

## **Freedom of Information Act 2000 (Section 50)**

### **Decision Notice**

**Date: 10 March 2011**

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

#### **Summary**

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The complainant made two requests for information to Durham Constabulary within six days in February 2010. The first request concerns incident reports made against the Force and the second request comprises of points appertaining to on-going issues between the complainant and the Constabulary. The Constabulary decided that both requests were vexatious and applied section 14(1) of the Act. Following investigation, the Commissioner upholds the Constabulary's decision.

#### **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. Two requests for information are considered in this Decision Notice. They form part of a prolonged interaction between the complainant and the public authority which began in February 2008. The complainant has made numerous complaints about the Durham Constabulary. The complaints were made directly to the Constabulary and to the Independent Police Complaints Commission (IPCC). The complaints were also used by the complainant in lobbying other organisations. These complaints do not form part of this Decision Notice. However the two Freedom of Information (FOI) requests which are considered in this notice are associated with the same overarching matter.

## The Requests

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3. On 13 February 2010 the complainant made the following request for information to the Durham Constabulary:

### Request 1

"Please can I make a freedom of information request on the following:

1) The number of occasions over the past three years in which an incident report was made against a member of the Force's Executive or against the Head of its Professional Standards Division. Please note that by incident report I am not meaning conduct complaint or direction and control complaint, but instead the attempted reporting of a criminally indictable offence concerning such individuals.

2) The Force policy (or acknowledgement of the lack of) in regards to what should happen when an instance as described in point 1 occurs, and what happens with the incident report once it is made. In particular, can you contrast the differences in handling an incident report that is made against a citizen and one that is made against a member of the Executive or Head of the PSD.

I am aware that in 2009 there were at least two such incident reports: DHM-02102009-206 and DHM-23102009-0281, and I trust this information eases your response."

4. On 19 February 2010 the complainant made a further request for information to the Durham Constabulary:

### Request 2

"Please may I make the following FOI request:

1) The rights of the public to communicate with the Force by telephone, and the instances and circumstances in which this right is unilaterally and permanently removed.

2) The view of the Force on what constitutes a 'reasonable interval' before a member of the public may make a subject access request following any previous request.

3) The Force's risk assessment for responding to a subject access request and how this may be declined on health and safety grounds because of an identified health risk to a Force employee.

- 4) The Force's view on what constitutes an 'exceptional' circumstance so as to justify the deletion of DNA for an individual never charged or cautioned. A hypothetical example of such a situation is useful.
- 5) The precedent ruling which holds suitable jurisdiction and justification for the Chief Constable to make a disclosure beyond the borders and realms of the UK concerning private and personal information and including his personal views and opinions of another individual."
5. Durham Constabulary responded to both of the complainant's requests on 23 February 2010 stating:

"Pursuant to the provisions of Section 14 of the Freedom of Information Act 2000 (the Act) I have decided to refuse your request as it has been deemed a 'Vexatious Request'".
6. Following a request from the complainant on 23 February 2010 the Constabulary provided a review of its decision on 31 March 2010 upholding its original decision.
7. The Commissioner allocated the reference number FS50319861 to the request of 13 February 2010 and FS50328113 to the request of 19 February 2010. Both requests are considered within the same Decision Notice as they appertain to the same matter. However the Commissioner's comments on each reference will be denoted in respect of each request separately.

## **The Investigation**

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### **Scope of the case**

8. On 28 June 2010 the complainant contacted the Commissioner to complain about the way both of his requests for information had been handled. The complainant specifically asked the Commissioner to consider whether Durham Constabulary 'appreciate that Section 14 refers to a request, not a requester'.

### **Chronology**

9. On 9 August 2010 the Commissioner wrote to the Constabulary advising it that he had received a complaint from the complainant.
10. On 18 August 2010 the Constabulary responded to the Commissioner's letter including submissions it wished the Commissioner to consider.

11. On 2 December 2010 the Commissioner wrote to Durham Constabulary and requested that it provide any further information in support of its application of section 14 in respect of each request.
12. On 16 December 2010 the Commissioner wrote to the complainant and requested that he provide any further information he wished to be taken into consideration.
13. On the same day the complainant responded with further comments.
14. Also on 16 December 2010 Durham Constabulary confirmed that it had nothing further to add to the submissions already provided to the Commissioner.
15. On 4 January 2011 the complainant provided an additional email to the Commissioner.

## **Analysis for Case Reference FS50319861**

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### **Substantive Procedural Matters**

#### **Exclusion**

#### **Section 14(1) – Vexatious request**

16. Section 14(1) provides that a public authority does not have a duty to comply with a request where it may be considered vexatious. As a general principle, the Commissioner considers that this section of the Act is meant to serve as protection to public authorities against those who may abuse the right to seek information.
17. Deciding whether a request is vexatious is essentially a balancing exercise and, in weighing up this issue, the Commissioner has considered the following factors<sup>1</sup>:
  - Could the request fairly be seen as obsessive?
  - Is the request harassing the authority or distressing to staff?
  - Would complying with the request impose a significant burden in terms of expense and distraction?
  - Is the request designed to cause disruption or annoyance?
  - Does the request lack any serious purpose or value?

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<sup>1</sup> The Commissioner's approach to section 14 can also be found at:  
[http://www.ico.gov.uk/~media/documents/library/Freedom\\_of\\_Information/Detailed\\_specialist\\_guides/VEXATIOUS\\_AND\\_REPEATED\\_REQUESTS.ashx](http://www.ico.gov.uk/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/VEXATIOUS_AND_REPEATED_REQUESTS.ashx)

18. In establishing which, if any, of these factors apply, the Commissioner will consider the history and context of the request. In certain cases, a request may not be vexatious in isolation but when considered in context it may form a wider pattern of behaviour that makes it vexatious. The Commissioner recognises, however, that it is the request and not the requester that must be vexatious for the exclusion to be engaged. The complainant has drawn attention to his belief that the Constabulary:

“...considers me, as a requester, as being vexatious, not the request”.

19. The complainant has provided an email which forms part of the ongoing correspondence he has with respect to two forthcoming court proceedings he has in respect of the Constabulary, in which the statement: “...you had been deemed vexatious” appears. However the Commissioner considers the Constabulary’s response to the two requests as clearly identifying the requests, rather than himself, as being vexatious.

### **Could the request fairly be seen as obsessive?**

20. An obsessive request is often a strong indication of vexatiousness. Contributory factors can include the volume and frequency of correspondence and whether there is a clear intention to use the request to reopen issues that have already been debated.
21. The Constabulary has provided the Commissioner with evidence of the extensive correspondence between it and the complainant from December 2008 to the date of the Constabulary’s internal review of its handling of the request. Both the Constabulary and the complainant also provided copies of ongoing correspondence after 31 March 2010 including a further information request from the complainant made on 20 June 2010.
22. The Commissioner has considered the information and arguments provided by the complainant and the Constabulary. In previous Tribunal decisions, notably in *Coggins v Information Commissioner EA/2007/0130*, in respect of the obsessive nature of a request, reference was made to the volume and haranguing tone of the correspondence. The Constabulary has stated that it holds over ten A4 box files of email exchanges not including letters which had been exchanged with the complainant prior to February 2009. From the representations and evidence provided by the Constabulary to support its position, the Commissioner agrees that the correspondence is voluminous and the tone of some of the correspondence can be considered to be haranguing.

23. The complainant disputes this point arguing that the Constabulary are "confusing obsession with repetition, frequency or duration". The Commissioner accepts that there is a fine line between obsession and persistence and he understands that the complainant believes that this matter is of the utmost importance. However the Commissioner does not accept the distinction made by the complainant of obsessiveness. The Commissioner is satisfied that the evidence proffered by the Constabulary in this case indicates that the combined frequency, repetitive nature and the continuance of the complainant's correspondence including the request considered here, can be properly considered indicative of obsessiveness.
24. The complainant does not believe his communications to be 'overwhelming' as described by the Constabulary, because despite the volume, the Constabulary has not been influenced; "to explain the concerns it holds about me or to allow the restoration of my human rights". However in his examination of the correspondence provided, the Commissioner has not found evidence pointing to any failure of the Constabulary in respect of its appropriate dealings with the complainant or in respect of its considerations of his human rights.
25. The complainant has stated that:
- "I fully admit that I will not end contact with Durham Constabulary whilst I have a vested interest in communicating with them. Not only is the organisation continuing to violate my human rights, but they are also the guardians of my most sensitive data. Yet, even if the DNA profile and Identification Details maintenance did end, I would continue to communicate with the Force if and when it gives me cause to do so, e.g. by undertaking actions which are worthy of complaint investigation."
26. The Commissioner accepts that the complainant has the concerns he expresses here. Nevertheless his stated intent of continuing to correspond with the Constabulary about these matters, in circumstances where the Constabulary has been clear with the complainant that it is content that the matters to which his complaints relate have been satisfactorily dealt with, shows the complainant's determination to pursue his cause to a point which indicates obsessiveness.
27. The complainant has stated to the Constabulary: "I will continue to pursue the facts, and I will do so to demonstrate that which I know to be true i.e. I am innocent of committing any crime". The Commissioner understands that the complainant considers that he is justified in pursuing his communications with the Constabulary. However, the

Commissioner considers that the complainant's stated tenacity provides more evidence of obsession.

28. The Commissioner therefore finds that this factor supports the Constabulary's application of section 14(1).

**Is the request harassing the authority or distressing to staff?**

29. The Commissioner's guidance on this factor also refers to the volume and frequency of correspondence as being relevant issues alongside the use of hostile, abusive or offensive language and mingling requests with accusations and complaints. The complainant has written that he uses, "accusatory and confrontational wording because I am confronting and accusing the Force".
30. The complainant has stated that he feels intimidated by the Constabulary's staff and also implies his dissatisfaction with the tone of the correspondence he has received. The Commissioner has not been provided with any evidence to support this assertion.
31. The Commissioner is aware of numerous examples of the complainant's hostile and provocative language often with a sarcastic tone. The content of the complainant's correspondence has at times been elaborate and imposing in denouncing the Constabulary's actions and its staff. The Commissioner has seen evidence of the complainant's extreme and dramatic statements regarding his own behaviour, addressed directly and indirectly to the Constabulary which are disturbing and potentially distressing.
32. The complainant states that he has not sought to distress any particular individual but he is;
- "..demanding the end of human rights violations against myself and feel fully justified in using a tone intended to express how I will not accept any resolution other than their full restoration."
33. The complainant goes on to explain that he will continue to use sarcasm in his correspondence as an indication of his frustration and displeasure at the Constabulary's correspondence. The Commissioner has noted the complainant's preference to express himself in grandiose terms which may be difficult to understand and interpret as the complainant intended.
34. In requesting an internal review of the Constabulary's decision to apply section 14(1) the complainant states:

"A refusal indicates that the Force would prefer not to disclose the report history of such individuals and that they may wish to protect a situation in which they are protected from criminal investigation."

35. The Commissioner has given careful consideration to the history of the correspondence between the complainant and the Constabulary and is mindful of the Tribunal's comments in the case of *Ahilathirunayagam v the Information Commissioner and London Metropolitan University* regarding tendentious language demonstrating the Appellant's purpose:

"to argue and even harangue the University and certain of its employees and not really to obtain information that he did not already possess".

36. The Commissioner accepts that the complainant is seeking information that is not in his possession; however, the Commissioner considers that the approach taken by complainant in this case has the effect of harassing the Constabulary's staff. The request and the correspondence associated with the request are distressing to the Constabulary's staff who are aware of the complainant's on-going complaints. Some of these complaints are focussed on individual members of staff. Therefore the Commissioner considers that this factor supports the Constabulary's application of section 14(1).

**Would complying with the request impose a significant burden in terms of expense and distraction?**

37. The volume of correspondence has already been referenced in paragraph 21. The background and context of this request indicate that the written and verbal correspondence regarding the same matter prior to this request has created a significant burden for the Constabulary's staff to deal with. The Commissioner accepts that this burden has the effect of distracting the Constabulary from its core functions after a time when the issue of concern to the complainant had been properly dealt with.

38. The complainant states in his request for internal review that:

"In both cases the case officer considers my request to be obsessive, yet I have only ever made 3 FOI requests,"

39. In considering this point the Commissioner notes the Tribunal decision in *Mr G Betts v Information Commissioner (EA/2007/0109)* which concluded that although there was nothing vexatious in the content of the specific request itself there had been a dispute between the council and the requester which had resulted in ongoing FOIA requests and

persistent correspondence over two years. Although the latest request was not vexatious in isolation, the Tribunal considered that it was vexatious when viewed in context. It was a continuation of a pattern of behaviour and part of an ongoing campaign to pressure the council. The request on its own may have been simple, but experience showed it was very likely to lead to further correspondence, requests and complaints. Given the wider context and history, the Tribunal concluded that the request was harassing, likely to impose a significant burden, and obsessive. The Commissioner's opinion is that there is an analogy here with this case. He has concluded that despite the complainant designating only three of his requests as FOIA requests, numerous other requests for information have been made, alongside other correspondence, subject access requests and complaints which together form a significant burden.

40. The Commissioner is aware that the complainant is continuing to correspond with the Deputy Force Solicitor regarding on going court proceedings in respect of the matter to which the correspondence relates. He acknowledges that the complainant is highly unlikely to be satisfied with a response to this request and will persist in corresponding with members of the Constabulary until the whole matter has been resolved to his satisfaction which is likely to be dependent on test cases yet to be concluded. Therefore the Commissioner's opinion is that this factor also supports the Constabulary's application of section 14(1).

**Is the request designed to cause disruption or annoyance?**

41. This question requires evidence to demonstrate it was the specific intention of the complainant to cause annoyance and disruption.
42. With respect to this factor the complainant stated:  
"The design of the request is not to cause disruption or annoyance, but as is indeed accepted as a possibility by [a named person], they are designed for a 'genuine and serious purpose'."
43. The Commissioner accepts that the complainant's request may have caused disruption and annoyance to the Constabulary against the background established above and the specific nature of the request. However, in the absence of evidence that this was the intention of the complainant, the Commissioner finds that this factor does not support the Constabulary's application of section 14(1).

**Does the request lack any serious purpose or value?**

44. The Constabulary has not applied this factor to support its application of section 14(1), acknowledging to the complainant that it: "...may feel that you have a genuine and serious purpose in pursuing these matters."
45. The Commissioner accepts that the complainant has a serious purpose in this request forming part of his on-going matters with the Constabulary.

**Could a reasonable public authority refuse to comply with the request on the grounds that it is vexatious?**

46. The Commissioner considers that, on the basis of the circumstances of this case, the Constabulary is justified in relying on three of the five factors described above. Therefore Commissioner accepts that section 14(1) was correctly applied in this case.

**Analysis for Case Reference FS50328113**

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47. In considering this request the Commissioner makes reference to paragraphs 16 – 18 and applies the same rationale to this case.

**Could the request fairly be seen as obsessive?**

48. Although the questions forming this request are of a general nature, the Commissioner is satisfied that all five parts of the request relate to the same matter which the complainant pursued previously with Constabulary. In consequence of this the Commissioner is drawn to the conclusion outlined in paragraphs 20 – 23 above. In illustration of this the Commissioner notes that following the internal review the complainant wrote an overly long, analytical response to the Constabulary regarding its application of section 14 and refers to his situation which is directly linked with part five of the request and has previously been addressed by the Constabulary. The Commissioner therefore considers the arguments detailed in paragraphs 20 – 23 are also applicable to this request.
49. The Commissioner finds that this factor supports the Constabulary's application of section 14(1).

**Is the request harassing the authority or distressing to staff?**

50. In considering this factor with respect to this request, the Commissioner's findings outlined above in paragraphs 29 – 33 are also relevant.

51. The complainant has acknowledged in correspondence with the Constabulary, albeit with a disparaging tone, that distress to staff has been caused during the on-going communications between the Constabulary and himself. The Commissioner understands that staff would be distressed by this request in the context of the history of complaints made against members of staff by the complainant and his specific criticisms, for example:

"I have already demanded [a named person] be suspended from duty" and "Not only does this indicate incompetence on your side,..."

52. The complainant also refers to his own distress. One example is the distress he experiences in dealing with specific members of staff and would prefer to communicate with staff; "...with whom I do not hold a grievance."

53. The complainant has also stated:

"...by now the Force should be in no doubt as to the level of distress its actions are causing me. This is further indicated in the tendentious nature of my correspondence, which is based on a definite purpose."

54. The Commissioner understands that the complainant considers that he is harassed and distressed by his dealings with the Constabulary. However this does not negate the harassment and distress experienced by the Constabulary. The Commissioner's decision is that this factor supports the Constabulary's application of section 14(1).

**Would complying with the request impose a significant burden in terms of expense and distraction?**

55. Again the Commissioner refers to his earlier comments in paragraphs 37 – 40 above. The investigation in this case follows the same analysis as in FS50319861. As the two requests covered in this Decision Notice were made within six days, the effect of the burden of responding in terms of expense and distraction can be considered alike. This request, being the second, therefore aggravates the burden already established above.

56. The Commissioner therefore finds that this factor supports the Constabulary's application of section 14(1).

**Is the request designed to cause disruption or annoyance?**

57. The Commissioner considers that paragraphs 41 and 42 are relevant to this factor. However, the five parts of this request represent matters which the Commissioner acknowledges to have been already raised by the complainant with the Constabulary using different approaches. The Commissioner acknowledges that this repetition could cause annoyance and he considers that this may have been the intention of the complainant or the complainant may have been aware that disruption and annoyance would be likely. However, the Constabulary has not provided the Commissioner with evidence that this was the specific intention of the complainant at the time of the request and therefore he finds that this factor does not support the application of section 14(1).

**Does the request lack any serious purpose or value?**

58. With reference to paragraphs 44 and 45 the Commissioner again considers that the complainant has a serious purpose in making this request which is to gather information which he judges will lead him to his desired outcome.

**Could a reasonable public authority refuse to comply with the request on the grounds that it is vexatious?**

59. The Commissioner has considered the evidence in this case, including the history and context of the request. Having reached his conclusion on Request 1 [paragraph 46] and on the basis of the circumstances in this case, the Commissioner finds that a reasonable public authority would find the complainant's request vexatious. The Commissioner considers that the strength of the three of the five factors considered support the Constabulary's application of section 14(1).

**The Decision**

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60. The Commissioner's decision is that the public authority dealt with both requests for information in accordance with the Act.

**Steps Required**

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61. The Commissioner requires no steps to be taken in respect of either case.

## Other Matters

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62. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters:

Although both requests are substantive FOI requests the Commissioner considers that the underlying issues which have led to the requests, relate directly to the complainant and as such would be more appropriately dealt with the subject access provisions under the Data Protection Act.

## Right of Appeal

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63. 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)

64. 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.

65. 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 10<sup>th</sup> day of March 2011**

**Signed .....**

**Alexander Ganotis  
Group Manager – Complaints Resolution  
Information Commissioner’s Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**

## Legal Annex

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### Vexatious or Repeated Requests

#### **Section 14(1) provides that –**

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

#### **Section 14(2) provides that –**

“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 a previous request and the making of the current request.”