

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

Date: 14 October 2010

**Public Authority:** Northumbria Police  
**Address:** North Road  
Ponteland  
Newcastle upon Tyne  
NE20 0BL

### Summary

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The complainant asked Northumbria Police ("the public authority") to provide information about the relationship between the police and the RSPB. As the subject matter was deemed to be the same as a number of previous requests, the public authority refused using the exclusion under section 14(1). Having considered this request, alongside other requests and complaints made by the complainant, the Commissioner has decided that the public authority was correct to refuse the request on the basis that it was vexatious under section 14(1) of the Freedom of Information Act 2000 ("the FOIA").

### The Commissioner's role

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1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

### Background

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2. The complainant's request is part of a long running dispute that he has had with Northumbria Police relating to his conviction for criminal offences relating to the Control of Trade in Endangered Species (Enforcement) Regulations 1985. His appeal was dismissed. The complainant has maintained his innocence and has continually striven

- to prove this. Investigations by both the police and the Independent Police Complaints Commission have not found in his favour and he remains convinced that there has been a 'cover up'.
3. The complainant sent in several complaints to the Commissioner at the same time. These included three complaints against this public authority. The other related complaints are covered by Decision Notices FS50274648 and FS50308738, which are issued at the same time as this notice. The earliest request is considered in the Decision Notice FS50274648 and this therefore contains more detail than either this notice or FS50308738. The requests in each case have been deemed vexatious by the Commissioner.
  4. The Commissioner has also viewed evidence of eight further complaints which the public authority has investigated in its Professional Standards Department ("PSD"), one of which post-dates this request. Of these complaints, six referred directly to the complainant's criminal conviction and his belief that it is unfounded. All of these six were also forwarded to either the Police Complaints Authority (the "PCA") or the Independent Police Complaints Commissioner (the "IPCC"), which replaced the PCA. None were found to be substantiated by any party.

## The request

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5. The complainant sent the following request to the public authority on 12 June 2009:

*"Dear CPS, Home Office, IPCC, Minister Justice and Northumbria Police*

*Reference: Information request in relation to which organ of the government is responsible for supplying the information in relation my questions below, who sets the powers of the RSPB and who is responsible to control and oversee the powers of the RSPB?. The responsibility is being passed about like a hot potato.*

*Which organ [servants of the people] of the democratically elected government is responsible for the issues below?*

*1] Supplying the information in relation to my questions below?*

*2] Who sets the powers of the RSPB?*

*3] Who is responsible to control and oversee the powers of the RSPB?*

*4] Who do I supply the information in relation to bogus information being used to get search warrant so the matter can be investigated?*

*The police are ignoring our letters and the IPCC are allowing the police not to investigate with the only justification that it has taken too long to complaint. Given that it is the police, RSPB and others external bodies to use that are causing the delay by withhold evidence how can it be justified to say our serious complaints in relation to a national conspiracy to pervert the course of justice cannot be investigated as we the victims have waited too long. Interestingly no one in thirteen year has said that any element of our complaint is wrong or not truthful instead there has been a cover up. For example the police have removed a video from You Tube of the Police and the RSPB kicking some ones door in, however they did leave the confidential statement from the RSPB that lied [documented fact backed up by a video] about the RSPB being asked to leave as the representative of the RSPB was not bon the search warrant, on a Forum called Hunting Life but the police names were removed. Now if I am not telling the truth I should be prosecuted for harassment and the RSPB would have taken their millions of pounds and sued me be now. In other word I have the shield of truth on my side and various organisations are hoping it will all go away however it will all be going on a website. A lot has already been published and no one has ever challenged the truthfulness of our complaints.*

*5] HOW IS A PERSON FROM THE RSPB WHO HAS BEEN SHOWN TO HAVE COMMITTED PERJURY IN THE JOHN DODSWORTH'S CASE IN OCTOBER 2008 [THE COURT TRANSCRIPT AND POLICE STATEMENTS HAVE ALRERADY BEEN SUPLIED AND YOU HAVE HEARD THE OPEN COURT STATEMENT FROM THE SOLICITOR INVOLVED IN THE CASE AND WHAT THE JUDGE HAD TO SAY] ALLOWED TO CONTINUE TO BE ENTRUSTED TO INVESTIGATE AND HANDLE FURTHER EVIDENCE WHILE THE INVESTIGATION INTO HIS CRIMES ARE PUT ON HOLD UNTIL AFTER SEPTEMBER? The matter needs to be looked at immediately to negate the potential of any new crimes.*

*In summary I would make the following statement of truth and challenges all to say where I am wrong. Various people have made serious complaint about the RSPB and the police but to date the police are ignoring our complaints or asked the IPCC permission not to investigate the crimes as the complaints has not been made within a very short period. This is of course a self fulfilling agenda as it is the police and others that are withholding the information that we need which is one of the main reason*

*that the complaints have been delayed. For example since 1994 I have been waiting for the report done on me by the RSPB. Other people have had the reports done on them given to them so why am I different? The answer is that I am not different; the answer is there are things in the report that will support my complaints and others. If this is wrong then show me the report. If there was nothing in the report to support my claims then the police and CPS, IPCC and Home Office would simple disclose the report to negate my complaints as they have done with other people. I would ask the CPS to ANSWER my letters in relation to this point. Furthermore, all the letters that are being ignored complaining about the RSPB and the police need to be answered fully by addressing each element of the complaints and an explanation of the investigation into each element and the conclusion. A meeting with all the people that are complaining would then be useful to expand and explain any difficult points of evidence.*

*We do not want confrontation we want the police to investigate our complaints and we want a Hillsborough type investigation headed by a senior judge. Most of all we want justice and transparency and not letters saying there has been a 'through investigation' but you cannot see the report, you just have to trust that we have correctly investigated ourselves about our organisation breaking the law. Just like turkeys will never vote for Christmas people investigating their own organisation need to be completely open to the complainants for obvious reasons.."*

6. Having previously declared requests relating to his own court case, to avian genetics and to its work with the RSPB as being 'vexatious', the public authority made no response.

## **The investigation**

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### **Scope of the case**

7. On 7 September 2009 the complainant contacted the Commissioner to complain about the way his request for information had been handled. He advised the Commissioner as follows:  
*"Reference; My Information requests that are being ignored on the information request website WHATDOTHEYKNOW. Please find enclosed numerous information requests to Northumbria Police, the CPS, the Ministry of Justice and Animal Health that are being ignored or I have requested an internal inquiry and I have now waited long enough for the information*

*requested. Please investigate the information requests on my behalf to secure the information requested”.*

8. This included several complaints about requests made to this public authority. The Commissioner advised the complainant that he would consider whether or not three of these were ‘vexatious’.

## **Chronology**

9. On 15 April 2010 the Commissioner wrote to the complainant to advise him that he was commencing his investigation. The complainant telephoned the Commissioner on receipt of his letter and accepted the scope set down by the Commissioner.
10. The Commissioner commenced his enquiries with the public authority on 26 April 2010.

## **Analysis**

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### **Substantive procedural matters**

#### **Exclusion – section 14(1)**

11. Section 14(1) is an exclusion which provides that –

*“Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious”.*

12. When assessing ‘vexatiousness’ the Commissioner adopts the view of the Information Tribunal (the “Tribunal”) decision in *Ahilathirunayagam v Information Commissioner’s Office* [EA/2006/0070] (paragraph 32); that it must be given its ordinary meaning and so would be likely to cause distress or irritation. The assessment is based on objective standards. This has been reaffirmed by the Tribunal in *Gowers v Information Tribunal and London Camden Borough Council* [EA/2007/0114] (paragraph 27). The Commissioner has developed a more detailed test in accordance with his guidance but it is important to understand that it has been developed from these general principles and they guide him in applying his test.
13. When considering what evidence can be considered when making this determination, the Commissioner endorses the Tribunal’s consideration of this point in *Mr J Welsh v the Information Commissioner* [EA/2007/0088] (paragraph 21) where it stated:

*"In most cases, the vexatious nature of a request will only emerge after considering the request in its context and background. As part of that context, the identity of the requester and past dealings with the public authority can be taken into account. When considering section 14, the general principles of FOIA that the identity of the requester is irrelevant, and that FOIA is purpose blind, cannot apply. Identity and purpose can be very relevant in determining whether a request is vexatious. It follows that it is possible for a request to be valid if made by one person, but vexatious if made by another; valid if made to one person, vexatious if made to another".*

14. The Commissioner has therefore taken into account the complainant's previous interaction with the public authority when determining whether the request can be correctly characterised as vexatious. This means that even if the request appears reasonable in isolation, it may be vexatious if it demonstrates a continuation of behaviour which is obsessive and/or represents a significant burden when considered collectively.
15. The Commissioner has issued Awareness Guidance 22 as a tool to assist in the consideration of what constitutes a vexatious request. This guidance explains that for a request to be deemed vexatious the Commissioner will consider the context and history of the request, as well as the strengths and weaknesses of both parties' arguments, in relation to some or all of the following five factors in order to reach a reasoned conclusion as to whether a reasonable public authority could refuse to comply with the request on the grounds that it is vexatious:
  - (1) whether compliance would create a significant burden in terms of expense and distraction;
  - (2) whether the request is designed to cause disruption or annoyance;
  - (3) whether the request has the effect of harassing the public authority or its staff;
  - (4) whether the request can otherwise fairly be characterised as obsessive; and
  - (5) whether the request has any serious purpose or value.
16. When considering the public authority's reliance upon section 14(1), the Commissioner has had regard to the Information Tribunal's decision in *Mr J Welsh v the Information Commissioner* [EA/2007/0088](at paragraph 26). In that case, the Tribunal spoke of the consequences of determining a request vexatious. It pointed out that this is not as serious as a finding of vexatious conduct in other contexts

and therefore the threshold for vexatious requests need not be set too high.

17. The public authority has advised the complainant that any requests he makes which relate to his own court case, avian genetics and its work with the RSPB will be classed as 'vexatious'. This request clearly relates to the same subject matter. For the same reasons as he set out in his Decision Notice FS50274648 the Commissioner has decided that this request is also 'vexatious'.

### **Section 17 – refusal of request**

18. It is important that public authorities receive protection from meritless applications under the Act. The Commissioner considers this to be the intention of including section 17(6) in the Act. This states that a public authority is not required to provide a refusal notice where:

- “(a) the public authority is relying on a claim that section 14 applies,*
- (b) the authority has given the applicant a notice, in relation to a previous request for information, stating that it is relying on such a claim, and*
- (c) it would in all the circumstances be unreasonable to expect the authority to serve a further notice under subsection (5) in relation to the current request.”*

19. In this case, the public authority is relying on section 14; it has previously provided a refusal notice which states that it is relying on such a claim; and the Commissioner believes that, in all the circumstances, it would be unreasonable to expect the public authority to issue a separate notice regarding this request. He believes that this is the case because he has already determined that two previous requests about the underlying subject matter are vexatious, which renders the issuing of a further notice unreasonable. He has therefore concluded that section 17(6) has been appropriately applied to this request.

### **The Decision**

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20. The Commissioner's decision is that the public authority dealt with the request for information in accordance with the Act.

## **Steps required**

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21. The Commissioner requires no steps to be taken.



## Right of Appeal

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22. 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,  
Arnhem House,  
31, Waterloo Way,  
LEICESTER,  
LE1 8DJ

Tel: 0845 600 0877

Fax: 0116 249 4253

Email: [informationtribunal@tribunals.gsi.gov.uk](mailto:informationtribunal@tribunals.gsi.gov.uk).

Website: [www.informationtribunal.gov.uk](http://www.informationtribunal.gov.uk)

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.

Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is sent.

**Dated the 14<sup>th</sup> day of October 2010**

**Signed .....**

**Jon Manners  
Group Manager**

**Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**

## Legal annex

### Section 14 – vexatious or repeated requests

- (1) Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious.
- (2) Where a public authority has previously complied with a request for information which was made by any person, it is not obliged to comply with a subsequent identical or substantially similar request from that person unless a reasonable interval has elapsed between compliance with the previous request and the making of the current request.

### Section 17 - refusal of request

- (1) A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which—
  - (a) states that fact,
  - (b) specifies the exemption in question, and
  - (c) states (if that would not otherwise be apparent) why the exemption applies.
- (2) Where—
  - (a) in relation to any request for information, a public authority is, as respects any information, relying on a claim—
    - (i) that any provision of Part II which relates to the duty to confirm or deny and is not specified in section 2(3) is relevant to the request, or
    - (ii) that the information is exempt information only by virtue of a provision not specified in section 2(3), and
  - (b) at the time when the notice under subsection (1) is given to the applicant, the public authority (or, in a case falling within section 66(3) or (4), the responsible authority) has not yet reached a decision as to the application of subsection (1)(b) or (2)(b) of section 2,  
the notice under subsection (1) must indicate that no decision as to the application of that provision has yet been reached and must contain an estimate of the date by which the authority expects that such a decision will have been reached.
- (3) A public authority which, in relation to any request for information, is to any extent relying on a claim that subsection (1)(b) or (2)(b) of section 2 applies must, either in the notice under subsection (1) or in a separate notice given within such time as is reasonable in the circumstances, state the reasons for claiming—

- (a) that, in all the circumstances of the case, the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing whether the authority holds the information, or
  - (b) that, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.
- (4) A public authority is not obliged to make a statement under subsection (1)(c) or (3) if, or to the extent that, the statement would involve the disclosure of information which would itself be exempt information.
- (5) A public authority which, in relation to any request for information, is relying on a claim that section 12 or 14 applies must, within the time for complying with section 1(1), give the applicant a notice stating that fact.
- (6) Subsection (5) does not apply where—
- (a) the public authority is relying on a claim that section 14 applies,
  - (b) the authority has given the applicant a notice, in relation to a previous request for information, stating that it is relying on such a claim, and
  - (c) it would in all the circumstances be unreasonable to expect the authority to serve a further notice under subsection (5) in relation to the current request.
- (7) A notice under subsection (1), (3) or (5) must—
- (a) contain particulars of any procedure provided by the public authority for dealing with complaints about the handling of requests for information or state that the authority does not provide such a procedure, and
  - (b) contain particulars of the right conferred by section 50.