that the requests could fairly be described as obsessive.
75. He therefore believes the public authority was correct in characterising this request as obsessive and finds in favour of the public authority on this factor. He notes that the Tribunal in the previous case also said

that it believed the Commissioner was right that the request was obsessive.

*Did the request have value and/or a serious purpose?*

76. The Information Tribunal in *Coggins v Information Commissioner* [EA/2007/0130] (at paragraph 20) stated that it:

*“could imagine circumstances in which a request might be said to create a significant burden and indeed have the effect of harassing the public authority and yet, given its serious and proper purpose ought not to be deemed as vexatious . For instance, one could imagine a requester seeking to uncover bias in a series of decisions by a public authority, covering many years and involving extensive detail, each of fairly minor importance in themselves but representing a major issue when taken together. This might indeed be experienced as harassing but given the issue behind the requests, a warranted course of action.”*

77. In light of this the Commissioner has considered whether the request in this case has serious purpose and/or value, and if so, whether it would be inappropriate to deem them vexatious even when taking into account the factors outlined above which he is satisfied are met.
78. The complainant argued his request has value and a serious purpose because:

*‘I refer to all of the submissions above. The evidence that came to light on 26 March 2008, 06 October 2008 (sent to ICO on 10/10/08) and that which came to light on 19 October 2009 demonstrate that my request had a serious purpose and value when viewed in terms of FS50204940. All of these items of evidence demonstrate blatant and wilful misconduct and dishonesty from LCC during the actual disclosures and beyond between February and June 2007 and further dishonesty in March/April 2009. LCC were lying to the LGO at around the same time as the request was made in FS50250070. If I hadn't pursued my concerns because of the highly disreputable, in my opinion, conduct of LCC then this vital evidence may well have never emerged. However this type of evidence may well have been forthcoming from LCC if any of the requests had been answered clearly and properly. LCC cannot ignore the Freedom of Information legislation purely because to do so may provide evidence of their misconduct. This is particularly relevant to the requests that should have been dealt with via the subject access*

*procedures as recognised by the ICO in the DN of FS50204940. In any event all of the disclosures, if they were made truthfully and properly, could well have highlighted the type of misconduct as demonstrated previously in this submission. This further extends to what may have been disclosed in FS50250070.'*

79. The Council has presented no specific arguments that support of this factor being met. The Commissioner notes that it could be argued the complainant was seeking access to recorded information that he believed would help him to challenge the Council's position further.
80. The Commissioner accepts that the complainant believes that he has a serious purpose in making the request. He accepts that the main incident was traumatic for him and that it is right that he pursued his concerns about the alleged incident. He also acknowledges that the complainant's accusations are serious and that if found proven then they would constitute misconduct.
81. However, against this the Commissioner must consider that the main issue has been considered through the internal appeals, the Local Government Ombudsman and the Regulator – the Information Commissioner (in respect to data protection matters). In addition previous requests have been considered by the Information Commissioner and found vexatious. The Tribunal has also upheld this decision and explained that in its view the request considered in its context has no serious purpose. The Commissioner also agrees that the fact that the DPA allegations had already been independently considered alleviates the value behind the request and that the Tribunal's view should be seen as persuasive as it has had the opportunity to consider a good deal of the same information as he has in this case.
82. In addition the Information Commissioner is the responsible regulator for both publication scheme issues and in respect to data sharing issues between public authorities. He has been provided the statutory responsibility to consider these issues and can take formal action where appropriate. In this case the complainant is continuing to pursue matters that the Commissioner has looked at and decided that no further action would be appropriate. The Commissioner has already drawn the issue about the lack of contemporaneous, formal record keeping to the Council's attention with the object of promoting best practice.
83. The Commissioner also notes that the complainant is in possession of the confidentiality policy that was relevant at the time of the incident. He knows this is the case as the complainant has provided the Commissioner with a copy of it in FS50204940. In balancing the

arguments, the Commissioner believes that the request does not have a serious purpose or value in the circumstances.

84. He has considered the context of the request and has not been convinced by the arguments that he has received from the complainant above those that have already been heard in the Tribunal. He agrees with the Tribunal that there comes a time when in light of what has gone before there is no longer a serious purpose and this matter has reached this point. He agrees that the complainant is not likely to be satisfied whatever he receives and that this request were part of his campaign against the public authority.<sup>3</sup> He therefore finds that this factor favours the application of section 14(1) and finds in favour of the public authority in this case.
85. Even had he believed that the request had a serious purpose, he believes that its significance must be considered together with the other circumstances in this case. In this instance he is not persuaded that sufficient weight can be placed on any serious purpose to make it inappropriate to deem the requests vexatious in this case. This is in view of the information that has already been made available to the complainant, the overall context and nature of these particular requests and his conclusions above about other aspects of his case would mean that the Commissioner believes this request would have remained vexatious even if it had a serious purpose.

*Could a reasonable public authority refuse to comply with the request on the grounds that it is vexatious?*

86. The Commissioner recognises that there is a fine balancing act between protecting a public authority from frivolous applications and the promotion of the transparency in the workings of an authority.
87. The Commissioner has considered all the evidence presented, including the history and context of the request. On the basis of the circumstances of this case, the Commissioner finds that a reasonable public authority would find the complainant's request of 12 March 2009 vexatious.
88. 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], where the Tribunal commented that the threshold for vexatious requests need not be set too high. He notes that it is not necessary for every factor to be made out from his

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<sup>3</sup> The Tribunal had similar reasoning for its conclusion. This can be found in paragraphs 40 to 51 of the Tribunal's decision in EA/2009/0080.



guidance. In this case he has found four factors are satisfied in this case. The Commissioner's decision in this case therefore rests on the complainant's request causing a significant burden, having the effect of harassing the public authority, have no serious purpose in its context and being obsessive.

89. The Commissioner also notes that the First Tier Tribunal (Information Rights) considering an earlier series of requests also found that they were vexatious. While this decision relates solely to the request dated 12 March 2009, he believes that the verdict of the Tribunal supports the outcome in this case.
90. The public authority has confirmed that it will treat each new request on its own merits. It explained that it was prepared to answer new requests which were not concerning the underlying complaint about the data sharing. The Commissioner believes that this approach is correct. It is essential that it does not treat the requester, rather than the request, as being vexatious.

#### *Section 17(6)*

91. The public authority applied section 17(6) in this case. This provision is designed so that where a series of requests are vexatious, the public authority is not required to continue issuing new notices for every request it receives on the same subject. Instead it can issue one section 17(6) notice and comply with the Act in respect to future requests on those matters.
92. The Commissioner must therefore consider whether the public authority has been applied correctly in this case.
93. There are three requirements for section 17(6) to apply:
  - (i) The public authority is relying on section 14(1).
  - (ii) It has given the applicant a notice stating this.
  - (iii) It would in all circumstances be unreasonable to serve a notice under subsection 17(5) to the current request.
94. The first two elements are clear in this case. The public authority has issued a number of notices about it applying section 14(1) to previous requests.

95. When considered whether in all circumstances it would be unreasonable to serve a notice under section 17(5) the Commissioner has carefully considered the following:
1. The information request arose out the same grievance namely what he believed to be inappropriate sharing of inaccurate personal data.
  2. That this has expanded to include challenges to the investigation, its complaints procedure and its record keeping.
  3. This was a campaign using every available method of challenge.
  4. When these were exhausted he persisted and was provocative.
  5. There is considerable information to support his stated aims already.
  6. He does not wait for a response before making the next request.
  7. He was never going to be satisfied with the response.
  8. The Information Commissioner has found that a previous request about the underlying matter being vexatious. The First Tier Tribunal (Information Rights) has supported his position in the first case.
96. As stated above it is important that public authorities receive protection from meritless applications under the Act. He notes that this must be the intention of including section 17(6) in the Act.
97. The Commissioner has considered that on the circumstances of the case it was unreasonable for the public authority to be required to issue a separate notice in this case. He believes that this is the case because the weight of the eight elements above would render the issuing of a separate notice unreasonable. He therefore finds that for this request section 17(6) has been appropriately applied.

## The Decision

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98. The Commissioner's decision is that the public authority dealt with the following elements of the request in accordance with the requirements of the Act:
- *It correctly applied section 14(1) to the request for information dated 12 March 2009. It was therefore excluded from the duty to comply with section 1(1)(a) or section 1(1)(b) in respect to it.*
  - *It correctly applied section 17(6) in respect to the current request and future requests of the same subject matter.*

## Steps Required

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99. The Commissioner requires no steps to be taken.

## Other matters

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100. Although it does not form part of this Decision Notice the Commissioner wishes to highlight the following.

101. The outcome of this case also means that the public authority may be able to rely on section 17(6) in the future. In the Commissioner's view any further requests from the complainant about its data protection policies, information sharing, policies on its publication scheme or its complaints process in respect to how it handled his original allegation can be reasonably considered to be covered by section 17(6). This is because it is unreasonable to expect the public authority to have to issue any further notices in respect to these matters. He notes that this does not exclude it from its separate duty to consider subject access requests under section 7 of the DPA where the requests are for the personal data of the complainant or from responding appropriately to requests about other matters.

## Right of Appeal

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102. 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,  
Arnhem House,  
31, Waterloo Way,  
LEICESTER,  
LE1 8DJ

Tel: 0845 600 0877

Fax: 0116 249 4253

Email: [informationtribunal@tribunals.gsi.gov.uk](mailto:informationtribunal@tribunals.gsi.gov.uk).

Website: [www.informationtribunal.gov.uk](http://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 06 day of September 2010**

**Signed .....**

**Andrew White**  
**Group Manager Complaints Resolution**

**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.

(3) Where a public authority—

(a) reasonably requires further information in order to identify and locate the information requested, and

(b) has informed the applicant of that requirement,

the authority is not obliged to comply with subsection (1) unless it is supplied with that further information.

### **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.

### **Section 17**

#### Refusal of request

Section 17 of the Act provides that:

(1) A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which—

(a) states that fact,

(b) specifies the exemption in question, and

(c) states (if that would not otherwise be apparent) why the exemption applies.

(2) Where—

(a) in relation to any request for information, a public authority is, as respects any information, relying on a claim—

(i) that any provision of Part II which relates to the duty to confirm or deny and is not specified in section 2(3) is relevant to the request, or

(ii) that the information is exempt information only by virtue of a provision not specified in section 2(3), and

(b) at the time when the notice under subsection (1) is given to the applicant, the public authority (or, in a case falling within section 66(3) or (4), the responsible authority) has not yet reached a decision as to the application of subsection (1)(b) or (2)(b) of section 2,

the notice under subsection (1) must indicate that no decision as to the application of that provision has yet been reached and must contain an estimate of the date by which the authority expects that such a decision will have been reached.

(3) A public authority which, in relation to any request for information, is to any extent relying on a claim that subsection (1)(b) or (2)(b) of section 2 applies must, either in the notice under subsection (1) or in a separate notice given within such time as is reasonable in the circumstances, state the reasons for claiming—

(a) that, in all the circumstances of the case, the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing whether the authority holds the information, or

(b) that, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

(4) A public authority is not obliged to make a statement under subsection (1)(c) or (3) if, or to the extent that, the statement would involve the disclosure of information which would itself be exempt information.

(5) A public authority which, in relation to any request for information, is relying on a claim that section 12 or 14 applies must, within the time for complying with section 1(1), give the applicant a notice stating that fact.

(6) Subsection (5) does not apply where—

- (a) the public authority is relying on a claim that section 14 applies,
- (b) the authority has given the applicant a notice, in relation to a previous request for information, stating that it is relying on such a claim, and
- (c) it would in all the circumstances be unreasonable to expect the authority to serve a further notice under subsection (5) in relation to the current request.

(7) A notice under subsection (1), (3) or (5) must—

- (a) contain particulars of any procedure provided by the public authority for dealing with complaints about the handling of requests for information or state that the authority does not provide such a procedure, and
- (b) contain particulars of the right conferred by section 50.