

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 26 October 2011

Public Authority: The Chief Constable of Northumbria Police
Address: North Road
Ponteland
Newcastle upon Tyne
NE20 0BL

Summary

The complainant made a request to Northumbria Police (the force) in November 2010 for information relating to the force's investigation into the attempted murder of Martin McGartland. In December 2010 he made a further related request for additional information relating to the same investigation. The force also received a number of similar related requests on the same subject at around the same time. The force refused the complainant's request on the basis that, as it was part of a campaign, the request was vexatious under section 14(1) of the Act. The Commissioner finds that the force incorrectly applied section 14(1) to the request. He requires the public authority to respond to the request in accordance with the provisions of section 1 of the Act within 35 calendar days.

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 initially made a request via the 'What do they know' website for information relating to Northumbria Police's review of the investigation into the attempted murder of Martin McGartland in 1999. The original request was in two parts, the first of which was not considered a valid request by the force. The force answered the

second part on 7 December 2010. The complainant then made a further request on 12 December 2010 leading directly from the force's response to the original request. Around the same time the force received a number of other requests from the same website for information relating to the same investigation.

The Request

3. On 12 December 2010 the complainant made the following information request:

"You told me a review was 'concluded' in 2007 as regards said matter...

1)Please can you furnish me with evidence that said review was carried out and by whom i.e Names and ranks of officers involved.

2)Can you furnish me with the policy documentation as regards these said reviews.

3)What were the findings of said review ?

4)What do you mean by the term 'such cases' ?

5)What date was said review carried out in 2007 ?

6)Can you tell me why said review has taken 8 years to be carried out ?

7)Have Northumbria Police established any connection that this was a terrorist attack ?

8)Are Northumbria Police treating this as a terrorist attack ?

9)DNA and forensic evidence was recovered from the scene of this attempted murder on Mr McGartlands life therefore have you ever had a match or close match as regards said evidence ?

10)As a result of your disclosure over said review can i ask when there is likely to be another review held over said investigation ?"

4. The force refused the request on 14 January 2011 on the basis that it was vexatious under section 14(1) of the Act, due to the number of requests on the same subject that the force had received around the same time and that the force had previously declared the 'subject'

vexatious. The force received four other requests about the same investigation between 13 December and 20 December 2010 (between receipt of the complainant's request and the force's issuing of a refusal notice). The force believed that the requesters were acting in concert due to the similarity, nature and frequency of the requests. The force has subsequently received a number of further requests on the same subject matter from other individuals.

5. The complainant asked the force to conduct an internal review into its refusal on 18 January 2011.
6. The internal review, dated 9 March 2011, upheld the force's decision that the request was vexatious.

The Investigation

Scope of the case

7. The complainant initially contacted the Commissioner on 1 March 2011 to complain about the way his request for information had been handled. At this point the complainant had requested an internal review on 18 January 2011 but the force had not yet completed its review.
8. The force completed the internal review on 9 March 2011 and the Commissioner accepted the complaint on 12 March 2011. The complainant specifically asked the Commissioner to consider the following points:

"I would like to know why Northumbria Police are saying my FOI requests are 'vexatious' now when my first requests were not"

"Passing the statutory time limit for internal review."
9. The Commissioner contacted the complainant on 28 June 2011 to inform him that the focus of the investigation would be to determine whether the force was correct in deeming this request to be vexatious within the meaning of section 14(1) of the Act.

Chronology

10. The Commissioner wrote to the force on 28 June 2011 to ask for a detailed explanation of its application of section 14(1) of the Act to the complainant's request.

11. On 13 July 2011 the force provided a general submission as to why it considered the complainant's request was vexatious. Rather than presenting its arguments under the five key questions recommended in the Commissioner's guidance (see paragraph 13), the force's submission reflected the Information Tribunal's statement in *Coggins v the Information Commissioner [EA/2007/0130]*, that 'determination whether a request was vexatious or not might not lend itself to an overly structured approach'. However, the Commissioner has chosen to relate the force's submissions to the key questions to assist him in deciding whether the force was correct in deeming the request vexatious.

Analysis

Substantive Procedural Matters

12. Section 14(1) provides that:

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

13. The Commissioner has produced external guidance ¹ for public authorities to use when considering whether or not to deem a request vexatious. The guidance contains five key questions to consider:
- Could the request fairly be seen as obsessive?
 - Is the request harassing the authority or causing distress to staff?
 - Would complying with the request impose a significant burden in terms of expense and distraction?
 - Is the request designed to cause disruption or annoyance?
 - Does the request lack any serious purpose or value?
14. When considering these factors, the Commissioner takes into account the decision of the First Tier Tribunal promulgated in *Hossack v the Information Commissioner and the Department for Work and Pensions [EA/2007/0024]*. The Tribunal stated that when considering vexatious requests under the Act:

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http://www.ico.gov.uk/for_organisations/guidance_index/~/_media/documents/library/Freedom_of_Information/Detailed_specialist_guides/VEXATIOUS_AND_REPEATED_REQUESTS.ashx

15. '....the consequences of finding that a request for information is vexatious are much less serious than a finding of vexatious conduct in these other contexts, and therefore the threshold for a request to be found vexatious need not be set too high....'
16. The bar in determining whether a request is vexatious is therefore set lower than that required for determining whether a person is a vexatious litigant. The Commissioner has assessed whether or not this request is vexatious under the Act by analysing whether the evidence provided supports any, all or some of the aforementioned categories, to the extent that the application of section 14(1) is or is not justified.
17. A public authority can take into account the wider context and history of the request when considering the questions. A request may not be vexatious in isolation, but when considered in context it may form part of a wider pattern of behaviour that makes it vexatious.
18. The Tribunal case of *Welsh v the Information Commissioner (EA/2007/0088)* outlines that the context, background and history of a request can be taken into account when considering section 14(1).
19. The Commissioner therefore, in addition to the request itself, considers it appropriate to consider the underlying context and purpose of the complainant's request and other requests by members of campaign groups on the force and other organisations when making his decision.

The history and background of the complainant's request

20. The force refused the request in the wider context of a number of requests it had received relating to the same subject matter. The force had, on 13 November 2009, issued a refusal notice to Martin McGartland stating that all future requests from Mr McGartland on the subject would be deemed vexatious. Mr McGartland had made two requests between September and November 2009 in relation to the investigation, to which the force responded. On receipt of two further related requests from Mr McGartland the force issued a refusal notice citing section 14(1). The Commissioner is not aware of any other requests to the force by any requester on the same subject between November 2009 and November 2010.
21. The force received one request from the complainant, dated 18 November 2010, concerning the same subject matter, to which the force provided a partial response on 7 December 2010. The force did not at this time consider that the request was vexatious as the request was considered in isolation and not linked with the 2009 requests.
22. The second request can be seen as a continuation of the complainant's first request to the force as it was sent on receipt of the original

response and contains questions that refer to the force's response to his first request.

Can the request fairly be seen as obsessive?

23. The main focus of the force's submission seems to fall under this question. The force became aware around the time of the request that there was an internet campaign relating to police investigations into the attempted murder. The force has provided supporting evidence that the complainant is closely linked with the internet campaign.
24. During the course of the investigation the Commissioner established that there are a number of active internet campaigns promoting further investigation into the McGartland case.
25. The force has stated, and the complainant has confirmed, that the complainant is one of the administrators of an internet campaign group² which appears to have been formed around November 2010. The Commissioner notes that the complainant's first request on the subject was made on 18 November 2010.
26. The complainant is a member of at least one other internet campaign dedicated to the same subject matter. However, being part of a campaign group does not necessarily make a request from a member of the group vexatious.
27. The complainant, in response to the force's internal review, stated "Also being an administrator of one of Mr McGartlands 'Cause pages' does not constitute your claim that myself and Mr McGartland are 'in league' with each other". The force received a number of similar requests from Mr McGartland on the same subject matter around the same time it received the complainant's request. The Commissioner's view is that the requests made by Mr McGartland, tend to detract from any suggestion by the force that the complainant may be requesting information on behalf of Mr McGartland in view of the force's previous statement to Mr McGartland in November 2009 that it would consider his future requests on this matter as being vexatious.
28. The Commissioner considers the nature and frequency of requests in the context of an ongoing grievance or campaign is significant in determining whether a request is indicative of an obsession with a particular issue. For instance, a request coupled with the history of an applicant's previous requests to the same authority on the same subject matter, which indicates that the applicant will continue to request

² www.causes.com/causes/548596-we-the-friends-of-martin-mcgartland-support-his-right-to-justice

information relating to the same subject matter despite the authority's reasonable explanations, could be characterised as obsessive. Any information or explanation provided by the authority would simply generate more requests and there is no indication that the applicant will ever be satisfied by the authority's responses. In this case the force had already explained to the complainant that the investigation was still open and the information it provided led to a further request. Given that the complainant is clearly part of a number of campaign groups dedicated to the same cause (and as far as the Commissioner is aware, members are still making requests relating to the issue to the force), it was reasonable for the force to conclude that a response to his request of 12 December 2010 would generate further requests from the complainant or the group.

29. The Commissioner does not consider the Act as the appropriate forum to air a grievance or progress a campaign against a public authority. This view is supported in the case of *Rigby v the Information Commissioner and Blackpool, Fylde & Wyre Hospital NHS Trust [EA/2009/0103]* where the Tribunal pointed out that "FOIA is not a panacea for problems that have not been resolved through other channels."
30. However, the Commissioner has noted that this is only the second request made by the complainant on this particular issue and as far as the Commissioner is aware, the complainant has not made any subsequent requests on the particular subject to the force. One of the characteristics often seen in the context of vexatious requests is a previous history of correspondence or interaction with the public authority demonstrating an obsession with a particular issue. The force has not made any submission to the Commissioner in relation to any previous relationship with the complainant and the Commissioner therefore concludes that there is no such history in this case. The Commissioner does not consider that the complainant's request in this case can fairly be characterised as obsessive.

Is the request harassing the public authority or causing distress to the staff?

31. Although the force has not put forward a specific argument to support this criterion, the Commissioner finds that the complainant's request contains questions that could be seen as cross-examination, or requests for opinion and explanation, rather than straightforward requests for recorded information.
32. However, the language used by the complainant at the time of the request could not fairly be characterised as harassing or designed to cause distress.

Would complying with the request impose a significant burden in terms of expense and distraction?

33. The Commissioner accepts that it is the cumulative effect of the number of requests received around the same time as the complainant's request from other members of the campaign group that may impose a significant burden on the force in handling them, rather than the effect of the particular request that forms the subject of this complaint.
34. At the time the request was made, the Commissioner does not consider that the burden of complying with this particular request combined with the complainant's previous request on the subject, would be excessive in terms of expense and distraction from the force's usual business.

Is the request designed to cause disruption or annoyance?

35. The campaign groups have expressed their dissatisfaction with the way the investigation has been conducted and there are allegations of a 'cover-up' aimed at officers of the force.
36. It is in the public domain that the investigation into the attempted murder is live and ongoing. The force states that the effect of the campaign has been to disrupt the normal business process of the force (the ongoing investigation) whether or not this was the intention.
37. The Commissioner finds that the force has not provided sufficient evidence to show that the complainant's request itself was intended to cause significant disruption or annoyance or has had these effects.

Does the request lack any serious purpose or value?

38. The Commissioner accepts that the complainant's and the campaign group's view is that the requests have a serious purpose as they relate to a matter of public interest.
39. The Commissioner considers that a serious purpose or value behind a request may be enough to prevent it from being deemed vexatious. If the request forms part of a wider campaign or pattern or requests, the purpose or value must justify both the request itself and the lengths to which the campaign or pattern of behaviour has been taken.
40. The Commissioner has made his own enquiries and is satisfied that there are a number of very active campaign groups dedicated to furthering the investigation of the aforementioned crime.
41. The requests by the complainant and others arise from their dissatisfaction with the perceived progress and lack of resolution of the investigation. The force sees the requests as an attempt to gain

information about issues that are being dealt with through more appropriate channels in that the investigation is still 'live'.

42. The Information Tribunal has stated in *Gowers v the Information Commissioner & London Borough of Camden [EA/2007/0014]* that, "It does not follow that a request can only be vexatious if the applicant intended it to be so; it may be vexatious regardless of his motives."
43. The Commissioner accepts that from the point of view of the complainant the request has a serious purpose and was not simply intended to cause annoyance or disruption. The cumulative effect of the number of similar requests received at around the same time may have placed additional pressure on the force. However, the impact of the particular request in question would be limited.

Summary

44. The force has established a clear link between the complainant and other members of the campaign groups. Although the complainant's original request was treated in isolation the Commissioner accepts that when the force had information to confirm that the complainant was an active member of several campaigns it was reasonable to link him with the requester/requests previously declared as vexatious by the force.
45. However, the request under consideration was only the second request from the complainant and there was no significant history of correspondence with the force demonstrating that the complainant had an obsession with the subject matter at the time the request was made, beyond a personal interest. The complainant did not use language that could be characterised as particularly harassing or distressing.
46. The complainant states that there was no deliberate intention to disrupt the normal business of the force and the Commissioner is satisfied that this request in isolation would not have that effect. The cumulative effect of this request, combined with other requests received at around the same time may have placed an additional burden on the force and the force has used this argument to justify declaring the request vexatious. However, the Commissioner's view is that at the time the request was made there was insufficient evidence of the intention to pursue a campaign intended to disrupt the force's normal business.
47. The Commissioner finds that the force has not shown that this request, at the time it was received, sufficiently met the criteria to be classed as vexatious.

48. The Commissioner wishes to note that these findings are made on the circumstances at the time of the request.

The Decision

49. The Commissioner's decision is that the public authority did not deal with the request for information in accordance with the Act.

Steps Required

50. The Commissioner requires the force to take the following steps to ensure compliance with the Act:

- The force must provide the complainant with a response to his request that complies with the requirements of section 1(1) of the Act.

Other matters

51. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern:

Part VI of the section 45 Code of Practice (the "section 45 code") makes it desirable practice that a public authority should have a procedure in place for dealing with complaints about its handling of requests for information, and that the procedure should encourage a prompt determination of the complaint. As he has made clear in his *'Good Practice Guidance No 5'*, published in February 2007, the Commissioner considers that these internal reviews should be completed as promptly as possible. While no explicit timescale is laid down by the Act, the Commissioner has decided that a reasonable time for completing an internal review is 20 working days from the date of the request for review. In exceptional circumstances it may be reasonable to take longer but in no case should the time taken exceed 40 working days. The Commissioner is concerned that in this case, it took nearly 40 working days for the internal review to be completed, and far as he is aware, there was no justifiable reason for the delay.

Right of Appeal

52. Either party has the right to appeal against this Decision Notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

53. 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.
54. 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 26th day of October 2011

Signed

**Gerrard Tracey
Principal Policy Adviser
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Legal Annex

General Right of Access

Section 1(1) provides that -

"Any person making a request for information to a public authority is entitled –

- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
- (b) if that is the case, to have that information communicated to him."

Vexatious or Repeated Requests

Section 14(1) provides that –

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

Section 14(2) provides that –

"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 a previous request and the making of the current request."