

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 26 September 2017

**Public Authority:** Police and Crime Commissioner for Northumbria  
**Address:** 2nd Floor Victory House  
Balliol Business Park  
Benton Lane  
Newcastle upon Tyne  
NE12 8EW

#### Decision (including any steps ordered)

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1. The complainant has requested information about any complaints the Police and Crime Commissioner for Northumbria ("the PCC") may have received about the Chief Constable of Northumbria Police. The PCC refused to comply with the request, on the grounds that it was vexatious within the meaning of section 14(1) of the FOIA.
2. The Commissioner's decision is that the PCC was entitled to rely on section 14(1) to refuse to comply with the request.
3. No steps are required.

#### Background

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4. Police and Crime Commissioners are elected officials in England and Wales, charged with securing the efficient and effective policing of an area. They are elected to make sure that local police meet the needs of the community. They replaced the previous system of police authorities overseeing the work of local police forces in 2012.

## Request and response

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5. On 3 July 2017, the complainant wrote to the PCC via the public, *Whatdotheyknow*<sup>1</sup> website and requested information in the following terms:

*"I would like you to supply me with information under FOIA.*

*1. How many complaints have been made against Steve Ashman since he became Chief Constable of Northumbria Police?*

*2. How many complaints have resulted in referrals to the Independent Police Complaints Commission (IPCC)?*

*I would like the data for 1 & 2 broken into date order and my request is for all information about all complaints, even those that were not recorded.*

*I do not wish for you to disclose any personal data relating to Steve Ashman. The information that I am requesting relates to Mr Ashman in his public facing role as Chief Officer of Northumbria Police."*

6. The PCC responded on 24 July 2017. It stated that it was not obliged to comply with the request on the grounds that it was vexatious within the meaning of section 14(1) of the FOIA.
7. Following an internal review, the PCC wrote to the complainant on 18 August 2017. It upheld its application of section 14(1) of the FOIA.

## Scope of the case

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8. The complainant contacted the Commissioner on 31 July 2017 to complain about the way his request for information had been handled. At that stage he had not had the outcome of the internal review, but this was subsequently received.
9. The Commissioner has therefore considered the PCC's application of section 14(1) to refuse to comply with the request.

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

## Reasons for decision

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### Section 14(1) – vexatious requests

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. The section is not subject to a public interest test.
11. The term “vexatious” is not defined in the FOIA. The Upper Tribunal (Information Rights) considered in some detail the issue of vexatious requests in the case of the Information Commissioner v Devon CC & Dransfield<sup>2</sup>. 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. [set out wording or summary of relevant exemption]
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) harassment or distress of and to staff.
13. 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).*
14. The Commissioner has published guidance on vexatious requests<sup>3</sup>. That guidance includes a number of indicators that may apply in the case of a vexatious request.

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<sup>2</sup> GIA/3037/2011

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

15. As discussed in the Commissioner's guidance, the relevant consideration is whether the request itself is vexatious, rather than the individual submitting it. However, a public authority may also consider the context of the request and the history of its relationship with the requester when this is relevant.

*The complainant's position*

16. In his complaint to the Commissioner it was evident that the complainant disagreed with the PCC's decision to find the request vexatious. However, he did not offer to the Commissioner any arguments as to why the request was not vexatious, other than to say that the PCC had included in its reasoning, "*very damaging ICO, NP lies and smears that have been maliciously included*" in a recent decision notice issued by the Information Commissioner. That decision notice had been issued in respect of a separate complaint that the complainant had submitted to the Commissioner, about Northumbria Police<sup>4</sup>.
17. In his request for an internal review, the complainant objected to the PCC's referencing of the aforementioned decision notice in its reasoning. He said that the PCC was a separate public authority and that it was not entitled to base its decision around those made by Northumbria Police, or copy and paste arguments from decision notices issued in respect of Northumbria Police. He said that the PCC had not demonstrated that the request met the Dransfield definition of vexatious. However, he did not offer any reasons of his own as to why the request should not be considered vexatious, or give a purpose or motive for the request. He also detailed, at some length, his wider grievances against Northumbria Police, which included allegations of corruption, smear campaigns and lies against both the force and particular, named officers.

*The PCC's position*

18. The PCC said that in determining whether it was appropriate to apply section 14(1) in this case, it had assessed the request on its own merits, and was mindful of the fact that only the request may be designated as vexatious, and not the person who submitted it. However, as the request directly related to the conduct of the Chief Constable of Northumbria Police, the PCC considered it relevant that similar requests which had been directed to Northumbria Police by the complainant, and

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<sup>4</sup> Despite his evident disagreement with that decision notice, the Commissioner notes that the complainant has not appealed it to the Information Tribunal, despite having been given information on his right to do so.

the outcomes of those requests, should be taken account when making its determination. In particular, it considered the findings in decision notices FS50671026<sup>5</sup> and FS50435641<sup>6</sup> relevant to its determination of this request.

19. The PCC said that the request in this case was part of a steady and persistent series of FOIA requests made to it by the complainant, relating to his grievances about senior officers within Northumbria Police. At the time of writing, of the 55 FOIA requests submitted to the PCC via the *Whatdotheyknow* website, 22 were from the complainant. The requests frequently contained defamatory accusations about individual officers and the PCC believed they were deliberately submitted via a public platform in an effort to publicise and further the complainant's grievances against Northumbria Police. The PCC noted that the Commissioner had accepted in decision notice FS50671026 that the complainant had misused the FOIA mechanism in pursuit of his grievance against Northumbria Police and its senior staff, and believed that this was the case here.
20. With regard to the specifics of the request, any complaint received about its Chief Constable by Northumbria Police would, as a matter of course, be referred to the PCC. However, it was the PCC's view that the authority dealing with such investigations was, in real terms, irrelevant to the complainant and that the real reason for his request was to pursue his ongoing issues and personal grievances against Northumbria Police and its senior officers, and increasingly, other bodies who the complainant felt had failed to take appropriate action against Northumbria Police, including the PCC.
21. The PCC considered that compliance with the request would further embed the complainant's view that Northumbria Police, its senior officers and the PCC itself, are corrupt. It referred the Commissioner to the wording of his request for an internal review, which, within the public arena of the *Whatdotheyknow* website, set out in some detail the complainant's personal views of Northumbria Police, and its senior officers as corrupt and mendacious. It included links to a video uploaded to YouTube by the complainant and to other online documents which were highly critical of Northumbria Police, named senior officers, and also of the PCC. It said that this information showed the complainant to

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<sup>5</sup> <https://ico.org.uk/media/action-weve-taken/decision-notices/2017/2013977/fs50671026.pdf>

<sup>6</sup> [https://ico.org.uk/media/action-weve-taken/decision-notices/2012/744018/fs\\_50435641.pdf](https://ico.org.uk/media/action-weve-taken/decision-notices/2012/744018/fs_50435641.pdf)

be particularly targeting Northumbria Police and senior officers who had been involved in handling the investigation into the attempt on his life.

22. The PCC said that this request and other requests have been made to it as a direct result of the complainant's dissatisfaction with Northumbria Police's handling of the attempted murder investigation. Responses that it has previously supplied to his requests have almost always been followed up by further requests for information, requests for clarification and requests for internal reviews. The PCC said that answering this request offered no prospect of satisfying the complainant and would not result in the requests stopping.
23. The PCC considered that this request, when taken in context with the many other requests the complainant had submitted to it which stemmed from his dissatisfaction with Northumbria Police, could fairly be regarded as vexatious.

#### *The Commissioner's view*

24. The Commissioner acknowledges that there are many different reasons why a request may be vexatious, as reflected in her guidance. There are no prescriptive 'rules', although there are generally typical characteristics and circumstances that assist in making a judgement about whether a request is vexatious. A request does not necessarily have to be about the same issue as previous correspondence to be classed as 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.
25. As the Upper Tribunal in Dransfield observed:

*"There is...no magic formula – all the circumstances need to be considered in reaching what is ultimately a value judgement as to whether the request in issue is vexatious in the sense of being a disproportionate, manifestly unjustified, inappropriate or improper use of FOIA".*
26. In her guidance on dealing with vexatious requests, the Commissioner recognises that the FOIA was designed to give individuals a greater right of access to official information with the intention of making public bodies more transparent and accountable.
27. While most people exercise this right responsibly, she acknowledges that a few may misuse or abuse the FOIA by submitting requests which are intended to be annoying or disruptive or which have a disproportionate impact on a public authority.

28. The Commissioner recognises that public authorities must keep in mind that meeting their underlying commitment to transparency and openness may involve absorbing a certain level of disruption and annoyance.

*Was the request vexatious?*

29. The Commissioner considered both the PCC's arguments and the complainant's position regarding the information request in this case. She also took account of the wider background to this case. The complainant has been in contact with Northumbria Police for many years regarding his dissatisfaction with its investigation into an attempt on his life many years ago for which nobody has been charged.
30. From this central dispute, the complainant has expressed wider concerns about Northumbria Police. He persistently accuses Northumbria Police of corruption, in trying to conceal the truth about the way it has dealt with him over the years, and he makes these accusations frequently and publicly. An internet search of his surname together with "Northumbria Police" brings up multiple blogs, information requests and postings alleging cover ups, incompetence, smear campaigns and corruption by Northumbria Police. The Commissioner is aware from other complaints that she has received from him that the complainant has increasingly expanded the focus of his attention to include bodies with responsibility for scrutinising the police, including the PCC.
31. It is Northumbria Police's position that the complainant's dissatisfaction with the way it handled the attempted murder investigation has escalated into voluminous and obsessive correspondence to it, and that the FOIA has been used as a vehicle for the complainant to publicise his dissatisfaction with Northumbria Police. The Commissioner recently upheld its refusal of a request on this basis in decision notice FS50671026.
32. The Commissioner also notes from her investigation into another recent complaint (decision notice FS50664628<sup>7</sup>) that Northumbria Police had received multiple approaches for information about the Chief Constable, from the complainant. It stated in that case:

*"That named Officer was the target of a campaign from this requestor and was the subject of eight separate FOI from those classed as working in concert regarding [the complainant's] issues. [The*

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<sup>7</sup> <https://ico.org.uk/media/action-weve-taken/decision-notice/2017/2014464/fs50664628.pdf>

complainant] *used these requests along with other websites to further his campaign against this other named Officer.*"

33. The Commissioner notes that in decision notice FS50435641 she upheld Northumbria Police's decision to neither confirm nor deny whether it held virtually identical information in respect of the Chief Constable, under section 40(5) (personal information) of the FOIA. Furthermore, in decision notice FS50664628, she upheld its decision to refuse an identical request in respect of the Deputy Chief Constable, under section 14(1) of the FOIA. In both cases, the requester was the complainant. She understands that he did not appeal either decision notice.
34. As in many cases which give rise to the question of whether or not a request is vexatious, the evidence in the present case shows a history of previous and subsequent information requests. It is also clear that the complainant has a well-documented grievance against Northumberland Police. Clearly, in this case the PCC considers that the context and history strengthens its argument that the request is vexatious. It believes the request was motivated by the complainant's wider grievances against Northumberland Police, and also by his dissatisfaction with the PCC, for failing to take action in respect of his concerns about Northumberland Police. In the circumstances, it considered the request had no serious motive or purpose beyond continuing the complainant's established pattern of harassing and disruptive behaviour.
35. The Commissioner acknowledges the impact on the PCC's administrative resources of dealing with the complainant's request, when considered alongside the voluminous nature of the other requests regularly submitted by him. The PCC is a small Office, with limited resources. The complainant's FOIA requests account for nearly 50% of the total number of FOIA requests it has received via *Whatdotheknow*. She considers that the complainant runs the risk of monopolising its FOIA service provision and that this may impact on service levels afforded to other people who make FOIA requests.
36. Having looked at the pattern of the complainant's requests, the Commissioner also considers that any response given by the PCC would be unlikely to be the end of the matter and would be likely to lead to follow-up requests from the complainant. She is of the view that this would extend the life of the complainant's use of the FOIA to pursue his grievances, and would impose a further consequential burden on the PCC.
37. The Commissioner considers that a public authority should be mindful to take into account the extent to which oversights on its own part might have contributed to a request being generated. If the problems which an authority faces in dealing with a request have, to some degree, resulted



from deficiencies in its own handling of previous enquiries by the same requester, then this will weaken the argument that the request, or its impact upon the public authority, is disproportionate or unjustified. However, the Commissioner has not seen any evidence that that is the case here.

38. The Commissioner recognises that the complainant had his reasons for pursuing information from the PCC. The complainant is clearly not satisfied with Northumbria Police's handling of the investigation into the attempt on his life and this has broadened out into more general concerns about the way it conducts itself, and the way in which scrutinising bodies discharge their functions. He considers that the PCC should be concerned about his alleged experiences with Northumbria Police.
39. The Commissioner has considered whether there is any serious purpose or value for the requested information. She notes that the complainant has not identified a specific purpose for requiring the information. She recognises that one of the driving factors for the complainant's discontent with Northumbria Police is the fact that nobody has yet been charged with his attempted murder, and that this must be a genuine and pressing concern for the complainant. However, disclosure of the requested information would do nothing to address that specific point.
40. The complainant clearly has other grievances about his treatment by Northumbria Police, which have led him to publicly question its competence and integrity. The disclosure of information about complaints made against a senior officer might therefore be in the public interest in that context. However, where individual officers' behaviour is called into question, there are official channels and procedures through which this should be investigated and addressed (via the force Professional Standards Department or referral to the Independent Police Complaints Commission). These referrals ensure that serious or systematic misconduct is identified and dealt with appropriately and the Commissioner is satisfied that the public interest in scrutiny of senior officers is, to a very large degree, served by these procedures.
41. In view of this, the Commissioner considers that the request for information has no wider value or purpose beyond the complainant's public pursuit of his personal grievance against Northumbria Police.
42. The Commissioner considers that the complainant appears to be attempting to pursue these grievances publicly, through the FOIA regime and particularly the platform afforded by the *WhatDoTheyKnow* website. The volume and the tone of many of the requests and accompanying correspondence, suggest that he is using the FOIA regime primarily as a means to harass and discredit Northumbria Police, rather than to obtain information which will genuinely be of use to him

and to the wider public. She considers that the complainant's growing dissatisfaction with the PCC's response to his concerns about Northumbria Police is also directing his persistent FOIA requests to it.

43. The Commissioner considers that the FOIA is not an appropriate mechanism for pursuing grievances. If the complainant has serious concerns about how Northumbria Police has dealt with him there exist formal channels through which he may have his grievances formally examined (as set out in paragraph 40, above) and he has been advised of this. The Commissioner considers that there is no wider public interest in them being played out in public, under the FOIA regime.
44. The purpose of section 14 of the FOIA is to protect public authorities and their employees from unreasonable demands in their everyday business. In her guidance, the Commissioner recognises that dealing with unreasonable requests can place a strain on public authorities' resources and get in the way of their delivering mainstream services or answering legitimate requests. Furthermore, these requests can also damage the reputation of the legislation itself.
45. On the basis of the evidence provided, and taking into account 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 is satisfied that the request meets the Tribunal's definition of "*manifestly unjustified, inappropriate or improper use of a formal procedure*". Consequently she finds that it was vexatious within the meaning of section 14(1).
46. Accordingly, she is satisfied that the PCC was entitled to apply section 14(1) of the FOIA to refuse to comply with the request.

## Right of appeal

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47. 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)

48. 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.
49. 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** .....

**Samantha Bracegirdle**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**