

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

**Date: 4 October 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 details of the effort undertaken to establish the existence or otherwise of a report. This followed an earlier request to the Metropolitan Police Service (MPS) for the report itself to which the MPS had responded that it did not hold it. The MPS responded citing a refusal under section 14(1) of the Act (vexatious request). The Commissioner, on balance, considers that the public authority was entitled to refuse the request under section 14(1).

### 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.

### Background

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2. The complainant acknowledges that this request, made on 16 December 2009, relates to an earlier request which he had made to the Metropolitan Police Service (MPS). In that case, the MPS had told the complainant that it did not hold the report he had requested. It

upheld this view in internal review correspondence sent to the complainant on 15 December 2009.

3. The complainant referred that request to the Commissioner who, having investigated the complaint, issued Decision Notice reference FS50288182, upholding the public authority's decision that the request was vexatious.

## The Request

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4. On 16 December 2009, the complainant wrote to the MPS requesting the following information:

*"Regarding [...] and your statement: 'I can confirm the information you have requested is not held'*

*Please advise:*

- *The efforts undertaken to locate the information*
- *The cost of these efforts*
- *The extent of the search ie whether this was restricted to 'reports' or if 'reviews' were included. I am concerned to ensure I am not kept from the document due to semantics.*

*Please consider this a request under FOIA.*

*I am at a loss to understand why the MPS DPS [Directorate of Professional Standards] cannot locate the report. The 'officer who cannot be named' has stated:*

*"I did a report to say that the deep, deep undercover unit should be disbanded, I was asked to do a review of it, and the, the rationale behind that was that they were unattributable, did have their own agendas, they weren't properly supervised and should be in effect brought back under the direct command of, of the SU commander". [sic]*

*It is this document I am seeking".*

5. The MPS responded on 21 January 2010. In this correspondence, the MPS cited section 14(1) and told the complainant that, in its view, this request constituted a vexatious request.

6. It also told him that, should he disagree with this decision, he could approach the ICO directly without the need to request an internal review.

## The Investigation

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### Scope of the case

7. On 21 January 2010 the complainant contacted the Commissioner to complain about the way his request for information had been handled.

### Chronology

8. The Commissioner wrote to the MPS on 12 April 2010 asking it to provide further information in connection with its citing of section 14(1). The Commissioner also wrote to the complainant on the same date advising him that the investigation into his complaint was underway.

9. The complainant wrote to the Commissioner on 21 April 2010. In his correspondence, he explained the background to his request and his dissatisfaction with the way the MPS had handled this and several of his previous requests. Specifically in relation to this request, he told the Commissioner:

*"I believe the statements of [name redacted] to be unequivocal; there is a report, he is the author";*

and

*"I do not accept that the MPS have looked for the report".*

10. The MPS provided a comprehensive response to the Commissioner's correspondence on 25 May 2010.

## Analysis

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### Substantive Procedural Matters

11. Under section 14(1), a public authority does not have to comply with vexatious requests. There is no public interest test.

12. Section 14(1) of the Act states:

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

13. 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.

14. 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 in terms of expense and distraction?

iv. Is the request designed to cause disruption or annoyance?

v. Does the request lack any serious purpose or value?

15. 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.

16. 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.

17. 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.

18. 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".*

19. 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?**

20. 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.

21. 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".*

22. In response to his request, the MPS told the complainant:

*"This request follows directly from the decision of the Internal Review in relation to your previous request ..... In the previous responses you have received, the MPS indicated that future requests relating to a particular MPS officer may be considered vexatious. I therefore find this request vexatious in that it is part of the continued pursuance of this information".*

23. The complainant acknowledges that this request was made in connection with an earlier request. Commenting on the MPS's decision to cite section 14 in this case, he told the Commissioner:

*"I believe this decision is flawed, that it is a device intended to obstruct and frustrate me. It is the MPS action that needs to be looked at in detail, their prevarication, misrepresentations and failings. My request is a logical, straightforward progressing of the request giving rise to your reference FS50288182. Having been advised the data was unavailable, having an unequivocal statement from a senior MPS officer, the author of the report, I questioned the enquiries undertaken. In hindsight, I appreciate that this request was effectively doing part of your job (as I perceive it) however, FOIA appeared the appropriate means by which to make the request the evidence for what had been undertaken and address my concerns [sic]".*

24. The Commissioner notes that the complainant is familiar with the Act and that he would therefore have known that, if he was dissatisfied with the response to his earlier request, the proper course of action, as acknowledged by the complainant, would have been to complain to the Information Commissioner.
25. The Commissioner notes that the complainant did in fact refer that case to his office, on 11 January 2010. He also notes that, despite having referred the matter to the Commissioner, the complainant does not appear to have retracted the request made to the MPS. It is that request which is now the subject of this Decision Notice.
26. As background to its citing of section 14(1) in this case, the MPS has told the Commissioner that the complainant is a frequent user of the Act and the Data Protection Act to access information, often concurrently.

*"Furthermore, the applicant has accompanied these formal approaches by frequent and lengthy emails, often containing further questions on the basis of any response received".*

27. In the Commissioner's view, it appears unlikely in the circumstances that resolution of the matters raised in the complainant's request would be brought any closer by the MPS responding in this case. He therefore accepts that the request can fairly be seen as obsessive.

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

28. The Commissioner considers the request under consideration illustrates the scenario described above, with the complainant making a further request to the MPS based on the response received to his earlier request.
29. MPS has told the Commissioner:  
  
*"The MPS believed there was clear indication that the applicant was continuing his focus on [named officer], specifically seeking further details in relation to any involvement of or approaches to [named officer] in respect of the previous request."*
30. The Commissioner understands that there is a background of requests for information and complaints in connection with the named officer. The request under consideration could therefore be seen as the latest in a series of requests relating to the same issues.

31. In considering whether the complainant's request should be regarded as vexatious, the Commissioner considers it both reasonable and relevant to take into consideration the wider context in which the request was made. In this respect, he does not consider it unreasonable to consider that the cumulative effect of the request was to harass the public authority and, deliberately or otherwise, appear to target the named officer.

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

32. The Act was passed 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.
33. 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.
34. The MPS does not appear to be arguing that complying with this individual request would create a significant burden in terms of expense and distraction. However, as background, the MPS has told the Commissioner that "*a truly vast amount of correspondence*" has been exchanged between the applicant and the MPS from 2003 onwards. In this respect, it has drawn the Commissioner's attention to the "*significant burden*" this has placed on the MPS.
35. The Commissioner has therefore considered the cumulative effect of this request in the context of the previous activity. Accordingly, he accepts the MPS argument that the background to, and context of, the request under consideration are relevant when considering whether complying would create a significant burden in terms of expense and distraction.

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

36. 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.



37. 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.
38. 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?**

39. In correspondence with the Commissioner, the complainant said:

*“I have sought to find out more about an MPS unit, a covert team that is apparently unaccountable and that was apparently the subject of a review which suggested it be disbanded. How much more serious a subject can I pursue; what appears to be a rogue, police controlled team, whose existence caused sufficient concern to warrant a review yet who appear so above accountability that despite a recommendation they continue to operate.*

*Furthermore, this group is so unaccountable that they can be set upon people such as [name redacted] and I without any fear of recourse and the data / information they collate avoids scrutiny.*

*The issue is now all the more serious; I am being led to believe a senior police officer, a former anti-corruption command Officer who has been somewhat high profile .... is lying to me.”*

40. Conversely, the MPS has not put forward any arguments in relation to the request not having any serious purpose or value. The Commissioner is therefore unable to conclude that this has been demonstrated in this case.

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

41. 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.

42. He also acknowledges that there is a fine balancing act between protecting a public authority from frivolous applications and the promotion of transparency in the workings of an authority.
43. 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 reiterates 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).
44. In this case the Commissioner considers that there are sufficient grounds to uphold the application of section 14(1). 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 vexatious.

## **Procedural Requirements**

### Section 17 Refusal of request

45. 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."*

46. Section 10(1) of the Act provides that:

*"Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt."*

47. In this case, the request was made on 16 December 2009 but the MPS did not respond until 21 January 2010. The Commissioner therefore considers the MPS to be in breach of section 17(5) of the Act in that it did not respond to the request for information within 20 working days following the date of receipt.

## The Decision

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48. 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:

- *it was entitled to apply section 14(1).*

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

- *it breached section 17(5) by failing to provide a response to the request within the statutory timescale.*

## Steps Required

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49. The Commissioner requires no steps to be taken.

## Right of Appeal

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50. 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 4<sup>th</sup> day of October 2010**

**Signed .....**

**Jon Manners  
Group Manager**

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

## **Legal Annex**

### **Section 14 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"*

Section 14(2) provides that:

*"Where a public authority has previously complied with a request for information which was made by any person, it is not obliged to comply with a subsequent identical or substantially similar request from that person unless a reasonable interval has elapsed between compliance with a previous request and the making of the current request."*