

**Freedom of Information Act 2000 (FOIA)
Environmental Information Regulations 2004 (EIR)**

Decision notice

Date: 25 March 2021

Public Authority: Chief Constable of Cheshire Constabulary
Address: Police Headquarters
Clemonds Hey
Winsford
Cheshire
CW7 2UA

Decision (including any steps ordered)

1. The complainant submitted five information requests to Cheshire Constabulary (the Constabulary) regarding different matters related to hunting. The Constabulary refused to comply with the requests, considering them to be vexatious.
2. The Commissioner's decision is that the Constabulary incorrectly handled the requests under FOIA instead of the EIR and failed to demonstrate that the exception provided under regulation 12(4)(b) is engaged and is therefore not entitled to rely on this exception.
3. The Commissioner requires the Constabulary to take the following steps to ensure compliance with the legislation:
 - Issue a fresh response that does not rely on regulation 12(4)(b) of the EIR, for each of the five requests.
4. The Constabulary must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of FOIA and may be dealt with as a contempt of court.

Requests and responses

Complaint 1 - IC-39475-F9H7

5. On 17 November 2019, the complainant wrote to the Constabulary and requested information of the following description:
- "1. Please confirm yes or no whether there has been any communications either/and of written, electronic or meetings between the Constabulary and the following organisations between 1 April 2019 and 1 November 2019:*
- a. Cheshire Hounds Hunt,*
 - b. Cheshire Forest Hunt,*
 - c. Wynnstay Hunt,*
 - d. Cheshire Beagles Hunt.*
- 2. If the answer is yes to any in 1. above and the parties noted in a.-d. please provide:*
- a. copies of written correspondence,*
 - b. copies of all electronic communications,*
 - c. minutes of all meetings,*
 - d. notes of any telephone conversations."*

6. The Constabulary acknowledged receipt on 18 November 2019 and provided the complainant with a response on 6 December 2019. The Constabulary answered with "Yes" in response to points a, b, and c of question 1 and with "No" in response to point d of question 1. In response to question 2 the Constabulary attached a copy of the letter sent to the organisations.

7. Dissatisfied with the Constabulary's response, on 14 February 2020 the complainant requested an internal review stating that the Constabulary's initial response was incomplete. This was in particular because according to the complainant *"Cheshire Police held a meeting on the 14 August 2019 (or thereabouts) with members of the Cheshire Hounds and Wynnstay Hunts."*

8. The Constabulary provided the complainant with the outcome of its internal review on 29 April 2020. It stated that no minutes were taken in the meeting to which he referred in his request for internal review. However, the Constabulary provided him with the agenda of that meeting.

Complaint 2 - IC-4481-M8G0

9. On 3 February 2020 the complainant wrote to the Constabulary and requested information of the following description:

"Please confirm whether you issued S.35 (Anti social Act) or S.60 Notices before the eight arrests of the anti Hunt supporters on 4/1/20."

10. The above request to the Constabulary was allocated the following reference number 12457.

11. On 13 February 2020, the Constabulary provided the complainant with a response, which in addition to the above information request (12457), also covered three other requests previously submitted by the complainant (12390, 12391 and 12412). The Constabulary told the complainant that it was refusing to comply with all four requests, citing section 12 of FOIA as a basis for this refusal and stated that responding to these requests would exceed the appropriate limit of costs.

12. The three other requests where the Constabulary invoked section 12 in refusing to respond were formulated as follows:

Request 12390 – submitted on 19 January 2020

"Please confirm that you have all the SIA Officers badge numbers that are being employed by the Cheshire Hounds Hunt since the 2019/20 hunt season began in November 2019."

Request 12391 – submitted on 19 January 2020

"1. Please confirm yes or no whether there have been any communication either and or of written, electronic or meetings between the Constabulary and the Cheshire Hounds Hunt between 1 November and 19 January 2020.

2. If the answer is yes to 1. Above please provide:

- a. Copies of written correspondence,*
- b. Copies of all electronic communications,*
- c. Minutes of all meetings,*
- d. Notes of any telephone conversations."*

Request 12412 – submitted on 22 January 2020

"Please confirm that Sergeant [name redacted] is not related to [name redacted] of The Cheshire Hunt Limited. If Sergeant [name redacted] is related please confirm that this is noted as a declared interest when

Sergeant [name redacted] duties involve policing the Cheshire Hounds Hunt."

13. The complainant wrote to the Constabulary on 23 February 2020 and requested an internal review for all four of the above mentioned requests.
14. The Constabulary provided the complainant with the outcome of its internal review on 11 May 2020. It decided to change its position regarding the basis for its refusal to comply with all four requests. On this occasion, the Constabulary stated that it considered all four requests to be vexatious, citing section 14(1) of FOIA as the basis for refusing to comply with these requests.

Scope of the case

15. The complainant contacted the Commissioner on two separate occasions (30 April 2020 and 15 May 2020), to complain about the way his requests for information had been handled. Bearing in mind that both complaints were submitted by the same complainant against the same public authority, for practical purposes the Commissioner decided to issue a single decision notice for both complaints.
16. During the course of the Commissioner's investigation, the Constabulary decided to change its position in relation to the first information request. It now stated that all five requests set out above were considered to be vexatious, claiming that section 14(1) of FOIA was applicable to all five requests.
17. The Constabulary also informed the complainant about this change of position.
18. In the course of her investigation, the Commissioner asked the Constabulary to reconsider the applicable access regime in relation to the complaints. She invited the Constabulary to revisit the requests and determine whether the information requested could fall under the definition of environmental information as provided in Regulation 2(1) of the EIR.
19. The Constabulary confirmed that it was satisfied that the information requests were correctly handled under FOIA rather than the EIR.
20. Therefore, the following analysis covers whether the Constabulary was correct when it:

- applied FOIA as the applicable access regime for all 5 requests; and
- refused the requests as it considered them to be vexatious.

Reasons for decision

Would the requested information be environmental?

21. Regulation 2(1) of the EIR defines environmental information as being information on:

(a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;

(b) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in (a);

(c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a)...as well as measures or activities designed to protect those elements;

22. Although she has not seen the requested information, as it is information relating to hunting, the Commissioner believes that the requested information is likely to be information on an "activity" affecting the elements of the environment – namely biological diversity. For procedural reasons, she has therefore assessed this case under the EIR.

Regulation 12(4)(b) of the EIR – Manifestly unreasonable

23. Regulation 5(1) states that:

"a public authority that holds environmental information shall make it available on request."

24. Regulation 12 of the EIR states that:

(1) Subject to paragraphs (2), (3) and (9), a public authority may refuse to disclose environmental information requested if—

- (a) *an exception to disclosure applies under paragraphs (4) or (5); and*
 - (b) *in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information.*
- (2) *A public authority shall apply a presumption in favour of disclosure.*
- ...
- (4) *For the purposes of paragraph (1)(a), a public authority may refuse to disclose information to the extent that—*
- (b) *the request for information is manifestly unreasonable;*
25. The Commissioner considers that a request can be manifestly unreasonable either because it is vexatious or because it would incur unreasonable costs for a public authority or an unreasonable diversion of resources. As detailed above, during the Commissioner's investigation the Constabulary changed its position to being that all five of the complainant's requests were vexatious, and relied on section 14(1) of FOIA.
26. In practice there is no material difference between a request that is vexatious under section 14(1) of FOIA and a request that is manifestly unreasonable on vexatious grounds under the EIR¹. Having found that the request should have been handled under the EIR, the Commissioner has gone on to consider the equivalent EIR provision to section 14(1) of the FOIA, which is regulation 12(4)(b).
27. As discussed in the Commissioner's guidance on vexatious requests², the relevant consideration is whether the request itself is vexatious, rather than the individual submitting it. Sometimes, it will be obvious when requests are vexatious, but sometimes it may not. In such cases it should be considered whether the request would be likely to cause a disproportionate or unjustified level of disruption, irritation or distress to the public authority. This negative impact must then be considered against the purpose and public value of the request. A public authority

¹ <https://ico.org.uk/media/for-organisations/documents/1615/manifestly-unreasonable-requests.pdf>

² <https://ico.org.uk/media/for-organisations/documents/1198/dealing-with-vexatious-requests.pdf>

can also consider the context of the request and the history of its relationship with the requester when this is relevant.

28. Regulation 12(4)(b) of the EIR requires a public authority to apply a public interest test (in accordance with regulation 12(1)(b)) before deciding whether to maintain the exception. The Commissioner accepts that public interest factors, such as proportionality and the value of the request, will have already been considered by a public authority in deciding whether to engage the exception, and that a public authority is likely to be able to "carry through" the relevant considerations into the public interest test.

The complainant's position

29. The complainant disagrees with the Constabulary's refusal to comply with his requests. He is disappointed with the Constabulary's decision to classify his requests as vexatious and rejected the invitation by the Constabulary for a private meeting to discuss his concerns.
30. The complainant believes that the Constabulary intends to keep its relationship with the Cheshire hunts out of any public scrutiny.

The Constabulary's position

31. The Commissioner wrote to the Constabulary requesting its reasoning as to why the requests were vexatious. The questions were focused on the factors that the Constabulary took into account when it decided to refuse to comply with the complainant's requests for information.
32. The Constabulary stated that the complainant submitted seven separate requests within a period of 54 days. It added that a number of these requests consisted of multiple questions and all of them related to the topic of hunting.
33. The Constabulary explained that following each of these seven requests it provided the complainant with a response. Following each response received, the complainant submitted requests for internal review.
34. The Constabulary told the Commissioner that *"this continued, unrelenting cycle of requests, internal reviews and investigations by the ICO has placed an undue and disproportionate burden on our Information Compliance team and complying with the many information requests and correspondence from the complainant had already taken up a hugely disproportionate and large amount of time."*
35. The Constabulary maintains that it has put sufficient effort into attempting to assist the complainant and *"due to the high interest in policing activity Cheshire Constabulary receives a large volume of*

requests which places huge pressure on a small team of individuals responsible for ensuring lawful compliance."

36. In its response to the Commissioner, the Constabulary stated that following each request it had to identify the relevant police officers in order to establish whether the information requested was held. Those police officers in assisting the information compliance team to respond to such requests were taken away from their core operational duties as police officers within the Constabulary.
37. The Constabulary noted that at all stages it offered the opportunity to the complainant to speak with the relevant superintendent in order to assist him in resolving certain matters outside FOIA, *"for example where the questions do not relate to recorded information."* According to the Constabulary these invitations were refused by the complainant.
38. The Constabulary believes that the complainant is abusing FOIA by placing an unreasonable burden on the relevant personnel of the Constabulary, knowing that FOIA allows multiple review stages. It added that it appears that the complainant submitted these requests as a result of his unhappiness at the policing of hunts. The Constabulary stated that *"If the applicant is unhappy with the conduct of an individual police officer or the organisation the correct avenue is to make a complaint to the constabulary's Professional Standards Department (PSD). The applicant instead continues to use the Freedom of Information Act to express his dissatisfaction on this topic."*
39. The Constabulary stated *"Every response we have sent to the applicant resulted in further correspondence. The amount of time spent on this request had and continues to have an adverse effect on our ability to deal with other requests."*

The Commissioner's view

40. Firstly, the Commissioner notes that there are many different reasons why a request may be considered vexatious, as reflected in the Commissioner's guidance. There are no prescriptive "rules", although there are generally typical characteristics and circumstances that assist in making a judgment about whether a request is vexatious. A request does not necessarily have to be about the same issue as previous correspondence to be classed vexatious, but equally, the request may be connected to others by a broad or narrow theme that relates them. A commonly identified feature of vexatious requests is that they can emanate from some sense of grievance or alleged wrong-doing on the part of the authority.

41. The Commissioner's guidance emphasises that proportionality is the key consideration for a public authority when deciding whether to refuse a request as vexatious. The public authority must essentially consider whether the value of a request outweighs the impact that the request would have on the public authority's resources in providing it. Aspects that can be considered in relation to this include the purpose and value of the information requested, and the burden upon the public authority's resources.

In relation to the first request

42. The Commissioner notes that the complaint about the first information request initially was submitted to her to object to the Constabulary's position that it had disclosed all the information held within the scope of the request.
43. However, in the meantime, the Constabulary decided to change its position by citing regulation 12(4)(b) in relation to this request. It is well established that public authorities are entitled to amend their position on an information request at any point in the process. This means that they can introduce new exceptions during the course of the Commissioner's investigation.
44. However, when considering whether an exception is relevant, public authorities should have regard to the circumstances at the time a request is received or at the time a response is issued.
45. The Commissioner notes that the request in question was submitted on 17 November 2019 and the response was provided on the following day; 18 November 2019. Therefore, the considerations to be made are whether at the time that it was submitted, the value of this request outweighed the impact that it would have on the public authority's resources to comply with it.
46. The Commissioner has carefully examined the arguments presented by the Constabulary to her and to the complainant in different phases of dealing with this complaint.
47. The Commissioner notes that, as the present request was the first one in a series of requests by the complainant, the Constabulary's argument about the burden caused by other requests cannot be accepted in relation to this request.
48. The Commissioner notes that the topic of hunting activities is a controversial one and provokes strong feelings. The Commissioner considers that there is a strong public value in information which demonstrates whether certain individuals and public authorities are or are not fully complying with the relevant laws on these matters.

49. The Commissioner notes that the Constabulary did not present any argument that the request was considered to be burdensome to comply with. Instead, it maintained that following its response to the complainant's first request, he continued to submit other information requests and this fact rendered the first information request manifestly unreasonable.
50. However, the Commissioner cannot accept this as a valid argument, because from an objective reading of the first information request, it is not evident that any response would trigger further information requests. As noted above when a public authority decides to rely on a specific exception at a later phase, as is the situation in this case, the relevant consideration is whether at the time of the request, it was obvious that complying with the request would become unjustifiably burdensome.
51. Even in situations when public authorities consider that responding to an information request with environmental implications may become burdensome, the Commissioner considers that public authorities may be required to accept a greater burden in providing environmental information than other information. Any exercise carried out to determine whether an exception applies must take into account the EIR's express presumption in favour of disclosure under regulation 12(2).
52. In relation to the first request, the Commissioner is of the opinion that the Constabulary did not present convincing arguments that at the time when the first request was submitted, it was clear that it was manifestly unreasonable. The Commissioner therefore finds that regulation 12(4)(b) was not engaged in relation to the request of 17 November 2019. Having reached this conclusion, it is not necessary for the Commissioner to go on to consider the balance of the public interests in relation to this request.
53. At paragraph 3 above the Constabulary is now required to issue a fresh response under the EIR to the request of 17 November 2019 which does not rely on regulation 12(4)(b).

In relation to the four subsequent requests

54. The Commissioner wishes to emphasise that refusing a request as manifestly unreasonable places a severe restriction on an individual's right to access information. When a public authority chooses to rely on this particular provision, it must be prepared to supply the Commissioner with evidence to support its use of the exception.

Supplying the Commissioner with assertions or assurances is unlikely to be sufficient.

55. The Commissioner considers that a public authority must present a convincing case that a request is vexatious and thus manifestly unreasonable. In this particular case, she does not consider that the Constabulary has demonstrated that this bar has been met.
56. The Commissioner has considered the Constabulary's arguments in support of its position to declare all four requests as vexatious. This reasoning from the Constabulary in part related to wider correspondence between the complainant and the Constabulary. This information provides context to the information requests but does not necessarily demonstrate how the requests were vexatious. The Constabulary also did not clearly evidence how a burden would be caused by complying with the requests.
57. The Commissioner considers that the arguments provided by the Constabulary in response to her investigation letter were of a general nature and did not clearly identify what the specific reasoning was for finding these requests vexatious.
58. The Commissioner notes that the Constabulary argued that due to the high interest in policing activity related to hunting, the Constabulary receives a large volume of requests that places a considerable pressure on its information governance team. However, in the present case, the considerations about information requests on a similar topic submitted by different individuals, can only be taken into account if there is evidence that they are acting in coordination with a specific purpose. In its response to the Commissioner, the Constabulary stated *"We believe this request can be considered as part of an ongoing campaign of disruption to Cheshire Constabulary that the complainant appears to be undertaking by making FOI requests with unreasonable persistence."* However, it did not present any argument in support of this position.
59. In a previous decision notice (in cases [FS50898869](#) and [FS50919851](#)), the Commissioner was asked to consider whether two requests, made to the LSE, were vexatious because of the number of similar requests made by other people around the same time. The Commissioner decided that:

"The fact that a public authority may receive a large number of similar requests over a short period of time does not mean that every similar request will be vexatious – even if some of them are."

It would be unfair to the complainant if she were to suffer for the actions of others with whom she has no link, beyond a shared interest."

60. It is clear that the complainant and the Constabulary have exchanged a series of correspondence regarding the matter the requests relate to and it is evident that there are a number of disagreements between them. However, the Commissioner's role here is only to determine whether these information requests have been complied with in line with the EIR.
61. The Constabulary argued that the number of requests (seven) submitted within a short period of time (54 days) amounted to an unreasonable burden. It also added a number of those requests contained multiple questions. The Commissioner notes that the number of the requests submitted may not alone be a convincing factor in favour of the requests being vexatious; it must be considered whether that volume of requests causes a disproportionate burden to the public authority.
62. The Commissioner has examined the correspondence exchanged between the parties while the Constabulary dealt with five out of seven requests. She notes that in response to four requests, the Constabulary issued a joint response and joint internal review outcome. In two of those requests, the only additional communication was the acknowledgements of receipt of the information requests and the requests for internal review. The Commissioner also notes that only two out of all information requests she has examined, contain multiple questions. Therefore, the Commissioner cannot accept the argument that the mere number of the requests submitted caused a disproportionate burden or an unjustified level of distress to the Constabulary.
63. When outlining the amount of correspondence created in handling the information requests in question, the Constabulary stated "*with each request we provided the applicant with a response, with each request he has submitted an internal review. Following the internal review the applicant now appears to be submitting an ICO complaint on a number of these requests.*"
64. The Commissioner does not find this argument convincing, as providing internal reviews is a statutory obligation under the EIR and making a complaint to the Commissioner is a right granted to requesters. It is unlikely that reasonable exercising of that right would be accepted as a valid factor in favour of a request being vexatious.
65. The Constabulary also mentioned that, on a number of occasions, it offered a meeting to the complainant to discuss his concerns, but he rejected this offer. The EIR places an obligation on public authorities to

provide the requesters with a response in the form that is preferred by them. In this case, the complainant made his requests in writing and it is clear that he expected the information requested to be provided in writing; the offered meeting would not have satisfied the requests. Consequently, the Commissioner does not accept the complainant's refusal of a meeting as a convincing argument in favour of his requests being vexatious.

66. The Constabulary also stated that these requests have been made as a result of the complainant's apparent unhappiness at the policing of hunts and that he is using FOIA to express his dissatisfaction on this topic.
67. The Commissioner notes that the complainant told the Constabulary that the information sought was for the purpose of research in relation to policing of fox hunting by the Constabulary. In a communication with the Constabulary, the complainant expressed his suspicion that there are irregularities in the way the Constabulary polices hunting. However, the correspondence the Commissioner has seen does not in her view demonstrate anything other than reasonable criticism and scrutiny of a public authority's actions.
68. The Constabulary also argued that it has explained to the complainant that "*a number of the requests cannot be answered within the limitations of the legislation.*" Whilst, the Commissioner notes that part of the information requested may have not been held in recorded form or would not be expected to be held by the Constabulary, she does not consider this to be sufficient to render these requests vexatious.
69. Based on the submissions that the Commissioner has seen, she considers that the complainant is using his right of access under the EIR to request information about actions that the Constabulary has taken in order to challenge and hold the Constabulary to account for those actions. That is in line with the purpose of the EIR.
70. The Constabulary argued that the complainant would not be satisfied with any further responses given, however it has not evidenced this argument strongly. Given that the requests in question here were refused by the Constabulary, the Commissioner notes that there can be no evidence as to how the complainant would have reacted had these requests been complied with.
71. The Constabulary has not demonstrated to the Commissioner that it is dealing with large volumes of correspondence from the complainant. In addition, the Commissioner also considers that there is value to the complainant's requests as they relate to a topic which is of significant public interest. Given this, the Commissioner's view is that the

Constabulary has not made a convincing case as to how these requests are so unreasonable as to outweigh their value.

72. The Commissioner is therefore satisfied that these four requests were not vexatious and hence not manifestly unreasonable, and so the Constabulary was therefore not entitled to rely on regulation 12(4)(b) to refuse them.
73. As the requests were not manifestly unreasonable, the Commissioner does not need to consider the balance of the public interest.
74. At paragraph 3 above the Constabulary is now required to issue a fresh response to the complainant which does not rely on regulation 12(4)(b).

Right of appeal

75. 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

76. 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.

77. 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

**Ben Tomes
Team Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**