

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 26 October 2021

Public Authority: Chief Constable of Dorset Police
Address: Force Headquarters
Winfrith
Dorchester
Dorset
DT2 8DZ

Decision (including any steps ordered)

1. The complainant made a request for information relating to a statement issued by Dorset Constabulary on the reduction of casualties and road safety.
2. The Commissioner's decision is that Dorset Constabulary has not demonstrated that the request was vexatious and was therefore not entitled to rely on section 14(1) to refuse it.
3. The Commissioner requires Dorset Constabulary to take the following step to ensure compliance with the legislation:
 - Issue a fresh response to the request which does not rely upon section 14(1).
4. The public authority must take this step 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

4. On 15 August 2020, the complainant wrote to Dorset Constabulary and requested information in the following terms:

"Over the last ten years, we've worked in partnership to reduce the number of casualties by 20 per cent and while every collision can be devastating, I am pleased that we are making consistent progress in making our roads safer."

www.dorset.police.uk/news-information/article/10528

Please could you provide the data, and the analysis, that demonstrated that the partnership have reduced casualties by 20%."

5. On 15 September 2020 Dorset Constabulary refused the request under section 14 of the FOIA stating that the complainant has been previously informed that any requests from him relating to roads policing would be deemed vexatious. It stated that it would not be responding to the request as it believes it is a continuation of this subject and as such is vexatious.
6. Dorset Constabulary provided a response to the complainant's request for a review on the 13 November 2020 upholding its original decision.

Background

7. On 25 November 2011 the complainant made a request to Dorset Constabulary for financial information relating to road safety and the partnership. The request was ultimately refused as vexatious due to the context and history of the complainant's engagement with Dorset Constabulary.
8. The Commissioner issued a decision notice FS50433957 upholding Dorset Constabulary's application of section 14 of the FOIA.
9. The complainant appealed the Commissioner's decision and on 12 July 2012 the First Tier Tribunal EA/2012/0163 upheld Dorset Constabulary's decision to refuse the request under section 14(1) of the FOIA.

Scope of the case

10. The complainant contacted the Commissioner on 31 October 2020 to complain about the way his request for information had been handled.
11. The Commissioner's investigation will focus on whether Dorset Constabulary was entitled to refuse the request on the grounds that it is vexatious.

Reasons for decision

Section 14(1) vexatious request

12. 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."

There is no public interest test.

13. 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*. The Tribunal commented that vexatious could be defined as *"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.
14. 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.
15. 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 previous course of dealings, the lack of proportionality that typically characterise vexatious requests” (paragraph 45).

16. The Commissioner has published guidance on dealing with vexatious requests¹. 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.
17. 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.
18. In that respect, the Commissioner’s guidance states:

“The context and history in which the 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.”
19. Sometimes it will be obvious when a request is vexatious, but sometimes it may not be. On that point, the Commissioner’s guidance states:

“In cases whether 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 and distress”.
20. However, the Commissioner is also keen to stress that in every case, it is the request itself that is vexatious and not the person making it.

¹ <https://ico.org.uk/media/for-organisations/documents/1198/dealing-with-vexatious-requests.pdf>

21. It is for the public authority to demonstrate to the Commissioner why the exemption at section 14 applies.

Dorset Constabulary's view

22. In its submission to the Commissioner, Dorset Constabulary explained that it reminded the complainant in July 2019 that "*he was deemed vexatious*" in the subject of 'road safety' and traffic related matters in response to a previous information request made to the Constabulary in July 2019.
23. Dorset Constabulary explained to the Commissioner that its original decision to make the complainant's request relating to the subject of 'roads policing' vexatious was taken in 2012 and was upheld by the Commissioner in a decision notice FS50433957 in the same year. Dorset Constabulary also provided the Commissioner with a copy of the First Tier Tribunal outcome EA/2012/0163 that upheld this decision.
24. Dorset Constabulary went onto explain that in 2013 the Upper Tribunal dismissed the complainant's appeal GIA/886/2013 and his application to appeal to the Court of Appeal was also refused. In this appeal the complainant stated:

"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."
25. Dorset Constabulary stated to the Commissioner that it can evidence that it is "*not making the complainant vexatious*" by the fact it has continued to respond to other requests made by the complainant on unrelated subjects. It provided evidence of this.
26. It also explained that the complainant made a request in April 2016 for "*road casualty statistics and driver course income*" and this was refused under section 14. A further request was made in July 2019 for "*road casualty data*" which was again refused under section 14 of the FOIA.
27. Dorset Constabulary stated to the Commissioner that it believes it is clear from the complainant's website that his "*campaign*" has continued since 2013. Dorset Constabulary provided two links to articles on the complainant's website in which he has made a formal complaint against Dorset Constabulary regarding road safety results.

28. Dorset Constabulary also provided the Commissioner with examples from 2014, 2019 and 2020, where the complainant has publicised his correspondence with Dorset Constabulary and complaints about it to public bodies relating to 'road safety' on his website.

29. In its submission to the Commissioner, Dorset Constabulary referred to paragraph 22 of the Commissioner's decision notice FS50433957 which addresses the complainant's 2011 request which was refused as vexatious by Dorset Constabulary. It states the following:

"The Commissioner notes that the complainant holds definite views on road safety and the actions of the Constabulary. These views are expressed in strong and almost belligerent terms on the website [redacted]. The Commissioner is satisfied that the complainant will likely continue to request information around the same matters."

30. It also referred to paragraph 13 of the First Tier Tribunal's decision that stated the following:

"In this case it is clear that there was a long history of requests, criticism and campaigning against Dorset Constabulary and 'Dorset Roadsafe' conducted from a hard – hitting website, to which the Appellant invited our attention. Anybody has the right, within certain limits, to conduct the most vigorous campaign to alter public policy in a particular area and to criticise mercilessly alleged failings in the discharge of duties to the public. FOIA is not, however, a weapon which can be used to browbeat an authority, rather than to extract information for use in such a campaign."

31. On the matter of the length of time between the 2011 request and this request, Dorset Constabulary stated the following to the Commissioner:

"As we can evidence that the website, which is considered evidence of being vexatious, continues to be used as a campaign on the subject of 'roads policing' to the current day we conclude that a reasonable period of time has not yet passed."

32. Dorset Constabulary referred the Commissioner to a post made by the complainant on his website in August 2020 relating to the information request that this decision notice addresses. Dorset Constabulary stated that it is worth noting that the complainant had already declared the statement from Assistant Chief Constable [name redacted] was "vague misleading nonsense" and "misinformation" before his request for information had been responded to. Dorset Constabulary explained that

it does not believe that any response it provides would be acceptable to the complainant. Based on this evidence Dorset Constabulary considers the application of section 14(1) of the FOIA to this request was the correct response.

The Commissioner's view

33. 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 to assist in making a judgement about whether a request is vexatious.
34. In cases that are not clear cut, the Commissioner has issued guidance advising public authorities to weigh the evidence on the impact on the authority and balancing this against the purpose and value of the request. Where relevant the authority will also need to take into account wider factors such as the background and history of the request.
35. 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.
36. In cases involving section 14, the Commissioner does need to consider the wider value and purpose behind the request which has been deemed vexatious.
37. Considering the Upper Tribunal case of the Information Commissioner v Devon CC & Dransfield we must not forget that one of the main purposes of the FOIA is to provide citizens with a (qualified) right to access to official information and therefore a means of holding public authorities to account.
38. The complainant is clearly concerned that Dorset Constabulary has made a statement that over the last ten years it has worked in partnership to reduce the number of casualties by 20 per cent, without publishing any data to support this claim.
39. It is therefore clear to the Commissioner that this request for information not only has value to the complainant but has a wider public interest in terms of openness and transparency in regards to public authorities providing information to support a statement.

40. The Commissioner acknowledges that, in this case, Dorset Constabulary evidenced that there has been previous long-standing engagement with the complainant. She also accepts that those previous dealings relate to the subject matter of the request in this case and have included a previous decision made by the Commissioner and a First Tier Tribunal decision.
41. However, the Commissioner understands that the complainant has made only two requests on the subject of 'road safety' since the initial refusal in 2012. These requests were made in 2016 and 2019. Both requests were refused under section 14(1).
42. The Commissioner is aware, that a post relating to 'Dorset Roadsafe' was published on his website in 2014 and a complaint made to Dorset Constabulary in 2019. Dorset Constabulary has not made the Commissioner aware of any other correspondence or complaints made to or regarding Dorset Constabulary on the issue of 'road safety'.
43. The Commissioner is not satisfied, from the information provided, that the complainant has demonstrated unreasonable persistence in relation to the topic of 'road safety' and Dorset Constabulary over the past eight years. The requests have been few and far apart as has any further correspondence with Dorset Constabulary on the matter.
44. The Commissioner notes Dorset Constabulary's belief that any response it provides would be unacceptable to the complainant, specifically due to the fact the complainant had already declared on his website that the statement from Assistant Chief Constable [name redacted] is "*vague misleading nonsense*" and "*misinformation*".
45. The Commissioner's guidance states that if the requester has used an accusatory tone, but his request has a serious purpose and raises a matter of substantial public interest, then it will be more difficult to argue a case that the request is vexatious.
46. In her guidance on vexatious requests, the Commissioner acknowledges that public authorities should be mindful to take into account the extent to which oversights on its own part might have contributed to the request being generated. In this case, a statement made with the absence of any data to support it.
47. Therefore, from the information presented to her and taking into consideration the findings of the Upper Tribunal in Dransfield that an holistic and broad approach should be taken in respect of section 14(1),

that the requested information will have wider public interest, the Commissioner has decided that on this occasion Dorset Constabulary has not supplied sufficient evidence to support that this request is vexatious, and therefore cannot rely on section 14(1) to refuse the request). However, that does not mean that further requests on the topic of 'road safety' may not be deemed vexatious in the future.

Right of appeal

48. 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

49. 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.
50. 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

Laura Tomkinson
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