

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 18 June 2015

Public Authority: The Chief Constable of Hampshire Constabulary
Address: Police Headquarters
West Hill
Romsey Road
Winchester
Hampshire
SO22 5DB

Decision (including any steps ordered)

1. The complainant requested information concerning expenses incurred by Hampshire Constabulary (the police) arising from a set of criminal and other connected proceedings. The criminal matter had included investigation of a private property in the course of which the police had collaborated with the Royal Society for the Protection of Birds (RSPB) regarding alleged offences against endangered species of birds.
2. The Commissioner found, from the context and history of the request, and the burden already placed on the police by previous connected information requests, that the request had been correctly characterised as vexatious. He decided that the police force had complied with FOIA and does not require it to take any action.

Request and response

3. The complainant has made multiple information requests to this and other police forces although none recently. All of his requests related to police investigations concerning endangered species of birds of prey and proceedings in which the RSPB and the police have cooperated. The complainant himself received a custodial sentence from the Crown Court

in a connected matter. He has maintained his innocence and has continually striven to prove this.

4. On 23 January 2015, the complainant wrote to the police and requested information relating to legal proceedings conducted between 2009 and 2011, the outcome of which the complainant regarded as unsatisfactory. The information request referred to two named individuals, referred to in this notice as "Mr X" and "Mr Y", and was made in the following terms:

1] Please supply the costing for the first court case in relation to Mr X in the Small Claims Court which was over £75 for damage to a door especially the two barristers that were used. This is the case that the judge said the police were not liable but Mr Y was.

2] Given statement below from the RSPB could you also confirm that even though the judge in the Mr X case said that Mr Y was liable for the damage to Mr X's door (see enclosed judgement) the police used public funds to pay the judgement against Mr Y even though they spent a vast sum defending the claim in the first place which they won.

3] Given that the RSPB are not telling the truth in relation to the Mr X case as clearly the judge said Mr Y was a trespasser, the fact the £75 was not paid to prevent court action, £750 was paid because the judge listened to the evidence and concluded Mr Y was a trespasser and did damage the door, please supply the information that you hold to the extent that it relates to an investigation or any other information that you [hold] on the matter. I have lot more evidence if you wish to see it.

5. The request was accompanied by supporting documents, some annotated with commentary by the complainant.
6. The police treated the request as vexatious and, following an internal review, wrote to the complainant on 10 March 2015 applying the section 14(1) FOIA (Vexatious or repeated requests) exemption.

Scope of the case

7. The complainant contacted the Commissioner on 11 March 2015 to complain about the way his request for information had been handled, saying that the police were denying him access to information about what he said had been a misuse of public funds.
8. The Commissioner noted that the information request was virtually identical with the requests and subsequent complaints made by the complainant against this and another police force between 2009 and

2011. The request to Hampshire had been made on 10 March 2010. The Commissioner had decided at that time that the complainant's requests had been correctly treated as vexatious. (ICO decision notice FS50348271 relating to Hampshire Constabulary was dated 16 May 2011; decision notices FS50274648, FS50308738 and FS50308744 relate to another police force on closely connected matters.)

9. The Commissioner considered the representations he has received from the complainant and the police. He also considered whether there had been significant changes in circumstances since his previous decisions that might lead him now to a different conclusion and in so doing he had regard for the Upper Tribunal's decision in *Dransfield*.

Reasons for decision

10. Section 14(1) of the FOIA states that:

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

11. The FOIA does not define the term vexatious, but it was discussed before the Upper Tribunal in the case of *Information Commissioner vs Devon County Council & Dransfield* [2012] UKUT 440 (AAC), (28 January 2013).
12. In that case the Upper Tribunal defined a vexatious request as one that is a *"manifestly unjustified, inappropriate or improper use of a formal procedure"*. The Tribunal made clear that the decision of whether a request is vexatious must be based on the circumstances surrounding the request.
13. In the *Dransfield* case, the Upper Tribunal also found it instructive to assess the question of whether a request is truly vexatious by considering four broad issues: (1) the burden imposed by the request (on the public authority and its staff); (2) the motive of the requester; (3) the value or serious purpose of the request; and (4) harassment of or distress to staff.
14. The Upper Tribunal did, however, also caution that these considerations were not meant to be exhaustive. Rather, it stressed the *"importance of adopting a holistic and broad approach to the determination of whether a request is vexatious or not, emphasising the attributes of manifest unreasonableness, irresponsibility and, especially where there is a previous course of dealings, the lack of proportionality that typically characterise vexatious requests"* (paragraph 45).

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 requests (<https://ico.org.uk/media/for-organisations/documents/1198/dealing-with-vexatious-requests.pdf>). 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 or not a request is vexatious.
16. The Commissioner has therefore considered whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress in relation to the purpose and value of the request. He considers there is in effect a balancing exercise to be undertaken, weighing the evidence of the request's impact on the authority against its purpose and value.

Awareness of police payments

17. In his appeal to the Commissioner, the complainant said that he had made a new information request brought about by a recent claim of the RSPB that the police had paid for the legal costs of a member of the public and also paid his personal judgement. He said, the police had no right to do this as it related to a personal judgment.
18. When asked what had changed since his 2010 information request to the police, the complainant said that there had been a recent email from the RSPB stating that the police had paid all of Mr Y's legal expenses with public money. The police, for their part, told the Commissioner that nothing had changed since the 2010 request to warrant a further request on the same subject.
19. During his investigation, the Commissioner saw that the complainant had made very closely connected information requests to the police in 2010, for the amount of tax payers' money used by the police in the matter, including any money given to pay for Mr Y's legal costs and the total cost to the taxpayer of Mr Y's case. In 2010 the police had treated the request as vexatious and the Commissioner had agreed for the reasons given in his decision notice FS50348271.
20. Also during the course of his investigation, the Commissioner saw, from the complainant's correspondence with another public authority, dated 23 March 2010, that the complainant was aware at that time that the police were paying the costs arising from the judgment against Mr Y from public funds. In 2010 the complainant had asked that public authority: *"...do you hold information on why Hampshire Police are paying for the judgement against Mr Y with public [money] in spite of the fact that a number of judges have said that the police are not liable*

but Mr Y is". In the light of this information request by the complainant, the Commissioner did not accept that he had only recently become aware that Mr Y's costs had been paid by the police.

Disruption, irritation or distress and the purpose and value of the request

21. The police said that, accompanying the current request from the complainant, there had been attachments and commentary running to 46 pages. These had to be read and considered to the extent that determining the matter was time-consuming, onerous and unduly burdensome.
22. The police said that, despite the lapse of five years since the complainant's last information request on virtually identical matters, there had been no significant developments, updates or changes to the investigation or the circumstances since the previous request - which the Commissioner had found to be vexatious.
23. Following his investigation the Commissioner decided that there had been no significant developments in the matter since he had issued his previous decision notice on 16 May 2011.
24. The Commissioner has seen that, in bringing this matter to his attention again, the complainant appeared to have been seeking to target Mr Y, a named individual, against whom the complainant appeared from the correspondence to have some personal enmity.
25. The Commissioner found that, in making this request, the complainant was attempting to reopen issues what had already been comprehensively addressed by the police, the Commissioner himself, and aspects of which had been the subject of independent scrutiny by other public authorities. The Commissioner found that the information request had demonstrated unreasonable persistence.
26. The request was futile as these matters had already been considered at length and conclusively addressed by the police and the ICO and had been the subject of independent investigation.
27. Some five years have elapsed since the last virtually identical information request but the Commissioner found, as a result of his investigation, that the passage of time has not brought with it any significant developments to warrant further consideration by the police.
28. The Commissioner therefore decided, from the context and history of the request, and the burden already placed on this police force and others by previous connected information requests, that for the police to

give the matter further consideration would be disproportionate and that the request had been correctly characterised as vexatious.

Right of appeal

29. 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@hmcts.gsi.gov.uk

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

30. 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.
31. 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
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Wycliffe House
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