

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 15 December 2011

Public Authority: Chief Constable of Avon and Somerset
Constabulary

Address: PO Box 37
Valley Road
Portishead
Bristol
Avon
BS20 8QJ

Decision (including any steps)

1. The complainant has requested information which relates to a series of complaints which he made about the public authority. The public authority refused to provide the information on the grounds that the request was vexatious.
2. The Information Commissioner's decision is that the public authority was correct to find the request vexatious.
3. The Information Commissioner does not require the public authority to take any steps.

Background

4. The complainant was arrested by officers of the public authority in November 2009. During his arrest a taser was used. The complainant has made many complaints and information requests in connection with this arrest, both under the FOIA and the Data Protection Act 1998 (the "DPA"). Some of his complaints have been considered by the public authority's own Professional Standards Department (the "PSD") and the Independent Police Complaints Commission (the "IPCC").
5. The complainant advised the public authority that he requires the information requested as he is hoping it will support him making a new complaint to the IPCC. He specifically stated:

"The request for the Pregnancy at Work policy documentation is because I am about to put in a complaint about a police officer who claimed she did not follow out an order from a sergeant as she was expecting. I believe this document will support the complaint."

"The reason why I have asked for head and body camera policy documentation is that some police forces in the UK actively issue this technology to front line officers to record trouble which can be used in court as evidence. I believe this technology was deployed on [date of complainant's arrest] and recorded this incident. If it was not deployed I would like to read the policy documentation to find out whether it should have been deployed that day. If it should have been deployed it will enable me to make [a] fresh complaint under date of knowledge which is a legal point of law according to the IPCC".

6. The Information Commissioner is also considering a separate request under case reference FS50408546.

Request and response

7. On 31 May 2011 the complainant wrote to the public authority and requested information in the following terms:

"I am requesting under Freedom of Information the following policy guidance documentation which was in force from the 1st January 2009 onwards;

- 1. The use of body cameras. If not in use from the 1st January 2009 when did Avon and Somerset Constabulary introduce them?*
- 2. The use of head cameras. If not in use from the 1st January 2009 when did Avon and Somerset Constabulary introduce them?*
- 3. Pregnancy at work policy from the 1st January 2009 onwards.*
- 4. Identify what are protected duties for pregnant police officers from the 1st January 2009 onwards?"*

8. Following an acknowledgement, the public authority responded on 16 June 2011. It cited section 14(1) of the FOIA, stating that the request was vexatious.

9. Following internal review the public authority wrote to the complainant maintaining this view.

Scope of the case

10. On 2 August 2011 the Information Commissioner received the complaint. The complainant provided reasons explaining why he wanted the information. The Information Commissioner advised that he would consider whether or not the requests were vexatious.
11. During the course of the investigation, the public authority provided some further information to the complainant in respect of parts (3) and (4) of the request. It explained to the Information Commissioner that:

"With regards to part three and four, the procedural guide namely "maternity entitlements – Police Officers" was supplied to [the complainant] in a letter dated 25th March 2011 in response to an FOI request reference 317/11. There is a procedural guide relating to pregnancy at work which I was not aware of at that time. I believe this further document would have fully answered his request ref 317/11, therefore I have decided to send [the complainant] this document as it is not protectively marked. This document also covers the risk assessment areas.

The decision to disclose this document is made as I believe this should have been sent previously".

Therefore the Information Commissioner will not consider parts (3) and (4) of the request in this decision as the information has since been provided.

Reasons for decision

12. Section 14(1) of the FOIA provides that a public authority is not obliged to deal with a request for information if the request is vexatious.
13. The Information Commissioner's approach to what constitutes a vexatious request is outlined in his guidance 'Vexatious or repeated requests'. The guidance sets out a number of points to consider in determining whether a request is vexatious, namely that:
 - it would create a significant burden in terms of expense and distraction;

- it is designed to cause disruption or annoyance;
 - it has the effect of harassing the public authority;
 - it can otherwise fairly be characterised as obsessive or manifestly unreasonable; and
 - it clearly does not have any serious purpose or value.
14. In establishing which, if any, of these factors apply, the Information Commissioner will consider the history and context of the request. In certain cases, a request may not be vexatious in isolation but when considered in context it may form a wider pattern of behaviour that makes it vexatious. The Information Tribunal upheld this approach in *Rigby v Information Commissioner and Blackpool, Fylde and Wyre Hospitals NHS Trust* (EA/2009/0103), commenting that:

“it is entirely appropriate and indeed necessary when considering whether a request is vexatious, to view that request in context” (para 40).

The Information Commissioner recognises, however, that it is the request and not the requester that must be vexatious for section 14 to be engaged.

15. When investigating a public authority’s application of section 14(1), the Information Commissioner is also mindful of the Tribunal’s decision in *Hossak v the Information Commissioner* (EA/2007/0024). In that case, the Tribunal commented on the consequences of finding a request vexatious. It accepted that these are not as serious as those of determining vexatious conduct in other contexts and consequently, the threshold for vexatious requests need not be set too high.
16. In determining whether section 14 was applied correctly, the Information Commissioner has considered the evidence provided by the council and the complainant under each of the above headings, and the context and history of correspondence and contact up until the date of the request. He also notes that the arguments were provided by the public authority to support both this case and the other complaint which is referred to above.
17. As this request relates to the same incident as the earlier request FS50408546, has the same aim of reopening issues and raising further complaints, and is substantially the same in respect of the factors which the Information Commissioner takes into account when considering whether a request is vexatious, he concludes, for the same reasons, that this request is also vexatious.

Right of appeal

18. 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

19. 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.
20. Any notice of appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

Jon Manners
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF