

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 19 April 2016

**Public Authority:** Chief Constable of Kent Police  
**Address:** Police Headquarters  
Sutton Road  
Maidstone  
Kent  
ME15 9BZ

### Decision (including any steps ordered)

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1. The complainant requested information relating to a police investigation concerning a road traffic collision that occurred on 22 February 2010. The request was refused as vexatious under section 14(1) of the FOIA.
2. The Commissioner's decision is that Kent Police correctly applied section 14(1) to this request and that there are no further steps to be taken.

### Request and response

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3. On 22 April 2015, Kent Police received the following request for information:

*"Due to recent revelations. I would like to know why the above driver's blood test results were not submitted by Kent Police to the Coroner, [name redacted] for evidence in regard to [name redacted] Inquest held on 19/10/2010? Also:*

*Over the past 5 years I have made numerous requests to Kent Police to know if any substances were found to be in the driver's system, on the day of the fatal accident. The responses varied from "no alcohol" – "no alcohol, or substances" – "no substances". I have these email responses from various Kent Police Employees to substantiate this. I know that the driver had codeine in his system which is classified as a controlled substance for all LGV drivers. Why was this fact kept from the Coroner and myself?*

*I once again have asked for a copy of these blood test results, if this is still made unavailable to me, I will have no alternative but to seek a court order to obtain this."*

4. On the 21 May 2015 Kent Police wrote to the complainants stating that it had not treated their questions as a request for recorded information under the FOIA. However, in this response it cited section 14(1) of the FOIA and advised that any further requests made to it will not receive a response by virtue of section 17(6). Kent Police also offered the complainants the right to request an internal review.

### **Scope of the case**

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5. The complainants contacted the Commissioner on 20 June 2015 to complain about the way their request for information had been handled.
6. Although Kent Police stated to the complainants that their questions dated 22 April 2015 were not being treated as a request for information under the FOIA, it is the Commissioner's view that the complainants' questions could be read as a request for recorded information.
7. The Commissioner also notes that Kent Police's response contained attributes that a refusal notice would be expected to include, such as citing section 14(1), refusing to comply with further requests relating to the same topic under section 17(6), offering the complainant the right to internal review and referring to the right of the complainant to complain to the Commissioner. As a result, the Commissioner is satisfied that Kent Police's correspondence of the 21 May 2015 was a refusal notice under section 17(1) of the FOIA.
8. The Commissioner accepted the complaint without Kent Police conducting an internal review. During the investigation, Kent Police indicated that its position was that, if the questions set out above were regarded as a request for recorded information, it would refuse to comply with it under section 14(1) of the FOIA.

### **Reasons for decision**

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9. Section 14(1) of the FOIA allows a public authority to refuse to comply with a request that is vexatious.
10. The term "vexatious" is not defined in the FOIA. The Upper-tier Tribunal considered the issue of vexatious requests in the case of *The Information Commissioner and Devon County Council vs Mr Alan*

Dransfield (GIA/3037/2011) and concluded that the term could be defined as "*manifestly unjustified, inappropriate or improper use of a formal procedure*".

11. The Dransfield case identified four factors that may be present in vexatious requests:
  - the burden imposed by the request (on the public authority and its staff)
  - the motive of the requester
  - harassment or distress caused to staff
  - the value or serious purpose of the request.
12. Notwithstanding these indicators, all the circumstances of the case such as the background and history of the request must be considered in reaching a judgement as to whether a request is vexatious.
13. The Commissioner's guidance on vexatious requests suggests that the key question a public authority must ask itself is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress. Where this is not clear, the Commissioner considers that public authorities should weigh the impact on the authority and balance this against the purpose and value of the request. In addition, where relevant, public authorities also need to take into account wider factors such as the background and history of the request.
14. The Commissioner considers that the background and history of the request are of particular significance in this case. In its submission, Kent Police stated that the circumstances of the traffic collision mentioned in the request were reviewed by a Coroner, the CPS and the Traffic Commissioner, as well as by Kent Police itself. Kent Police explained that the Coroner's Inquest returned a verdict of accidental death and following consultation with the CPS no charges were brought against any individual. In addition, Kent Police stated that a public hearing of the Traffic Commissioner confirmed that no action should be taken against either the driver or their employer.
15. Kent Police stated that the complainants have previously raised a number of concerns about the police investigation which the information request set out above refers to. Kent Police explained that the complainants believe the police investigation failed to adhere to ACPO's Road Death Investigation Manual (RDIM) (since superseded by "*Authorised Professional Practice on Investigating Road Deaths*" published by the College of Policing).

16. Kent Police stated that the complainants' concerns about the police investigation have been discussed at a meeting chaired by the Assistant Chief Constable and as a result of this meeting, the Serious Crime Directorate jointly operated by Kent and Essex Police decided to conduct a Serious Case Review. Kent Police explained that the review indicated certain shortcomings in the investigation; however these shortcomings were insufficient to alter the investigation outcome. Kent Police explained that the conclusions from the review were shared with the complainants, in person, by a senior officer and although the meeting initially appeared to satisfy the complainants' concerns, they subsequently indicated that they were considering taking civil action against the Chief Constable.
17. In its submission, Kent Police added that the complainants have made numerous complaints to its Professional Standards Department, the Independent Police Complaints Commission (IPCC) and the Police and Crime Commissioner. None of these complaints were upheld.
18. Kent Police explained that the complainants have made eight information requests in two years, all for information relating in some way to the police investigation of the road traffic collision, the latest request being that set out above. It provided evidence of each of these requests having been responded to.
19. Kent Police believes that the complainants' requests have reached a point where it can reasonably consider them to be "*a manifestly unjustified use of the FOIA*". It stated that it understands the complainants are entitled to request recorded information under the FOIA, however, it submits that the FOIA is not the appropriate route for the complainants to pursue their concerns, particularly where they are seeking access to third party sensitive personal data as disclosing this information under the FOIA would put it into the public domain.
20. Kent Police submitted that the complainants' requests seek to reopen matters that have already been addressed and which Kent Police considers resolved. It referred to instances where it has disclosed information to the complainants outside the scope of the FOIA and stated that such disclosure has tended to generate further FOIA requests.
21. The Commissioner's guidance suggests that if a public authority's experience of dealing with previous requests indicates that the complainants will not be satisfied with any response provided and will tend to continue to submit further correspondence and further information requests, this can strengthen any argument that responding to the current request will impose a disproportionate burden on the authority.

22. Based on Kent Police's claim that providing information to the complainants tends to generate further information requests and other correspondence from them, it is the Commissioner's view that the complainant is unlikely to be satisfied by disclosure of the information requested in this case. Instead, his view is that it is reasonable for Kent Police to suspect that disclosure in this case will, instead of resolving the complainants' concerns, be more likely to perpetuate them.
23. The Commissioner however, notes that it appears the complainants only became aware on 8 April 2015 of confirmation that codeine was in the LGV driver's system and this seems to have prompted their requests of 22 April 2015. Therefore, the Commissioner acknowledges that these requests raised a new, specific issue, and that the requests were not solely a reiteration of previous requests made.
24. The Commissioner notes that the incident that the request relates to has been considered at a Coroner's Inquest and by the Traffic Commissioner. The Commissioner also notes the representations from Kent Police that the complainants have exhausted their opportunities to raise their complaint with the IPCC, Police and Crime Commissioner for Kent and Kent Police itself.
25. The Commissioner's guidance on vexatious requests states that to argue a requester is demonstrating unreasonable persistence, a public authority must demonstrate that the requester is attempting to reopen an issue which has already been comprehensively addressed by the public authority or otherwise subjected to some form of independent scrutiny. The complainants have had their concerns addressed at a review by Kent Police and those concerns have also been subject to independent scrutiny by a Coroner and Traffic Commissioner. The complainants have also attempted to take their issues further with the relevant Police and Crime Commissioner and with the IPCC.
26. On the basis of these representations from Kent Police about the background to the request, the Commissioner's view is that, by making further requests for information relating to the police investigation, the complainants demonstrated unreasonable persistence. He also believes that the complainants are unlikely to be satisfied short of a reinvestigation of an incident that it appears has already been thoroughly considered. He further believes that it is unlikely that compliance with the request in question here will bring about any resolution.
27. The Commissioner believes the complainants have exhausted all of the appropriate processes in regards to their dissatisfaction with the police investigation and will continue to make complaints in the unrealistic belief that they will reach the outcome they seek. The Commissioner

considers that this is an example of a situation where a public authority is entitled to say "enough is enough".

28. The Commissioner is sympathetic to the complainants and has no difficulty in understanding their persistence in pursuing their issue with Kent Police. For the reasons given above, however, his conclusion is that the point has been reached where the FOIA does not oblige Kent Police to devote any of its resources to complying with this request.
29. The finding of the Commissioner is, therefore, that the request above was vexatious and so Kent Police was not obliged to comply with it.

## Right of appeal

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30. 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@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

Website: <http://www.justice.gov.uk/tribunals/general-regulatory-chamber>

31. 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.
32. 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** .....

**Ben Tomes**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**