

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 14 October 2015

**Public Authority:** Chief Constable of Cheshire Constabulary  
**Address:** Cheshire Constabulary HQ  
Oakmere Road  
Winsford  
CW7 2UA

### Decision (including any steps ordered)

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1. The complainant has requested statistical information about child abuse investigations conducted by Cheshire Constabulary. The Constabulary refused to comply with the request because it considered it to be vexatious under section 14(1) of the FOIA.
2. The Commissioner's decision is that the Constabulary has correctly relied on section 14(1) of the FOIA to refuse the request. The Commissioner requires no steps to be taken.

### Request and response

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3. On 3 March 2015 the complainant submitted the following request for information to the Constabulary. The request was titled "Failing To Investigate Child Abuse" and was submitted via the What Do They Know ("WDTK") website<sup>1</sup>, a website for submitting and archiving FOIA requests:

*"Yesterday I attended a meeting wherein I was told a number of parents living in Cheshire West area had made complaints of child abuse to your Force and to Cheshire West and Chester Council Social*

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<sup>1</sup> <https://www.whatdotheyknow.com/>

*Services. I am advised their complaints were not taken seriously nor Professionally investigated by either agency.*

...

*Please confirm how many complaints of child sex abuse your force received between 2008 - 2014 - How many of those complaints were Professionally investigated - How many of those complaints resulted in your Force working with Cheshire West and Chester Council to resolve - How many of those cases went to the CPS - How many of those cases resulted in convictions."*

4. The Constabulary responded on 13 March 2015. It said that it was not obliged to deal with the request because to do so would exceed the appropriate costs limit established under section 12(1) of the FOIA. However, it did confirm that it had received 2960 complaints from people aged 17 or under, which addressed the first part of the complainant's request.
5. On 13 March 2015 the complainant requested an internal review. He disputed that compliance with the request would exceed the appropriate limit, stating that the information was almost identical to that requested by his MP prior to a meeting with the Constabulary in October 2014.
6. The Constabulary wrote to the complainant on 13 April 2015 to notify him of the outcome of the internal review. It revised its position and refused to comply with the request, stating that it considered it to be vexatious within the meaning of section 14(1) of the FOIA.

## **Scope of the case**

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7. The complainant contacted the Commissioner on 1 May 2015. Referring to the Constabulary's application of section 14 to refuse six requests he had submitted, of which this complaint was one, he accused the Constabulary of effectively "blacklisting" him from making FOIA requests.
8. The Commissioner has considered whether the Constabulary was entitled to rely on the vexatious provisions at section 14(1) of the FOIA.

## **Reasons for decision**

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9. 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.

10. The term "vexatious" is not defined in the FOIA. The Upper Tribunal considered the issue of vexatious requests in the case of *Information Commissioner vs Devon County Council & Dransfield* [2012] UKUT 440 (AAC), (28 January 2013)<sup>2</sup>.
11. 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.
12. 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) the harassment or distress of and to staff.
13. The Upper Tribunal cautioned 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).
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 requests<sup>3</sup>. The fact that a request

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<sup>2</sup> <http://www.osspsc.gov.uk/Aspx/view.aspx?id=3680>

<sup>3</sup> <https://ico.org.uk/media/for-organisations/documents/1198/dealing-with-vexatious-requests.pdf>

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.

## **Evidence from the parties**

### *The complainant*

16. The complainant complained to the Commissioner about the way the Constabulary had dealt with six of his FOIA requests, of which this was one. In support of the complaints, the complainant stated only that the Constabulary was engaging in bullying and blacklisting tactics. He did not explain to the Commissioner why he considered the application of section 14 to be inappropriate.
17. The Commissioner invited the complainant to provide more information about his purpose and motivation for requesting the information he had asked for. He asked him to clarify any aims he hoped to further and the public interest he considered that would be served by the Constabulary disclosing the information. He also asked the complainant whether he considered the Constabulary had acted improperly, and for any evidence or reasons to support his belief. The Commissioner explained that any submissions the complainant wished to make on these points would be considered alongside the Constabulary's submissions. The complainant acknowledged receiving the Commissioner's letter but failed to provide any response to the questions.

### *Cheshire Constabulary*

18. The Constabulary stated that the request forms part of a wider pattern of enquiries, complaints and FOIA requests which the complainant has used to pursue personal grievances against it. The Constabulary considered that it was evident from the volume of requests (which imposed a significant burden on its staff and resources) and from their combative and frequently defamatory tone, that the complainant's primary intention was to disrupt the Constabulary's operations and damage its reputation.
19. With regard to the set of indicators referred to in paragraph 15, above, the following criteria appear to be met:
  - the request imposes a burden on the Constabulary;
  - the request contains unfounded accusations;
  - the complainant submits frequent or overlapping requests; and

- the complainant has no obvious intent to obtain information.
20. The Constabulary therefore found the request vexatious within the meaning of section 14(1) of the FOIA.

*Would compliance with the request create a significant burden in terms of expense and distraction*

21. The Constabulary gave some wider background to its interactions with the complainant. Since October 2010 the complainant had submitted 65 FOIA requests to it (28 having been received in 2015). The complainant also submitted voluminous correspondence outside of the FOIA regime. A search of inbound email traffic from the complainant's personal email account to various points within the Constabulary found 186 emails received between September 2013 and May 2015. The Constabulary was therefore expending significant resources in dealing with the complainant's stream of complaints, accusations and FOIA requests.
22. Turning to the impact of dealing with this request, the Constabulary noted that it had complied with the first part by disclosing that it had received 2960 complaints of child sex abuse. In order to comply with the remainder of the request it said it would have to retrieve and manually examine each individual case file to extract the information required. With regard to the last part of the request, which asked for information about convictions, this would have required a separate search of each accused person's arrest and conviction history, on the Police National Computer ("PNC").
23. The Constabulary estimated that to retrieve and extract the requested information from the individual case files would take one person a minimum of 500 hours. The PNC searches would take an estimated 250 hours. The Constabulary therefore felt entitled to refuse the request under section 12, on costs grounds alone, but it amended its response at internal review because it considered it would be more accurate to categorise the request as vexatious.
24. The complainant had responded to the initial claim that costs limits would be exceeded by stating that the information should be readily available, as it was almost identical to information previously requested by a local MP. As part of the internal review the Constabulary checked the information that had been prepared for the MP. It noted that the information the MP had asked for was substantially different from what the complainant had requested. The only intersection between the two requests was that the MP had also asked for the number of child victims of sexual offences, which was information the Constabulary had provided to the complainant.

*Motive of the requester and purpose and value of the request*

25. The Constabulary considered that the request was made in bad faith. It said that the wording of the request was unnecessarily combative and was clearly written to be read by a wider audience than just the Constabulary. It argued that the purpose of request was not to obtain the requested information, but to publicly attack the Constabulary.
26. It said that the complainant's wider interactions with it are characterised by him stating things as fact which have either never happened or did not happen in the way he represents them. With regard to the meeting referred to in the request, it said that it had not been aware of the meeting and so was not present at it. Furthermore, it had been unable to verify where or even whether the meeting had taken place. It said that it had made enquiries with Cheshire West and Chester Council, and with Hartford Parish Council, neither of which had any knowledge of the meeting. The Constabulary said that it was also not aware that there were any concerns among local people that child abuse allegations made to it had not been investigated. It suggested that the reference to the meeting and the supposed concerns was an example of the complainant deliberately imposing a false narrative of events to publicly discredit the Constabulary.

*Does the request have the effect of harassing the Constabulary or its staff?*

27. The Constabulary considered that the central premise of the request (that it had not dealt properly with allegations of child abuse made to it) was typical of the complainant's pattern of publicly making unsupported allegations of wrongdoing and corruption. It considered that the tone of a significant proportion of his complaints and correspondence was personal in nature and implied both high-level, systemic corruption and personal incompetence by individual officers and civilian staff, allegations which the complainant had not substantiated.
28. Of particular note was the fact that the requests were made via the WDTK website, and thus were publicly viewable. The Constabulary had commented in the Commissioner's investigation of another complaint submitted by the complainant that he had a pattern of using FOIA requests to making inflammatory remarks and allegations, and that it believed that increasingly he used the WDTK mechanism primarily for this purpose. It believed that this was an abuse of the FOIA mechanism and was completely unreasonable.
29. It considered the complainant was habitually using the FOIA mechanism in an attempt to bully and harass the Constabulary and its staff, in furtherance of a personal grievance, which would neither be addressed

nor furthered by the disclosure of the information he asked for. With regard to this request, it found the suggestion it had not investigated allegations of child abuse made to it to be particularly offensive.

30. The Constabulary acknowledged that it had designated many of the complainant's other requests as vexatious. However, it said that it maintained an objective approach to assessing his requests, and that it had not simply designated the complainant himself as "vexatious". It highlighted the fact that in this case it had initially refused the request under a different section (which it still maintained was entirely valid) and that it conducted a proper and considered internal review in response to particular points raised by the complainant.

### **The Commissioner's decision**

31. In reaching a decision, the Commissioner has considered the case of *Independent Police Complaints Commissioner v The Information Commissioner*<sup>4</sup> in which the Tribunal observed that:

*"A request may be so grossly oppressive in terms of the resources and time demanded by compliance as to be vexatious, regardless of the intentions or bona fides of the requester. If so, it is not prevented from being vexatious just because the authority could have relied instead on s.12".*

32. He has also had regard to a more recent Court of Appeal decision, in *Dransfield v IC & Devon County Council / Craven v IC & DECC*<sup>5</sup>. In the Court of Appeal decision it was held that the costs of complying with "an extremely burdensome request" could be the basis for concluding that a request was manifestly unreasonable under the EIR; it also concluded that this was the case under FOIA with regard to section 14.
33. Finally, the Commissioner has had regard to his own guidance on vexatious requests and to the set of indicators referred to in paragraph 15, above.
34. The Commissioner notes that, taken in isolation, the complainant's request would not necessarily be regarded as vexatious within the meaning of section 14. However, in considering this matter, the

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<sup>4</sup> EA/2011/0222, 29 March 2012

<sup>5</sup> [2015] EWCA Civ 454

Commissioner has had regard to the context and history surrounding the request.

35. Since September 2012 the Commissioner has received 12 complaints from the complainant about the way in which the Constabulary has dealt with his FOIA requests. He has also viewed many more FOIA requests that the complainant has submitted to the Constabulary on the WDTK website.
36. The Commissioner considers that at least some of his FOIA requests originate from a dispute between the complainant, the Constabulary and several local councils. The nature of the dispute was outlined in decision notice FS50551798<sup>6</sup> and will not be repeated here.
37. The Commissioner considers it reasonable to conclude from the tone and content of many of the complainant's wider requests, and the information posted on a website that he maintains, that he is increasingly using the FOIA mechanism as a vehicle for venting frustration and publicising his discontent with these bodies.
38. It should be noted that in July 2015 Cheshire West and Chester Council, against whom the complainant has engaged in a similar pattern of behaviour, succeeded in having an anti-harassment injunction made against him. The Commissioner has noted the High Court judge's comments about the complainant, when giving the judgement:

*"It appears to me that he has become obsessed and perhaps even exhilarated by his ability to cause distress by repeating long dead allegations over and over again. By accusing each new recipient of corruption if they do not immediately do whatever it is he asks of them, he widens the scope of his campaign to include people who have nothing to do with it. He has long since ceased to apply any rational judgment of any kind in deciding what to do. On the evidence as it stands now,*

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<sup>6</sup> [https://ico.org.uk/media/action-weve-taken/decision-notices/2014/1042614/fs\\_50551798.pdf](https://ico.org.uk/media/action-weve-taken/decision-notices/2014/1042614/fs_50551798.pdf)

*it appears probable to me that he simply wants to cause harm. I consider that it is likely that he is succeeding.”<sup>7</sup>*

39. The Commissioner also considers it pertinent that the First-tier Tribunal, when considering appeals by the complainant against two decision notices, observed that he made unsubstantiated allegations and stated as fact things which had not occurred. It has also commented on his apparent desire to create “*a scandal*” out of what appeared to be genuine errors<sup>8</sup>.
40. The Commissioner has had regard to the Constabulary’s submissions about the frequency and tone of the complainant’s communications with it, and particularly the complainant’s allegations of misconduct and corruption which he has levelled at it publicly, through the WDTK website. The Commissioner notes that in this case the request was titled “*Failure to Investigate Child Abuse*”, and contained claims that local people were concerned at the way the Constabulary had handled complaints of child abuse. However, the complainant failed to supply any evidence in support of his claims when asked to do so by the Commissioner, and the Constabulary says it has no knowledge of any such concerns.
41. The Commissioner noted in decision notice FS50551798 that the complainant appears to view the WDTK website as being as much a platform for publicly airing grievances and allegations as it is a means for accessing official information, and this appears to be another instance where WDTK may have been used for that purpose. The Commissioner considers it relevant to note here that the complainant’s WDTK account is currently suspended, “*...following persistent abuse of our service*”.
42. The Commissioner considers that the complainant would be fully aware that the comments and allegations he posts about the Constabulary will be seen by users of the WDTK website and that they may be returned in internet search results. The Commissioner considers that the claims may be construed as fact by users of the WDTK website and that, taking the wider background of the matter into account, this would be a motivating factor behind the complainant’s request. He also considers that,

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<sup>7</sup> <http://www.bailii.org/ew/cases/EWHC/QB/2015/2141.html>

<sup>8</sup> EA/2015/0065 and EA/2015/0052

particularly in the current climate where allegations of failure to investigate child sex abuse are taken very seriously, the complainant's behaviour could fairly be described as having the effect of harassing the Constabulary and its staff.

43. The Commissioner is also aware that having received a response to the request on 13 March 2015, on 26 March 2015 the complainant submitted a fresh FOIA request, which asked the Constabulary "*...how many complaints of child sex abuse your Force received between 2008 – 2014*". This was identical to the first part of his request dated 3 March 2015, and which the Constabulary had answered 13 days earlier.
44. The Constabulary refused the fresh request on the grounds that it was vexatious and substantially similar to the previous request. The complainant asked for an internal review of that decision and subsequently complained to the Commissioner about the Constabulary's response (the Commissioner refused to investigate that complaint on the grounds that it was frivolous within the meaning of section 50(2)(c) of the FOIA).
45. The Commissioner considers the complainant's behaviour here to be unreasonable, as he would have known that the Constabulary had already disclosed the requested information to him very recently. He considers that the time given over by the Constabulary (and, for that matter, by the Commissioner's own staff) to dealing with the second request had the effect of unnecessarily tying up resources which would otherwise have been dealing with legitimate FOIA requests.
46. The Constabulary has demonstrated to the Commissioner that it has expended significant resources in dealing with matters arising from the complainant's various FOIA requests, requests for internal review and complaints to the Commissioner. The Commissioner accepts that the time and resources that the Constabulary has devoted to dealing with the complainant have been considerable and that this inevitably reduces the amount of time that can be given over to dealing with other requesters' requests.
47. Most importantly, he has had regard to the estimate that the Constabulary has provided of the time it would take to comply with this request, an estimate he considers to be cogent and reasonable. He accepts that the diversion of more than 750 working hours to deal with this request could not be absorbed by the Constabulary without having a significant, disruptive effect on other areas of its work. He further notes that if the Constabulary was not applying section 14(1), the costs to it of complying with the request would appear to exceed the appropriate limit established under section 12 of the FOIA.

48. The Commissioner considers that the exemption set out at section 14 prevents an individual from imposing an *unwarranted* level of disruption, irritation or distress on a public authority. He has considered whether there are any mitigating factors which might justify requiring the Constabulary to comply with the request, particularly given the serious nature of the subject matter of the request.
49. As noted in paragraph 17, above, the complainant was specifically asked to submit information which might inform this point, but failed to do so. The Commissioner has therefore looked at all the available evidence and does not consider that sufficient weight can be placed on any serious purpose served by the request to justify the level of disruption, irritation and distress it imposes on the Constabulary and its individual members of staff. In reaching this decision he has had regard to the Upper Tribunal's definition of vexatious (the "*manifestly unjustified, inappropriate or improper use of a formal procedure*").
50. The Commissioner is therefore satisfied that the request imposes a burden on the Constabulary to the point where it should not reasonably be expected to comply with it.
51. Taking all the above into account, the Commissioner is satisfied 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

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52. 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](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

53. 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.
54. 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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