

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 16 November 2011

Public Authority: The Chief Constable of South Yorkshire Police
Address: South Yorkshire Police Headquarters
Snig Hill
Sheffield
S3 8LY

Decision (including any steps ordered)

1. The complainant has requested information from South Yorkshire Police (the Police) about a Notice of Intended Prosecution he had received regarding an alleged speeding offence. In relation to the requests that fall within the scope of FOIA, the Police's position is that these requests are vexatious.
2. The Commissioner's decision is that the requests in question are not vexatious.
3. Therefore the Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - In respect of the requests numbered below as 3, 5 and 6 the Police need to confirm to the complainant whether it holds the information falling within the scope of each request, and, if information is held, it needs to provide the complainant with that information.
 - If the Police believe that any of the information falling within the scope of these requests is exempt from disclosure on the basis of the exemptions contained within Part II of FOIA, it should provide the complainant with a valid refusal notice which complies with the requirements of section 17 of FOIA.
4. The public authority 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

(or the Court of Session in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 8 October 2010 the complainant wrote to the Police and requested information about a Notice of Intended Prosecution (NIP) he had received regarding an alleged speeding offence. The request sought:

[1] I am therefore writing to request that copies of both photographs taken by your camera recording the alleged offence should be sent to me so that we can positively establish... the identity of the vehicle... and the identity of the driver.

Additionally...in support of any subsequent defence, I shall also require...

[2] A copy of the Calibration Certificate and maintenance records for the equipment. Both the camera and any sensor in the road surface.

[3] A copy of the operators manual for the device.

[4] A copy of any other evidence that you intend to rely on in Court.

[5] A copy of the original NIP to verify it was delivered within 14 days.

[6] A copy of your procedures dealing with the collection and process of the evidance [sic]'.

6. On 18 October 2010 the Police provided the complainant with the information sought by requests 1 and 2.
7. The Police contacted the complainant again on 3 November 2010 and, despite its correspondence of 18 October 2010, explained that it considered his requests to be vexatious and therefore they were refused on the basis of section 14(1) of FOIA.
8. The complainant subsequently contacted the Police in order to ask for an internal review of this decision.
9. The Police informed the complainant of the outcome of the internal review on 22 November 2010; the review upheld the decision that the requests were vexatious. However, the Police explained that in line with its duty to advise and assist requestors under section 16 of FOIA, it provided him with a website link to Association of Chief Police Officers' (ACPO) Code of Practice for Operational Use of Road Policing Enforcement Technology.

Scope of the case

10. On 27 November 2010 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant disputed that his requests were vexatious.
11. As the complainant has in fact been provided with the information falling within the scope of requests 1 and 2 the Commissioner has not considered the Police's handling of these requests in this notice. Furthermore, in the Commissioner's opinion, information held by the Police falling within the scope of request 4 would constitute the complainant's personal data as defined by the Data Protection Act 1998 (the DPA). Therefore the Police should have dealt with this request as a subject access request under the provisions of the DPA rather than under FOIA. The Commissioner has carried out a separate 'request for assessment' which considers the Police's compliance with the DPA in handling request 4. This assessment is being provided to the complainant and the Police at the same time this notice is being issued. The Police's handling of request 4 is therefore not considered in this notice.
12. Consequently the scope of the Commissioner's investigation in relation to FOIA has been limited to considering whether requests 3, 5 and 6 have been correctly refused on the basis that they are vexatious.

Reasons for decision

13. Section 14(1) of FOIA states that a public authority does not have to comply with a request if the request is vexatious.
14. Deciding whether a request is vexatious is a balancing exercise, taking into account the context and history of the request. In line with his published guidance the Commissioner believes that one or more of the following criteria have to be met for a request to be deemed vexatious:
 - Can the request fairly be seen as obsessive?
 - Is the request harassing the authority or causing distress 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?¹

15. In submissions to the Commissioner the Police's principal argument was that the requests were designed to cause disruption or annoyance, although it also argued that they had the effect of harassing staff and had the potential to place a significant burden on the Police. The Commissioner has considered each of these criteria in turn.

Are the requests designed to cause disruption or annoyance?

16. The Police explained that safety camera partnerships are frequently asked a certain set of questions, or similar questions, by those in receipt of NIPs which are designed by anti-speed camera websites. The Police suggested that such letters are specifically designed to cause disruption to the processing of speed camera offences by Safety Camera Partnerships in the hope that they will cancel the offence. The Police argued that the form of the complainant's requests indicated that they had been taken from one such 'form letter' available on the internet; indeed it provided the Commissioner with the particular website address from which the complainant's requests were taken.
17. With regards to how the letters available from such websites are disruptive to the processing of speeding offences, and the legal framework that supports it, the Police referred the Commissioner to a guidance document apparently also available to other police forces entitled 'Guide to Form Letters'. In essence the guidance explained that such websites openly promoted tactics to render the administration of justice untenable by making the administration of fixed penalty notices difficult and lengthy with, as the Police themselves suggested, the ultimate intention of preventing speeding offences being processed. Such tactics included using FOI requests to try and circumvent other legal processes that are already in place for the processing of speeding offences.
18. The Police argued that as the complainant's letter was so clearly based upon the advice available on these websites – and the explicit purpose of the websites was to frustrate the processing of speeding offences – it was logical and reasonable to conclude that the intention of the complainant's requests was also to disrupt and/or annoy the Police.

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http://www.ico.gov.uk/for_organisations/guidance_index/~/_media/documents/library/Freedom_of Information/Detailed_specialist_guides/VEXATIOUS_AND_REPEATED_REQUESTS.ashx

19. The Police emphasised the fact that a legal process was in place for individuals who felt they had mitigating circumstances and wished to challenge the issuing of a fixed penalty ticket, i.e. they could attend court. Thus the Police argued that FOI requests, such as those submitted by the complainant, should not be used to circumvent the administration of justice.
20. The Police also noted that the Commissioner's own guidance on section 14 stated that 'the focus should be on the likely effect of the request (seen in context), not on the requestor's intention'. In light of this the Police argued that it should not have to prove that the complainant's intention was to disrupt its activities, rather that the requests, as a whole and in context, had the effect of disrupting it. Furthermore, the Police highlighted the Information Tribunal's comments in *Welsh v Information Commissioner* at paragraph 26: 'the threshold for a request to be found vexatious need not be set too high'.² The Police argued that if intent had to be proved in this case, the threshold to be found vexatious would indeed be pushed too far. The Police also noted that there was no mention of the need to prove intent in ACPO's guidance on applying section 14(1) of FOIA.
21. In response to these submissions, the Commissioner does not accept the Police's suggestion that for this particular criterion a public authority does not have to establish the intention of the requestor. Although the quote from the Commissioner's guidance to which the Police has referred to is accurate, it is in fact taken from the part of his guidance which discusses another of the criteria, namely whether a request is harassing the public or causing stress to staff. In that context, as the guidance sets out, the Commissioner agrees that it is not necessary to show that a requester's intention was to deliberately harass the authority or cause stress to staff; the effect of a requestors' actions is enough. However, as his guidance makes clear for the criterion 'is the request designed to cause disruption or annoyance?' the purpose or intention of the request **does** need to be established, and moreover that purpose or intention has to be one that aims to disrupt or annoy the public authority. This is not say that the public authority cannot highlight the context of the request in order to support its position that a request was submitted with some vexatious intention – but the fact remains that the request has to have been submitted with the purpose of causing disruption or annoyance to the public authority. The burden for proving

² <http://www.informationtribunal.gov.uk/DBFiles/Decision/i125/Welsh.pdf>

such intention lies on the public authority. This does not need to be proven indisputably, but on the balance of probabilities.

22. With regard to the Tribunal decision referenced by the Police and the threshold for deeming a request vexatious, the Commissioner would simply highlight the fact that, as his guidance makes clear, the intention of the requestor only needs to be established in respect of one of the given criteria set out at paragraph 14. Given that a public authority can argue that a request is vexatious on the basis of the four other criteria without having to establish the motive of the requestor, the Commissioner does not accept that his guidance sets the threshold for engaging section 14(1) too high.
23. The Commissioner accepts the Police's view that one of the purposes of the websites containing form letters is to assist those who have received NIPs to avoid having to pay a fine or receive points on their licence. One of the ways in which this can be achieved, as some of the websites clearly argue, is by disrupting the processing of fixed penalty notices. However, the Commissioner does not accept that simply because the complainant used a form letter from one such website it necessarily follows that his intention was to disrupt the activities of the Police. The letters are of course a useful central resource and the complainant may have simply used one of the freely available form letters as a relevant template letter. In the Commissioner's opinion such letters can be seen – and used as such – without having the intention of deliberately wanting to disrupt or annoy. Furthermore in the particular circumstances of this case the Commissioner understands that although the requests follow the form letter, the complainant has identified some more specific circumstances relevant to his case which in his opinion led him to question the validity of the NIP he received. In the Commissioner's opinion, in such circumstances an individual would want to be aware of all of the relevant facts before deciding whether to accept a fixed penalty notice or contest the alleged speeding offence in court. Therefore, the Commissioner is prepared to accept that the complainant **may** have had genuine concerns and simply used the form letter for convenience. The Commissioner accepts that this is a finely balanced judgement but given the underlying presumption in favour of disclosure contained within FOIA, the Commissioner has decided to give the complainant the benefit of the doubt and has therefore concluded that the Police have not demonstrated on the balance of probabilities that complainant's intention was to disrupt or annoy the Police.
24. The Commissioner also wishes to make clear that he rejects the line of argument advanced by the Police that as there is an existing route of appeal within the legal process of challenging fixed penalty notices, the public do not need to use, and moreover should not use, the FOIA to seek information about a NIP they may have received. In the

Commissioner's opinion simply because there is an existing appeals process this does not mean that there is no legitimacy for submitting FOI requests. The Commissioner is of the view that as a general principle the public are entitled to use FOIA to hold public authorities to account and aid transparency on all aspects of public authorities' activities, even in areas where a public authority may have existing processes in place for dealing with individuals' dissatisfaction in respect of decisions taken by the public authority in question.

Are the requests harassing the authority or causing distress to staff?

25. The Police suggested that the complainant was clearly aggrieved at receiving a fixed penalty notice and it argued that he adopted various means in order to avoid paying the fine and receiving points on his licence. Such steps included seeking an internal review of the application of section 14(1) in response to his FOI requests, and then complaining to the Commissioner; and also making a complaint about the staff who dealt with the NIP and those who dealt with his FOIA requests. The complaint about the staff was investigated by the Police and found to be unsubstantiated.
26. The Police argued that this pattern of behaviour was particularly similar to that considered in a previous decision notice, FS50274648, in which the Commissioner found that:

*'frustration may override reasonable behaviour... The Commissioner has therefore considered the volume of correspondence and resources which have already been expended by the PA in dealing with the issues raised by the complainant... He believes that the cumulative effect is sufficient to harass a reasonable public authority when assessing this particular request in its context'*³

27. The Police argued that the fact that the complainant actually paid the fixed penalty ticket in December 2010 but was continuing with 'this course of action' – which the Commissioner assumes is a reference to this present complaint to him – is evidence that it is being harassed by the complainant.

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http://www.ico.gov.uk/~media/documents/decisionnotices/2010/fs_50274648.ashx&sa=U&ei=AlKyTvaOLMn38QPd7ND1BA&ved=0CBAQFjAA&usq=AFQjCNE7JY5ao6_G3UgTfdMOzWEg2voSZA

28. The Commissioner does not dispute the fact the complainant was unhappy about receiving a NIP. However, the Commissioner is not prepared to accept that from an objective view point the complainant's FOI requests can be said to have had the effect of harassing the Police, even when he takes into account the complainant's broader actions as described above. This is on the basis that in contrast to the case cited by the Police above, the complainant's correspondence is less in volume, focuses on one single issue, and only included one set of FOI requests, those being the ones in his letter of 3 November 2010. The Commissioner would also reject the suggestion that in the context of this case – bearing in mind that the complainant only submitted one set of requests - that asking for an internal review or subsequently submitting a section 50 complaint to the Commissioner can be seen as having the effect of harassing the public authority. In the Commissioner's opinion a requestor is entitled to exercise his appeal rights under FOIA without such behaviour being construed as harassing a public authority except in the most extreme of cases where the number of requests and subsequent appeals are numerous in nature. The Commissioner acknowledges the Police's point about the formal complaint made to it by the complainant. However, the Commissioner would imagine that the Police receive a number of such complaints from individuals who are dissatisfied with its actions and thus there must be robust and well established processes in place to deal with such allegations. Moreover, in line with established case law, the Commissioner can only consider the events as they existed at the time the request was submitted when determining whether section 14(1) had been relied upon correctly by the Police. Thus the majority of the evidence identified by the Police to support its position that the complainant was harassing it cannot be taken into account by the Commissioner because it post-dates the request.

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

29. In order to support its position that this criterion was met, the Police again referenced the Tribunal's findings in *Welsh v Information Commissioner*, namely:

'Mr Welsh's response to the question of significant burden is instructive: "Why doesn't he employ temporary office workers to remove the significant burden on his time; if there is one. In any way, the tax payers would pick up the bill for the temporary office workers for a public authority". Simply to shrug off the burden placed on the Doctors shows no awareness of the real burden placed on them from the cumulative effects of persistent demands, and the potential distraction from their ability to perform their normal duties'

30. Similarly, the Police argued that if a public authority was to comply with these requests for 'lists' of information that constitute form letters, which are all substantially similar, from those collaborating in concert to 'clog up' the criminal justice system, the scenario described by the Tribunal would be the case for all Safety Camera Partnerships and Central Ticket Offices across the country. Such bodies generally have few staff to process the thousands of tickets that are issued every week in the 'usual' manner.

31. The Police also drew the Commissioner's attention to the findings of decision notice FS50274648 at paragraph 31:

'When making a determination of whether each request represents a significant burden to a public authority... This means that even if a request does not impose a significant burden when considered in isolation, it may do when considered in context'.

32. The Police argued that the context in this case was the overall impact that such requests will have on public authorities across the country.

33. The Commissioner's understanding, based on the above submissions, is that the Police are not arguing that complying with these requests in isolation would place a significant burden on it. Rather it is the significant burden that would be faced collectively by all similar public authorities if they had to respond to similar requests in the future. The Commissioner does not accept that this is a correct interpretation of how the significant burden criterion should be applied. Firstly, this is because the burden that would occur if a request was complied with can only be assessed with regard to the effect on an individual public authority in dealing with the requests it receives; the burden cannot be seen as the cumulative burden placed upon numerous public authorities. Secondly, the Police's evidence of a significant burden being imposed on such authorities is based upon them receiving similar requests in the future and not being able to refuse them on the basis of section 14(1). As explained above, only the circumstances as they existed at the time of a request can be taken into account; therefore the Police cannot take into account the likely consequences of future requests from members of the public in order to deem these existing requests vexatious. The Commissioner notes that the Police would also appear to be advocating a blanket policy approach to all 'form letter' requests about NIPs – i.e. to refuse them on the basis of section 14(1). This is contrary to the approach taken by the Commissioner, namely that each request needs to be considered on its own merits, which is exactly the approach that has been adopted in this notice.

34. For the reasons discussed above the Commissioner is not satisfied that any of the three criteria identified by the Police in determining that the

requests are vexatious are met. Therefore the Police are not entitled to rely on section 14(1) to refuse to respond to the requests numbered 3, 5 and 6.

Other matters

35. In determining the scope of FOIA matters to be addressed, the Commissioner also assessed whether request 5 would constitute a request for the complainant's personal data. The Police's view of request 5 is that *'the original NIP was sent to the leasing company which was the owner of the vehicle at the time (according to PNC); as such the original NIP was not his personal data and as such would not be relevant to him under DPA'*. Having considered the Police's position and the wider circumstances of this case, the Commissioner is prepared to accept this explanation. However, as set out above, this request will now need to be addressed under FOIA.

Right of appeal

36. 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: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

37. 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.
38. 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

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