

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 22 November 2010

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

Summary

The complainant requested information about the diary system for subject access requests of the Metropolitan Police Service (MPS). This followed an earlier subject access request to the MPS. The MPS responded citing a refusal under section 14(1) of the Act (vexatious request). The Commissioner, on balance, considers that the MPS was entitled to refuse the request under section 14(1). However, the Commissioner also found that, by failing to inform the complainant that it was relying on section 14(1) within 20 working days of receiving the request, it breached section 17(5) of the Act.

The Commissioner's Role

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

2. The complainant wrote to the Metropolitan Police Service (MPS) on 19 February 2010 with the following information request:

"I ask to be provided:

1. *The name and details of system employed by the MPS PAO to log, enter, correspond and diary Subject Access Requests (SAR's).*
 2. *An overview of the case management features to include, but not restricted to, the diary alerts facility and / or any features that monitor and warn of a requirement to address an issue. These 'alerts' will, for example, include the warning facility that prevents, or should avoid a request not being addressed within the 40 day statutory limit and general correspondence tracking and diary facilities that prevent a case being overlooked such as a slow or inactive case report.*
 3. *A copy of the operating manual".*
3. The MPS responded on 22 March 2010, advising the complainant that it considered the request vexatious and that, as a result, it was citing section 14(1) of the Act.
 4. The Commissioner notes that the MPS advised the complainant that, if he was not satisfied with the response, he should contact the Information Commissioner's Office directly. The Commissioner understands that this was on the basis that, although the MPS operates an internal review process, the request relates to the management of previous requests by the same department that would carry out the review.

The Investigation

Scope of the case

5. On 23 March 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:

"My request is NOT vexatious. The only awkward and consistently obstructive party is the MPS..... With regard to this request, you will note that the MPS have waited until the 11th hour to label my approach vexatious. If the label of 'vexatious' were so obvious, clear-cut and applicable, why was the excuse not cited immediately?"
6. The Commissioner's investigation has focussed on whether or not the MPS was correct to cite section 14(1) in relation to the request under consideration in this case.

Chronology

7. The Commissioner wrote to the MPS on 20 July 2010 asking it to provide further information in connection with its citing of section 14(1).
8. The MPS provided a comprehensive response on 19 August 2010.

Analysis

Substantive Procedural Matters

Section 14 Vexatious and repeated requests

9. Under section 14(1), a public authority does not have to comply with vexatious requests. There is no public interest test.
10. 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".
11. 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.
12. 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 or distraction?
 - iv. Is the request designed to cause disruption or annoyance?
 - v. Does the request lack any serious purpose or value?
13. 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.

14. 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.
15. 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.
16. 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".

17. 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?

18. 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.
19. 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".
20. In relation to the request in this case, it is the MPS's view that this request cannot be viewed in isolation. In support of this stance it has explained to the Commissioner something of *"the substantial context of, and background to, this request"*.

21. MPS has told the Commissioner that the request in this case, dated 19 February 2010, followed the final MPS response to a subject access request (SAR) made by the complainant. That SAR response was sent on 15 February 2010. In order to give context to the freedom of information request being considered here, MPS told the Commissioner that *"delays did occur in the processing of this SAR"*.
22. However, it also told him that the complainant has previously used the Freedom of Information Act to make requests as a result of delays experienced or decisions made in respect of other formal requests for information. In its view, not only is the request in this case:

"closely linked to the applicant's correspondence with the MPS in respect of his Subject Access request it also is one further piece in a wider and longer-standing pattern of engagement".
23. In correspondence with the Commissioner, the complainant also suggested that the Commissioner may wish to consider this complaint in relation to his associated subject access application. He provided the Commissioner with the case reference number for that complaint.
24. In considering the question of reasonableness in the context of whether 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.
25. In this case, the Commissioner is mindful of the evidence of the pattern of requests that has been presented to him. He 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 timing of the request, as well as the context and background, 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?

26. MPS has brought to the Commissioner's attention the complainant's manner of engagement, including his practice of publishing details of his grievances on the internet. MPS has argued that *"such actions contribute to the effect of harassment"*.

27. In this respect, the Commissioner notes that the complainant directed him to two such websites when he notified him of his complaint.
28. With respect to his request, the complainant argued that it is not vexatious. Instead, he told the Commissioner that, in his view, MPS was being "*awkward and consistently obstructive....as evidenced by the information I am compiling and displaying at [link to website redacted]*".
29. In his correspondence to the Commissioner, he said:

"possibly you can discern whether the refusal of the MPS has nothing to do with my tenacity but is another example of them seeking to avoid providing data....."
30. The Commissioner accepts that whether a request has the effect of harassing the public authority or its staff is an objective test, based on whether a reasonable person would be likely to regard the request as harassing or distressing. In this case, having taken account of the circumstances of this case, and the history that preceded the request, he is satisfied that it can reasonably be considered as having the effect of harassing the public authority and its staff.

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

31. 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.
32. MPS has provided the Commissioner with evidence of "*the significant burden on the MPS as a whole*". The Commissioner notes that this is in relation to the volume, nature and context of the complainant's requests. MPS describes these as being made "*often contemporaneously*". MPS told the Commissioner this means that multiple staff, often in more than one unit or department, become involved in dealing with the complainant at any one time.
33. Referring to the burden imposed by the applicants' requests, MPS described the request in this case as being "*one of the latest*".
34. The Commissioner notes that the Act was introduced 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.

35. From the evidence provided to him, the Commissioner is satisfied that, in this case, the work undertaken in order to meet the demands of the complainant constituted a significant burden to the MPS.

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. Although MPS argues that the request, being one of many in a wider pursuit of information, "*could reasonably be perceived as 'disruptive'*", it accepts that it may not be the complainant's deliberate intention to cause disruption. The complainant has been silent on this matter.
38. In the circumstances, the Commissioner is unable to conclude that this has been demonstrated in this case.

Does the request lack any serious purpose or value?

39. 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.
40. The complainant told the MPS:
- "My request does not 'relate to the management of previous requests for information by the PAO [Public Access Office]'. The request is a generic application seeking information in respect of systems and processes in place. There is no reference to my SAR and your abuses of the DPA".*
41. MPS has not put forward any arguments in relation to the request not having any serious purpose. In respect of whether the request is of value, MPS emphasised the context of the request, arguing accordingly

that its value "*could reasonably be perceived to be somewhat reduced*".

42. Nevertheless, in considering this matter, the Commissioner is not satisfied that MPS has demonstrated that the request in this case lacks any serious purpose or value.

Is the request vexatious?

43. Section 14 of the Act 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.
44. He also acknowledges that there is a fine balancing act between protecting a public authority from frivolous and vexatious applications and the promotion of transparency in the workings of an authority.
45. 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).
46. Viewed in isolation from the considerable volume of correspondence between the complainant and the MPS, the Commissioner considers that the request in this case might not necessarily be manifestly unreasonable. However, having considered the evidence presented in this case, including with regard to the timing and context of the request and in particular its impact on the public authority, the Commissioner finds that the complainant's request of 19 February 2010 was vexatious.

Procedural Requirements

Section 17 Refusal of request

47. Section 1(1) provides that:

"Any person making a request for information to a public authority is entitled –

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him."

48. Section 10(1) 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."

49. 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."

50. Section 17(6) provides that -

"Subsection (5) does not apply where –

(a) the public authority is relying on a claim that section 14 applies,

(b) the authority has given the applicant a notice, in relation to a previous request for information, stating that it is relying on such a claim and

(c) it would in all the circumstances be unreasonable to expect the authority to serve a further notice under subsection (5) in relation to the current request."

51. In other words, if a public authority wishes to rely on section 14, it must still issue a refusal notice stating whether or not it holds the information, unless the following two criteria apply:

- it has previously issued a refusal notice to the requester regarding an identical or substantially similar request, stating it is relying on section 14; and
- it would be unreasonable for the authority to have to issue a further notice.

52. In this case, the Commissioner understands that the MPS had previously issued a refusal notice to the requester stating it was relying

on section 14. It may, therefore, have been able to rely on section 17(6) of the Act and not issued a refusal notice in this case.

53. However, for reasons it has explained to the Commissioner, the MPS chose not to rely on section 17(6) in this case, and issued a refusal notice.
54. The Act requires that a refusal notice should be issued as soon as possible and not later than 20 working days from receipt of the request. In this case, the request was received on 19 February 2010 and the refusal notice issued 21 working days later, on 22 March 2010.
55. It follows that the Commissioner finds that MPS breached the requirements of section 17(5) by failing to issue a refusal notice within 20 working days.

The Decision

56. 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) 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:

- it breached section 17(5) by failing to inform the complainant of its reliance on section 14(1) within 20 working days of receiving the request.

Steps Required

57. The Commissioner requires no steps to be taken.

Right of Appeal

58. 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.

Website: 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 22nd day of November 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."