

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 4 July 2013

Public Authority: The Chief Constable of Cambridgeshire Constabulary

Address: Constabulary Headquarters
Hinchingsbrooke Park
Huntingdon
PE29 6NP

Decision (including any steps ordered)

1. The complainant made a request for information relating to a complaint he had made about an investigation. The Constabulary refused the request under section 14(1) of the FOIA as it considered it vexatious. The Commissioner's decision is that the request is vexatious and that section 14 was applied correctly. The Constabulary is therefore not obliged to comply with the request.

Background

2. The complainant has been in dispute with the Constabulary since 2011 over allegations he made of fraud, breach of trust and theft relating to the administration of an elderly relative's financial affairs. The allegations hinged around the redrafting of wills and the withdrawal of money using an Enduring Power of Attorney.
3. The Constabulary investigated his allegations. On 12 April 2011 it informed him that it had uncovered no evidence of criminal wrongdoing. The complainant was not satisfied with the Constabulary's investigations and made formal complaints to its Professional Standards Department ("PSD"). The PSD's investigations concluded that his allegations had been properly investigated. A copy of its report was provided to the complainant.

4. The complainant then exercised his right of appeal to the Independent Police Complaints Commission ("the IPCC"). The IPCC determined that one of his complaints to the PSD required further investigation. The PSD duly re-investigated the complaint but its conclusion remained that the original allegation had been properly investigated.
5. The complainant continues to dispute that his original allegations were properly investigated. He claims that High Court action in relation to the will is currently ongoing.

Request and response

6. On 10 November 2012, the complainant wrote to the Constabulary and requested information in the following terms:

"Complaints about the Police – report references CO/117/11 and CO/300/11 and CO/497/11¹

I submit that key evidence in the recorded information contained in the above referenced reports has been manipulated, fabricated and faked contrary to section 77 of the Freedom of Information Act. Please provide me with the source of and copies of that key evidence so that I may pass it to the IPCC, HMIC, the PHSO, the ICO, the LGO, the Independent Case Examiner, the partners of five firms of solicitors and to the High Court.

- 1 *Report CO/117/11 states 'In 2007 a will was written excluding [name redacted] but including her children.' Please provide me with a copy of this specific will and the contemporaneous or manuscript notes of the investigating officers.*
- 2 *Report CO/117/11 states 'This will is being contested by [name redacted] and the complainant.' Please provide me with a copy of the Caveat against Probate lodged by [name redacted] and the complainant at Leeds Probate Registry.*
- 3 *Report CO/117/11 states 'In February 2003 [name redacted] tried to sell a building plot which is adjacent to the complainant's home, at [address redacted].' Please provide me with the names and service addresses of the legal owners of that building plot before February 2003 and after August 2004.*

¹ Independent Police Complaint Commission reference numbers

- 4 *Report CO/300/11 states '[name redacted] was shown a letter from [name redacted] who made a planning enquiry as to whether the demolition work carried out to a wall breached planning regulations.' Please provide me with a copy of the letter shown to [name redacted] together with a copy of his manuscript or contemporaneous notes of his meeting on 12 January 2012 with [four names redacted].*
- 5 *Finally the investigating officers are entitled to their opinions as to whether a Sole Trustee of land can grant a Joint Enduring Power of Attorney. Please provide me with a copy of the Joint Enduring Power of Attorney that the Sole Trustee of the building plot granted on 13 July 2004 to enable the Attorneys allegedly provide [sic] them with lawfully authority [sic] to remove funds and property from the grantors home and estate."*
7. The Constabulary responded on 30 November 2012. It stated that it considered the request to be vexatious and therefore covered by section 14(1) of the FOIA. Its reasons for considering the request vexatious were that it did not serve any serious purpose or value and had been made purely as a means to complain about the Constabulary to the Information Commissioner.
8. Following an internal review the Constabulary wrote to the complainant on 20 December 2012, upholding its decision.

Scope of the case

9. The complainant contacted the Commissioner on 5 January 2013 to complain about the way his request for information had been handled. He stated that the information he had requested was urgently required for submission as evidence in relation to two High Court claims.
10. The Commissioner examined the request and related correspondence from the complainant.
11. This decision notice addresses the Commissioner's consideration of the complainant's request as vexatious under section 14(1) FOIA. The complainant made another FOIA request for similar information to the Constabulary contemporaneously. That complaint is dealt with in a separate decision notice under reference FS50481517. In that case the Commissioner upheld the Constabulary's application of section 14(1) to designate the request as vexatious. This decision notice should be read in conjunction with that notice.

Reasons for decision

12. Section 14(1) of FOIA states that section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious. There is no public interest test.
13. The term "vexatious" is not defined in the FOIA. The Upper Tribunal recently considered the issue of vexatious requests in the case of the *Information Commissioner v Devon CC & Dransfield*². The Tribunal commented that vexatious could be defined as the "*manifestly unjustified, inappropriate or improper use of a formal procedure.*" The Tribunal's definition clearly establishes that the concepts of proportionality and justification are relevant to any consideration of whether a request is vexatious.
14. In the Commissioner's view, the key question for public authorities to consider when determining if a request is vexatious is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress.
15. The Commissioner has identified a number of "indicators" which may be useful in identifying vexatious requests. These are set out in his published guidance on vexatious requests³. The fact that a request contains one or more of these indicators will not necessarily mean that it must be vexatious. All the circumstances of a case will need to be considered in reaching a judgement as to whether a request is vexatious.
16. The Constabulary identified several indicators as being present within the request. It considered that the request was obsessive, formed part of a wider pattern of the complainant making unfounded accusations about the Constabulary and that he displayed no serious intent to obtain the requested information. In view of this, the Constabulary considered that dealing with the request was likely to cause a disproportionate and unjustified level of disruption, irritation and distress and that it was therefore vexatious.

² GIA/3037/2011

³

http://www.ico.org.uk/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/dealing-with-vexatious-requests.ashx

17. The Commissioner has considered each of the factors the Constabulary identified in reaching this position.

The request is obsessive

18. The Commissioner would characterise an obsessive request as one where the requester is attempting to reopen an issue which has already been comprehensively addressed by the public authority, or otherwise subjected to some form of independent scrutiny.
19. In the Commissioner's view, the test to apply here is reasonableness. Would a reasonable person describe the request as obsessive in the circumstances? For example, the Commissioner considers that although a request in isolation may not be vexatious, if it is the latest in a long series of overlapping requests or other correspondence then it may form part of a wider pattern of behaviour that makes it vexatious.
20. The Commissioner accepts that at times there is a fine line between obsession and persistence and although each case is determined on its own facts, the Commissioner considers that an obsessive request can be most easily identified where a complainant continues with the request(s) despite being in possession of other independent evidence on the same issue. However, the Commissioner also considers that a request may still be obsessive even without the presence of independent evidence.
21. In this case, the Constabulary contends that the request is obsessive because the complainant is using it, and other similar requests, to attempt to re-open concluded criminal investigations which have already been thoroughly investigated. It points to the fact that, as set out in the "*Background*" section of this decision notice, the complainant has had his concerns about the conclusions of the original investigations considered by the PSD, and then externally reviewed by the IPCC. Neither resulted in any change to the decision that the allegations revealed no evidence of criminal wrongdoing.
22. The complainant maintains that he requires the requested information for submission as evidence in High Court proceedings involving the will. The Constabulary has advised the complainant how to obtain a court order for any information necessary for court action (as has the ICO). It had also explained that access to certain information would be covered by the Data Protection Act 1998 ("the DPA") rather than the FOIA. To the Constabulary's knowledge, the complainant has pursued neither option (it stated that he had said he was not prepared to pay a £10 subject access fee to receive information under the DPA).
23. The Constabulary stated that the complainant has submitted at least five FOIA requests and in excess of forty letters during 2012 on matters pertaining to its investigation of his allegations. Dealing with the

correspondence has considerable resource implications for the Constabulary. However, of more concern is the frequency and length of his telephone calls, which have sometimes been received several times a day and may last up to 40 minutes. The Constabulary has described them as often “taunting” in tone and frequently lacking structure or focus. Staff members have reported dealing with them to be stressful, as the complainant’s attitude can be somewhat combative and he frequently expects to discuss specific legislation in some detail. In one case, the stress of dealing with the complainant’s repeated calls led to a member of staff taking a period of sick leave. The Constabulary has provided the Commissioner with notes of particular telephone calls in support of this claim.

24. While the allegations referred by the complainant to the Constabulary in 2011 are serious, the Commissioner considers that he has provided no evidence which supports his contention that they were not properly investigated. Against this, the Commissioner notes that his complaints to the PSD and the IPCC (and also, he claims, two local councils) have not resulted in his original allegations of criminal behaviour being re-investigated.
25. It is not for the Commissioner to determine whether the matters which the complainant originally referred to the Constabulary revealed criminal behaviour. However, the number of reviews that those investigations have subsequently been subject to, with no change to their findings, suggests that the intensity of the complainant’s approaches to the Constabulary is disproportionate to the probability of criminal wrongdoing with regard to the will.
26. In this case, taking into account the context and background to the request, in conjunction with the volume of telephone calls and correspondence to the Constabulary relating to the closed investigations, and the fact that complaints to third parties have not resulted in a decision to re-open the investigations, the Commissioner considers that the complainant’s persistence in making related requests to the Constabulary has reached the stage where it could reasonably be described as obsessive.

The request makes unfounded accusations

27. The Constabulary contends that the request forms part of a wider pattern of the complainant making completely unsubstantiated accusations against it and third party individuals.
28. The request commences with a contention that the Constabulary has breached section 77 of the FOIA. The complainant alleges that the police reports on his complaints about its investigations contain information

which has been "*manipulated, fabricated and faked contrary to section 77 of the Freedom of Information Act*".

29. Section 77 creates an offence relating to the deliberate, unlawful attempt to prevent the disclosure of information which a requester is entitled to receive under section 1 of the FOIA.
30. The complainant has not clarified which of his FOIA requests (if any) the alleged section 77 offence relates to and has not asked the Commissioner to investigate it in his submissions to the ICO. In the circumstances the Commissioner considers the allegation to be unsubstantiated.
31. The Constabulary claims that this approach forms part of a wider pattern of accusatory behaviour towards the many people who have been involved in the police investigations and the subsequent investigation of his complaints into those investigation. It states that he routinely questions the honesty and integrity of police officers who investigated his initial allegations and those who have subsequently considered his complaints about those investigations and has cited particular instances of this, involving named members of staff.
32. The Constabulary states that in telephone calls the complainant routinely makes allegations of cover-ups, interference with his mail and conspiracies to deprive him of due process. He has accused individual members of staff of committing criminal offences, including the case officer who has dealt with his FOIA requests. These allegations often result in internal investigations which have resource implications for the Constabulary.
33. It cited an instance on 15 September 2011, when the complainant made a telephone complaint to the Constabulary, alleging conspiracy to pervert the course of justice. The complainant declined to give the necessary information to allow the allegation to be recorded as a report of a crime and so the allegation was not formally recorded. The complainant then made a complaint against the officer who took his call. (The complaint was subsequently investigated by the PSD and not upheld. The complainant is currently appealing that decision.)
34. The Commissioner has had sight of the complainant's written correspondence to the Council. He has also received numerous emails from the complainant which contain multiple allegations that named members of the Constabulary have falsified evidence in connection with his complaints. The complainant also refers to complaints made to other agencies (such as the local council and NHS bodies) which have not been upheld for reasons, he alleges, that amount to corruption. The Constabulary has informed the complainant that some of these allegations are so lacking in substance that it has contemplated charging

him with wasting police time (although the Commissioner understands that no such charges have been brought).

35. As stated previously, it is not the Commissioner's place to determine whether these allegations are true. However, he notes that the complainant has not provided any cogent evidence to support his allegations. For example, the complainant has stated that the internal review letter from the Constabulary, dated 20 December 2012, was deliberately addressed incorrectly with the intention, he claims, that he should not receive it. The Constabulary disputes that the letter was incorrectly addressed (it says its letters are usually posted out in window envelopes which display the address typed on the letter, and that its copy of the letter shows the correct address).
36. The Commissioner has not considered this claim beyond noting that it remains a point of dispute between the two parties. However, assuming for the sake of argument that the letter had been incorrectly addressed, it is far from convincing evidence of a deliberate attempt to prevent the complainant from receiving the letter. There would appear to be no advantage to be gained by the Constabulary in deliberately addressing the letter incorrectly, given that the complainant was expecting it and would chase it up if not received.
37. The complainant appears intent on ascribing sinister motives to what, without any other supporting evidence, might simply have been a routine administrative error. Similarly, he appears to consider any investigation or complaint finding which contradicts his view as being both materially incorrect and most likely arrived at through fabricated evidence and collusion.

There is no obvious intent by the requester to obtain information

38. The Commissioner considers that a requester is likely to be abusing the section 1 rights of the FOIA if he uses FOIA requests as a means to vent anger at a particular decision, or to harass and annoy the authority, for example by submitting a request for information which he knows to be futile. When assessing whether a request or the impact of dealing with it is justified and proportionate, it is helpful to assess the purpose and value of the request.
39. The FOIA is generally considered applicant blind, but this does not mean that a public authority may not take into account the wider context in which the request is made and any evidence the applicant has imparted about the purpose behind their request.
40. In this case, the request is made against a backdrop of investigations into allegations of criminal offences, the findings of which the complainant disputes. The complainant has made several other requests, which, when taken together in the context of the

complainant's wider dispute with the Constabulary, appear to seek to undermine the integrity of the investigations, even though several reviews, both internal and independent, have found no evidence of wrongdoing.

41. The complainant has presented conflicting reasons for requiring the information. He has informed the Constabulary and the Commissioner that the information is required to present as evidence in a High Court action. While on the face of it this would appear to be a serious purpose, the complainant has been informed that the proper route to it would be to obtain a Court Order requiring the Constabulary to produce the information to the Court. Setting aside for a moment the question of whether the request is vexatious, some or all of the requested information (if held) might be exempt from disclosure under one or more of the exemptions in the FOIA. That being the case, such information would clearly not be fit for the purpose the complainant has said he requires it.
42. The complainant has not commented on this point and continues to indicate to the Commissioner that he expects to use the FOIA as a viable route to the information.
43. Of more concern, however, are the complainant's remarks to the Constabulary that he knows that it does not hold the requested information. This would suggest that he has knowingly submitted a futile FOIA request.
44. The Constabulary says that it received the request by email on 12 November 2012. The same day, it logged a call from the complainant in which it says he stated that he knew the Constabulary did not hold the information he requested and that he was making the request as a means of being able to complain about the Constabulary to the ICO and ultimately, to the Information Tribunal.
45. On 30 November 2012, prior to the Constabulary issuing its response on the request, the complainant telephoned again and asked whether it was possible to by-pass the internal appeals process so that he could complain directly to the ICO about the Constabulary. The Constabulary advised him it was yet to make a decision on how to respond to his request. The Commissioner has seen the note of this call and also the Constabulary's electronic log of date and time of the call.
46. The complainant also repeated his claim that he knew the Constabulary did not hold the information and stated that he knew it could be obtained from Huntingdon District Council.
47. The Commissioner notes that early in the ICO's investigation, the complainant telephoned the case officer and specified that a decision notice be prepared in respect of his complaint so that he may appeal it

to the Information Tribunal. This was notable because the preceding discussion had not addressed whether the Commissioner was likely to uphold his complaint.

48. The Commissioner is therefore minded to conclude that the complainant has viewed making the FOIA request as a means to complain about the Constabulary to the Commissioner and ultimately the Information Tribunal. It is not clear whether the motive for this is simply to put the Constabulary to the trouble of appearing before the Information Tribunal or so that the complainant can complain about his wider grievances with the Constabulary. In either case, the Commissioner considers this to be an inappropriate use of the FOIA.

The Commissioner's decision

49. The complainant has a clearly held belief that criminal acts have been committed. However, while the allegations he made to the Constabulary are serious, his reluctance to accept, after thorough investigation and several reviews, that no evidence of criminal wrongdoing has been uncovered by the police investigations has severely limited the serious purpose and value of his request. Additionally, the Commissioner considers that the complainant's failure to use the appropriate channels to obtain information for his stated purpose of pursuing High Court proceedings further reduces the seriousness of the purpose.
50. The complainant has exhibited an intention to use the FOIA as a vehicle for complaining about the Constabulary regardless of its response to the request, or the ICO's finding on the matter. The overall purpose of his course of action appears to be to place pressure on the relevant authorities to reconsider the original allegations under criminal law. Although the Commissioner recognises the complainant's depth of conviction regarding this point, such an approach would appear to amount to an abuse of section 1 of the FOIA, one which resonates with the Tribunal's definition of vexatious as "*manifestly unjustified, inappropriate or improper use of a formal procedure.*" .
51. In this case the Commissioner does not consider that sufficient weight can be placed on any serious purpose served by the complaint to overcome the disproportionate burden of disruption, irritation and distress it imposes on the Constabulary and its individual members of staff.
52. The Commissioner therefore considers that the Constabulary is entitled to rely on section 14(1) to refuse the request on the grounds that it is vexatious.

Right of appeal

53. 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

54. 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.
55. 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

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