

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 1 December 2014

Public Authority: Chief Constable of Cheshire Constabulary
Address: Cheshire Constabulary HQ
Oakmere Road
Winsford
CW7 2UA

Decision (including any steps ordered)

1. The complainant has requested information about why a historical allegation of fraud he made to Cheshire Constabulary was not investigated. The Constabulary refused to comply with the request because it considered it vexatious under section 14 of the FOIA.
2. The Commissioner's decision is that the Constabulary has correctly relied on section 14(1) of the FOIA to refuse the request. The Commissioner requires no steps to be taken.

Background

3. The complainant believes he has uncovered evidence of fraud in relation to a land sale and is concerned that Cheshire Constabulary has declined to investigate his findings.
4. The complainant has researched historical records pertaining to the ownership and boundaries of a piece of land that borders his house, and he has identified what he believes to be anomalies in those records, relating to the sale of the land in the 1950s. He has concluded that the records in question were deliberately and unlawfully altered and that the sale and development of the land (as playing fields) was consequently unlawful.

5. In 2012 he submitted a formal complaint to Cheshire Constabulary about his concerns. Cheshire Constabulary considered his complaint and, after making preliminary enquiries, it informed him that his allegations did not meet the necessary criteria for commencing a criminal investigation.
6. The complainant then submitted a complaint of misconduct against the police officers who had dealt with his initial complaint, based upon their decision to not investigate it. This complaint was investigated by the force's Professional Standards Department ("PSD") The PSD's investigation did not support the allegations made against the officers.

Request and response

7. On 13 June 2014, the complainant wrote to Cheshire Constabulary via the *What Do They Know* website ("WDTK") and, referring to its decision not to investigate his fraud allegation, requested the following information.

"I am reliably informed somewhere within your organisation will be a report confirming all reasons why my complaint has been dismissed and it is for copy of that report I write you - Please provide me copy of that report."

8. He received no response and appealed to the Commissioner for assistance. After the Commissioner's intervention, the Constabulary responded on 5 September 2014. It stated:

"Your request for information submitted on the 13th June was repeated and vexatious. I would refer you to your request referenced 5234 and the associated response sent on 4th March 2014. This incorporated a S14 response and stated that the Constabulary will not deal with any further FOI requests from you relating to these issues."

Scope of the case

9. The complainant contacted the Commissioner on 9 September 2014 to complain about the way his request for information had been handled. He disputed the decision by Cheshire Constabulary that his request was vexatious.

10. In view of Cheshire Constabulary's application of section 14(1) to a previous, similar request from the complainant, the Commissioner has not required the complainant to request an internal review of its decision. He has instead used his discretion and considered the complaint in the absence of an internal review.
11. The Commissioner has considered whether or not Cheshire Constabulary was entitled to rely on the vexatious provisions at section 14(1) of the FOIA.

Reasons for decision

12. Section 14(1) of the FOIA states that section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious. There is no public interest test.
13. The term "vexatious" is not defined in the FOIA. The Upper Tribunal considered the issue of vexatious requests in the case of the *Information Commissioner v Devon CC & Dransfield* (UKUT 440 (AAC), 28 January 2013)¹. The Tribunal commented that "vexatious" could be defined as the "*manifestly unjustified, inappropriate or improper use of a formal procedure*". The Tribunal's definition clearly establishes that the concepts of proportionality and justification are relevant to any consideration of whether a request is vexatious.
14. In the Commissioner's view, the key question for public authorities to consider when determining if a request is vexatious is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress.
15. The Commissioner has identified a number of "indicators" which may be useful in identifying vexatious requests. These are set out in his published guidance on vexatious requests². The fact

¹ <http://www.osspsc.gov.uk/Aspx/view.aspx?id=3680>

²

http://ico.org.uk/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/dealing-with-vexatious-requests.ashx

that a request contains one or more of these indicators will not necessarily mean that it must be vexatious. All the circumstances of a case will need to be considered in reaching a judgement as to whether a request is, or is not, vexatious.

Evidence from the parties

16. When making his complaint to the Commissioner, the complainant stated that he had submitted a reasonable and legitimate request for information to Cheshire Constabulary. He did not submit arguments as to why Cheshire Constabulary was wrong in designating the request as vexatious. However, in a telephone call with the case officer about a related complaint, he expressed the view that he was entitled to scrutinise Cheshire Constabulary's conduct in light of the concerns he had, and that its refusal to comply was in itself suspicious behaviour.
17. The complainant appears to consider that the evidence he provided to the Constabulary alleging corruption in the transfer of the land was thorough and detailed and that his allegations should have been fully investigated. He appears to consider the Constabulary's failure to do so to be part of an ongoing "cover up" of the unlawful sale of the land. He accuses the Constabulary of failing to explain to him why it will not investigate, and of "*unlawful discriminatory practices*" in failing to do so.
18. For its part, Cheshire Constabulary has explained that it considered the fraud allegations which the complainant referred to it and did not agree with the interpretation he had placed on the anomalies in the land records. It duly found the allegations contained insufficient grounds to open a full investigation of the matter.
19. The complainant was notified of the reasons why his complaint did not instigate a full criminal investigation. The Commissioner has had sight of a letter dated 28 November 2012 which explained why the Constabulary would not be investigating the allegations. It addressed, point by point, specific concerns that the complainant had raised about a local parish council's involvement in the disposal of the land, many years earlier.
20. At the complainant's request, the Constabulary's decision not to launch an investigation was subsequently reviewed by a senior police officer, who upheld the decision and informed the complainant accordingly, giving reasons why. The Constabulary provided the Commissioner with an extract of the complainant's written response to that review outcome:

"Thank you very much indeed for your written summation.

Of course I am disappointed but at the end of the day you were as good as your word and you did investigate the matter considerably more seriously than [investigating officer] and that is all that I had ever wanted from the Constabulary. With regard to my complaint against [investigating officer] of course the matter is now closed and I would very much appreciate you informing him so."

21. Despite this statement, the complainant subsequently made a complaint of misconduct against the investigating officer and the senior police officer, alleging that they had failed to properly respond to his fraud allegations.
22. That complaint was investigated by the PSD and on 3 October 2013 the complainant was informed that his complaint about the officers was not upheld. He was referred to the reasons provided in the letter of 28 November 2012. He was also notified that the introduction of the Fraud Act 2006 repealed much existing fraud legislation, and meant that it was not possible to prosecute offenders for offences committed prior to the Act's introduction. The PSD's letter stated that he had been informed of this information previously but appeared to be choosing to disregard it.
23. Cheshire Constabulary informed the Commissioner that on 11 February 2014, referring to the Constabulary's refusal to investigate his fraud allegations, the complainant had submitted an FOI request via the WDTK website which stated:

"To date I still await copy of the Chief Constables reasons why he refuses to investigate my complaint. Please provide me copy of the Chief Constables reasons."

24. On 4 March 2014, Cheshire Constabulary refused that request under the vexatious provisions at section 14(1). It stated:

"My reason for treating this request as vexatious are that I consider that you are using the FOI Act and this publicly available web site to reopen issues that have been resolved. You are purporting to seek information which you already possess, the response to your complaint was sent on 3rd October 2013. The language used in this and previous request implies that officers are not carrying out their duties and that local authority officials are guilty of serious offences. These issues have previously been addressed and your complaints

found to be without substance. Your disregard of previous findings and your unwillingness to accept a viewpoint other than your own in spite of independent investigations makes this request set against that background and context, vexatious."

25. The complainant did not ask the Information Commissioner to investigate Cheshire Constabulary's refusal of this request.
26. In correspondence with Cheshire Constabulary about the request dated 13 June 2014, the complainant stated:

"...my request is indeed a repeated request but only as a result of your irrational decision not to comply with it when first submitted."
27. The Commissioner has taken this as the complainant's acknowledgement that the request dated 13 June 2014 is a repeat of his request dated 11 February 2014, Cheshire Constabulary's response to which had pointed out that he had already received the information.
28. Cheshire Constabulary stated that at the time of writing the complainant had made 32 FOI requests to it, the majority of which related to issues stemming from his fraud allegations (the Commissioner understands this figure to have since increased). It said that dealing with his requests places a significant burden on the Constabulary's FOI staff. His 32 requests generated 64 further emails from him and they were a distraction from staff's ability to deal promptly with other requests.
29. It argued that his requests are designed to cause disruption and harassment of staff and that his use of language appeared to be an attempt to intimidate and blacken the reputations of both individuals and public authorities. It was Cheshire Constabulary's opinion that the complainant views the WDTK website as being as much a platform for publicly airing his grievances as it is a means for accessing official information. It noted that the version of his email which appeared on the WDTK site in response to the refusal notice was redacted by WDTK staff, and the comment "*Potentially defamatory extraneous material removed*" added.

The Commissioner's decision

30. When reviewing the evidence and representations put to him, the Commissioner has had regard to his own guidance on vexatious requests and to the set of indicators he uses following the decision in *Dransfield*.

31. The Commissioner notes that, if the complainant's request were to be taken in isolation, then it would not necessarily be regarded as vexatious. However, in considering these matters, the Commissioner has regard to the context and history of the request. In this case, he has seen the effect of past requests and complaints from this complainant, which largely relate to Cheshire Constabulary's refusal to investigate his fraud allegations. He has seen that the effort expended by Cheshire Constabulary in dealing with them has been considerable in terms of the strain on time and staff resources. Most significantly, he has seen that Cheshire Constabulary has provided the complainant with the information he has requested outside of the FOIA, at least twice. Set in that context, the Commissioner considers that the request imposed a burden on Cheshire Constabulary to the point where it should not reasonably be expected to comply with it.
32. The Commissioner notes Cheshire Constabulary's submissions about the frequency and tone of the complainant's previous communications with it, and particularly the allegations of misconduct and corruption levelled publicly through the WDTK website. The Commissioner accepts that this goes beyond what Cheshire Constabulary's staff should reasonably expect to receive and that it has had the effect of causing them distress. He notes that the complainant's communications with a local authority on a related matter resulted in him being arrested on suspicion of harassment, although he also notes that no charges were subsequently brought against him.
33. The Commissioner has considered whether the request amounts to unreasonable persistence by the complainant. He has seen that the complainant has, on at least two occasions, been given clear reasons why Cheshire Constabulary did not investigate his fraud allegations. Furthermore, the Commissioner notes that the reasons given by Cheshire Constabulary have themselves been reviewed, firstly by the Constabulary and then by its PSD, and the results communicated to the complainant. In light of this, the Commissioner considers the complainant's repeated statements that he has not been given reasons for Cheshire Constabulary's refusal to investigate his allegations to be disingenuous.
34. In considering whether there has been a deliberate intention to cause annoyance, the Commissioner has noted the frequency and tone of the complainant's communications with the Constabulary.

35. In addition to the correspondence on his FOI requests, Cheshire Constabulary identified 368 emails that the complainant had sent to 3 officers, the ACPO Office, and the PSD and FOI departments. The complainant's communications are often lengthy, disrespectful in tone and present speculation and allegation as fact.
36. Furthermore, the Commissioner has noted that the complainant has twice apparently signalled that he considers a matter concluded (specifically, his positive response to the senior police officer's investigation and his lack of complaint to the Information Commissioner about the way his request of 11 February 2014 was dealt with) only to then attempt to reopen it by making further complaints or requests about it. The Commissioner considers this to be part of a deliberate and obsessive pattern of behaviour which seeks to disrupt and to annoy.
37. Cheshire Constabulary has demonstrated that it has expended significant effort in dealing with matters arising from the complainant's fraud allegations and with the complainant's requests, complaints and appeals. The Commissioner accepts that the level of input required from Cheshire Constabulary has already been disproportionate.
38. In this case the Commissioner does not consider that sufficient weight can be placed on any serious purpose served by the request to justify the disproportionate burden of disruption, irritation and distress it imposes on Cheshire Constabulary and its individual members of staff. The Commissioner therefore considers that Cheshire Constabulary is entitled to rely on section 14(1) to refuse the request on the grounds that it is vexatious.

Right of appeal

39. 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

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

40. 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.
41. 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

Jon Manners
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