

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 14 October 2010

Public Authority: Northumbria Police
Address: North Road
Ponteland
Newcastle upon Tyne
NE20 0BL

Summary

The complainant asked Northumbria Police (“the public authority”) to provide information relating to the cost of a police operation. As the subject matter was deemed to be the same as a number of previous requests, the public authority refused using the exclusion under section 14(1) of the Freedom of Information Act 2000 (“the FOIA”). Having considered this request, alongside further requests and complaints made by the complainant, the Commissioner has decided that the public authority was correct to refuse the request on the basis that it was vexatious. However, it was in breach of its procedural obligations under the Act.

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

2. The complainant’s request is part of a long-running dispute that he has had with Northumbria Police. He was committed to Crown Court over 10 years ago and was sentenced to 18 months imprisonment. His Indictment contained 13 counts relating to the Control of Trade in Endangered Species (Enforcement) Regulations 1985. The matter was

subject to an appeal against sentence but was dismissed. The complainant has maintained his innocence and has continually striven to prove this. Internal investigations by both the police and the IPCC have not found in his favour and he remains convinced that there has been a 'cover up'.

3. The Commissioner has previously received a complaint under the terms of the Data Protection Act (the "DPA") regarding the public authority's handling of requests the complainant has made for his personal data. In his response the Commissioner advised the complainant:

"With your complaint you have provided evidence including: 448 pages of requests for information you have sent to the force by email; 103 pages of 'questions the police refuse to answer'; and, 270 pages detailing evidence you feel they have withheld from you. You detail 1000s of questions you have asked of Northumbria Police.

You appear to have misunderstood the requirements of the DPA. The DPA does not provide you with the right to 'cross examine' Northumbria Police in relation to their actions and the court case involving you. The DPA, similar to the FOIA, only provides individuals with a right of access to a copy of information held by the organisation. There is no obligation on the organisation to: answer questions; compile reports on peoples' request; provide explanations; or otherwise create new information in response to access requests.

The Court of Appeal has very clearly asserted that people cannot extend the access rights provided under the Data Protection Act 1998 because they need additional information for legal proceedings. They direct people requiring disclosure of specific documents to the Court and Tribunal Procedure Rules of Disclosure. The Disclosure process is the legal mechanism formally designed to permit people access to documents necessary and relevant for the legal proceedings involved. If you require copies of specific documents for legal proceedings, I would recommend you utilise Part 5 of the Court and Tribunal Procedure Rules".

4. The complainant subsequently stated that he had made requests under the DPA. The Commissioner made an assessment under the terms of the DPA and advised the complainant that he considered it likely that he had received all the information to which he was entitled in response to his requests.

5. Following a further request for an assessment, the Commissioner again wrote to the complainant on 25 June 2009, saying that:

"I reviewed your complaint during 2008 in accordance with our role under Section 42 of the Data Protection Act 1998 (DPA). Our role is to assess the circumstances of a person's complaint to us and to provide them with our opinion as to whether we consider the DPA likely to have been complied with by the organisation involved.

Where you have requested information from Northumbria Police relating to you personally, your trial, your conviction, the police investigation, or the evidence used and not used, your requests for information are likely to fall under the DPA.

The DPA only provides rights of access in relation to recorded information. It does not provide a right to have information created in order to answer questions, provide explanations, or otherwise respond to cross examination from an individual regarding past issues. There are also exemptions permitting personal data to be withheld in response to a subject access request.

I wrote to you in November 2008 advising you that Northumbria Police were, in our opinion, likely to have already provided with a copy of all the information you are likely to be entitled to receive from them under the DPA and therefore were unlikely to be contravening the DPA.

Section 8(3) of the DPA provides that organisations are not obliged to comply with further requests from a person for the same information sought previously by them. I therefore do not consider the force likely to be obliged to provide you with any information where you are requesting information the same as, or similar to, the information regarding your past issues your earlier requests related to.

Irrespective of our opinion, you are however entitled to pursue your own civil legal action under Section 7(9) of the DPA against the force if you believe they hold information you are entitled to receive under the Section 7 of the DPA.

I do not intend taking any further action in relation to your complaints about Northumbria Police's response to your requests for information regarding you, your trial, their investigations of you, and the evidence used and not used therein".

6. The complainant sent in several further complaints to the Commissioner at the same time; these included three complaints against this public authority which the Commissioner agreed to consider. The other related complaints are covered by Decision Notices FS50308738 and FS50308744, which are issued at the same time as this notice. This case is the earliest request considered and it therefore contains more detail than either of the other notices, both of which make reference to this notice. The requests in each case have been deemed vexatious by the Commissioner.
7. The Commissioner has also viewed evidence of eight further complaints which the public authority has investigated in its Professional Standards Department ("PSD"), one of which post-dates this request. Of these complaints, six referred directly to the complainant's criminal conviction and his belief that it is unfounded. All of these six were also forwarded to either the Police Complaints Authority (the "PCA") or the Independent Police Complaints Commissioner (the "IPCC"), which replaced the PCA. None were found to be substantiated by any party.
8. This request relates to a police operation. The Commissioner was advised by the public authority that:

"Operation Sea Hare was a multi-agency investigation launched after police received information that a householder possessed wildlife items of rare and endangered species in a chest freezer in 2006. Assisted by the RSPCA and RSPB officers searched a home and took away a large quantity of stuffed animals, trays and birds' eggs and a frozen swan, together with other stuffed animals..."
9. The following is a link to a newspaper article written at that time:
http://www.thenorthernecho.co.uk/news/964633.Dead_swan_found_in_freezer_during_wildlife_raid/.

The request

10. The complainant sent the following request to the public authority on 20 April 2009:

"How much has been spent on Operation Sea Hare in relation to [name removed] and [name removed] before and after they were raided due to bogus information on the 10 October 2006 by Northumbria Police and North Yorkshire Police?"

How much more is likely to cost?".

The request can also be found via the following link:

http://www.whatdotheyknow.com/request/the_costing_on_the_public_purse#incoming-69703.

11. On 29 June 2009 the public authority sent its response. It advised the complainant:

"We have now had the opportunity to fully consider your request above. However, it clearly relates to the same subject area which previously led to your request being declared vexatious under Section 14 of the Freedom of Information Act and accordingly we will not be providing a response.

As you are already aware under this section of the Act, an authority is not obliged to deal with requests that are manifestly unreasonable or obsessive. The Information Commissioner has stated that a vexatious request is, or causes, excessive burden, has no serious purpose, causes disruption and annoyance and leads to harassment of the public authority.

It therefore remain[s] the Northumbria Police position that this FOI request has been considered vexatious and again to inform you no further Freedom of Information requests on this subject, avian genetics, or in relation to your court case concerning offences under the Wildlife and Countryside Act 1981 will be answered or acknowledged".

12. The complainant responded:

"I am a tax payer therefore you are using my money therefore justify your answer that I am vexatious as opposed to the police just trying to cover their mistakes".

13. The public authority sent a review on 21 August 2009. It stated the following:

"The Information Compliance Unit has received a number of other requests from you dating from 2007 onwards; these all concern operations involving birds of prey and eggs. Many of these have been classed as vexatious. Operation Sea Hare was a joint Police RSPB operation in relation to the illegal taking of birds' eggs. This is clearly the same subject for which you were originally declared vexatious in 2007".

14. The vexatious requests were variously summarised by the public authority as follows:

- (1) Bird DNA - received 8 May 2007, response sent 5 June 2007.
- (2) Questions relating to evidence on complainant's court case - received 4 June 2007, response sent 22 June 2007.
- (3) Avian Genetics – received 30 May 2007, response sent 22 June 2007 declaring it vexatious.
- (4) Letter relating to complainant's court case – received 11 June 2007, no response sent as considered to be vexatious.
- (5) Duplicate of item 4 - received 12 June 2007, no response sent as considered to be vexatious.
- (6) Information about a search warrant – received 14 June 2007, no response sent as considered to be vexatious.
- (7) Cost of Operation Sea Hare – received 20 April 2009, response sent 29 June 2009, again declaring vexatious as per earlier requests.
- (8) Duplicate of items 4 and 5 – received 20 April 2009, response sent 21 April 2009 declaring vexatious.
- (9) Payments to the RSPB – received 30 April 2009, response sent 11 May 2009 declaring vexatious.
- (10) Use of single locus probes (DNA) – received 17 May 2009, no response sent as declared vexatious.
- (11) Request in the interest of justice (RSPB) – received 11 July 2009, no response sent as considered to be vexatious.
- (12) Items received by the Courts in relation to birds – received 4 July 2009, no response sent as considered to be vexatious.
- (13) Information about a search warrant – received 27 July 2009, no response sent as considered to be vexatious.

Full copies of these requests are provided in an accompanying annex; some of these post-date this request.

15. The public authority advised the complainant that it does not have to comply with a request for information if the request is vexatious. It also advised him as follows:

"In formulating my response to this request, I reviewed documentation connected to your original requests sent to us in 2007. At that time enquiries revealed that you had been convicted of a criminal offence and had exhausted the legal options open to you with regard to your belief that the conviction was inappropriate. I also note that you wrote on the subject to Central Government (Department of Constitutional Affairs), the Home Office, Members of Parliament, the Independent Police

Complaints Commission and over twenty different Police Forces and that you received various appropriate responses. At that time you were advised by [name removed] that the use of The Freedom of Information Act to recycle the same points that were already made was deemed to be inherently obsessive.

Your latest request is one among many requests and can be classed as obsessive and manifestly unreasonable. Indeed in an e-mail sent to you on 21 June 2007, you were informed that future requests may be considered vexatious under section 14 of the Freedom of Information Act.

As stated in that e-mail to you, an authority is not obliged to deal with requests that are manifestly unreasonable or obsessive. The Information Commissioner's own guidance states 'there is a risk that some individuals and some organisations may seek to abuse these new rights with requests which are manifestly unreasonable. Such cases may well arise in connection with a grievance or complaint which an individual is pursuing against an authority. While giving maximum support to individuals genuinely seeking to exercise the right to know, the Commissioner's general approach will be sympathetic towards authorities where a request, which may be the latest in a series of requests, would impose a significant burden and can otherwise be characterised as obsessive or manifestly unreasonable'.

The Information Commissioner has also stated that using the FOI to re-open long running disputes, such as yours with Northumbria Police and the RSPB, is clearly inappropriate and the examination of the previous history of the applicant and their requests to public authorities is also very relevant to making an individual vexatious.

You were initially informed that you were being classed as vexatious [on] 22 June 2007. Subsequently you have made numerous further requests and upon review of requests from other parties that are identical to yours, it would appear that you are also acting in concert with other parties.

The requests you have made serve no public interest and a Freedom of Information request is not the appropriate arena within which to air your grievance against either Northumbria Police or the RSPB.

These continued requests for specific details of investigations lack any serious purpose or value and these requests can fairly be seen as obsessive".

The investigation

Scope of the case

16. On 7 September 2009 the complainant contacted the Commissioner to complain about the way his request for information had been handled. He advised the Commissioner as follows:

"Reference; My Information requests that are being ignored on the information request website WHATDOTHEYKNOW.

Please find enclosed numerous information requests to Northumbria Police, the CPS, the Ministry of Justice and Animal Health that are being ignored or I have requested an internal inquiry and I have now waited long enough for the information requested. Please investigate the information requests on my behalf to secure the information requested".

17. This included several complaints about requests made to this public authority. The Commissioner advised the complainant that he would consider whether or not three of these were 'vexatious'.

Chronology

18. On 15 April 2010 the Commissioner wrote to the complainant to advise that he was commencing his investigation. He advised him that he may consider the complaint under the terms of the Environmental Information Regulations (the "Regulations"), but he would make this deliberation after contacting the public authority. The complainant telephoned the Commissioner on receipt of his letter and accepted the scope set down by the Commissioner.
19. The Commissioner commenced his enquiries with the public authority on 26 April 2010. He also asked whether this request had been considered under the terms of the Regulations rather than the Act as it appeared to relate to biological diversity.
20. In its response of 1 June 2010 the public authority advised the Commissioner that:

"We handled this request under the FOIA rather than the EIRs that you have suggested. [The complainant's] request related to the criminal investigation into the illegal collection of stuffed animals and birds' eggs. The costing of this operation was therefore considered under FOIA rather than EIRs".

21. The Commissioner understands that such operational costs could be regarded as information on a measure designed to protect the elements of the environment and that this is therefore an issue which could be dealt with under the terms of the Regulations. However, he notes the public authority's explanation that the focus of the request concerns actual 'policing costs' rather than environmental concerns. He is therefore satisfied that it was not inappropriate for the request to be considered under the Act.

Analysis

Exclusion – section 14(1)

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

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

23. 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 and so would be likely to cause distress or irritation. The assessment 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 been developed from these general principles and they guide him in applying his test.
24. When considering what evidence can be considered when making this determination, the Commissioner 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 person, but vexatious if made by another; valid if made to one person, vexatious if made to another”.

25. The Commissioner has therefore 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 if it demonstrates a continuation of behaviour which is obsessive and/or represents a significant burden when considered collectively.
26. 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, in order 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.
27. 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 this is not as serious as a finding of vexatious conduct in other contexts and therefore the threshold for vexatious requests need not be set too high.

(1) Whether compliance would create a significant burden in terms of expense and distraction

28. 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..."

29. 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.
30. 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).

31. It is therefore appropriate for the Commissioner to take into account the complainant's previous interaction with the public authority when making a determination of whether each request represents a significant burden to a public authority as noted above. This means that even if a request does not impose a significant burden when considered in isolation, it may do so when considered in context.
32. The public authority has stated that the complainant has submitted many information requests about his previous court case, the RSPB, birds of prey and other 'bird-related' investigations. The Commissioner has seen a selection of the complainant's correspondence, which both predates and postdates this particular request. He notes from this evidence that the complainant has contacted the public authority on several occasions asking for information of this type. The public authority provided a brief summary of some of the requests in its internal review of this request, which is included above. The requests are those which are appended to this Notice in the non-confidential annex (some of which postdate this request).
33. As well as the frequency of the contact with this public authority, the Commissioner notes that over the period of time in question contact has been made with many other public authorities for information around the same subject matter under both the Act and the DPA.
34. The 13 requests itemised above are all for information which the Commissioner considers falls within the boundary of what the public authority has described to the complainant as being vexatious, i.e. in relation to his court case, the subject of avian genetics or operations involving birds of prey and eggs. He notes that when it responded to the first two requests listed the public authority advised the

complainant that it was considering classing the requests as vexatious but it did not do so until the third request. It did not respond to the following three requests having decided they were also vexatious. The complainant did not make any more related requests to the public authority for almost two years. When he made the seventh request listed, this particular request, the public authority again deemed it vexatious but sent out a refusal notice with its reasons rather than sending no response. It did the same for the following three related requests and then sent no further responses. Although they indicate the same pattern of behaviour, the Commissioner has not considered the latter requests in reaching his decision in this case as they all post-date this request.

35. The Commissioner would here like to note that there is one request from 2009 which the public authority did not deem to specifically relate to any of the areas which it had deemed as vexatious. The request was as follows:

“Please release the rules governing whether the police have to or have not to investigate serious complaints made by members of the public in relation to criminal activities”.

36. The public authority did respond to this request and provided the relevant information it held rather than declaring it vexatious. The Commissioner notes that this has therefore been done in the spirit of the Act and this demonstrates that the public authority has been ‘person blind’ in dealing with requests to it.
37. The Commissioner further notes that the public authority has previously investigated several complaints against it made by the complainant, as mentioned above in the “Background” section, eight of which relate to the complainant’s conviction; the PCA and IPCC also considered these complaints. Additionally, the public authority has provided the complainant with much information under the terms of the DPA and the Commissioner has already made his assessments of the public authority’s compliance under the terms of the DPA. However, because he remains dissatisfied with what he has received, the complainant continues to make information requests of the types which the public authority has deemed vexatious.
38. The Commissioner must analyse whether there is a significant burden in terms of expense and distraction for dealing with this request. He considers that the request is focused on a similar matter to the requests which have previously been classed as vexatious. The Commissioner believes that the quantity of documentation has led to individuals being drawn away from the public authority’s core

purposes. He is therefore content that the request constitutes a burden in terms of both expense and distraction. He believes that this factor is significant when deciding whether each request is vexatious.

39. The Commissioner has also considered in this determination the approach of the Information Tribunal in *Betts v The Information Commissioner* [EA/2007/0109], where it 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 be likely to 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 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".

40. The Commissioner's conclusions regarding the pattern of the requests are also supported by the nature of the correspondence he has personally dealt with in relation to other complaints and enquiries made by the complainant, which have already been dealt with.

41. To conclude this section, assessing all the circumstances of the case the Commissioner has found that this particular request 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.

(2) Whether the request is designed to cause disruption or annoyance

42. The Commissioner here notes the findings of the Information Tribunal in *Alan Adair and Information Commissioner* [EA/2009/0043]:

"The Tribunal agrees [with the Commissioner] that the continued pattern of requesting is also likely to cause disruption and annoyance because -- in essence -- it is always linked back to the [same] issue..." (in paragraph 48).

43. In this case, similarly, the complainant's request links back to the same issues which have previously been declared vexatious by the public authority. The Commissioner finds that the repeated return to an issue

concerning a joint Police / RSPB operation is likely to cause disruption and annoyance to the public authority.

(3) Whether the request has the effect of harassing the public authority or its staff

44. Whilst the Commissioner accepts that the wording of the request in this case is likely to cause disruption and annoyance, he notes that on its own it would not be an onerous request to deal with. The Commissioner appreciates that to harass is a strong concept and emphasises that it is the effect of the request and not the requester that must be considered. The public authority has provided no written evidence to support this effect in this case.
45. The Commissioner notes that the public authority has provided evidence of 13 requests, mentioned above, submitted over a three-year period. Since the same request was submitted on three occasions there were in fact ten requests in total. The Commissioner does not consider this number to be onerous in itself. However, he does note the tone and nature of those requests, examples of which are appended to this Notice, as well as the particular request in this case. Although the requests are not particularly voluminous in number, the Commissioner considers that the content of them is designed to harass staff by being accusatory in nature.
46. Although the point was not directed to this specific issue, the Commissioner also notes that the public authority advised him that:

"It has become apparent that [the complainant] is working in concert with others via the web-site whatdotheyknow.com, as different requestors have submitted substantially similar and/or identical requests. Of particular interest is a recent request from [name removed] ... This takes a more sinister turn as he states to this department 'I hope the lot of you burn in hell'. [The complainant] himself has added a note of support to this message on the Whatdotheyknow web-site. Again this is indicative of the improper use of FOI by this group. Such requests have caused a degree of stress to the staff within this department. I am sure that you are already aware that such requests/messages, whatever their nature are freely available to view by the public (I am currently in the process of contacting whatdotheyknow.com for their assessment of this particular entry)".

47. The Commissioner has also taken into account the complainant's situation. He is clearly frustrated in his belief that he was wrongly given a prison sentence, albeit several years ago. The Commissioner therefore appreciates that it is likely that there will be some intemperance and that frustration may override reasonable behaviour. However, the Commissioner notes that the complainant has previously had an appeal dismissed at the time of his sentence. He has also had a number of complaints about his case formally considered by the public authority's Professional Standards Department (PSD), by the Police Complaints Authority (PCA) and by the Independent Police Complaints Commission (IPCC), all of which were unsubstantiated. The Commissioner has therefore considered the volume of correspondence and resources which have already been expended by the public authority in dealing with the issues raised by the complainant. He believes that the cumulative effect is sufficient to harass a reasonable public authority when assessing this particular request in its context. The Commissioner therefore believes that this factor also supports the application of section 14(1) in this case.

(4) Whether the request can otherwise fairly be characterised as obsessive

48. The background issue which led to the complainant making information requests and submitting other correspondence has been set out in the "Background" section of this Notice.

49. The public authority's position is that the request is clearly obsessive in nature given its past dealings with the complainant. As outlined in the Commissioner's published guidance, public authorities may take account of the context and history of a request when deciding whether it is vexatious. The guidance states the following:

"A request may not be vexatious in isolation, but when considered in context (for example if it is the latest in a long series of overlapping requests or other correspondence) it may form part of a wider pattern of behaviour that makes it vexatious".

50. The public authority indicated that given the volume, frequency and nature of the requests and correspondence, it believed that this request was obsessive. It has stated to the Commissioner:

"[The complainant]'s requests make up part of the long running dispute that he has with Northumbria Police and the RSPB. [The complainant] was convicted of a criminal offence and having exhausted the legal process, he has used FOI to recycle the points he has already made.... [The complainant] appears to not accept the results of previous investigations. Whilst FOI requests

are treated as applicant blind, the requests received from [the complainant] are clearly obsessive and serve no public purpose. There would appear to be a clear intention to use the request to reopen issues that have already been debated and considered. [The complainant] has submitted a series of linked requests that form part of a pattern on this subject”.

51. Having read many of the requests and comments made by the complainant, the Commissioner understands that he has been driven to pursue his requests because of what he perceives to be the lies, incompetence and shortcomings of the public authority. However, the Commissioner here notes, as already mentioned above, that his complaints have been taken seriously and have been investigated by a number of authorities.
52. In addition, as recorded in paragraph 45 above, the public authority has advised the Commissioner that the complainant has been working in concert with others to submit substantially similar and/or identical requests, and had added a note of support to a message (*'I hope the lot of you burn in hell'*) on the *Whatdotheyknow* website that had caused a degree of stress to the staff within the relevant department of the public authority.
53. 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 this case, the Commissioner considers that the nature of the request falls within the definition of obsession.
54. 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.

(5) Whether the request has any serious purpose or value

55. 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."

56. In light of this the Commissioner has considered whether the requests in this case have any serious purpose and, if this is 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.
57. It is clear to the Commissioner that all the correspondence sent by the complainant stems from his original concern about his criminal conviction; he believes that his conviction was unsound and that he was innocent of his crime. Accordingly he has been seeking further information in an effort to prove his innocence. The Commissioner is satisfied from previous cases that it is not uncommon for vexatious requests to be associated with a longstanding grievance or dispute. However, he acknowledges that a request will not necessarily be vexatious simply 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.
58. An example of one of the complainant's requests indicates that he is very concerned about the DNA profiling of birds in connection with his court case, the experts who conducted this profiling and his belief that the process was flawed. He has sought statements from witnesses in relation to his court case, and also requested that the police talk to witnesses he identified in order to gather more information about his court case. He has tried to introduce further evidence to support his case.
59. It is understandable that the complainant would wish to pursue his case if he wishes to prove his innocence. However, his case has been reconsidered by the public authority, the PCA and the IPCC. Furthermore, when he sought to appeal his sentence at the time this was dismissed by the appeal judge. The question for the Commissioner, however, 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.
60. The public authority has stated to the Commissioner:

"[The complainant] has been advised on options available to him regarding his issues that lie outside the Freedom of information arena. It would appear that he is reluctant to follow the appropriate steps advised to him and prefers to continue to

follow this line of enquiry. Particularly you will note that [the complainant] clearly mingles his requests with accusations and complaints about both the judicial process, the complaints procedure and individuals”.

61. The public authority therefore believes that its complaints process has properly dealt with the complainant's issues outside the remit of the Act, and that the requests therefore have no further public interest as they have been found to be unsubstantiated. The Commissioner therefore understands this to mean that the public authority considers that the requests have no serious purpose or value.
62. When considering serious purpose and value the Commissioner finds in favour of the public authority. It has already considered the complainant's various allegations and issues under the appropriate channels. His issues have then been independently addressed by the PCA and the IPCC. Although the outcome may not have satisfied the complainant the Commissioner does not consider there is any further serious purpose or value in revisiting issues via the Act. He therefore finds that this factor also favours the application of section 14(1).

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

63. On the basis of the circumstances of this case, the Commissioner finds that a reasonable public authority would find the complainant's request of 20 April 2009 vexatious. 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. The safeguard is present to maintain the credibility of a disclosure regime. The Commissioner notes that it is not necessary for every factor to be made out from his guidance, but in this case he considers that each of the five factors is met. The Commissioner's decision in this case therefore rests on the complainant's request causing a significant burden, being designed to cause disruption or annoyance, having the effect of harassing the public authority, being obsessive and not having any serious purpose or value.
64. The public authority has already demonstrated to the Commissioner that it will deal with the complainant's further requests for information in line with the Act. Each request will be considered on its own merits. The Commissioner believes that this approach is correct: it is essential that the public authority does not treat the requester, rather than the request, as being vexatious.

65. The Commissioner further notes the findings in the recent Information Tribunal case of *Rigby v Information Commissioner and Blackpool, Flyde and Wyre Hospitals NHS Trust* [EA/2009/0103] which found, at paragraph 41, that:

"... the Trust's shortcomings had already been investigated by the HC [Health Commission], and the requests for information appear to have become a vehicle for the Appellant to try to reopen those issues. Although we recognise that the Appellant was not satisfied with the responses he had received from the Trust, FOIA is not a panacea for problems that have not been resolved through other channels. In our view, the on-going requests (which included the request in issue in this Appeal), after the underlying complaint had been investigated, went beyond the reasonable pursuit of information, and indeed beyond persistence. They indicate an obsessive approach to the Appellant's grievances about the underlying complaint".

66. The Commissioner considers the circumstances in this case to be similar in that the complainant has already exhausted the public authority's internal complaints system as well as those of the PCA and IPCC. Similarly, the Commissioner understands that the complainant remains dissatisfied with the responses.
67. The Commissioner makes no findings as to whether the complainant's various complaints and grievances against the public authority are or are not well-founded. These are matters outside the scope of the Commissioner's jurisdiction.

Procedural requirements

Section 17

68. Section 17(5) of the Act provides that:

"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."

In this case the request was made on 20 April 2009 but the public authority did not respond until 29 June 2009, more than 20 working days later. The public authority therefore breached its obligations under section 17(5).

The Decision

69. The Commissioner's decision is that the public authority was justified in applying the exclusion under section 14(1) to the request in this case. However, he has also decided that the public authority breached section 17(5).

Steps required

70. The Commissioner requires no steps to be taken.

Other matters

71. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following.

Personal data

72. Section 7 of the DPA gives an individual the right to request copies of personal data held about them – this is referred to as a right of 'subject access'. Although it is not relevant to this particular request, some of the information which has been sought by the complainant is in fact his 'personal data'. The Commissioner would like to clarify that the public authority has previously dealt with requests from the complainant under the DPA and he has assessed favourably its compliance with its obligations under that Act.

Right of Appeal

73. 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.

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 sent.

Dated the 14th day of October 2010

Signed

**Jon Manners
Group Manager**

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

Legal annex

Section 14 – vexatious or repeated requests

- (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

- (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.