

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 9 October 2017

Public Authority: Chief Constable of Durham Constabulary
Address: Police Headquarters
Aykley Heads
Durham
County Durham
DH1 5TT

Decision (including any steps ordered)

1. The complainant has requested information about an investigation Durham Police was asked to conduct on behalf of North Yorkshire Police in 2013. Durham Police refused to comply with the request on the grounds that it was vexatious within the meaning of section 14(1) of the FOIA. The complainant also voiced concerns that Durham Police had not responded to the request "promptly" and had therefore breached section 10(1) (time for compliance) of the FOIA.
2. The Commissioner found that the request was not vexatious and therefore that Durham Police was not entitled to refuse to comply with it under section 14(1) of the FOIA. However, the Commissioner found no breach of section 10(1) of the FOIA.
3. The Commissioner requires Durham Police to take the following steps to ensure compliance with the legislation.
 - Issue a fresh response to the request, which does not rely on section 14(1).
4. Durham Police must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 15 October 2016, the complainant wrote to Durham Police via the public *Whatdotheyknow* website¹ and requested information in the following terms:

"In July or August 2013 Durham Constabulary were asked, on behalf of North Yorkshire Police, to investigate alleged fraud concerning a company called Dales Timber Ltd. The case attracted widespread publicity, including in the national press.

The information I seek can be summarised as follows:

- 1. The operational codename given to the investigation.*
 - 2. The terms of reference.*
 - 3. The name of the Gold Commander.*
 - 4. A copy of the Gold book (otherwise known as policy log or policy book). It is accepted that this will be redacted to exclude personal information/policing techniques*
 - 5. A copy of the investigation outcome/report. It is accepted that this will be redacted to exclude personal information/policing techniques.*
 - 6. The amount charged by Durham Constabulary to North Yorkshire Police as the cost of the investigation."*
6. Durham Police responded on 10 November 2016. 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. It provided details for its decision as follows:

"Obsessive request

A request may be considered as obsessive if there is reason to believe that it is the intention of the applicant to use the information to reopen issues that have already been debated and considered, such as investigations and complaints.

¹ <https://www.whatdotheyknow.com/>

In this case it appears you are targeting this request around allegations of misconduct among police officers, staff and other individuals including local councillors allegedly connected to Dales Timber Ltd. These matters were fully investigated in 2012 and 2013 by North Yorkshire Police and Durham Constabulary. I am also mindful that aspects of the matter were referred to the Independent Police Complaints Commission (IPCC) by North Yorkshire Police in 2013.

It is my belief that you are attempting to use Freedom of Information legislation, not to obtain data aimed at holding the authority accountable for its actions and the use of public funds / resources as intended by legislators, but rather as a means to re-open personal issues with North Yorkshire Police and other individuals.

Lack of Serious Purpose or Value

While the Freedom of Information Act is generally not concerned with the motives of the applicant it must be acknowledged that the aim of the Act was to make public authorities accountable to those they serve. As such it is reasonable to expect that a request made to an authority has some identifiable purpose or value in ensuring that the authority is being correctly run / using public funds correctly, or provides data in which there is likely to be some legitimate public interest, even if this is to a minority section of the community.

The focus of this request, and many others you have made to other authorities, focuses on alleged misconduct offences against police officers, staff and public figures. Although it can be argued that it relates to the public purse, it seems futile to now put more resources into processing this, and other requests relating to the same subject area, where there is no apparent meaningful purpose to be gained by re-visiting issues that have been, historically, comprehensively addressed by both the police service and the IPCC.

Public Interest and the Value of Requests

The application of Section 14 of the Act is not subject to a public interest test. However, the examination of whether there is any real value in a request is pertinent and in this case, I believe that it is relevant to consider the issue.

It is right that the general public have the ability to hold Durham Constabulary responsible for its actions and the way that it uses various public resources. However, in this case it is

my belief that, considering the passage of time, while a specific individual may well have an interest in the issues, the public interest in this matter is likely to be low and the information sought is of questionable use in holding the force accountable to the general public.

It is my belief that this request has little or no public interest value.

Having considered your request I am of the belief that it is not made within the spirit of the Act and as such is frivolous in its nature and that the time spent in answering the request would place an undue burden on staff, diverting them from their core role."

7. Following an internal review Durham Police wrote to the complainant on 5 January 2017. It upheld its application of section 14(1).

Scope of the case

8. The complainant referred the correspondence to the Commissioner on 3 April 2017, saying that he wished to complain about the decision.
9. The Commissioner has considered Durham Police's application of the exemption at section 14(1) of the FOIA and also compliance with section 10(1) of the FOIA.

Reasons for decision

Section 1 – general right of access

Section 10 – time for compliance

10. Section 1(1) of the FOIA states that an individual who asks for information is entitled to be informed whether the information is held and, if the information is held, to have that information communicated to them.
11. Section 10(1) of FOIA states that:

"Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt".
12. The complainant stated in his internal review request that Durham Police had failed in its duty to respond "*promptly*", as it had waited 18 working days before telling him that it was applying section 14 of the FOIA to refuse the request. He implied that Durham Police would have known

prior to the eighteenth working day that it was not going to comply with the request, and so should have advised him of this sooner.

13. The Commissioner's guidance² clarifies that the obligation to respond promptly means that an authority should comply with a request as soon as is reasonably practicable. Whilst this is linked to the obligation to respond within 20 working days, it should be treated as a separate requirement. A public authority will need to both respond both promptly *and* within 20 working days, in order to comply with section 10(1).
14. The Commissioner expects that careful deliberation will be given to any decision to apply section 14(1) and it is not a decision which should be reached lightly or without adequate supporting evidence. In this case, while she disagrees with its decision, the Commissioner is satisfied that prior to reaching it, Durham Police examined a range of information and weighed up competing arguments, and that it was reasonable that this should take 18 working days. Consequently, she finds no failure to respond "*promptly*" and no breach of section 10(1) of the FOIA.

Section 14 - vexatious or repeated requests

15. Section 14(1) of the FOIA states that section 1(1) of the FOIA does not oblige a public authority to comply with a request for information if the request is vexatious. There is no public interest test.
16. 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 County Council & Dransfield*³. The Tribunal commented that the term 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.
17. 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.

² <https://ico.org.uk/media/for-organisations/documents/1165/time-for-compliance-foia-guidance.pdf>

³ <https://www.judiciary.gov.uk/judgments/info-commissioner-devon-county-council-tribunal-decision-07022013/>

18. 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).

19. The Commissioner has published guidance on dealing with vexatious requests⁴. That guidance includes a number of indicators that may apply in the case of a vexatious request. 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 or not a request is vexatious.
20. 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.
21. Sometimes it will be obvious when a request is vexatious, but sometimes it may not. In that respect, the Commissioner's guidance states:

"In cases where the issue is not clear-cut, the key question to ask is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress".

22. This will usually mean weighing evidence about the impact of the request on the public authority and balancing this against the purpose and value of the request.

The complainant's view

23. The complainant did not submit arguments in support of his complaint to the Commissioner, and so the Commissioner has referred to the views

⁴ <https://ico.org.uk/media/for-organisations/documents/1198/dealing-with-vexatious-requests.pdf>

he expressed to Durham Police in his request for an internal review, when representing his position in this decision notice.

24. Referring to the definition of "vexatious" in Dransfield, the complainant disputed that his request met the threshold of a "*manifestly unjustified, inappropriate or improper use of a formal procedure*". He examined his request against the individual indicators of vexatiousness, cited in the Commissioner's guidance.
25. He said that Durham Police had not demonstrated that compliance with the request would impose a significant burden, and he believed the information to be concise and readily to hand.
26. He disputed that the request could be considered "obsessive", saying that Durham Police had provided no evidence to back up this assertion. He commented that it appeared to be relying on "*a "belief" that gives the appearance of being largely implanted by a senior officer from another police force*". He stated that the request was, at the time, both his first and only FOIA request to Durham Police, and his first and only FOIA request about the Dales Timber Ltd investigation. He said that in referring to requests made to and about other bodies, Durham Police had failed to adopt an applicant-blind approach when dealing with this request, or to consider it on its own merits.
27. He noted that the request was short and plainly expressed, and therefore that it could not be considered to cause distress, alarm or harassment.
28. He denied that it was designed to cause disruption or annoyance, saying that it was submitted in pursuance of his own professional remit (as an investigative journalist).
29. The complainant said Durham Police had failed to demonstrate that the request lacked serious purpose and value, and that it had relied upon "*unevidenced and falsely grounded generalisations*" for reaching that view. He said that the claim that he had made multiple other requests, "*focussing on alleged misconduct offences of police officers and others*", was both false and irrelevant to the consideration of this request. He disputed that the matters to which the request related had been fully or completely investigated and referred to his background as a "*press card carrying investigative journalist/justice campaigner trying to go about his daily vocation*", as evidence of the legitimacy of the request. He accepted that he was a frequent user of the FOIA, which he said he used to obtain information in connection with his investigations into miscarriages of justice and official misconduct.
30. Finally, with regard to the request having "no wider public interest", the complainant provided a link to an article in Private Eye magazine, which commented on the wider matters which to his request related. He said it

was incorrect for Durham Police to assert that there was little wider public interest in the information being requested, saying that press interest in the matter was "very considerable and ongoing".

31. In summary, the complainant said that Durham Police was using the FOIA to avoid being held to account for the "*woeful*" investigation it had conducted on behalf of North Yorkshire Police and that the request had "*a pre-determined outcome that bears no credible relationship with the data controller's responsibilities under the Act*".

Durham Police's view

32. Durham Police explained that the requested information pertained to a fraud investigation it had conducted on behalf of North Yorkshire Police, because one of the people under investigation was the former Chair of the North Yorkshire Police Authority. The investigation had concluded that there was no evidence of fraud.
33. Durham Police acknowledged that it had received no previous requests or correspondence from the complainant regarding the matter. However, it said that the request was made against a wider backdrop of complaints and malicious blogs, alleging a sustained "cover up" and misconduct by North Yorkshire Police, so as to shield the people under investigation from criminal charges. It said that the complainant was one of a group of connected persons (who it described as "*citizen journalists*") involved in posting derogatory blogs about the Dales Timbers investigation, the people under investigation and North Yorkshire Police. It said that in 2016, three individuals were the subject of court orders, requiring them to cease contacting and publishing information about the people under investigation.
34. It said that the complainant's links to these individuals was evidenced by his repeatedly mentioning them in posts he made on his website, and across other websites. It also noted that, during hearings relating to the court orders, the complainant was mentioned by name, in connection with alleged attempts by one of the individuals to circumvent the court order. (It should be noted here that the complainant himself was not subject to the restrictions imposed by the court orders.)
35. Durham Police considered the complainant held what amounted to a grudge against the people under investigation, and North Yorkshire Police and its staff. It cited repeated, derogatory statements he made about the people under investigation on his website (for example, that one of them is "*a proven liar*"), and allegations of misconduct he continued to publicise about North Yorkshire Police and its staff. It said there were numerous posts on his website going back several years, regarding the subject matter of the request and the people under investigation. It said the comments were frequently defamatory and

could be construed as harassment and that the complainant was using this FOIA request as a means of continuing a campaign of harassment against people he believed guilty of wrongdoing, regardless of the available evidence to the contrary.

36. Durham Police also noted that the complainant was the subject of an injunction obtained by staff at another public authority in 2014, with regard to "*harassment, defamation, breach of privacy, misuse of private information and/or using unlawful means to injure another*".
37. Durham Police also considered the complainant's request demonstrated unreasonable persistence, in that he was seeking to reopen matters which had already been comprehensively addressed by itself, North Yorkshire Police and by the IPCC.
38. Durham Police stated:

"I consider it reasonable to assume that the focus of the request from [the complainant] is [the people under investigation] and associated North Yorkshire police officers/staff issues. I consider it reasonable to assume that [the complainant]'s intention is to then continue blogging about these data subjects/organisations and this blogging will be in malicious and insulting detail. As evidenced [the associated individuals who were the subject of the court orders] are currently prevented... from ... blogging about [the people under investigation] and also others. Although it can be argued that [the complainant]'s request relates to the public purse in relation to Durham Constabulary's investigation of Dales Timbers Limited on behalf of North Yorkshire Police, it seems futile to now put more resources into processing his request when there is no meaningful purpose, that is, no evidence of any wrong doings by [the people under investigation] and/or associated North Yorkshire Police officers and staff. "

39. Finally, Durham Police cited a recent decision notice⁵ in respect of a request the complainant had submitted to another public authority, as supporting its decision to apply section 14 in this case, in view of the overlapping issues considered.
40. In conclusion it stated:

"Durham Constabulary considers it reasonable to assume that this request can be viewed as the likely continuation of an utterly oppressive, tormenting and unjustified campaign of malicious and

⁵ FS50652852

harassing internet postings and blogs against [the people under investigation] and North Yorkshire Police Officer and staff. Durham Constabulary considers it reasonable to assume that [the complainant]'s request is likely to be in collaboration and collusion with two of the... citizen journalists... who currently cannot blog (or otherwise communicate) about [the people under investigation] as a result of current court orders."

The Commissioner's view

41. 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.
42. 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".
43. 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.
44. 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.
45. 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?

46. The Commissioner considered both Durham Police's arguments and the complainant's position regarding the information request in this case. She also looked at the wider background to this case.
47. The complainant has explained that he is an investigative journalist and justice campaigner. He maintains a website and regularly posts there, and on wider social media, information about what he considers to be miscarriages of justice and instances of official misconduct. The Dales Timbers investigation is an area of interest to him, his concern being that police corruption and wrongdoing surrounding the fraud investigation may have been covered up.
48. Durham Police believes the request was entirely motivated by the complainant's wider grievances against North Yorkshire Police and accused the complainant of conducting a campaign of harassment against that force. In the circumstances, Durham Police considered the request had no serious motive or purpose beyond continuing the complainant's established pattern of harassing and disruptive behaviour.
49. The Commissioner notes the complainant's wider history of robust commentary via websites and social media. She recognises that the complainant has made what could be considered highly personal and critical comments about various public authorities and their staff, to the extent that he has been the subject of legal action.
50. The Commissioner acknowledges that she upheld the application of section 14(1) of the FOIA in the decision notice Durham Police referred her to when setting out its case. It was a significant feature of that request that the complainant had frequently corresponded with the public authority in question and had made persistent requests for information about a matter which, at the time, was still before the Court. Her decision in that case recognised that his requests, when considered together, imposed a consequent burden on the public authority. The Commissioner accepted in that case that there was an impact on the public authority's administrative resources of dealing with the complainant's request, when considered alongside the voluminous nature of the other requests and correspondence submitted by him.
51. That is not the case here, as both the complainant and Durham Police agree that this was the first time the complainant had made a FOIA request to Durham Police. Likewise, Durham Police has not experienced a pattern of behaviour whereby its responses to the complainant's requests generate further, follow up requests from him. Although Durham Police has submitted to the Commissioner that the request would impose an administrative burden which was not justified by the benefit of any information which would flow from it, in light of the

absence of any previous course of dealings between it and the complainant, the Commissioner does not accept that this point has carries any weight.

52. The Commissioner then considered whether the request could be considered "obsessive". Durham Police has argued that the complainant is seeking to reopen matters that have been settled by investigations by North Yorkshire Police, Durham Police and the IPCC, and that this is "obsessive" and unreasonable. While section 14 of the FOIA exists to shield public authorities from unreasonable demands, it is not intended to block access to certain topics of information, except insofar as provided by the terms of individual non-disclosure exemptions. The fact that investigations have been completed and no wrongdoing found should not act as an automatic bar to requesting information about those investigations, unless other aggravating factors are present. In this case, the Commissioner is concerned that Durham Police is very much relying on experiences reported by other public authorities to reach a decision as to whether this request is vexatious, and that it has no previous course of dealings of its own with the complainant, on which to draw.
53. The Commissioner has considered whether the request is designed to harass or cause distress to Durham Police or its staff. She accepts the complainant's point that it was short and plainly expressed. She again notes that it was the first time he had submitted a request on the matter to Durham Police. She is therefore satisfied that it could not realistically be considered to harass or cause distress to Durham Police or its staff.
54. Durham Police has argued that the information sought in the request would be used to harass and cause distress to the people under investigation, and to North Yorkshire Police and its staff, and it referred to the circumstances in which the injunction referred to in paragraph 36 had been awarded as a likely indicator as to his future behaviour if it were to comply with this request. However, the Commissioner's guidance makes it clear that section 14(1) of the FOIA is concerned with the nature of the request, rather than the consequences of releasing the requested information. If an authority is specifically concerned about the possible prejudice which might arise from disclosure, then it will need to consider whether any of the exemptions listed in Part II of the Act apply. Section 14 cannot be relied on in such circumstances.
55. The Commissioner has considered whether the request was designed to cause disruption or annoyance and whether there is any serious purpose for the requested information. In doing so, she has assessed the value of the information and whether it was a reasonable request to make. She accepts that there is a degree of media interest in the matters covered by the investigation, as evidence by the coverage it has

received in Private Eye. There is also a public interest in transparency regarding criminal investigations of people who have links to the police. The Commissioner considers these points lend weight to the view that the request was a reasonable one to make. She therefore considers that there was a serious purpose and value for the request and that it cannot reasonably be said to have been designed to cause disruption or annoyance.

56. The Commissioner has born in mind the central reason for section 14, which is to protect a public authority and its staff from requests which cause a disproportionate or unjustified level of disruption, irritation or distress or which dominate its administrative resources. She is not satisfied that Durham Police has demonstrated that the request meets these criteria. Rather, it appears to have drawn on its awareness of the complainant's interactions with other public authorities, and of their responses, to conclude that this request, too, is vexatious.

57. The Commissioner's guidance states:

"It is important to remember that section 14(1) can only be applied to the request itself, and not the individual who submits it. An authority cannot, therefore, refuse a request on the grounds that the requester himself is vexatious. Similarly, an authority cannot simply refuse a new request solely on the basis that it has classified previous requests from the same individual as vexatious."

58. It follows from this, that an authority cannot refuse a request as vexatious solely on the basis that other public authorities have classified requests from the same requester as vexatious.

59. Taking all the above into account, the Commissioner's decision is that the Durham Police is not entitled to rely on section 14(1) of the FOIA to refuse to comply with this request.

Right of appeal

60. 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

61. 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.

62. 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