

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 1 April 2020

Public Authority: Chief Constable of Greater Manchester Police
Address: Central Park
Northampton Road
Manchester
M40 5BP

Decision (including any steps ordered)

1. The complainant requested information about email response policies. The Chief Constable of Greater Manchester Police ("GMP") considered that the request was vexatious and relied on section 17(6) of the FOIA to refuse the request without issuing a fresh refusal notice.
2. The Commissioner's decision is that the request was vexatious and that, in the circumstances, it was reasonable for GMP not to issue a fresh refusal notice.
3. The Commissioner does not require any further steps.

Request and response

4. On 3 September 2019 the complainant wrote to GMP and requested information in the following terms:

"I have made formal allegations that I have been abused by Rochdale MBC and some of its senior employees.

"This has been confirmed by the Crown Court and yet I have been ignored by GMP. No action has been taken in respect of the abuse I have suffered (and continue to suffer) (except that I was prosecuted/persecuted by GMP for doing NOTHING MORE SINISTER THAN TELLING THE TRUTH I HAVE BEEN ABUSED)

[1] How many more reports of hate crimes have you ignored?

[2] How many more reports of abuse have you ignored?

"I have sent numerous emails to senior officers at GMP ([addresses redacted]) (and others) but have been systematically ignored.

[3] What is your policy on replying to emails?

[4] What is your target response time?

[5] How many more emails have you ignored?

"I have made a number of other Freedom of Information Act/Data Protection Act requests to GMP (including 09/06/2019 15:15) but have been ignored

[6] How many more FOI Act/DP Act requests have you ignored?

[7] What is the collective amount GMP pays to the above officers?

[8] How many people have been prosecuted in connection with the historic abuse in Rochdale (Knowl Hill)?"

5. GMP did not respond to the request.

Scope of the case

6. The complainant contacted the Commissioner on 5 November 2019 to complain about the apparent failure of GMP to respond to the request.
7. In line with her usual practice, the Commissioner wrote to GMP on 19 November 2019 to highlight the outstanding response. She asked GMP to issue a response within 10 working days.
8. GMP responded to the Commissioner's correspondence to say that it considered the request to be vexatious and had relied on section 17(6) of the FOIA to not issue a fresh refusal notice.
9. The Commissioner considers that it would undermine the purpose of this particular exemption to require GMP to carry out an internal review. She has therefore exercised her discretion and accepted the case for investigation without an internal review.
10. The scope of the Commissioner's investigation has therefore been to determine whether the request was vexatious and, if it was, whether it was reasonable in the circumstances not to expect GMP to issue a fresh refusal notice.

Reasons for decision

11. Section 17 of the FOIA states that:

(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.

12. In August 2017, the Commissioner issued decision notice FS50672933 (“the 2017 Notice”) which found that a previous request, submitted by the same complainant, was vexatious.¹ The 2017 Notice provided an overview of the underlying issue common to both that request and the current one. The Commissioner considers that it would serve no useful purpose to repeat that background here.

13. The complainant chose not to appeal the 2017 Notice.

14. Rather than attempt to revisit old ground and given her previous decision, the Commissioner therefore asked GMP to focus on developments in the intervening period since the 2017 Notice.

15. In seeking to determine whether it was reasonable for GMP not to issue a fresh refusal notice to the present request, the Commissioner considers that it would be sufficient for GMP to demonstrate that the same patterns of behaviour had continued over the intervening period.

¹ <https://ico.org.uk/media/action-weve-taken/decision-notices/2017/2014736/fs50672933.pdf>

GMP's position

16. GMP largely rehearsed the arguments which it had originally provided to the Commissioner back in 2017 when, it argued, it had provided a detailed explanation of why the request was vexatious.
17. However, GMP also pointed to the fact that the complainant had sent a total of 41 emails in 2019.
18. GMP argued that the emails followed a broadly similar pattern in that they contained multiple allegations of impropriety and maladministration on behalf of GMP and its staff. In particular, GMP pointed to the pejorative manner in which the request was written.
19. In summary, GMP argued that it would be unreasonable, given the Commissioner's 2017 Notice, to continue to engage with the complainant and it should therefore be spared from having to issue further refusal notices.

The complainant's position

20. The complainant's argument around why the request should have been answered around the perceived failure of GMP to respond adequately to his previously complaints.
21. The complainant argued that he had been a victim of "abuse" from numerous public authorities in the area and that GMP had failed in its statutory responsibilities to protect him. He also felt that GMP had not properly investigated his previous complaints.
22. The complainant attempted to adduce a copy of a previous court ruling in his favour ("the Judgment") for the Commissioner's consideration. He argued that the Judgment reinforced his position and underlined the public interest in his request.
23. The Commissioner was made aware of a 2018 ruling of the First-tier Tribunal which had drawn attention to the fact that the complainant was the subject to a Restraining Order, preventing him from "*publicizing or attempting to publicize by any means*" the Judgment. Having been made aware of this fact, the Commissioner asked the complainant to provide evidence that the terms of the Restraining Order had been removed or modified such that the relevant provision was no longer in force. The complainant responded to say:

"How about you provide evidence that it is?"

24. The Commissioner agrees with the Tribunal when it commented that:

"For this Tribunal to have regard to that finding or to any part of HH Judge Lever's judgment would involve us, not just in disregarding the order, but in rewarding [the complainant for his disobedience to it. We therefore refuse to admit any part of HH Judge Lever's judgment in evidence."

The Commissioner's view

25. Whilst the Commissioner accepts that section 17(6) will almost always be used by public authorities to deal with those who persistently make a vexatious requests, she is also conscious that it is not and should not be used as, a "blanket ban" on an individual exercising their rights under the FOIA.
26. The request in question was submitted more than two years after the 2017 Notice and the complainant is entitled to test whether GMP's use of this exemption is still appropriate. However, the Commissioner's view is that it *is* still appropriate.
27. The evidence provided by GMP demonstrates that the same patterns of behaviour highlighted in the 2017 Notice have continued from that point to this.
28. The complainant has made various other complaints to the Commissioner about a range of public bodies over a number of years. Whilst there is some evidence to suggest that he has not always been treated well by some of the public bodies with which he has interacted, that is now quite some time ago. Moreover, as the Commissioner pointed out in the 2017 Notice:
 - "51. [the Commissioner] considers it clear that the complainant appears to be attempting to pursue his grievances through the FOIA regime and that, by the volume and the tone of many of the requests and accompanying correspondence, he is using it in an attempt to defame and harass GMP.*
 - 52. The Commissioner considers that the FOIA is not an appropriate mechanism for pursuing such concerns. If the complainant has concerns about how GMP has dealt with him regarding the matters set out in paragraph 4, there exist other channels through which he may have his grievances formally examined. The Commissioner considers that there is no public interest in them being played out in public, under the FOIA regime."*
29. The Commissioner accepts that, despite her 2017 Notice, the complainant continues to use the FOIA as a means to re-visit, re-open and re-litigate his previous grievances. It is apparent that no answer GMP could reasonably be expected to give him would prove satisfactory.

Answering this request would shed no light on the underlying matter, nor would it be likely to bring matters to a conclusion. The Commissioner considers it highly likely that even responding to the request by issuing a refusal notice would merely provoke a fresh round of correspondence revisiting the same ground.

30. Section 17(6) exists to give public authorities some form of protection against those who continue to make information requests in order to prolong a pointless exchange of correspondence. That point has clearly been reached here and therefore the Commissioner considers that, not only was the request vexatious, but that it was reasonable, in the circumstances, for GMP to rely on section 17(6) to not issue a fresh refusal notice.

Other matters

31. Section 50(2) of the FOIA states that:

On receiving an application under this section, the Commissioner shall make a decision unless it appears to [her]—

(c) that the application is frivolous or vexatious

32. The Commissioner considers that it would undermine GMP's right to rely on section 17(6) in future if she were continually required to investigate and issue decision notices in respect of GMP's specific use of this exemption to deal with this complainant.
33. The complainant obviously has an absolute right to appeal this decision notice if he wishes to do so. However, in the absence of a successful appeal the Tribunal, the Commissioner considers it reasonable to put the complainant on notice that she is likely to rely on section 50(2)(c) of the FOIA in future to refuse to accept his complaints about GMP relying on section 17(6).

Right of appeal

34. 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: 0870 739 5836

Email: grc@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

35. 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.
36. 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

Phillip Angell
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