

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

**Date: 23 August 2010**

**Public Authority:** The Metropolitan Police Service  
**Address:** Public Access Office  
20<sup>th</sup> Floor Empress State Building  
Lillie Road  
London SW6 1TR

### Summary

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The complainant requested a copy of a report compiled by a senior Metropolitan Police Service officer about its "deep undercover unit". The Metropolitan Police Service (MPS) told the complainant that it did not hold the report. During the course of the Commissioner's investigation, the MPS cited section 14(1) (vexatious) in respect of the request. In this case, having considered the context and history of the request, the Commissioner considers that there are sufficient grounds to uphold the application of section 14(1). However, he found procedural errors in the MPS's handling of the request.

### 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.

### The Request

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2. On 27 August 2009 the complainant wrote to the Metropolitan Police Service (MPS) with the following request:

*"please provide me with a copy of the report compiled by a senior MPS officer in respect of the MPS 'deep undercover unit' associated with police discipline, complaints and/or corruption investigations. That report apparently recommended that the unit be disbanded."*

3. On 11 September 2009, in order to locate the requested report, the MPS wrote to the complainant to obtain further details that might assist its search. The complainant provided additional details on 22 September 2009 and 15 October 2009. In the correspondence dated 22 September 2009, he named the officer he considered would be able to provide additional information and confirm the existence of the report.
4. On 9 November 2009, MPS wrote to the complainant advising him that it did not hold the requested information. It also told him that, having considered his correspondence of 22 September 2009, his email *"could reasonably be classified as obsessive or intended to harass"*. MPS told him that it would consider any future requests concerning the named officer, that did not have reasonable justification, as vexatious.
5. The complainant requested an internal review on 17 November 2009. He also sought an apology regarding the use of the term "vexatious" in relation to his request.
6. The MPS confirmed, on 15 December 2009, that it did not hold the requested information.

## **The Investigation**

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### **Scope of the case**

7. On 11 January 2010, the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider the following points:

*"I have taken exception to the use of 'vexatious' and the term 'obsessive' by the MPS; it is inappropriate".*

8. Taking account of developments during the course of his investigation, outlined in the Chronology section below, the Commissioner's investigation has focussed on whether or not the MPS was correct to cite section 14(1) in relation to the request in this case.

9. In doing so, the Commissioner recognises that the MPS applied section 14(1) of the Act at a late stage in the process and after a formal complaint had been submitted to the Commissioner. However, having given due consideration to the circumstances of the case, he has exercised his discretion to accept the MPS's reliance on section 14(1) in this case.

## **Chronology**

10. The Commissioner wrote to the MPS on 12 April 2010 asking it to provide more information about its stance that it did not hold the requested information.
11. The MPS provided a substantive response on 25 May 2010. In this correspondence, the MPS told the Commissioner "*it is the view of the MPS that section 14(1) should be applied to this request*".
12. In support of this stance, it told him that it considered the request to be the opening of "*a further avenue of enquiry*" in the applicant's request for information in respect of the named officer.

## **Analysis**

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### **Substantive Procedural Matters**

#### **Section 14 Vexatious or repeated requests**

13. Under section 14(1), a public authority does not have to comply with a request for information if the request is vexatious. There is no public interest test.
14. The term "vexatious" is not defined further in the Act. The Commissioner notes, however, that it is the request rather than the requester which must be vexatious.
15. The Commissioner issued revised guidance entitled "Vexatious or repeated requests" in December 2008 as a tool to assist in the consideration of when a request can be treated as vexatious. The guidance sets out key questions for public authorities to consider when determining if a request is vexatious which are set out below:
  - i. Could the request fairly be seen as obsessive?
  - ii. Is the request harassing the authority or causing distress to staff?

- iii. Would complying with the request impose a significant burden?
  - iv. Is the request designed to cause disruption or annoyance?
  - v. Does the request lack any serious purpose or value?
16. The guidance indicates that an affirmative response to all of the questions is not necessary for a request to be deemed vexatious. However it states that to judge a request as vexatious a public authority should usually be able to make persuasive arguments under more than one of the above headings.
17. Accordingly, the Commissioner has considered whether the MPS has provided sufficient arguments in support of any of the criteria above in its application of section 14(1) in this particular case.
18. The Commissioner notes that the Information Tribunal in *Hossack v Department for Work and Pensions* (EA/2007/0024) stated, at paragraph 11, that the threshold for finding a request vexatious need not be set too high as the consequences are much less serious than the finding of vexatious conduct in other legal contexts.
19. In *David Gowers v Information Commissioner* (EA/2007/0114, paragraph 27) the Information Tribunal noted that when considering section 14:
- “The proper inquiry must be as to the likely effect of the request on a reasonable public authority. In other words, the standard to be applied is an objective one”.*
20. In considering whether or not a request is vexatious, the Commissioner considers it appropriate to take into account the context and history of a request in addition to the request itself in relation to one or more of the five factors listed above.

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

21. In the Commissioner’s view, the test to apply here is one of reasonableness. In other words, would a reasonable person describe the request as obsessive or manifestly unreasonable? In answering this question, the Commissioner’s view is that the wider context and history of a request is important as it is unlikely that a one-off request could be obsessive.
22. The Commissioner’s published guidance states:

*"A request may not be vexatious in isolation, but when considered in context (for example if it is the latest in a long series of overlapping requests or other correspondence) it may form part of a wider pattern of behaviour that makes it vexatious".*

23. In this case, the MPS originally told the complainant:

*"the MPS will consider classifying any future applications that concern this officer, where there is no reasonable justification for their inclusion, as vexatious".*

24. The Commissioner notes that the officer in question was not named at the time of the request. It was not until the complainant provided the MPS with additional information in order to assist them in locating the report that he introduced the officer's name in relation to his request. It was at this stage that the MPS recognised the request as being, in its view, the continuation of the complainant's pursuit of information in connection with the named officer.

25. Having recognised it as such, the MPS told the complainant that *"based upon the volume and nature"* of his previous correspondence connected to the named officer, his request could be classified as obsessive or intended to harass.

26. However, in later correspondence with the Commissioner, the MPS told him that, while at that stage it had told the complainant that his request "could" have been considered as meeting the criteria for a vexatious request, it was now saying that the request should be considered vexatious.

27. The MPS explained that it had reached this conclusion having reviewed the history of engagement between the applicant and the MPS. In this respect, it told the Commissioner that *"a significant number"* of the requests submitted by the complainant have been seeking to access information:

*"in support of his beliefs about personal situations and in respect of information relating to his personal grievances".*

28. The Commissioner understands that there is a background of requests for information and complaints in this case in connection with the named officer. The MPS has outlined the wider context and history which culminated in the request for information under consideration in this case. In this regard, the MPS has told the Commissioner that the complainant not only makes contact in writing but also follows up requests for information with telephone calls.

29. The Commissioner understands that the applicant first referred to the named officer in a subject access request he made in 2006, with the first in a series of freedom of information requests for information relating to the officer being made in 2007.

30. The complainant has written at length to the Commissioner. In this correspondence, he told the Commissioner:

*"I am obsessed with getting to the truth of understanding and uncovering who is lying to me; clearly someone is. I am not 'obsessive'...My sphere of interest is restricted to events over the past 5 or so years that have, in no small way centred about the behaviour of an officer and the action of the MPS DPS [Directorate of Professional Standards] and MPS PAO [Public Access Office].... I am persistent and determined".*

31. The complainant has also argued that:

*"the fact is that [named officer] is the only link I have to much of the information held by the MPS that I am seeking both via the Freedom of Information Act and Subject Access".*

32. The MPS has argued that the complainant *"is prepared to exceed the level that would be considered as 'reasonable' in his pursuit of information".*

33. In considering the question of reasonableness in the context of whether or not a request is vexatious, the Commissioner considers it will be easier to identify these requests when there has been frequent previous contact with the requester or the request forms part of a pattern, for instance when the same individual submits successive requests for information. Although these requests may not be repeated in the sense that they are requests for the same information, taken together they may form evidence of a pattern of obsessive requests so that an authority may reasonably regard the most recent as vexatious.

34. The MPS considers that the request of 27 August 2009 was made in an attempt to continue the complainant's pursuit of an individual grievance in connection with the named officer. It considers this demonstrates the request can fairly be seen as obsessive.

35. The Commissioner accepts that there is often a fine line between obsession and persistence and each case must be considered on its own facts. In this case, taking into account the context and background

to the request, the Commissioner considers that the request can fairly be seen as obsessive.

**Does the request have the effect of harassing the public authority or its staff?**

36. The Commissioner acknowledges that there will often be an element of overlap between various vexatious criteria. For instance, where a request is considered obsessive, it may be the case that it will have the effect of harassing a public authority. Whilst the complainant may not have intended to cause distress, the Commissioner must consider whether this was the effect. This is an objective test, based on whether a reasonable person would be likely to regard the request as harassing or distressing.
37. The MPS has described there being a "vicious circle" of engagement in the case of responses which do not correspond with the applicant's expectations: *"Put simply, any such responses then become the subject of further correspondence"*.
38. It has described this "vicious circle" as being a *"significant burden and distraction"* on its resources as well as serving to harass both the authority and individual employees.
39. The MPS told the Commissioner that it deals with approximately 300 freedom of information requests each month. It acknowledges that, in the majority of cases, it is appropriate to use the Act *"to seek information in relation to genuine concerns"*.
40. However, the MPS told the Commissioner that, in its view, *"the applicant has taken this approach beyond that which would be considered 'reasonable'"*.
41. In support of this argument, the MPS described the manner in which the complainant engages with the MPS including *"his use of [the Act] as a means to supplement ongoing grievances"*. The MPS told the Commissioner that his approach has the effect of:  
  
*"continually expanding the volume of correspondence exchanged with the applicant, of engaging more and more MPS staff in dealing with his requests and complaints, and of inevitably increasing the number of both that are received from the applicant"*.
42. MPS explained:

*"A truly vast amount of correspondence has been exchanged between the applicant and the MPS from January 2003 onwards".*

43. In this regard, it has told the Commissioner that since 2004, the complainant has made:
- *"41 Freedom of information Act requests;*
  - *24 formal complainants to the MPS Directorate of Professional Standards; and*
  - *3 subject access requests under the Data Protection Act".*
44. MPS has told the Commissioner *"there is considerable cross-over between the subject matter at the heart of each request or complaint"*. It has also argued that the applicant's formal approaches are accompanied by *"frequent and lengthy emails, often containing further questions on the basis of any response received"*.
45. The Commissioner considers it relevant to take account of this context and history in reaching his decision in this case.
46. Having taken account of the circumstances of this case, the Commissioner considers the request can reasonably be considered as harassing the public authority.

### **Would complying with the request create a significant burden?**

47. The Act was enacted to assist people in seeking access to recorded information held by public authorities. However it was not the intention of the Act to distract public authorities unreasonably from their other duties or for public money to be spent unproductively.
48. When considering if this factor applies, the Commissioner would expect a public authority to be able to show that complying with the request would cause a significant burden in terms of both costs and diverting staff away from their core functions.
49. In this respect, the Commissioner notes that the issue of costs has not been raised by the MPS. However, he considers it relevant to take account of the scenario described by MPS and referred to above whereby the *"vicious circle"* of engagement between the MPS and the complainant *"constitutes a significant burden and distraction on the resource of the MPS"*.



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

50. As discussed in the Commissioner's published guidance, this factor relates to a requester's intention and can therefore be difficult to prove. The Commissioner is mindful of the fact that under the Act the purpose behind any request is not a relevant factor. However, in examining the intent of the requester the Commissioner is considering the effect of complying with the request rather than questioning why he wants the information.
51. In the Information Tribunal case of *Coggins v The Information Commissioner* (EA/2007/0130), the Tribunal found that a "*significant administrative burden*" was caused by the complainant's correspondence to the public authority that started in March 2005 and continued until the authority's application of section 14(1) in May 2007. Similarly, in this case the MPS has responded to the complainant's correspondence over a sustained period dating back to 2003.
52. The complainant has told the Commissioner "*there is no intention to disrupt and annoy*". Similarly, the MPS has not suggested that the request was intended to cause disruption and annoyance. As the Commissioner has not been presented with any evidence to suggest that this factor needs to be considered in this particular case, he has not considered it further.

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

53. Whether a request has value is not of significance given that the Act is not concerned with the motives of an applicant, but rather in promoting transparency for its own sake. However, the Commissioner acknowledges that should any authority be able to show that a request has no value or purpose, this may help bolster the application of section 14(1) when taken together with other supporting factors.
54. The MPS has not presented any argument to suggest that the request in this case is trivial. Accordingly, the Commissioner has not considered this point further.

### **Was the request vexatious?**

55. Section 14 of the FOIA is intended to protect public authorities from those who might abuse the right to request information. The Commissioner recognises that having to deal with clearly unreasonable requests can strain an organisation's resources, damage the credibility of the Act and get in the way of answering other requests.

56. He also acknowledges that there is a fine balancing act between protecting a public authority from vexatious applications and the promotion of transparency in the workings of an authority.
57. In considering the circumstances of this case in relation to the five questions set out above, the Commissioner acknowledges that the questions, to a greater or lesser extent, overlap and that the weight accorded to each will depend on the circumstances. He also re-iterates that, in his view, it is not necessary for every factor relevant to vexatious requests to be satisfied in order to refuse a request on the basis of section 14(1).
58. In this case the Commissioner considers that there are sufficient grounds to uphold the application of section 14(1) and that any purpose or value the request has is insufficient to outweigh these grounds. He considers that the obsessive nature of the request, when taken in the context of the previous correspondence, and its impact on the public authority and its staff is sufficient for the request to be deemed as vexatious.

## **Procedural Requirements**

### **Section 17 Refusal of request**

59. Section 17(5) provides that:

*"A public authority which, in relation to any request for information, is relying on a claim that section 12 or 14 applies must, within the time for complying with section 1(1), give the applicant a notice stating that fact."*

60. As the refusal notice issued by MPS in this case did not refer to section 14(1), which the MPS later came to rely on, the Commissioner finds the MPS in breach of section 17(5) of the Act.

## **The Decision**

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61. The Commissioner's decision is that the public authority dealt with the following elements of the request in accordance with the requirements of the Act:
  - the MPS was entitled to apply section 14(1) as the complainant's request can be correctly categorised as vexatious under the provisions of the Act.

However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:

- the MPS breached section 17(5) by failing to notify the complainant it was relying on section 14(1) within the statutory timescale.

## **Steps Required**

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62. The Commissioner requires no steps to be taken.

## 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)

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.

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 23<sup>rd</sup> day of August 2010**

**Signed .....**

**Graham Smith  
Deputy Commissioner**

**Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**

## **Legal Annex**

### **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" .*

### **Refusal of Request**

Section 17(5) provides that:

*"A public authority which, in relation to any request for information, is relying on a claim that section 12 or 14 applies must, within the time for complying with section 1(1), give the applicant a notice stating that fact."*