

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 12 July 2012

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

Decision (including any steps ordered)

1. The complainant requested information on the costs involved with the 'Driver Awareness Scheme' operated by Dorset Police ("the Constabulary").
2. The Constabulary initially refused the request by relying on section 12(1) of the FOIA and stated that the cost of complying with the request would exceed the appropriate limit as set out in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004.
3. In its internal review the Constabulary revised its response and refused to comply with the request because it considered it to be vexatious under section 14(1) of the FOIA.
4. The Commissioner's decision is that the Constabulary correctly determined the request to be vexatious.
5. There are no steps to be taken.

Background

6. The Constabulary has a partnership with Dorset Road Safe (previously named Dorset Safety Camera Partnership). The staff of Dorset Road Safe form part of the Constabulary. The complainant's requests for information have been addressed to both organisations.

7. This case follows from an earlier case (FS50403659) brought to the Commissioner by the complainant regarding his dissatisfaction with the response provided by the Constabulary in respect of a request for the cost per person of providing the Driver Awareness Course and the composition of the costs of the course.
8. Following the Commissioner's involvement the Constabulary provided a breakdown of the composition of costs involved with the course.
9. The complainant contacted the Constabulary requesting additional details based on the disclosure made. This request is the substantive request in this case.

Request and response

10. The complainant made the following request for information on 25 November 2011:

"1. The document you originally referred me to showed the "provision of Driver Awareness Scheme" for 2010/11 as £813,000. You are now telling me that the cost is £1.457m. Could you explain this apparent discrepancy?

2. Please could you detail the Staffing costs, numbers of staff, duties, salaries, and if any of these staff receive any other payments for any other duties.

3. Please could you detail the Premises costs. What premises are used for the courses, who owns the premises, who is the payment made to?

4. Please could you detail the IS charges.

5. The "contribution towards cost of Dorset Road Safe" is clearly not part of the cost of provision of courses – perhaps this explains some of the discrepancy noted in point1? But then I would expect the true cost to be $1457 - 548.7 = £908,000$, could you explain.

6. Please could you detail "Force back office" service

7. Please could you detail SEES Command.

In addition to my question 3 please could you detail the last payment date and amount in relation to the premises."
11. The Constabulary responded on 23 December 2011 with a refusal notice in reliance on section 12(1) (Cost of compliance).
12. The Constabulary acknowledged the complainant's request for an internal review on 4 January 2012.
13. On 31 January 2012 the Assistant Chief Constable ("the ACC") wrote a letter to the complainant encompassing the history of correspondence between the two parties and the Constabulary's determination of the

request as vexatious. The Commissioner confirmed with the Constabulary that it wished this letter to be considered as its review of the initial response.

Scope of the case

14. The complainant contacted the Commissioner on 31 January 2012 to complain about the way his request for information had been handled. He explained to the Commissioner that he did not agree with the time estimated by the Constabulary to provide the information he requested.
15. The Commissioner wrote to the complainant on 24 April 2012 explaining that he would be investigating the Constabulary's reliance on section 14(1) as this was the section of the Act which the Constabulary was now relying on.

Reasons for decision

16. **Section 14(1)** provides the following:

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

17. Guidance on the Commissioner's approach to vexatious requests can be found on the Commissioner's website and for ease of reference, at the following links:

http://www.ico.gov.uk/for_organisations/freedom_of_information/information_request/reasons_to_refuse.aspx

<http://www.ico.gov.uk/foikb/FOIPolicySectionsRegs.htm>

18. As explained in the guidance, the Commissioner's general approach is to consider the argument and evidence that the public authority is able to provide in response to the following questions:

Could 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?

19. It will not be necessary for all of the above criteria to apply but in general, the more that apply, the stronger the case will be for a vexatious request. The Commissioner is able to take into account the history and context of the request when determining whether a request is vexatious. It will often be the case that a request for information only reveals its vexatious quality when put into context.

Could the request fairly be seen as obsessive?

20. When a request for information is refused as vexatious it is often the case that an examination of the background will reveal a long and difficult relationship between the parties that has arisen as a result of a dispute or a number of related disputes that have not been resolved to the satisfaction of the complainant. In this case the complainant has corresponded with the Constabulary regarding road safety, in particular speed cameras, over a period of seven years. The Constabulary estimates that this correspondence has involved "about 400 requests for information and many thousands of emails".
21. The Commissioner notes that although the requests made by the complainant are not specifically repeated, the majority of the correspondence is linked and has the same focus. The request in this case is an attempt at seeking more detail on the Constabulary's response to an earlier request. That response provided detailed information – although not to the satisfaction of the complainant.
22. 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 www.dorsetspeed.org.uk. The Commissioner is satisfied that the complainant will likely continue to request information around the same matters.
23. The Commissioner has determined that there is sufficient evidence to conclude that the complainant's requests are obsessive and represent attempts to pursue matters relating to road safety and safety cameras which have already been considered by the Constabulary. It is not the Commissioner's role to determine whether there is merit in any of the complainants' comments about the actions of the Constabulary in respect of its strategy in road safety; however the complainant has consistently demonstrated his willingness to question the Constabulary's decisions in implementing its road safety programme.

The Commissioner is aware of the complainant's conviction in his motive for corresponding with the Constabulary; however it is the Commissioner's view that it is unlikely that the Constabulary would ever be able to satisfy the complainant unless it agreed to adopt a different approach to road safety. The evidence and arguments provided supported the Constabulary's case that the requests were obsessive.

Is the request harassing the authority or causing distress?

24. The Commissioner would like to highlight that when considering this part of the criteria, he is not concerned with what the complainant's intention may have been. It is not unusual for a request to be deemed vexatious even though the complainant genuinely believes that the request and contextual behaviour was entirely justified. Instead, the Commissioner is concerned with the effect that the request would have had on any reasonable public authority.
25. There will often be a significant overlap between the reasons why a request can fairly be seen as obsessive and the reasons why it may have had the effect of harassing the authority. The Constabulary explained to the Commissioner that the complainant's communications over a number of years had had the effect of harassing the staff dealing with the correspondence.
26. The Constabulary explained to the Commissioner that staff had been upset and felt victimised by the complainant. It cited examples of the language and tone of some of the complainant's correspondence which staff found both dismissive and accusatory:

"I find it offensive that you use the term 'work' to describe what you do."

"WHAT THE HECK IS WRONG WITH THE POLICE IN DORSET – the only way you will achieve these objectives is to STOP TRYING TO MAKE SO MUCH MONEY and to put proper cops on the road looking for DANGEROUS DRIVERS....STOP THROWING OUR MONEY DOWN THE DRAIN ON SPEED CAMERAS, MOBILE OR FIXED,"

"How do they find people low enough to do this job?"

"Any competent organisation holds proper records concerning its finances."
27. The Constabulary explained to the Commissioner that various members of staff had tried to engage positively with the complainant but had often found his responses to be hostile and provocative. The Commissioner notes, in information provided by the complainant to the Commissioner, the accusatory tone of his correspondence with the Constabulary.

28. The Commissioner's own guidance suggests 20 working days to be an appropriate limit for the time taken to provide an internal review. When chasing a response to his request for an internal review on 26 January 2012, made on 23 December 2011 - which in this case should therefore have been provided by 25 January 2012 - the complainant wrote:

"This is properly overdue, please can you respond now."

On 27 January 2012 he wrote again:

"I have to complain (again) about your FOI department. Another item (related to the same item I have been trying to get answers for for [sic] nearly a year now) has gone overdue with no communication. Please can you:

1. Ensure that this item is now dealt with immediately.
2. Review the competence of your FOI staff and explain to me what will be done to bring the performance of your FOI department up to satisfactory levels."

29. The Commissioner acknowledges that the Constabulary, as at 27 January 2012, had exceeded his guidelines by 2 days; however he finds the complainant's correspondence to be unnecessarily antagonistic and is indicative of the attitude displayed in the content of some of his correspondence with the Constabulary.
30. The Commissioner considers that it would not be unreasonable for a staff member to regard correspondence as harassing when there is every indication that it would only lead to further complaints, criticisms and requests without generating a productive outcome.

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

31. The Commissioner has not considered the Constabulary's initial reliance on section 12 (Cost of compliance), as the Constabulary confirmed to the Commissioner its subsequent determination that the request was vexatious. Notwithstanding this the Commissioner considers that compliance with the individual request in this case, in isolation may not have been too burdensome. However, when taken in the context of his previous requests, the Commissioner is satisfied that the request would form a part of a collective burden that the Constabulary has handled since 2005. The distraction from its staffs' other duties caused by this burden had been substantial. Paragraph 20

above details the volume of correspondence from the complainant. This is not the first time the Commissioner has considered correspondence between the two parties. The figures provided by the Constabulary are not at variance with information previously given to the Commissioner which demonstrates the disproportionate amount of time taken to deal with the requests and queries brought by the complainant. As already noted the evidence suggests that any response provided to the complainant would be unlikely to satisfy him and would result in further related requests.

32. The Commissioner has taken account of the complainant's request in the context of his past history of making requests. In view of this he is satisfied that compliance with the request made on 25 November 2011 would impose a significant burden on the Constabulary.

Does the request lack serious purpose or value?

33. The Constabulary did not provide the Commissioner with any evidence that the request lacked serious purpose or value, other than a note stating that it is not clear if it has any serious purpose or value.
34. The Commissioner has considered this point and also the complainant's representations. He has concluded that the complainant considers that there is a serious purpose to his requests in seeking information on safety cameras and the actions of the Constabulary with respect to road safety which have not been published. The complainant wrote to the Commissioner stating:

"What on earth could be vexatious about asking for information about spend of public money?

It's a simple question I have asked. The extent to which Dorset Police are trying to avoid answering it is indicative of the importance that they do, in the public interest. There is absolutely no ethical, competent spend of public money that needs to be hidden."

35. The Commissioner is satisfied that the complainant had a serious purpose in making this request for information although he is unable to comment on the nature of that purpose.

Is the request designed to cause disruption or annoyance?

36. The Constabulary said that it was of the opinion that the requests were designed to cause disruption or annoyance as the complainant was clearly conducting a campaign on his website. The Constabulary provided the Commissioner with details of the website (detailed above

in paragraph 22) including the following sample of comments from the site:

"Please could everyone now send an email complaint"

"The point is, the DSCP [Dorset Safety Camera Partnership] seem to be feeling the heat, and we HAVE TO KEEP THE PRESSURE ON."

37. The Commissioner notes that the website provides links to other sites concerned with the use of safety cameras and the monetary penalties claimed by the "Road Safe" initiatives. The website itself contains suggestions on how the general public who support the ideas put forward on the website could assist the complainant. As the extract below indicates:

"I have been contacted by someone who has received a NIP from the Speed on Green and would like to challenge it. If the costs could be shared by a few hundred (thousand??) people, perhaps for a couple of quid each, a proper investigation and case may be able to be made, if this could succeed, it would be a fantastic victory for us against this nonsense, and could open the floodgates for others."

38. Generally this criterion is difficult to assess because it requires objective evidence of intention and motivation. However, in this case, the Commissioner is persuaded that the Constabulary provided sufficiently strong evidence to prove the intention behind the complainant's requests.
39. Taking into account his conclusions in respect of four of the criteria outlined above, the Commissioner has determined that the Constabulary has demonstrated that the complainant's request of 25 November 2011 was vexatious. He considers that the Constabulary was correct in its application of section 14 of the Act to that request and was therefore justified in refusing to comply with it.

Other Matters

40. The Commissioner does not consider that the Constabulary provided an appropriate internal review. The Constabulary explained to the Commissioner that the letter from the ACC was intended to provide a "corporate response" in respect of the history of communications between the two parties as well as forming the internal review

requested by the complainant. The Constabulary acknowledged that on reflection the review had "some limitations".

41. The Commissioner is not commenting on the letter with regard to the Constabulary's decisions on handling communications from the complainant. Notwithstanding this the Commissioner would point out that if a request for information is received into a public authority that authority must act in accordance with the applicable information access legislation. With regard to FOIA internal reviews, the Commissioner would expect the Constabulary to handle these according to the relevant provisions of the section 54 code of practice:

<http://www.justice.gov.uk/downloads/information-access-rights/foi/foi-section45-code-of-practice.pdf>

Right of appeal

42. 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

43. 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.
44. 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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