

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 22 December 2016

Public Authority: Commissioner of the Metropolitan Police
Service

Address: New Scotland Yard
Broadway
London
SW1H 0BG

Decision (including any steps ordered)

1. The complainant has requested information about a named police officer from the Metropolitan Police Service (the "MPS"). Having initially refused to confirm or deny holding any information by virtue of section 40(5) (personal information) of the FOIA, the MPS subsequently found the request to be vexatious under section 14(1). The Commissioner's decision is that the request is vexatious. No steps are required.

Background

2. This request relates to a named police officer who stayed at a hotel in 2012 which was run by the complainant's family. The police officer, who stayed there in a private capacity for a family event, was unhappy with the accommodation and refused to pay the full bill. There was an argument and various allegations were subsequently made which included involvement by the local police force.
3. Having later established that the named party was a police officer at the MPS, the complainant made a complaint about him to the MPS. His complaint was not upheld and he was advised that it was considered to be a civil matter. A further complaint to the MPS was also made and it was concluded that there had been no breach of professional standards by the officer concerned.

4. Later, the complainant went on to complain to the IPCC. The IPCC concluded that there was no evidence of misconduct although it advised that the officer had received words of advice regarding the argument that had occurred. The complainant remained dissatisfied with the outcome of the IPCC investigation and appealed it to them. It was reconsidered and the outcome did not change.
5. This is the fourth request under the FOIA which the complainant has made to the MPS asking for information about the named officer.

Request and response

6. On 13 August 2016 the complainant wrote to the MPS and requested information in the following terms:

"I wish to seek confirmation from the force about the status of [name removed], sometime Inspector in Bromley. Specifically, is this individual still:

(a) working as a constable within the service?

(b) at what rank are they serving".
7. On 14 September 2016 the MPS responded. It refused to confirm or deny holding the requested information, citing section 40(5) (personal information) of the FOIA as its basis for doing so.
8. Following an internal review the MPS wrote to the complainant on 15 September 2016. It revised its position finding that the request was vexatious under section 14(1) of the FOIA.

Scope of the case

9. The complainant contacted the Commissioner on 16 September 2016 to complain about the way his request for information had been handled. He asked the Commissioner to consider whether or not his request was vexatious and provided the following grounds for his complaint:

"I requested confirmation whether an individual ion [sic] the MPS was continuing as a constable (with powers of arrest, rights of entry etc). The MPS had previously publically disclosed on its own website that this person was a countable [sic] at Inspector/Sergeant rank. I had reason to complain about this officer, and aspects of the complaint were upheld.

Anyone with the rank of constable is engaged in a public facing role with coercive powers against the public, backed by statute.

Because I made a complaint against this officer, I have been branded vexatious. This question engages the public interest because of the nature of the public powers invested in a police officer, and the straightforward question "is this person you have previously publically disclosed to be a constable still a constable and at what rank are they now serving" is not an intrusive question, but one about conferral of considerable powers on a class of person".

10. The Commissioner will consider whether or not the request is vexatious below.

Reasons for decision

Section 14(1) – vexatious requests

11. 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.
12. The term vexatious is not defined in the FOIA. The Upper Tribunal considered the issue of vexatious requests in the case of the *Information Commissioner v Devon CC & Dransfield*¹. The Tribunal commented that vexatious could be defined as the "*manifestly unjustified, inappropriate or improper use of a formal procedure.*" The Tribunal's definition clearly establishes that the concepts of proportionality and justification are relevant to any consideration of whether a request is vexatious.
13. 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.
14. The Commissioner has identified a number of "indicators" which may be useful in identifying vexatious requests; these are set out in her

¹ <https://www.judiciary.gov.uk/judgments/info-commissioner-devon-county-council-tribunal-decision-07022013/>

published guidance². 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 the case will need to be considered in reaching a judgement as to whether a request is vexatious.

15. The MPS has provided the Commissioner with its reasons as to why it has applied section 14(1) of the FOIA. In doing so, it has considered the history and context leading up to this request being made. Adding to this, the MPS also provided a summary of its interaction with the complainant, which includes three other FOIA requests about the named officer, liaison with the named officer himself and its dealing with correspondence from the complainant's MP about the subject matter. It provided an email from the complainant to his MP's secretary asking her to make enquiries on his behalf as his requests had been found to be vexatious. It also includes details of correspondence with the complainant's local police force and the Independent Police Complaints Commission ("IPCC").

Is the request obsessive?

16. The Commissioner would characterise an obsessive request as one where the requester is attempting to reopen an issue which has already been comprehensively addressed by the public authority, or otherwise subjected to some form of independent scrutiny.
17. In the Commissioner's view, the test to apply here is reasonableness. Would a reasonable person describe the request as obsessive in the circumstances? For example, the Commissioner considers that although a request in isolation may not be vexatious, if it is the latest in a long series of overlapping requests or other correspondence then it may form part of a wider pattern of behaviour that makes it vexatious.
18. The Commissioner accepts that at times there is a fine line between obsession and persistence and, although each case is determined on its own facts, the Commissioner considers that an obsessive request can be most easily identified where a complainant continues with the requests despite being in possession of other independent evidence on the same issue. However, the Commissioner also considers that a request may still be obsessive even without the presence of independent evidence.

²http://ico.org.uk/for_organisations/guidance_index/~/_media/documents/library/Freedom_of_Information/Detailed_specialist_guides/dealing-with-vexatious-requests.ashx

19. To evidence its dealings with the complainant, the MPS provided a log of its main correspondence. It included details of an internal investigation it had conducted into allegations raised against its police officer and the outcome of that investigation - which found no evidence of misconduct. The MPS also provided the Commissioner with the outcome of a subsequent investigation into the officer's conduct which was undertaken by the IPCC, along with details about an appeal into the IPCC's initial findings. Again, no evidence of misconduct was proven.
20. The Commissioner has taken into account the context and background to the request, the evidence having been provided by the MPS, and she considers that the complainant is attempting to prolong an issue which has already been comprehensively addressed by MPS and which has been subjected to independent scrutiny by the IPCC.
21. Therefore, the Commissioner is satisfied that the complainant's persistence has reached the stage where it could reasonably be described as obsessive.

**Is the request designed to cause disruption or annoyance?
Does it have the effect of harassing the public authority?**

22. The Commissioner considers that a requester is likely to be abusing the section 1 rights of the FOIA if he uses FOIA requests as a means to vent anger at a particular decision, or to harass and annoy the authority, for example by submitting a request for information which he knows to be futile. When assessing whether a request, or the impact of dealing with it, is justified and proportionate, it is helpful to assess the purpose and value of the request.
23. The FOIA is generally considered applicant blind, but this does not mean that a public authority may not take into account the wider context in which the request is made and any evidence the applicant has imparted about the purpose behind their request.
24. In this case, the MPS accepts that, on the face of it, the request appears to be somewhat innocuous. However, it has confirmed that it is the context under which the request was made that is key and that the background to the request evidences how its vexatiousness becomes apparent.
25. The complainant has not made a large volume of requests but it is the nature of the requests which impose a detrimental effect. As mentioned above, the MPS has provided a summary of the interaction between the complainant and itself, the complainant's MP, the named police officer, the complainant's local police force and the IPCC.

26. Previous requests made to the MPS seek to question whether the named officer has properly followed guidelines in declaring a second job, his tours of duty and his attendance at court and whether or not he was required to provide any evidence. The Commissioner views these enquiries as being particularly intrusive into the circumstances of one named officer. She notes that this officer was contacted some time ago regarding one of these requests and objected to disclosure thereby invoking his rights under section 10 of the Data Protection Act 1998. She considers that the effect of such requests on the officer could reasonably be seen as having the effect of harassing him.
27. Although it is not voluminous, the correspondence relates to the issue of the complainant's personal dealings with the named officer, and, because his behaviour has now been fully investigated with no case to answer, the Commissioner considers that disclosure of any further information about him serves no wider benefit to the public. In line with her guidance she therefore considers that it is a futile request because: *"The issue at hand individually affects the requester and has already been conclusively resolved by the authority or subjected to some form of independent investigation"*.
28. Again citing from her guidance, it appears to the Commissioner that the complainant is *"abusing their rights of access to information by using the legislation as means to vent their anger at a particular decision"* and that there is therefore no obvious intent to obtain information.
29. The Commissioner has considered the correspondence presented to her by the MPS and found that there is sufficient evidence to suggest that the request is vexatious in that it is in pursuit of a personal matter and is without merit or value to the wider public. The complainant is attempting to prolong the issue of an incident which occurred around 4 years ago and which has already been comprehensively addressed and conclusively resolved by both the MPS and, independently, the IPCC. Whilst it may be the complainant's opinion that the officer's behaviour was unsatisfactory, the matter has been investigated and not proven.
30. The Commissioner has also considered the purpose of the request in the context of the other correspondence and finds that the effect is to harass the MPS and, in particular, the officer concerned who has been subject to both internal and external investigations and has been found to have no case to answer.

The Commissioner's decision

31. The Commissioner has considered both the MPS's arguments and the complainant's position regarding the information request. Taking into consideration the findings of the Upper Tribunal in *Dransfield* that an

holistic and broad approach should be taken in respect of section 14(1), the Commissioner has decided that the MPS was correct to find the request vexatious. She has balanced the purpose and value of the request against the detrimental effect on the MPS and the officer concerned and is satisfied that the request is obsessive and has the effect of harassing the officer. Accordingly, the Commissioner finds that section 14(1) of the FOIA has been applied appropriately in this instance.

Right of appeal

32. 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

33. 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.
34. 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

Carolyn Howes
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