

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: **20 August 2020**

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 'stop check' order from the Metropolitan Police Service (the "MPS"). The MPS refused to comply with the request advising that it considered it was vexatious under section 14(1) of the FOIA. The Commissioner's decision is that the request is not vexatious.
2. The Commissioner requires the MPS to take the following steps to ensure compliance with the legislation:
 - issue a fresh response under the FOIA without relying on section 14(1).
3. The MPS 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.

Background

4. The MPS has advised the Commissioner:

... the following Mayor's question and answer has been published on the London Assembly website¹:

'Question

On 15 October 2019, officers from the Metropolitan Police Service (MPS) were stationed on Lambeth Bridge stopping members of the public and asking them to present identification. Since police don't commonly have the power to ask for identification and the public don't have a duty to show them any or even provide their name, what was the purpose of this, under which powers were these checks carried out, and who issued the order to officers to carry out these checks?

Answers ...

Answered By: The Mayor

Date: Tuesday, 26th November 2019

The Met inform me that officers were located on Lambeth Bridge as part of the policing operation relating to the Extinction Rebellion two weeks of planned protest activity. The purpose of officers asking individuals to provide ID was to ensure they had no intention of engaging in unlawful activity that could potentially bring London to a standstill. Officers do not hold power to force members of the public to identify themselves and not all individuals presented their ID to the police'."

Request and response

5. On 15 October 2019, the complainant wrote to the MPS (via the "What do they know?" website) and requested information in the following terms:

"According to this Tweet (with video) you have been doing stop and ID checks on Lambeth Bridge, London. [link redacted]

REQUEST.

Disclose the police Order, request, guidance etc. or similar which led to these stops. The name of the officer should not be redacted.

¹ <https://www.london.gov.uk/questions/2019/20148>

State if MPS was recording any details on paper, video etc.

State which statute or common law allows you to stop and demand I.D. in such a situation - i.e. Terrorism Act 2000.

How many people were arrested for failing to I.D.?

How many times have you done a similar operation in the last 30 days in MPS area?"

6. On 3 December 2019, the MPS responded. It refused to provide the requested information on the basis that the request was vexatious under section 14(1) of the FOIA. It referred to previous refusal notices, the earliest of which was issued to the complainant on 9 November 2018, in which the MPS advised the complainant that it considered his requests to be vexatious and / or potentially invalid, requiring him to provide proof of identity before it would further proceed.
7. The complainant requested an internal review on 4 December 2019, saying "*I am writing to request an internal review of Metropolitan Police Service (MPS)'s handling of my FOI request ...*". He did not provide any details to support why he did not consider the request to be vexatious or any commentary regarding his identity.
8. The MPS provided an internal review on 9 December 2019 in which it maintained its position.

Scope of the case

9. The complainant contacted the Commissioner on 9 December 2019 to complain about the way his request for information had been handled. He said only: "*I apply for a s50 DN. The request was not vexatious. I have made a number of requests to MPS and got nothing. It claims costs limits or s. 14*".
10. The Commissioner notes that there is no reference to the costs limit in this case, only to the request being vexatious.
11. The Commissioner invited the complainant to submit his reasons for disagreeing with the MPS, advising that it would be helpful if he were able to represent his position too. No response was received.
12. The Commissioner will consider the application of section 14(1) to the request.

Reasons for decision

Section 14 – vexatious requests

13. 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.
14. However, 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.
15. 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*². The Tribunal commented that 'vexatious' could be defined as being the "*manifestly unjustified, inappropriate or improper use of a formal procedure.*" The Tribunal's definition establishes that the concepts of proportionality and justification are relevant to any consideration of whether a request is vexatious.
16. *Dransfield* also considered 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.
17. It explained that these considerations were not meant to be exhaustive and also explained 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).

² <https://www.judiciary.uk/judgments/info-commissioner-devon-countycouncil-tribunaldecision-07022013/>

18. The Commissioner has published guidance on dealing with vexatious requests³, which includes a number of indicators that may apply in the case of a vexatious request. However, even if a request contains one or more of these indicators it will not necessarily mean that it must be vexatious.
19. When considering the application of section 14(1), a public authority can consider the context of the request and the history of its relationship with the requester, as the guidance explains:

"The context and history in which a request is made will often be a major factor in determining whether the request is vexatious, and the public authority will need to consider the wider circumstances surrounding the request before making a decision as to whether section 14(1) applies".

20. However, the Commissioner would stress that, it must be the request itself that is shown to be vexatious and not the person making it.

The complainant's position

21. Whilst the burden of proof always lies with the public authority in demonstrating why a particular request would engage section 14(1), the Commissioner accepts that complainants may wish to advance their own arguments as to why a request was not vexatious.
22. The Commissioner therefore invited the complainant to provide his own submissions as to why he did not consider the request to be vexatious. No response was received.

The MPS's position

Identity

23. One of the issues raised by the MPS is that of the complainant's identity. It advised that it considered that the complainant may be using a pseudonym and that it had therefore required proof of identification from him. This was not forthcoming and appears to be the basis, at least in part, for the refusal of a number of his requests.
24. Section 8(1) of the FOIA sets out that to be valid, a request must contain, amongst other things, the name of the requestor. The Commissioner has interpreted this as meaning that a request which is

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

submitted under a pseudonym will be invalid under the FOIA⁴. Thus, where a public authority has genuine concerns about whether a requester has correctly identified themselves, they may ask for proof of identity. The Commissioner expects such concerns to be supported by credible evidence.

25. The MPS made a confidential submission to the Commissioner regarding this, outlining its concerns, which she is unable to reproduce here. However, taking this into account, the Commissioner is not persuaded that this sufficiently evidences the use of a pseudonym by the complainant.
26. In this case, the Commissioner is aware that the complainant has made many information requests to many public authorities. She is not aware of any question about his identity having been raised as an issue in relation to any of these. Furthermore, she has dealt with his information requests to her office without requiring proof of identity. The complainant has also gone on to appeal to the First-tier Tribunal using the same name, which is not a pattern of behaviour which the Commissioner would associate with someone who was concealing their identity.
27. She therefore does not agree with the MPS and can find no basis for the complainant to be required to provide such identification to the MPS.

Is the request vexatious?

28. The MPS explained to the Commissioner:

"The MPS adopts an applicant blind and motive blind approach when dealing with FOIA requests. However, it is legitimate for the MPS to consider the purpose and value of the requests when considering whether or not a request is vexatious i.e. if complying with a request would cause a disproportionate or unjustified level of disruption, irritation or distress.

In determining whether or not the requests are vexatious, I have taken into account the context and history of the requests, ICO guidance and tribunal decisions relating to vexatious requests.

The ICO guidance in relation to vexatious requests states:

⁴ <https://ico.org.uk/media/for-organisations/documents/1164/recognising-a-request-made-under-the-foia.pdf>

"A request may not be vexatious in isolation, but when considered in context (for example if it is the latest in a long series of overlapping requests or other correspondence) it may form part of a wider pattern of behaviour that makes it vexatious"".

29. It also included a detailed history of the volume of requests made by the complainant since November 2018, which is included in a non-confidential annex at the end of this notice (related links to the "What do they know?" site have been redacted). 22 of these requests, including this one, were refused on the basis of them being vexatious, three more being refused on this basis after the date of this request.
30. The MPS added:

"Any decision to cite section 14(1) would be authorised by a senior manager in the first instance and protects MPS resources from being applied disproportionately in response to FOIA requests.

The Code of Practice issued under section 45 of the Freedom of Information Act 2000 states:

'7.3...Section 14(1) should not be considered as something to be applied as a last resort or in exceptional circumstances.'

It is also pertinent to note that the entire public sector, including police services have been under severe budgetary constraints over the last 10 years and there has been much commentary about the effect of this upon crime in London and the wider UK. That is to say that the resources of the MPS are not infinite.

Whilst the complainant is not responsible for the various challenges that the MPS faced during this time period nor can they reasonably be expected to be aware of these factors, it was felt necessary at this time to be more robust with individuals who were causing a disproportionate impact upon the MPS as their impact and the associated burden placed upon the MPS and its staff was increased during this time period.

Because the complainant's requests were focused upon typically high profile alleged misconduct and certain sub themes such as undercover policing together with number of internal reviews, the impact of his requests were felt disproportionately by a relatively low number of staff both within the MPS Information Rights Unit and elsewhere in the MPS who would be required to manage the FOIA request, locate related information, advise of any harm in disclosure and authorise any disclosure decision.

This would be at the opportunity cost of dealing with other FOIA related matters or for those staff based outside of the Information Rights Unit, the opportunity cost would be time spent dealing with other operational matters especially those relating to police misconduct. In the case of undercover policing, related requests would have impacted upon staff and legal counsel dealing with related matters in connection with an ongoing Public Inquiry that is placing additional demands upon parts of the MPS. The MPS accepts that there is a public interest in such matters and already deals with a high volume of requests from a range of individuals in relation to conduct matters in addition to serving the legitimate public interest via other means. In the circumstances, it was only felt necessary and proportionate to apply section 14(1) to the complainant's requests at that time for the reasons explained in this correspondence and within the refusal notice dated 09/11/2018, taking to account the context and history of their requests and the significant distraction from the MPS' main functions that complying with the request would cause".

31. The MPS also made the following generic arguments to support its position that the request is vexatious:

- Frequency and overlapping nature of his requests (e.g. within a 20 working day period)
- Lack of evidence to suggest that the applicant is willing to reduce the frequency of requests or give the MPS time to answer one request before submitting further requests
- Tendency for requests to ask for 'all' or 'any' information relating to a topic or incident making such requests broad in scope
- Complainant's focus upon police misconduct and/or related issues
- Complainant's use of the WhatDoTheyKnow.com website, which while not a problem in and of itself, in the context of the history of their requests may facilitate and/or fuel the continuation of the conduct that suggests that their request is vexatious
- Lack of evidence to suggest that the applicant is willing to engage with the MPS in relation to specific requests or requests in general
- Complainant's express intention to complain about any refusal irrespective of the merits which would likely increase the disproportionate impact upon MPS resources.

32. The MPS added that: "*In the circumstances of this case, the request should be viewed in the wider context and history of the complainant's previous requests*".
33. The MPS refers to a pattern in the types of request, saying that they are: "*focused upon typically high profile alleged misconduct and certain sub themes such as undercover policing*", also generalising the requests as relating to: "*misconduct issues, internet videos and legal or settlement costs*". The Commissioner notes that this is not the case in respect of this particular request and it is clearly not one of the 'typical' ones to which the MPS refers. It therefore does not appear to fall within the remit of any such pattern and the MPS has not provided evidence to suggest that it does – or to suggest that other requests similar to this one have been received.
34. Regarding the question of 'overlapping' requests and the frequency of requests, the Commissioner is not persuaded by the MPS's arguments. At the time of this request, according to the MPS's figures, in the 6 months prior to this request it had received 7 requests from the complainant – another one in October 2019, one in July 2019, two in June 2019 and three in May 2019. One of those received in May was refused on the basis of the information being available by other means, the others were all refused as being vexatious. As it has indicated that it receives around 400 requests a month, the Commissioner does not consider this evidences any significant frequency of requests. Whilst there may be some overlap where requests are received in the same month, the numbers are again minimal.
35. The MPS also referred to the "*burden of request and level of disruption, irritation or distress & unreasonable persistence*" in its response to the Commissioner, more details of which are again appended to this notice.
36. Several of the arguments provided relate to requests made by the complainant to other public authorities and their responses. Whilst the Commissioner understands that these may demonstrate a behavioural pattern and show that he makes a large number of requests, she does not consider it appropriate for the MPS to draw its arguments from, or base any conclusions on, requests and complaints which the complainant has made to other organisations. Unfortunately, whilst the collation of this material may have contributed to the considerable delay in responding to the Commissioner's enquiries in this case, she will only consider any vexatious impact on the MPS itself in this notice. As such she has not taken any such rationale into account here and has not included any such content in the annex.
37. The MPS explained that:

"Given the wider context and history of these requests, complying with these requests would impose a disproportionate burden on the MPS and would significantly compromise the ability of the MPS to meet its FOIA obligations in relation to the wider public".

38. It advised that it regularly deals with in excess of 400 FOIA requests a month, and that:

".. the burden placed on the MPS by the volume of repeated/inter linked requests from the complainant, who is among the MPS' most frequent applicants in 2018 and 2019, imposes a further significant burden on the MPS".

39. The Commissioner notes that there was no evidence to suggest that this particular request is either repeated or in any way inter-linked with other requests. As such, she has discounted this argument.

40. Whilst dealing with the complainant in general may impose some degree of burden because of the volume or type of requests that he makes, the Commissioner notes that the MPS also submitted that:

"The MPS is conscious of the fact that it is the request that is vexatious and not the applicant. For this reason, the MPS is prepared to consider responding to future requests from the complainant and will assess such requests on a case-by-case basis".

41. In the Commissioner's view, this request in isolation does not appear to be burdensome and, furthermore, the Commissioner considers that there is some public interest in the subject matter – so much so that the Mayor published a related comment on the London Assembly website (see Background above). Were the same request to have been made by a different requester the Commissioner considers it unlikely that the MPS would have found it vexatious.

42. The MPS added that 87 cases relating to the complainant had been logged on its FOIA case management system since March 2018 including 57 FOIA requests, 27 internal reviews and three complaints to the Commissioner. Of these, which were provided to the Commissioner in a spreadsheet, the Commissioner assessed that 25 were refused on the grounds of being vexatious. The others were variously responded to or refused for a variety of reasons, often on costs grounds. It advised:

"The 57 FOIA requests logged by the MPS consist of at least 174 questions. While some of these are duplicated, a number of these contain questions asking for specific breakdowns and/or are wide in scope asking for 'all' or 'any' records relating to a particular person, incident or topic. Some of these relate to ongoing investigations or

covert policing and it is questionable as to whether the complainant realistically expected that related information would be disclosed".

43. The Commissioner is only considering whether this particular request is vexatious. Whilst she is able to take a pattern of behaviour and history of requests into account during the investigation of a section 14(1) complaint, she does not consider that this request demonstrates any particular pattern of behaviour and that it stands alone on a particular subject matter. It does not seek any detailed breakdown and, according to the response cited in the Background section above, it does not appear to relate to an ongoing investigation or covert operation – if it does then the MPS has not provided relevant arguments.
44. As to volume, the 57 requests (including this one) range from 8 March 2018 to 13 July 2020, ie both pre-dating and post-dating this request. As the MPS advises that it regularly receives in excess of 400 FOIA requests a month, over the approximately 28 months identified this would equate to it having received around 11,200 requests for that time period. The Commissioner does not therefore consider 57 requests to be a particularly significant number of requests given the sheer volume of requests received, even if the complainant is one of the individuals who makes the most requests. In any event, she is considering this specific information request which, on the face of it, is not voluminous.
45. The MPS also refers to the burden of internal reviews. Whilst this may be the case, it is a necessary part of the process where a public authority does not provide the requested information and the complainant is dissatisfied. Generally, the Commissioner will not investigate a complaint without an internal review firstly having been requested. Furthermore, where a refusal notice has been issued under section 14(1), a public authority is entitled to rely on section 17(6) of the FOIA to refuse further vexatious requests, thereby negating the need for either a detailed refusal or an internal review to be conducted.
46. The MPS submitted many other arguments which are not relevant to the request under consideration here, specifically relating to misconduct matters and the Undercover Policing Inquiry which the Commissioner has not taken into account. It advised, for example, that: "*MPS finances, actions and decisions, including those relating to misconduct are subject to external scrutiny by a number of organisations*", and listed several organisations which have oversight in these areas. It explained that individuals can also: "*make a complaint about a police service to the Investigatory Powers Tribunal (in respect of matters within its jurisdiction) if they have reason to believe that a police force has acted in a way to harm them or their property*". However, whilst this may be factual commentary, the Commissioner does not consider it to be of relevance to the request under consideration here. The complainant is

not disputing the action taken by the MPS in his request, he is only asking for general information about it.

47. Regarding other points made by the MPS, the Commissioner does not consider that this request falls into the category of: "*requests to ask for 'all' or 'any' information relating to a topic or incident making such requests broad in scope*". It is succinct and specific.
48. Regarding the MPS's comments about the use of the "*What Do They Know?*" website, the Commissioner accepts that, on occasion, the use of the site to generate a request may facilitate inappropriate conduct by some parties. However, the site does have administrators who may be contacted where improper use is identified. Furthermore, the use of a public forum such as this can facilitate debate and promulgate information which readers may find of interest.
49. Regarding the personal actions of the complainant, his apparent lack of willingness to engage with the MPS and his expressed opinion that he will complain if he doesn't get what he wants, the Commissioner can find no evidence of this in respect of this particular request. While the complainant has not offered any specific reasons as to why he believes his request is not vexatious, he is not formally required to do so. He also chose not to provide any further supporting evidence to the Commissioner, which may have been helpful, but is not essential, provided he has stated what he wants to have investigated. And, if he is dissatisfied with the handling of a request, he is entitled to apply for a decision under section 50 of the FOIA.
50. The MPS also referred to a 'scattergun' approach, saying that the complainant requested information:

... relating to a wide range of incidents relating to alleged misconduct from multiple public authorities within the criminal justice sector combined with queries that are wide in scope without any clear or coherent purpose.
51. The Commissioner does not consider that this request falls within this general categorisation by the MPS as the request is self contained and it addresses a specific subject.

The Commissioner's view

52. From the submissions made by the MPS, it is apparent to the Commissioner that it is essentially arguing that the complainant's requests are vexatious simply because he is making too many of them – he is not exercising his FOIA rights in the spirit of 'fair use'. Furthermore, dealing with his requests demands particular time and attention because they often relate to complex or sensitive subject matter.

53. This request is the only one on this subject matter which has been brought to the Commissioner by this complainant. She finds there is some wider public interest in the information being requested and it does not appear to be onerous to deal with. Had it been submitted by a different party she considers it unlikely that it would have been deemed to be vexatious by the MPS – albeit the requested information may be exempt for other reasons.
54. The Commissioner further notes the MPS's submission regarding her decision notice FS50877467, whereby the MPS says that it shares a number of the concerns outlined in it. However, the Commissioner has accorded little weight to these arguments as they were submitted by a different public authority, in respect of a different request and under different circumstances. She does not consider it appropriate to try and 'lift' the rationale from one case and apply it to another where there is clearly a disparity in the circumstances. Were the requested information the same then there may be some comparison to be drawn but the requests under consideration are very different and the two public authorities are also not comparable.
55. The Commissioner does not find that this request meets any of her "indicators" for being vexatious and, just because the complainant makes a variety of wide-ranging requests does not, in itself, mean that they are vexatious. Were this the case, then it would in effect limit the number of requests which an individual may make, which is not a provision made in the FOIA legislation.
56. In order to determine whether section 14 has been correctly applied, the Commissioner must consider whether a request, not the requester, is vexatious.
57. In line with her published guidance, the Commissioner is not persuaded that this request can be categorised as vexatious under section 14(1).

Other matters

58. Although they do not form part of this notice the Commissioner wishes to highlight the following matters of concern.

Information Notice

59. As the MPS failed to respond to the Commissioner's enquiries in a timely manner it was necessary for her to issue an Information Notice in this case, formally requiring a response; the response to this Notice was provided out of time. The Information Notice will be published on the Commissioner's website.

60. The Commissioner will use intelligence gathered from individual cases to inform her insight and compliance function. This will align with the goal in her draft Openness by Design strategy⁵ to improve standards of accountability, openness and transparency in a digital age. The Commissioner aims to increase the impact of FOIA enforcement activity through targeting of systemic non-compliance, consistent with the approaches set out in our Regulatory Action Policy⁶.

⁵ <https://ico.org.uk/media/about-the-ico/consultations/2614120/foi-strategy-document.pdf>

⁶ <https://ico.org.uk/media/about-the-ico/documents/2259467/regulatory-action-policy.pdf>

Right of appeal

61. 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@justice.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

62. 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.
63. 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
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Annex

The MPS has provided the following background evidence to support its position:

"Background Information"

On 21/09/2018 the MPS responded to the complainant with a section 17(5) refusal notice⁷ citing section 12(2) and aggregated 29 requests received over two 60 day periods, including 10 that had been separately responded to.

It was noted that between 08/03/2018 – 10/09/2018 the MPS had received 30 separate items of correspondence from the complainant containing approximately 90 questions.

Although the MPS considered applying section 14(1) at this stage, the response instead included a 'vexatious warning' with a view to providing the complainant with an opportunity to change their behaviour in relation to the frequency and overlapping nature of their requests.

Following the MPS response, the complainant increased the frequency of his requests, submitting 7 requests within 20 working days including 6 requests within 9 working days.

On the 09/11/2018, the MPS issued a section 17(5) refusal notice citing section 14(1) in response to these requests⁸. At that point the complainant was asked to provide proof of ID before the MPS considered processing their requests or to appeal to the ICO as the MPS believed that the complainant may have been using a pseudonym which would mean that the requests were not valid.

While a single request may not be vexatious in isolation, the pattern and history of the complainant's requests indicated that once we had started to process a single request, the complainant would continue to submit frequent and overlapping requests for information which in the circumstances created a disproportionate burden upon the MPS.

This stance was subject to 2 section 50 complaints (ref: FS50814491 & FS50809542). However, the MPS was advised by

⁷ Link redacted

⁸ Link redacted

the ICO on 29/04/2019 that 'The Commissioner considers the complaint to have been abandoned by the complainant'.

Despite being informed that the MPS may choose not to respond to further requests in accordance with section 17(6) of the Freedom of Information Act and would not be conducting an internal review, between the date of the section 17(5) refusal notice and the conclusion of the Section 50 complaint (i.e. 09/11/2018-29/04/2019), the complainant submitted a further 8 FOIA requests⁹ and 7 requests for an internal review¹⁰.

Some of these requests were acknowledged in error and generated additional work for our administrative staff. This may be evidence of a deliberate attempt to disrupt the functioning of the MPS as despite warnings and formal refusal notices outlining the MPS stance in relation to their requests they continued to request internal reviews despite related matters being subject to a FOIA section 50 appeal.

Following the abandonment of the section 50 complaint, the complainant then submitted 3 requests to the MPS in May 2019¹¹, 2 of which were refused as vexatious while the other requests related to information accessible to the complainant via other means. 2 requests for an internal review were also received from the complainant in May 2019¹².

A further 6 FOIA requests¹³ and 6 requests for internal review¹⁴ were received by 04/12/2019. These were all closed as vexatious.

The MPS are alert to the possibility that individuals submitting requests via the whatdotheyknow.com website may be submitting requests under different names/accounts and/or in coordination with other users. This is because of the ease with which an individual can submit a request for information and/or internal review using a non-obvious pseudonym. The code of practice issued under section 45 of the Freedom of Information Act states:

⁹ Link redacted

¹⁰ Link redacted

¹¹ Link redacted

¹² Link redacted

¹³ Link redacted

¹⁴ Link redacted

'...the use of pseudonyms may also form part of broader considerations when considering whether or not a request, or a series of requests, should be considered vexatious.'

The requests submitted by the complainant are inherently complex as they typically relate to alleged instances of misconduct, which is often a sensitive subject matter within the MPS relating to multiple data subjects. There is a significant public interest in relation to disclosing information pertaining to police misconduct. Under the Freedom of Information Act, public authorities are not permitted to apply 'blanket exemptions'. Consequently, each case must be considered on its merits depending upon the specific circumstances of the case.

I am also mindful of the section 45 code of practice which states:

'7.11 Finally, public authorities should note that the public interest in obtaining the material does not act as a 'trump card', overriding the vexatious elements of the request and requiring the public authority to respond to the request.'

This reflects the opening statement taken from the Upper Tribunal decision in relation to Cabinet Office v Information Commissioner and Ashton [2018] UKUT 208 (AAC) which stated:

'What this appeal is about: the legal question'

1. *The legal question at the heart of this appeal relates to the proper assessment of an allegedly "vexatious" request (within the meaning of section 14(1) of the Freedom of Information Act 2000 [FOIA]). In particular, does a compelling public interest in the disclosure of information held by a public authority necessarily trump any consideration of the resource burden involved in complying with that request, such that the request cannot under any circumstances be regarded as vexatious?*
2. *The short answer to that question, as a matter of principle, is no.'*

The complainant has also encouraged other members of the public on WhatDoTheyKnow.com to make follow up requests to the MPS¹⁵. In isolation, this would be harmless. However, in the context of the history of the complainant's requests and their impact upon the MPS and other public authorities, this is further evidence of the

¹⁵ Link redacted

ability and or willingness of the complainant to impose a disproportionate burden upon the MPS. It is also not possible to discount the possibility that the complainant's requests to the MPS and other public authorities may constitute part of a wider campaign as they share similarities with requests submitted by other users of WhatDoTheyKnow.com".

"Burden of request and level of disruption, irritation or distress & unreasonable persistence

... the complainant increased the frequency of their requests following the [vexatious] warning provided by the MPS, has continued to submit requests to the MPS despite being informed on multiple occasions that such requests would be considered to be vexatious and/or responded to on a discretionary basis and being advised to provide proof of ID or appeal to the ICO.

Following a further request dated 17/11/2018¹⁶, the complainant sent further correspondence on 18/12/2018 advising that a response was now due¹⁷. In response, the complainant was explicitly advised¹⁸ that:

- *A refusal notice was provided on 09/11/2018 in relation to previous requests advising that the MPS was applying section 14(1) to their requests*
- *Further requests will be considered vexatious and/or potentially invalid unless they are able to provide proof of identity*
- *They were previously advised that the MPS would not conduct an internal review*
- *If they were dissatisfied with this response they may wish to appeal by contacting the ICO*
- *This advice was provided again on 20/11/2018*
- *With this in mind, it would be unreasonable in all the circumstances to expect the MPS to serve a further notice in relation to future requests for information*
- *Section 17(6) of the FOIA means that in the current circumstances, the MPS is not required to respond to your FOIA*

¹⁶ Link redacted

¹⁷ Link redacted

¹⁸ Link redacted

requests in the future, having previously issued a notice under section 17(5) of the Act advising that section 14(1) was applicable to your requests and outlining the nature of future requests that will be considered to be vexatious.

- *Unless they provide proof of ID or appeal to the Information Commissioner in relation to the decision to apply section 14(1) to their requests, the MPS will only respond to their FOIA requests or related correspondence on a discretionary basis and may choose not to respond.*

The complainant replied on the 18/12/2018 stating that 'the matter has now been passed to the ICO for a section 50 decision'¹⁹ yet they continued to submit requests and requests for internal reviews while the section 50 appeal was in progress as outlined earlier...

... Given the wider context and history of these requests, complying with these requests would impose a disproportionate burden on the MPS and would significantly compromise the ability of the MPS to meet its FOIA obligations in relation to the wider public.

The MPS recognises that there may be a legitimate public interest in disclosing the requested information. A legitimate interest is inherent in the disclosure of information upon request under FOIA given the associated benefit of enhancing transparency and accountability of public authorities. However, the additional work undertaken in order to meet the complainant's requests and complaints has constituted a significant amount of work and a significant distraction from the day to day business and in relation to responding to other FOIA requests. This has placed a strain on our time and resources which further contributes to the aggregated burden.

The ICO guidance in relation to vexatious requests states:

"that to show burden, the public authority must demonstrate the effort required to meet the request will be so grossly oppressive in terms of the strain on time and resources, that the authority cannot reasonably be expected to comply, no matter how legitimate the subject matter or valid the intentions of the requestor".

I believe the correspondence evidenced above and in our responses has had the undesired effect of diverting staff away from dealing

¹⁹ Link redacted

with FOIA requests made by other members of the public. The MPS regularly deal with in excess of 400 FOIA requests a month, and the burden placed on the MPS by the volume of repeated/inter linked requests from the complainant, who is among the MPS' most frequent applicants in 2018 and 2019, imposes a further significant burden on the MPS.

The MPS provided the complainant with advice in relation to obtaining information from a public body, sourced from the ICO website, within our responses dated 21/09/18 and 09/11/18 that further outlined the nature of the complainant's requests.

The MPS is conscious of the fact that it is the request that is vexatious and not the applicant. For this reason, the MPS is prepared to consider responding to future requests from the complainant and will assess such requests on a case-by-case basis. The MPS has provided advice and assistance in the form of press lines relevant to one of their request for information about settlement agreements relating to [name redacted]²⁰ and has answered one of the applicant's more recent requests relating to the legal costs associated with a civil case²¹. However, we continue to have concerns about the:

- *Frequency and overlapping nature of his requests (e.g. within a 20 working day period)*
- *Lack of evidence to suggest that the applicant is willing to reduce the frequency of requests or give the MPS time to answer one request before submitting further requests*
- *Tendency for requests to ask for 'all' or 'any' information relating to a topic or incident making such requests broad in scope*
- *Complainant's focus upon police misconduct and/or related issues*
- *Complainant's use of the WhatDoTheyKnow.com website, which while not a problem in and of itself, in the context of the history of their requests may facilitate and/or fuel the continuation of the conduct that suggests that their request is vexatious*
- *Lack of evidence to suggest that the applicant is willing to engage with the MPS in relation to specific requests or requests in general*

²⁰ Link redacted

²¹ Link redacted

- *Complainant's express intention to complain about any refusal irrespective of the merits which would likely increase the disproportionate impact upon MPS resources*
- *Specific history and context of previous requests which may be relevant to the circumstances of future requests*

The above factors are particularly pertinent as the MPS and its officers will likely continue to be subject to allegations of misconduct reported in the media and/or discussed on social media and there is nothing to suggest that the complainant intends to reduce the volume of requests or be less interested in police misconduct and related matters in the future.

I also note ICO decision notice FS50582996²² where it states:

'...the ICO highlighted that it has found before that this deliberate attempt to find a 'new' topic or a 'new' angle, simply to try and evade the application of section 14 (1) is vexatious in itself.'

This is relevant to the complainant's requests as they typically relate to different incidents albeit with a common focus on misconduct issues, internet videos and legal or settlement costs".

- *87 cases relating to [the complainant] have been logged on our FOIA case management systems since March 2018 including:*
 - *57 FOIA requests*
 - *27 Internal reviews²³*
 - *3 section 50 appeals*
- *15 Requests have been submitted to other public authorities that mention the Metropolitan Police Service or the Commissioner of Police of the Metropolis".*

²² https://ico.org.uk/media/action-weve-taken/decision-notices/2015/1560093/fs_50582996.pdf

²³ The number of internal reviews requested may be slightly higher as not all of the applicant's requests for internal review were separately logged.