

## **Freedom of Information Act 2000 (FOIA)**

### **Decision Notice**

**Date:** 18 February 2013

**Public Authority:** Chief Constable of Surrey Police  
**Address:** PO Box 101  
Guildford  
GU1 9PE

#### **Decision (including any steps ordered)**

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1. The complainant has requested information from Surrey Police. Surrey Police refused to comply with the request, arguing that it was vexatious under section 14(1) of the FOIA. The Commissioner's decision is that Surrey Police correctly categorised this request as vexatious, therefore it was entitled to rely on section 14(1) to refuse the request. The Commissioner does not require any steps to be taken.

#### **Request and response**

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2. The complainant has been in contact with Surrey Police since 2007 in relation to a parking dispute near her home involving a third party who is a local businessman. In 2010 the complainant obtained certain information, from Tandridge District Council, which the third party had submitted to that Council as part of a planning application. This information was disclosed following a decision notice issued by the Commissioner in December 2009<sup>1</sup>.
3. On 28 January 2012, the complainant submitted an information request to Surrey Police. The complainant referred to two letters written by the third party:

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<sup>1</sup> Decision notice FS50198252, issued 3 December 2009

*"In a letter dated 22 June 2001, he writes: "The above two letters and you choosing to ignore my letter can only be seen as your continued harassment, and a reason to close down my business. I think there is something very suspicious going on, and in view of this I should inform you that I am enlisting the services of [a private detective] to look into the background and finer details of certain staff and families connected with Tandridge District Council, to see whether any of them - who are supposed to be servants of the public - are abusing their positions. I will be forwarding the findings to the appropriate authorities."*

*In a later letter, dated 3 August, he states: "...the results of our investigations are showing up as being very interesting, and I have been informed about a certain person with a police record, and other points which I will deal with as necessary."*

*A.1) I would like to know whether Tandridge District Council contacted Surrey Police as a result of these letters.*

*A.2) I would like to know whether Surrey Police has investigated whether any there was any potential misuse of the police database during this period, given the reference to police records.*

*B. In the same batch of information, an individual (Mr A) also writing on behalf of a company, threatens a senior council officer, stating "do not cross me or my family".*

*B.1) I would like to know whether Tandridge District Council contacted Surrey Police as a result of this correspondence. If so, what action was taken?*

*In 2005 the council was informed that in a conversation related to parking problems at Mr A's site, an associate of Mr A said to a member of the public: "Do not cross Mr A".*

*B.2) I would like to know whether Tandridge District Council informed Surrey Police and, if so, what action was taken.*

*A Surrey County Council employee stated in conversation with a member of the public that he was threatened on an attempted site visit to Mr A's property (the threat included the phrase "I know where you live"). This incident would have taken place in around 2000/2001.*

*B.3) I would like to know whether Surrey County Council informed Surrey Police and, if so, what action was taken."*

4. Surrey Police responded on 27 February 2012, refusing the request under section 14(1) of the FOIA. The complainant requested an internal review on the same day.

5. On 16 July 2012 Surrey Police communicated the outcome of the review to the complainant, which was that the refusal was upheld.

### **Scope of the case**

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6. The complainant contacted the Commissioner on 6 August 2012 to complain about the way her request for information had been handled. The complainant did not believe her request was vexatious and asked that the Commissioner investigate whether it had been properly refused.

### **Reasons for decision**

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7. Section 14(1) of the FOIA states that a public authority is not obliged to comply with a request if the request is vexatious. The term vexatious is not defined in the FOIA, but the Commissioner's published guidance<sup>2</sup> explains that the term is intended to have its ordinary meaning and there is no link with legal definitions from other contexts (e.g. vexatious litigants).
8. Surrey Police advised the Commissioner that it had considered his guidance, and had concluded that the request was vexatious on the following grounds:
  - The request can fairly be categorised as obsessive, and
  - The request is harassing the authority or causing distress to staff.
9. Surrey Police referred to the complainant's parking dispute and advised that the complainant had been in contact with Surrey Police since 2007 in relation to the dispute. Surrey Police told the Commissioner that in 2010 the complainant had made a number of requests relating to the third party. This resulted in a refusal notice being issued by Surrey Police on 13 October 2010 stating that the latest of these requests was considered vexatious and therefore refused under section 14(1) of the FOIA.

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[http://www.ico.gov.uk/for\\_organisations/guidance\\_index/~media/documents/library/Freedom\\_of\\_Information/Detailed\\_specialist\\_guides/VEXATIOUS\\_AND\\_REPEATED\\_REQUESTS.ashx](http://www.ico.gov.uk/for_organisations/guidance_index/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/VEXATIOUS_AND_REPEATED_REQUESTS.ashx)

10. Surrey Police advised that the complainant had not responded to the refusal notice issued in 2010. Consequently Surrey Police had assumed that she accepted its assessment that the requests were vexatious. However, in November 2011 the complainant made a fresh request about the third party's company in relation to Surrey Police.
11. The Commissioner notes that the letters which led to the complainant's requests dated from 2001, over ten years ago. The requests made by the complainant in 2010 focused on the complainant's suspicion of a relationship between Surrey Police and the third party. The requests made from November 2011 onwards continued this theme, but the request dated 28 January 2012, which is the subject of this decision notice, was slightly different in its focus. In this request the complainant had asked if various incidents which were mentioned in two letters which were written more than 10 years ago have been reported to the police or investigated.
12. Surrey Police advised the Commissioner that the complainant has submitted a total of seven information requests asking whether Surrey Police holds information about the third party's company. Surrey Police is of the view that it has advised the complainant on several occasions that it does not hold any relevant information about the third party. In addition Surrey Police has provided information to the complainant in a number of attempts to clarify the situation. This has included details of action taken by Surrey Police, and logs of its interactions with the complainant with regard to her issues.
13. The complainant also accepted that the parking dispute and other issues between her and the third party extended over some time. In respect of the request of 28 January 2012 the complainant argued that she had made the request because she was concerned by the threats contained in the letters identified. The complainant told the Commissioner that she would be extremely concerned if it transpired that the two councils identified in her request – Trandridge District Council and Surrey County Council – had not notified the police about these threats.
14. The Commissioner has considered the arguments put forward by the complainant and Surrey Police. Surrey Police has not claimed that responding to the request of 28 January 2012 would place a significant or unreasonable burden on it as a public authority. Rather, Surrey Police has argued that, in continuing to make requests for information which the complainant knows is not held, the complainant is demonstrating a pattern of obsessive behaviour.
15. The Commissioner is of the view that seven requests during a period of more than two years, is not in itself excessive. However the Commissioner has also been provided with copies of some of the

complainant's more general correspondence with Surrey Police. This includes twelve emails sent between 1 June 2010 and 31 December 2010.

16. The Commissioner considers that parallels can be drawn between this case and the Information Tribunal case of *Betts v Information Commissioner Information Tribunal*<sup>3</sup>. In *Betts*, the complainant made a series of requests for information tenuously connected his ongoing dispute with the public authority. The majority Tribunal found section 14(1) was engaged and commented:

*"...the Appellant's refusal to let the matter drop and the dogged persistence with which he pursued his requests, despite disclosure by the Council and explanations as to its practices, indicated that the latter part of the request was part of an obsession. The Tribunal accepted that in early 2005 the Appellant could not be criticised for seeking the information that he did. Two years on however and the public interest in openness had been outweighed by the drain on resources and diversion from necessary public functions that were a result of his repeated requests..."* (para 38).

17. Surrey Police also drew the Commissioner's attention to the language and tone of the complainant's correspondence. The Commissioner notes the complainant's clear frustration at what she perceives as a lack of action in relation to the parking dispute. Some of the complainant's correspondence contains insulting language directed towards the police generally, for example, referring to police officers as "poodles". The complainant has also made personal insults against named individuals.
18. Surrey Police has rightly pointed out to the Commissioner that it has a duty of care towards its staff. The Commissioner considers the complainant's behaviour to be fairly low-level, and would tend to categorise the language as insulting rather than abusive. The Commissioner recognises that public authorities such as police forces by their very nature deal with all types of people, some of whom may not be polite or indeed reasonable. The Commissioner is of the view that public authority staff should be able to manage a certain level of inappropriate behaviour. However, in this case the Commissioner believes the complainant's conduct is so unreasonable that it constitutes harassment of Surrey Police staff, and is likely to cause distress to these individuals.

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<sup>3</sup> Appeal no EA/2007/1009

19. The complainant has advised the Commissioner that the stress of dealing with Surrey Police has made her act out of character. The Commissioner understands that requesters may be frustrated in their dealings with public authorities, but this does not absolve them of a general responsibility to communicate in a courteous and civil manner. Therefore the Commissioner has attached significant weight to this argument.

20. In reaching a conclusion in this case the Commissioner is also assisted by the Upper Tribunal's comments in the case of *Wise*<sup>4</sup> v Information Commissioner:

*"Inherent in the policy behind section 14 (1) is the idea of proportionality. There must be an appropriate relationship between such matters as the information sought, the purpose of the request and the time and other resources that would be needed to provide it."*

21. The Commissioner is mindful that the complainant has made a number of requests to Surrey Police, all on the same broad topic of her parking dispute and the third party involved. The Commissioner considers that, as with *Betts*, the complainant in this case has continued to pursue requests despite the fact that until now Surrey Police has responded to every request she has made by advising that the requested information is not held.

22. The Commissioner also notes that the complainant has not sought to challenge Surrey Police's responses that it does not hold the requested information, but instead she has reacted by submitted further requests for similar information. If the complainant felt she had grounds for challenging Surrey Police's responses in any respect then she should follow the internal review process as provided by Surrey Police. As the complainant has not done this, the Commissioner is inclined to accept Surrey Police's argument that the complainant's continuing correspondence does indicate a pattern of obsessive behaviour. The Commissioner sees no evidence to suggest that compliance with the request of 28 January 2012 would satisfy the complainant or bring an end to the correspondence.

23. In light of the above the Commissioner finds that there is sufficient evidence to support Surrey Police's claim that the complainant's request of 28 January 2012 was vexatious. Accordingly the Commissioner finds

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<sup>4</sup> Appeal no EA/2012/0150

that section 14(1) is engaged, and Surrey Police was not obliged to comply with the request.

### **Other matters**

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24. Although it does not form part of this decision notice the Commissioner has considered the time taken by Surrey Police to complete the internal review in this case, ie 96 working days.
25. The Commissioner has published guidance which sets out his view that most internal reviews should take no more than twenty working days. That guidance sets out the Commissioner's view that exceptionally complex cases may take longer, but that no case should take longer than forty working days. A prompt internal review can in many cases resolve the complainant's dissatisfaction. Conversely, excessive delay in completing an internal review can exacerbate the situation and prevent resolution.
26. Surrey Police advised that the delay in this case was due to "a heavier than usual workload". However, the Commissioner would expect that Surrey Police take steps to ensure that this inordinate delay does not recur.

## Right of appeal

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27. 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](mailto:informationtribunal@hmcts.gsi.gov.uk)  
Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

28. 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.
29. 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 .....**

**Alexander Ganotis**  
**Group Manager – Complaints Resolution**  
**Information Commissioner’s Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**