

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 16 February 2011

Public Authority: Lancashire County Council
Address: Chief Executive's Office
Christchurch Precinct
County Hall
Preston
Lancashire
PR1 8XJ

Summary

The complainant requested copies of correspondence between Lancashire County Council and Lancashire Fire and Rescue Service about the drafting and amending of consent forms relating to the disclosure of personal data under the Data Protection Act. The public authority refused the request as vexatious, under the provisions of section 14(1) of the Freedom of Information Act. The Commissioner finds that section 14(1) was correctly applied by the public authority and he requires no action to be taken.

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.

Background

2. The complainant is a retired firefighter. He represents a number of fire service veterans (FSVs) – retired firefighters who receive a pension from the Lancashire Fire and Rescue Service (LFRS) – who are in dispute with LFRS. Lancashire County Council's pensions service administers the LFRS pension scheme under a contract with LFRS.
3. The dispute arises because a supplementary 'injury allowance' has been withdrawn from pensioners who have also received additional benefits

(e.g. 'incapacity benefits') from the Department of Work and Pensions (DWP), associated with disability arising from the injuries which gave rise to their enhanced pension. The allowance has also been withdrawn from pensioners who have refused to co-operate with enquiries relating to any DWP payments.

4. Towards the end of 2007, the LFRS decided to undertake a review of all fire injury pensions being paid following discovery of an overpayment. The regulations governing fire injury pensions require that the actual injury allowance payable must be offset by benefits paid by the state in respect of the same injury. This is designed to ensure that individuals are not compensated twice for the same injury. While the terms of the pensions scheme require LFRS to obtain details of the additional benefits received by those pensioners eligible for injury pensions, the scheme does not expressly provide for the obtaining of this information from the DWP. In view of this, individuals were asked to give their consent for this information to be obtained from the DWP. However, a number of those individuals refused to consent because they felt that this would be a breach of their rights under the Data Protection Act 1998 ("the DPA"). Where consent was not given, LFRS considered that they were justified in suspending injury pension payments until the necessary information was provided and wrote to inform those affected of its position.
5. The complainant has been engaged in substantial correspondence with the LFRS and Lancashire County Council (LCC) since 2008, including the making of a number of DPA subject access requests and Freedom of Information (FOI) requests.

The Request

6. On 16 March 2010, the complainant wrote a letter to LCC which included the following request for information:

*"[...] please supply copies of **any and all** recorded 'communication' between the LCC and the LFRS in respect of the drafting, redrafting, and amending, of all editions of the Injury Award 'Review' 'consent form' and correspondence associated thereto.*

*For the purposes of interpretation you are to regard the word "associated" as meaning and including copies of **any and all** LCC inter departmental communication on this subject; and copies of **any and all** communication between those LCC departments and the LFRS on this subject.*

For the purposes of interpretation you are to regard the word 'Communication' in its broadest sense, for example, all emails; all

contemporaneous notes; all correspondence; and all vox recordings; this example list is not intended to be exhaustive."

7. The public authority refused this request as vexatious, under section 14(1) of the Act, on 16 April 2010. No internal review was offered and the complainant was advised of his right to refer the matter to the Information Commissioner.
8. The Commissioner understands that the public authority has waived its right to conduct an internal review and he has therefore accepted the complaint in the absence of any internal review.

The Investigation

Scope of the case

9. The complainant wrote to the Commissioner in May 2010 about various matters relating to LCC and LFRS under the Data Protection Act and about FOI requests he had made, including a request which had been refused as the information was said to be 'not-held' by the public authority¹. The complainant subsequently made the Commissioner aware of the LCC refusal of his 16 March 2010 request as vexatious, forwarding correspondence on 17 June 2010. He indicated, on 2 July 2010, that he wished to complain about this, in addition to the other matters which the Commissioner was already investigating.
10. This case therefore examines the public authority's refusal of the complainant's 16 March 2010 request as vexatious, under section 14(1) of the Act.
11. The complainant also raised other issues that are not addressed in this Notice because they are not requirements of Part 1 of the Act.

Chronology

12. On 8 July 2010 the Commissioner wrote to the complainant to acknowledge this specific complaint and also wrote to LCC to obtain information from it in relation to the request.
13. LCC replied on 16 July 2010, arguing that the request had been refused as vexatious (together with another request, which itself related directly to a previous request), on the grounds that the requests were obsessive

¹ See the Commissioner's Decision Notice in case reference FS50316139 http://www.ico.gov.uk/~media/documents/decisionnotices/2010/fs_50316139.ashx

and contained accusatory and threatening comments aimed at named officers of the council, intended to cause distress and harassment. It further argued that the volume and frequency of the complainant's correspondence is designed to cause disruption and annoyance and that it is reluctant to divert further attention and resources to responding to his correspondence, which has been extremely time-consuming, costly and, in some cases, distressing for its staff.

14. The Commissioner wrote to the complainant on 8 September 2010, referring him to the guidance on the Information Commissioner's Office (ICO) website about vexatious requests², summarising the grounds set out by the public authority and inviting him to respond. The Commissioner also wrote to LCC on 8 September, requesting further clarification of its position.
15. The complainant replied on 17 September 2010, his arguments can be summarised as follows:
 - the LCC refusal was intended to frustrate his right of access to information and showed a disregard for the provisions of the Act. LCC has made no genuine attempt to comply with the Act, which should invalidate its defence for its use of section 14;
 - this is borne out by the disclosure of information resulting from his complaint in case reference FS50316139 (referenced above), which undermines the LCC's use of section 14 of the Act;
 - his serious purpose is in his 'fight for justice' for the FSVs, a key element of which 'presently' requires the recovery of correspondence between LCC and LFRS;
 - he has not made repeated requests, but additional requests, prompted by [his characterisation of] LCC's intransigence and breaches of the Act and the DPA;
 - the LCC argument that *"the issuance of the documentation sought will cause expense or distraction to any degree"* is a mischievous defence, given the length of time the dispute has been ongoing;
 - LCC's actions have been distressing to FSVs, therefore any distress caused to LCC or its staff is fair. Furthermore, *"To say that my*

² Available online at http://www.ico.gov.uk/upload/documents/library/freedom_of_information/detailed_specialist_guides/vexatious_and_repeated_requests.pdf

language is intemperate is the refuge of a whining contemptible. As a public servant myself of over 35.5 years there are many times when you just have to grin and bear it while the public work you over in pursuit of their redress. It comes with the job [...] One man's brusque is another's incivility";

- his purpose in seeking the requested documents goes to the heart of the matter, is not a side issue, and is both serious and proper. The requested information will be used in planned court action, which action will also make use of the legal discovery process; and
 - there is a strong, overarching public interest in the matter.
16. The Commissioner observes, in passing, that the examples of 'public interest' cited by the complainant³ in support of this last element of his response might fairly be characterised as describing public interest as 'what is of interest to the public' rather than 'what is in the interests of the public'. The latter has been recognised by the Information Tribunal as the interpretation to be applied under the Act, for example the Tribunal in the case of *Guardian Newspapers and Heather Brooke v IC and the BBC* (EA/2006/0011 and 0013)⁴ which stated, at paragraph 34:

"Lord Wilberforce said in British Steel Corp v Granada Television Ltd 1981] AC 1096 at 1168: 'There is a wide difference between what is interesting to the public and what it is in the public interest to make known'. We did not find that the list of articles assisted us, since [...] no distinction was made between matters which were in the interests of the public to know and matters which were merely interesting to the public (ie, which the public would like to know about, and which sell newspapers, but which [...] are not relevant)."

17. LCC replied on 22 September 2010, setting out its arguments in more depth. It enclosed a brief chronology of the correspondence sent by the complainant to it (copied at Annex 2 to this Decision Notice). LCC comments that this chronology is unlikely to be comprehensive as the volume of the complainant's correspondence, and the numerous recipients, makes it difficult for it to accurately keep track of all correspondence. LCC also provided examples of the complainant's correspondence, in support of its position and also to demonstrate examples of the harassment and distress it argued was caused by the complainant's language.

³ See, for example, http://www.lep.co.uk/news/fire_pensions_row_escalates_1_77760

⁴ Available online at <http://www.informationtribunal.gov.uk/DBFiles/Decision/i81/Guardian%20Brooke.pdf>

18. The Commissioner provided a copy of this chronology to the complainant on 23 September 2010, inviting him to comment or rebut the LCC arguments. The complainant replied on 24 September 2010, giving arguments in justification of the correspondence and, in particular, his reasons for sending copies of letters to multiple recipients. He does not dispute the chronology provided.
19. The Commissioner wrote again to the complainant on 24 September 2010. He explained that he was aware that the complainant had been advised (by LCC) to submit his enquiries directly to LFRS. The Commissioner requested clarification from the complainant as to why the requests for information had been submitted to LCC, when the underlying dispute was with the LFRS.
20. The complainant replied on 27 September 2010. He provided copies of correspondence from LFRS and explained that a related request to LFRS made in late 2009 had resulted in his being informed that LFRS held no information. He anticipated that LFRS would be hostile to his actions and it was his intention to pursue his gathering of evidence via all available routes (including information requests to LFRS, LCC and the DWP) and, ultimately, to confront LFRS with the accumulated evidence and, if necessary, take legal action.
21. The Commissioner also wrote to LCC on 24 September 2010. He queried the LCC rationale for referring the complainant to LFRS. If, as had been explained, LCC administers the LFRS pension scheme under contract, then it will hold the information in its own right, as well as on behalf of LFRS. Therefore, the Commissioner was unclear why LCC would advise the complainant to approach LFRS as, arguably, an approach to LFRS might equally result in his being referred back to LCC, as the body which administers the pension scheme on its behalf.
22. The Commissioner wrote again to LCC on 14 October 2010, reminding it that he had not had a response to his 24 September letter. He summarised the complainant's reasons for the volume of correspondence in the chronology referred to above and invited it to respond. The Commissioner commented that the examples of the complainant's contentious language cited by it in its submissions to date did not appear to him to be particularly severe examples of the sort of correspondence which has been cited in similar cases, and did not provide sufficient evidence in support of the council's arguments of harassment and/or distress.
23. The public authority replied on 29 October 2010, providing further arguments and examples of the complainant's correspondence in support of its position. It did not address the Commissioner's queries

about its advice to the complainant that he should approach LFRS for the information.

Analysis

Substantive Procedural Matters

Section 14

24. The Commissioner will consider the context and history of the request as well as the strengths and weaknesses of both parties' arguments in relation to some or all of the following five factors to reach a reasoned conclusion as to whether a reasonable public authority could refuse to comply with the request on the grounds that it is vexatious:

- whether compliance would create a significant burden in terms of expense **and** distraction
- whether the request is designed to cause disruption or annoyance
- whether the request has the effect of harassing the public authority or its staff
- whether the request can otherwise fairly be characterised as obsessive or manifestly unreasonable
- whether the request has any serious purpose or value

25. These factors are considered, below. It is not necessary for all five factors to be engaged, the outcome will depend on the balance of the arguments and any other circumstances considered relevant.

Would compliance create a significant burden in terms of expense and distraction?

26. LCC has provided the Commissioner with a chronology of the complainant's correspondence, reproduced at Annex 2, below. It comments that the complainant's letters extend, on average, to 5 pages, although several run into double figures. It is clear that this constitutes a substantial amount of correspondence and the cumulative effect of dealing with that level of correspondence may be seen to create a burden on the public authority. LCC also explains that the correspondence is commonly copied to multiple recipients, typically 10-20 recipients including *"various officers, numerous Councillors, the Leader of the Council, the Chief Executive, Members of Parliament, etc."*

27. This general argument has been put to the complainant (the Commissioner has received a number of the complainant's letters to LCC and is satisfied that the council's assessment of their average length is a

reasonable one). The complainant does not dispute the chronology and explains his reasons for sending multiple copies as follows:

"I do not attribute my 'experience' exclusively to my correspondence but to the LCC's notorious general administrative incompetence in dealing with public correspondence.

Because of this laissez faire attitude I have long accepted that it would be unlikely that I would receive a routine acknowledgement, let alone a response, if one was required.

My attitude 'developed' by the LCC in respect of their failure to acknowledge or respond to my correspondence, which is reflected in this chronology, has 'conditioned' me not to expect a reply and thus I was simply driven to copying letters for information primarily to [name] who it must not be forgotten is not only the current Leader of the LCC but is also my constituency County Councillor whom requested that he be regularly updated on the developing dispute, and to other CCs who sit on the independent Combined Fire Authority but whose mailboxes are hosted by the LCC . In effect I reduced, rather than increased the LCC's workload, by killing two birds or 26 politicians, with one stone."

28. The complainant also objected to any suggestion that LCC had responded to "every single one of these letters" and commented that in "this extended period of 2.75 years" he had received a total of 11 letters of response to his correspondence, and no letters of acknowledgement. He therefore refuted any suggestion that responding to his correspondence could be considered a burden, as in the majority of cases, no response had been made.
29. The Commissioner understands the last sentence quoted in the extract above to be suggesting that, by copying his correspondence to 26 councillors or politicians, he has saved the actual intended recipient the task of forwarding it. He has asked the complainant to clarify the meaning of that sentence, but he has not done so. The Commissioner is not satisfied that the complainant has shown that the recipient of the correspondence (i.e. the one who is directly addressed) would have felt obliged to forward the correspondence as he appears to suggest, nor that any such forwarding would have necessarily included all the parties copied by the complainant. He therefore discounts the complainant's argument that his habit of copying multiple recipients might be considered to reduce any burden on the public authority.
30. The complainant also explained that:

"In shaping my need to inform I also have a fair minded custom in transparency that where a particular person is named in my

correspondence then they have an inalienable right to see that correspondence in the context in which they are referred to by me. That was also a reason for circulation which requires no administrative input, or output, whatsoever except perhaps to use an individual's 'del' key."

31. The Commissioner put the complainant's points to LCC, they may be summarised as:
 - parties named in the document have a right to receive a copy;
 - many items are copied for information only and no response is required; and
 - the majority of the correspondence has not received a response in any event.
32. LCC's response refutes the complainant's explanation, observing that in most cases his letters will name perhaps one or two individuals and the wide circulation is considered to be an attempt to involve as many people as possible, thus causing disruption, a burden, and, in some cases, annoyance. LCC provided the Commissioner with a substantial body of correspondence, and compiled a list of correspondence which it characterises as *"unnecessarily copied to a large number of recipients"*. The Commissioner put this counter-argument to the complainant, who has not responded to it.
33. The Commissioner observes that, in the examples highlighted by LCC (not disputed by the complainant), the list of recipients contains not only councillors (some of whom might reasonably be expected to have an interest), but also external public bodies (including, on occasion, the ICO), various Members of Parliament, and local newspapers. The Commissioner considers it reasonable to acknowledge the possibility that (particularly in the case of the newspapers and Members of Parliament) the complainant sent copies of the correspondence to these parties so that they might be able to make enquiries to LCC about the contents if they chose to. This would have the effect of increasing any burden caused by the correspondence, in requiring the council to deal with any associated queries or correspondence from these external bodies. The complainant declined to engage with the Commissioner's enquiries on this subject so he does not discard this possibility.
34. The Commissioner recognises that the complainant did not say that his only reason for copying-in multiple recipients was either because they were named in the document, or had a clear need to receive a copy, however these are a reasonable summary of his main justifications. The complainant also suggests that, because he rarely received a response to his correspondence, the wider circulation was justified, perhaps in an attempt to obtain a response or other action. He criticises the lack of

acknowledgement of his correspondence, saying *"the vast majority of these letters were copies for information none of which required a reply but all of which ought to have been routinely in good business practice, acknowledged, but were not."*

35. The Commissioner understands from this that the complainant sent his copies in the *belief* that the recipients ought to acknowledge them (albeit without any firm *expectation* of such acknowledgement). It is reasonable to conclude that if an acknowledgement is sent by a recipient, that recipient has read the correspondence. Therefore, the complainant sent his letters and emails in the anticipation that all the recipients would read them.
36. Given the substantial nature of much of this correspondence (one document, in particular, runs to 54 pages), whether or not a response is made to the complainant, simply reading the correspondence will take an appreciable amount of time, even if no further action is taken by the reader. If it is assumed that all 26 councillors (plus other officials within the public authority) read the correspondence which the complainant copied to them, this would represent a significant duplication of effort within the council, resulting in unnecessary expense and distraction from other duties.
37. It is reasonable to assume that the complainant sent his letters with the intention that they would stimulate some action or other and again, if any action were to be duplicated by virtue of having been sent to multiple recipients, that would represent a waste of available resources. While the Commissioner accepts that the public authority has not provided any evidence to show any duplicated effort, he may not conclude that because the complainant received no response or acknowledgement, nothing had been done by any recipient of that correspondence.
38. Nevertheless, the majority of this correspondence is not concerned with the making of FOI requests and those requests which the Commissioner has seen, when taken in isolation, would not necessarily constitute a burden. It is only when considered alongside the wider scope of the complainant's dealings with the public authority, that the requests for information (coming, as they often do, within correspondence about other matters) can be considered as contributing to the burden in terms of cost and distraction from other duties, argued by LCC.
39. Given that the request under consideration was submitted within a 4-page letter (and comprises, at most, three short paragraphs within that letter) the Commissioner considers that it would be artificial, and inappropriate, to distinguish between the request and the wider correspondence and he is satisfied that it is reasonable to consider the

request as part of a lengthy and ongoing body of dealings with the public authority. Therefore, it is fair to consider the burden in terms not only of compliance with the specific request, but also in the context of the wider use of council resources in dealing with the complainant. It is also clear that the council's responses often elicit further contact from the complainant, and it appears likely that any response to the request in this case would similarly result in further contact from the complainant.

40. For these reasons, the Commissioner is satisfied that compliance with the request would create a significant burden in terms of expense and distraction. He therefore attaches some weight to this argument, albeit substantially less than its full weight, partly because the proportion of FOI requests to the overall body of correspondence is not particularly large and partly because, as will be examined later, LCC may be argued to have incited some of the complainant's correspondence by its failure to deal appropriately with him in certain respects.

Is the request designed to cause disruption or annoyance?

41. For the reasons considered at paragraphs 33 and 35, above, the Commissioner does not discount the possibility that, in copying his correspondence to numerous recipients, the complainant was pursuing a strategy designed to cause disruption or annoyance. Not all the complainant's correspondence, however, was sent to multiple recipients. The request under consideration was contained in a letter addressed to the council's Chief Executive and, from LCC's submissions, does not appear to have been more widely circulated by the complainant.
42. While the Commissioner finds that, for reasons explored above, it is not helpful to consider the request entirely in isolation, it is nevertheless not clear to him that the request at issue here should be linked directly to any strategy designed to cause disruption. The actual request for information is relatively straightforward and LCC has not argued that, in itself, the request is designed to cause disruption or annoyance. Had the letter containing the request been submitted to several parties within the public authority, the Commissioner recognises that all recipients might have been obliged to take action to ensure that the request was being responded to. As that is not the case, he does not find that the specific request, by itself, is designed to cause disruption.
43. However, the wider context does suggest that, to some degree, the complainant's overall strategy involves causing a certain amount of disruption within the public authority. The complainant has, for example,

explained⁵ that he is “engaged in ‘uninhibited public criticism’ of the LCC and the Lancashire Combined Fire Authority” which has resulted in parties, including the media, becoming aware of what he characterises as the public authority’s lack of diligence and disregard of the law. He gives his view that, by its intransigence and unwillingness to reach a resolution of the underlying dispute, the public authority has, in effect, brought this on itself.

44. The Commissioner therefore makes a distinction, in this case, between disruption which is an anticipated, and possibly intended, side-effect of the determined pursuit of a campaign, and a campaign whose principal intention is the causing of disruption. He does not consider that the complainant’s actions are intended principally to cause disruption, though he doubts that the complainant is unaware that disruption will be one consequence of his actions.
45. It is clear that the provocative and challenging tone of much of the complainant’s correspondence will have the effect of annoying the recipient. The complainant has been singularly unapologetic in this regard and is also on record as declaring that his correspondence is designed, ultimately, for scrutiny in court. It is therefore clear to the Commissioner that the complainant’s use of language is deliberate and considered and is, at least to some degree, designed to unsettle the recipient in what is becoming an increasingly adversarial dispute. For this reason, it is considered that the complainant’s correspondence is, at least partially, intended to cause annoyance. The specific letter which contains the request under consideration does not adopt such a confrontational tone but, as has been stated above, the Commissioner considers that to assess the specific document in isolation would be artificial. The Commissioner accordingly gives a small amount of weight to this factor.

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

46. The public authority has confirmed that, in relation to the complainant’s letters “more than one officer of the County Council has found his correspondence to be harassing and distressing in nature”. It has provided the Commissioner with a body of correspondence in which some of the complainant’s comments may fairly be characterised as intemperate. It has highlighted numerous examples in his letters where his choice of language might reasonably be considered as contentious. Terms such as ‘*arrogant; incompetent; stupidity; ineptitude; uncaring*

⁵ In a letter to the public authority’s Deputy County Secretary and Solicitor, dated 21 April 2008

gross incompetence' are frequent (these specific examples are taken from his letter of 30 May 2008, but may be considered to be fairly typical).

47. These, it is argued, have the effect of harassing the council or its staff, most particularly those individuals who are named as the object of the comments. The Commissioner notes the complainant's robust defence of his language, quoted at paragraph 15 above and he has invited the complainant to comment further if he chose to do so, but has not received a response.
48. The complainant's correspondence is precise and painstaking in its level of detail. The complainant has himself commented, in his 16 March 2010 letter to LCC, that *"I indicated to you that I write all my documents for ultimate consumption by the Judiciary who are, rightly, sticklers for accurate detail"*. It is therefore reasonable to conclude that the complainant's choice of language and tone is considered and deliberate. It is not a response written in hot blood, perhaps out of understandable frustration.
49. The Commissioner would expect a public authority to make due allowance for frustration or annoyance in correspondence from a complainant about a grievance or dispute. For this reason, he does not consider that an argumentative or hostile tone in correspondence is necessarily evidence of vexatiousness. The test as to whether such language might be seen as harassing a public authority or its staff is not whether a particularly sensitive person might be affected, but whether a reasonable person, confronted with such language, might feel harassed or distressed.
50. The Commissioner finds the Information Tribunal in *Jacobs v IC* (EA/2010/0041)⁶ of assistance, at paragraph 27:

"Although it is relevant to consider the impact that the Request and associated communications may have on those to whom they are addressed, the Tribunal should not be over-protective of them. Public authorities and the individuals representing them must expect to be exposed to an element of robust and persistent questioning, sometimes articulated in fairly critical tones. And the test of when a dialogue develops to the stage where it may be said to have become vexatious will be an objective one, not based on the particular sensitivities of the individual or individuals dealing

⁶ Available online at [http://www.informationtribunal.gov.uk/DBFiles/Decision/i426/Decision%20&%20PTA%20\(w\).pdf](http://www.informationtribunal.gov.uk/DBFiles/Decision/i426/Decision%20&%20PTA%20(w).pdf)

with the person making the request. This particular factor will carry weight in the overall assessment only if distress or irritation would be caused to a reasonably calm, professional and resilient officer of a public authority"

51. In this case it is clear that the tenor of the language used by the complainant has been deliberately chosen. These are not ill-considered remarks born out of frustration in the heat of the moment, but carefully drafted letters, written (by the complainant's own admission) with possible judicial scrutiny in mind. It may therefore be seen that any adverse effect on the recipient is not an unintended consequence, but a deliberate act. The complainant's remarks on the subject, quoted in paragraph 15 above, suggest that he feels it appropriate to communicate in this fashion and that public servants must simply accept this as their due. The Commissioner cannot condone this approach and is not persuaded by the complainant's view.
52. The Commissioner is also mindful of the findings of the Information Tribunal in *Gowers v IC and London Borough of Camden* (EA/2007/0114)⁷ which stated, at paragraph 53:

"What we do find, however, is that the Appellant often expressed his dissatisfaction with the CCU in a way that would likely have been seen by any reasonable recipient, as hostile, provocative and often personal (particularly in respect of the CCU's head), going beyond any reasonable pursuit of his grievances, and amounting to a determined and relentless campaign to obtain any information which he could then use to discredit them."

53. The Commissioner is aware that some of the complainant's letters in which he openly and robustly criticises named individuals are among those which have been widely circulated. He notes, for example, a letter sent to the leader of the council on 6 June 2009 in which the complainant names three individuals who, in his words:

"[...] enjoyed humiliating and hurting my people and for that I expect them to be publicly punished [...]"

and

"[Name] was her partner in crime who especially enjoyed the 'interrogation' interviews, wielding and abusing power over the innocent. That is intolerable in any 'human' being and completely unacceptable in any public servant.

⁷ Available online at <http://www.informationtribunal.gov.uk/DBFiles/Decision/i80/Gowers.pdf>

[Name] [...] like many another Pontius Pilot regularly washed her hands but she also was a pivotal part of this disgusting triumvirate"
[sic]

54. The letter in which these comments may be found was circulated to 12 other parties, including several individuals understood to be external to the council such as Fire Brigade Union contacts and advisers, the permanent secretary at the DWP, and a Member of Parliament. This is given by way of a specific example, the Commissioner has copies of other letters, also widely circulated, which contain comments of a similar nature about various named individuals.
55. Even if the Commissioner were to leave aside the inflammatory language used by the complainant, he considers that the fact that these letters are circulated to parties other than the named individuals being criticised (and external to the public authority) is likely to cause them understandable concern. Particularly when the complainant's choice of words is also factored-in, the Commissioner is satisfied that a reasonable person would be likely to feel harassed or distressed by such correspondence.
56. As in the previous section, the particular request at issue here is not contained in a document which was more widely circulated, but the letter containing the request does refer to two named individuals who are being complained about and the letter is associated directly (by the complainant) with another letter, sent four days previously to the same recipient (dated 12 March 2010) and copied elsewhere. The 12 March 2010 letter also contains numerous further examples of the complainant's confrontational style, including:

"[Name] in his inimitable bullying and lecturing fashion [...]"

"[...] it is clear that by their own criminal and unlawful misconduct [...]"

"Viewed objectively, [Name]'s outrageous actions, as head of a department, using repeated blatant falsehoods, sets an appalling example [...]. There can be no excuse for [Name]'s deceitful actions because he knew exactly what he was doing in these calculated acts in which he blatantly lied [...]"

57. Therefore, while the request itself does not contain any comment or allegations which might be considered to harass or distress the public authority or its staff, it is contained in correspondence which does, and which the complainant has directly linked to other correspondence which uses language of an inflammatory nature. The wider context of the complainant's dealings with the public authority suggests strongly that at least some of the complainant's choice of language is deliberately

provocative. The Commissioner therefore accepts the public authority's assertions that the complainant's correspondence and, by association, the request, has the effect of harassing its staff and is satisfied that a reasonable person would be likely to feel harassed or distressed by it.

Can the request otherwise fairly be characterised as obsessive or manifestly unreasonable?

58. It is clear that the complainant is pursuing a campaign against the public authority. Where this case differs from some others, for example the case of *Gowers* quoted above, is that in those other cases the complainant has already received some resolution to his underlying dispute, or has to some extent had that dispute considered and dealt with by other means. The requests for information in those cases can be seen as attempts to pursue, reopen or otherwise continue a dispute past the point at which it should be allowed to drop.
59. In this case, however, the underlying dispute about the withdrawal of injury pension payments is still a live issue which has not been resolved. The Commissioner makes no comment about whether the complainant's strategy is an effective one but it is clear that his dealings with LCC have been protracted, having their beginnings in 2008. The complainant's requests are intended to obtain information in support of his case and appear to the Commissioner to be a reasonable use of the Act, as an obvious route to obtaining information, prior to any action for discovery of documents during legal proceedings.
60. The Commissioner has questioned whether the complainant ought to be addressing his requests to LFRS, rather than LCC, and the complainant has explained his reasons for submitting his requests to LCC, having been informed by LFRS that it does not hold the information. The Commissioner has, separately, been in contact with LFRS in connection with related matters and has given his view that LFRS has failed to comply with the Data Protection Act 1998 in respect of the complainant's personal data⁸. He therefore has some sympathy with the complainant's expressed view (see paragraph 20, above) that the co-operation of LFRS cannot be relied upon, which necessitates an approach by a different route, namely through LCC.
61. Similarly, the Commissioner asked LCC to explain its reasons for arguing that the complainant should make his requests to LFRS, not to LCC, but has not received a reply to that point. As LCC are the administrators of the pension scheme, under contract from LFRS, the Commissioner does not consider that requesting the information from LCC is clearly

⁸ Case reference RFA0351582

misplaced. Therefore, the Commissioner does not consider that requesting information from LCC, when his dispute appears to be with LFRS, is unreasonable in the circumstances.

62. The complainant has given his view that both LFRS and LCC have been obstructive and unco-operative to his efforts and that this justifies his persistence. The Commissioner is inclined to agree that the complainant's actions ought reasonably to be characterised as 'determined' rather than 'obsessive'.
63. The complainant argues that the public authorities' lack of genuine attempts to comply with the Act ought to invalidate its use of section 14. He is, in effect, arguing that LCC (and LFRS) have brought this on themselves and should not be permitted to evade their responsibilities by declaring his request vexatious.
64. The Commissioner acknowledges that this would be a logical argument. He has already served a Decision Notice on LCC⁹ in case reference FS50316139 respect of a related complaint from the complainant, which found LCC in breach of sections 1 and 10 of the Act. During the investigation in that case, information was disclosed to the complainant. The complainant's view is that the public authority was being deliberately obstructive in that case and should have disclosed the information in response to the requests, without the need for the Commissioner's involvement.
65. LCC has given its opinion that the complainant can be seen to misrepresent the views which have been expressed to him. It argues, for example, that the complainant:

"has a history of 'confirming' in writing the content of telephone conversations in a way that is twisted to suit his case"

It cites a comment in the complainant's letter of 8 March 2010 where he takes issue with the public authority's (telephone) advice that he will need to submit a new request if he requires certain specific information:

"You did not accept the logic of my arguments that this was a natural extension of my original Requests and my institution of my request that you review your response of the 15th January 2010.

I expressed the view that you were playing semantics and obstructing my lawful right of access to data.

⁹ Available online at http://www.ico.gov.uk/~media/documents/decisionnotices/2010/fs_50316139.ashx

You subsequently agreed, in a shift of position, that if I delivered my Requests to you today [...] that you would guarantee me that you would delivery the said documents to me tomorrow [...]" [sic]

66. The Commissioner agrees with the public authority that, if a complainant becomes aware of new information it may hold (and which he has not requested), he is likely to need to submit a new request for that information, it cannot simply be incorporated into a previous request for other information. The public authority argues that there has been no 'shift of position'.
67. The Commissioner is aware that, during the course of his investigation, the complainant wrote to LFRS on 14 October 2010 for other information, stating:

"I require, with the support of the Information Commissioner (IC), that you release the following items of Public and private interest: [...]"

68. The Commissioner found it necessary to write to the complainant to remind him that his (verbal) advice in the matter had only been that he retained the right to make requests for further information from the public authority. This should not be interpreted as any endorsement of the complainant's requests. He requested that the complainant refrain from any statement which might imply anything other than impartiality on the part of the Commissioner. The complainant apologised, blaming a hastily-drafted letter for this inadvertent misrepresentation but commenting that:

"I am entitled to ask and press the IC for his support on any matter I choose to, and whether he chooses to give it or not is a matter for him, and us."

69. The Commissioner therefore acknowledges that his own dealings with the complainant have been consistent with the public authority's observation that the complainant occasionally misrepresents comments which are put to him, verbally. While he was not party to the telephone conversation cited by the public authority at paragraph 65, above, he is inclined, in light of his own experience, to accept the public authority's assertion that the complainant has misrepresented the key elements of that conversation, in a way which better suits his own position. This is not only manifestly unreasonable, but also casts some doubt on whether the complainant's accounts can be considered to be as objective as they may at first appear.
70. The Commissioner considers this element to be more finely balanced than the previous factor. On the one hand, the complainant is judged to be persistent, rather than obsessive, however there is evidence to

support an argument that, at least occasionally, he has been manifestly unreasonable. On the other hand, the Commissioner has already found LCC in breach of sections 1 and 10 of the Act in relation to one request from the complainant in case reference FS50316139, above, and considers it unlikely that LFRS has complied with the requirements of the Data Protection Act in respect of the complainant's personal data. He therefore acknowledges that this would be likely to create considerable anger and frustration in the complainant and that this ought to offset any suggestion that the complainant is manifestly unreasonable, on the grounds that neither public authority can claim to have been entirely reasonable in its dealings with the complainant.

71. The Commissioner would not go as far as the complainant, who argues that the public authorities have brought this on themselves and ought not to be permitted to invoke section 14 of the Act, on those grounds. He does find, however, that the complainant is not obsessive or manifestly unreasonable, and he gives no weight to this factor.

Does the request have any serious purpose or value?

72. The underlying dispute which gives rise to the current situation arises from the LCC decision to suspend injury pension payments to FSVs who had declined to give their consent to LCC requesting information from the DWP about their receipt of state benefits.
73. The request under consideration relates to the form and content of the 'consent form' sent to the FSVs in order to obtain that consent. The public authority argues that this is a 'side issue' and resolving that side issue does not help to resolve the fundamental dispute. It explains its view that the complainant is inclined to be distracted from the main matters into secondary disputes, often about the conduct of individuals in its dealings with him. It has provided the Commissioner with copious documentation, largely copies of the complainant's correspondence with it, which supports this view. The correspondence can be seen to devote a significant amount of effort to complaints about named individuals, of little obvious relevance to the underlying dispute.
74. The Commissioner put this argument to the complainant, who replied that the request goes to the heart of the dispute. He explained his strategy, which is to obtain information from the various parties (i.e. LFRS, LCC and DWP) and confront LFRS with that evidence as a precursor to legal action.
75. The Commissioner remains unclear how receiving a response to the request will assist in the resolution of the underlying dispute. The complainant maintains that it is '*one of the core issues*' in this dispute. The Commissioner has requested clarification from the complainant, who

has declined to provide further assistance. The Commissioner therefore undertook a further review of the complainant's correspondence for evidence that this matter is central to a resolution of the fundamental dispute.

76. He notes the following comments in a letter from the complainant to the DWP on 12 March 2008:

"One of the legal nubs of this matter is the lawfulness, or more accurately, the unlawful methodology that the LFRS have used to coerce FS pensioners into signing their legitimate rights of subject data protection away so that the LFRS may approach the DWP for information about their benefits, which I may add is still currently being supplied by your department."

And, similarly, in a further letter to the DWP of 24 June 2008:

"From the outset of this fiasco, in November 2007, it has been my consistent contention that the LFRS/LCC PS knowingly used a false instrument under direct duress, namely sign this document giving us permission to see all your DWP records or we will stop your Injury pension. These actions of duress and deceit were, in parallel, to obtain pecuniary advantage over FS Pensioners by deceit and in the process to defend their own gross mismanagement of FS pensions. [...]"

"Because I and others regarded these actions as unlawful we have continued to refuse to sign any form of waiver until we are convinced of the legality of these actions and in particular the bona fides of those seeking our permission."

77. The following comments appear in a letter to LCC of 12 March 2010:

"This Request goes to the legal heart of the matter. The key question being the illegality of the so called 'consent forms' signed under duress (with the exception of 2) by all 167 +/- Injury Award FSVs at the beginning of this LFRS 'review'. The primary objective of my exercise was to obtain independent documentary evidence that the LCC PS in complicity with the LFRS had acted unlawfully in stopping FSVs Injury Pension Awards."

"My secondary objective was to support my charges against your LCC staff (and others) that they had acted in a (a) knowingly criminal and reckless manner; (b) in an unlawful manner; (c) and with defamatory words and imputations intended to harm the good names of the disabled FSVs."

Having successfully concluded a 2 month FOI dialogue with two of the previously named Agencies you must now accept, on trust, that I have the independent documentary evidence I require to support my intended charges under (a); (b); and (c)."

78. The Commissioner therefore understands the complainant's argument to be that if the two public authorities (LCC and LFRS) can be shown to have acted in bad faith in respect of any 'consent form' used to obtain personal data from the DWP (the 'secondary objective'), this might be used as evidence of similar bad faith in the actions surrounding the decision to suspend the injury awards in FSV pensions (the 'primary objective'). The Commissioner makes no comment on the validity of such an argument, but notes instead that the third paragraph, above, appears to state that his secondary objective has been achieved. This letter (12 March 2010) is closely associated, by the complainant, with his subsequent letter of 16 March 2010, which contains the request which is the subject of this complaint.
79. The comments quoted above appear to confirm that the complainant believes he has sufficient information to support his claim that the 'consent forms' are in some way improper. The Commissioner is therefore unclear why, four days later, he has submitted the request detailed at paragraph 6 of this Decision Notice. He has requested clarification from the complainant, who has declined to assist him further. The Commissioner therefore understands that the complainant considers that he has sufficient evidence to argue this particular point successfully, and therefore infers that the 16 March 2010 request can only have been intended to obtain further, independent, corroborative evidence.
80. Even if the Commissioner were to concede the validity of the complainant's wider strategy and accept, for the sake of argument, that the matter of the legality of the 'consent forms' was central to the underlying dispute about the withdrawal of injury pensions, it appears to him that the complainant has admitted that he has sufficient evidence to achieve that particular objective. As things stand, however, he is more inclined to accept the LCC view that this remains a 'side issue' which the complainant has allowed himself to become distracted by. The Commissioner is reminded of the circumstances described by the Information Tribunal in *Gowers*, quoted above, in which the complainant's behaviour is characterised as: *"[...] amounting to a determined and relentless campaign to obtain any information which he could then use to discredit them"*.
81. Even putting that view aside, the Commissioner cannot see that the 16 March 2010 request can have the serious purpose attributed to it by the complainant, because this information would simply corroborate

information he already possesses. It is therefore 'helpful' rather than 'essential' to his case. For this reason, while he acknowledges the serious purpose which is ultimately behind the complainant's requests, he gives only modest weight, in the complainant's favour, to this argument in respect of the specific request under consideration.

Summary

82. The Commissioner has considered the five factors listed at paragraph 24 and finds the first three factors engaged, to a greater or lesser degree. He gives slight weight to the argument that the request will constitute a burden in terms of expense or distraction, and a small amount of weight to the possibility that the request is designed to cause disruption or annoyance. He is satisfied that the request will have the effect of harassing the public authority or its staff and that factor ought to be given considerable weight, but concludes that it can not fairly be characterised as obsessive or otherwise manifestly unreasonable. Collectively, the first three factors give quite substantial weight to the public authority's arguments that the request is vexatious.

83. Balancing this, as stated by the Information Tribunal in the case of *Coggins v IC* (EA/2007/0130)¹⁰:

"[...] the Tribunal could imagine circumstances in which a request might be said to create a significant burden and indeed have the effect of harassing the public authority and yet, given its serious and proper purpose ought not to be deemed as vexatious . For instance, one could imagine a requester seeking to uncover bias in a series of decisions by a public authority, covering many years and involving extensive detail, each of fairly minor importance in themselves but representing a major issue when taken together. This might indeed be experienced as harassing but given the issue behind the requests, a warranted course of action." (paragraph 20)

84. The Commissioner accepts that the complainant has a serious and proper purpose in challenging the withdrawal of injury pension payments from a group of fire service veterans. He also accepts that there is evidence to suggest that LCC has not always dealt appropriately with the complainant's enquiries and that this may have exacerbated the situation, leading to increased volume of correspondence and requests. Criticism of such failings might therefore be anticipated, however this distracts from the serious and proper purpose at the heart of this matter. In order for this test to support the complainant's position, it is,

¹⁰ Available online at <http://www.informationtribunal.gov.uk/DBFiles/Decision/i119/Coggins.pdf>

therefore, necessary to show that the requested information is required in pursuit of that serious and proper purpose. The Commissioner has expressed some doubt in this regard, and has requested the complainant's assistance in establishing it.

85. The complainant has declined to provide that assistance, instead referring the Commissioner back to the substantial body of correspondence he had submitted in support of this, and another, complaint. The Commissioner had already reviewed that correspondence and found it helpful in many elements of his investigation. He had not, however, located anything which could be used to show that the request was essential to the serious and proper purpose at the heart of the complainant's actions. He nevertheless undertook a second review of the complainant's letters, as directed, but located little in support of that specific matter.
86. The Commissioner therefore concludes that, while the complainant's wider campaign has a serious and proper purpose, and the request should not be considered entirely in isolation from that undertaking, the request itself has not been shown to be sufficiently important to that wider campaign. He is therefore unable to give sufficient weight to the complainant's statement that the request has a serious and proper purpose, in order to permit him to decide that that serious purpose outweighs the combined weight of the arguments put forward by the public authority. Accordingly, he finds that the public authority correctly applied section 14(1) of the Act in this case.

The Decision

87. The Commissioner's decision is that the public authority dealt with the request for information in accordance with the Act.

Steps Required

88. The Commissioner requires no steps to be taken.

Other matters

89. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters.
90. He observes that the arguments in the analysis section above which are concerned with whether the request has any serious purpose or value,

apply, in the main, to the secondary issue of the legality (or otherwise) of the 'consent forms'. The Commissioner would not wish it to be inferred from the above that the primary issue, namely the dispute over the withdrawal of injury pension awards, lacks serious purpose.

91. Conversely, it should not be inferred that a serious purpose behind a request ought to permit a complainant to accuse, harass or harangue a public authority or its staff, with impunity. While occasional intemperate comments in frustration or the heat of the moment are understandable and, in the main, excusable, the Commissioner does not condone widespread, calculated and premeditated abuse.
92. He therefore wishes to remind the public authority that it is the request, not the requester, which can be refused as vexatious under the Act. But, he also acknowledges that, unless the complainant adopts a significantly different approach in his dealings with the public authority, it remains likely that the third factor (whether the request has the effect of harassing the public authority or its staff) will continue to carry weight.

Right of Appeal

93. 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

94. 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.

95. 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 16th day of February 2011

Signed

**Pamela Clements
Group Manager, Complaints Resolution
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Legal Annex

General Right of Access

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."

Section 1(2) provides that -

"Subsection (1) has the effect subject to the following provisions of this section and to the provisions of sections 2, 9, 12 and 14."

Section 1(3) provides that –

"Where a public authority –

- (a) reasonably requires further information in order to identify and locate the information requested, and
- (b) has informed the applicant of that requirement,

the authority is not obliged to comply with subsection (1) unless it is supplied with that further information."

Section 1(4) provides that –

"The information –

- (a) in respect of which the applicant is to be informed under subsection (1)(a), or
- (b) which is to be communicated under subsection (1)(b),

is the information in question held at the time when the request is received, except that account may be taken of any amendment or deletion made between that time and the time when the information is to be communicated under subsection (1)(b), being an amendment or deletion that would have been made regardless of the receipt of the request."

Section 1(5) provides that –

“A public authority is to be taken to have complied with subsection (1)(a) in relation to any information if it has communicated the information to the applicant in accordance with subsection (1)(b).”

Section 1(6) provides that –

“In this Act, the duty of a public authority to comply with subsection (1)(a) is referred to as “the duty to confirm or deny”.

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.”

Annex 2

Brief chronology of the complainant's correspondence with Lancashire County Council

- 20 January 2008** – 8 page letter to Councillor
- 21 January 2008** – 4 page letter to Councillor
- 24 January 2008** – 7 page letter to Pensions Service
- 25 January 2008** – email to Leader of Council enclosing 5 page letter to local newspaper and email correspondence with newspaper
- 29 January 2008** – Email to Councillor with document attached
- 1 February 2008** – 3 page letter to Councillor, copied by email to various at LCC
- 2 February 2008** – email correspondence with his colleagues copied to various at LCC and elsewhere
- 4 February 2008** – 3 page letter to ATI team
- 4 February 2008** – email to ATI team
- 5 February 2008** – email of correspondence with his colleagues copied to various at LCC
- 5 February 2008** – 9 page letter to the Standards Board for England copied to LCC
- 6 February 2008** – 3 page letter to Councillor, copied to numerous at LCC and elsewhere
- 7 February 2008** – 5 page letter to ICO copied to numerous at LCC and elsewhere
- 9 February 2008** – email to ATI team
- 13 February 2008** – copy of 2 page letter to ICO emailed to numerous at LCC
- 13 February 2008** – 6 page letter to Councillor, copied by email to numerous at LCC and elsewhere
- 14 February 2008** – email to various at LCC plus MPs with 4 page letter
- 20 February 2008** – email to various at LCC with ICO correspondence attached
- 20 February 2008** – 6 page letter to Leader of Council
- 6 March 2008** – email to various at LCC with copy of correspondence attached

- 7 March 2008** – 2 page letter to Leader of Council (also emailed to various Councillors and MPs)
- 11 March 2008** – 1 page letter to ATI team (also emailed to numerous Councillors and MPs)
- 28 March 2008** – email to various at LCC
- 29 March 2008** – 54 (**fifty-four**) page document to various at LCC
- 31 March 2008** – email to Pensions Service and various Councillors
- 1 April 2008** – 3 page letter to his colleagues, copied to various officers and numerous Councillors, plus MPs
- 5 April 2008** – email to Pension Service (copied to over 20 MPs and Councillors)
- 11 April 2008** – 5 page letter to Pensions Service
- 15 April 2008** – 2 page letter to DWP copied to various at LCC
- 18 April 2008** – 3 page letter to Department for Communities and Local Government, copied to various at LCC
- 18 April 2008** – 2 page letter to DWP, copied to various at LCC
- 21 April 2008** – 11 page letter to Deputy County Secretary & Solicitor
- 30 May 2008** – 4 page letter to Leader of Council and Pensions Service
- 1 June 2008** – email to Leader of the Council attaching 4 page letter to Pension Service
- 25 June 2008** – email and 10 page letter to Chief Executive
- 4 July 2008** – 2 page letter from [complainant's] solicitors to Pensions Service
- 13 September 2008** – 11 page letter to Councillor, copied to numerous Councillors, Leader of the Council, Chief Executive, MPs
- 14 September 2008** – Email to Leader of Council, Chief Executive and numerous Councillors and MPs attaching 11 page letter to Councillor
- 1 November 2008** – 3 page letter to Pensions Service
- 12 November 2008** – Email to Leader of Council and Pension Service complaining and attaching other correspondence
- 15 January 2009** – Email to various Councillors and MPs attaching 3 page letter to LFRS
- 31 March 2009** – Email to Leader of Council and other Councillors and MPs forwarding his correspondence with a colleague
- 13 April 2009** – 10 page letter to Leader of Council, copied by email to numerous Councillors and MPs

27 May 2009 – email to numerous officers and Councillors attaching 4 page letter to his colleagues

6 June 2009 – 2 page letter to Leader of Council, copied to numerous at LCC

22 June 2009 – Email to numerous Councillors attaching a 6 page letter to his colleagues

30 November 2009 – 7 page letter to LFRS copied by email to Leader of Council and other Councillors

6 December 2009 – 6 page letter to Leader of Council

7 December 2009 – copy of 3 page letter to LFRS copied by email to numerous Councillors

12 January 2010 – 2 page letter to Deputy County Secretary & Solicitor, copied to Leader of Council and Chief Executive)

27 January 2010 – 1 page letter to ATI team (also emailed to Leader of Council)

20 February 2010 – email to ATI team and Leader of Council

8 March 2010 – 1 page letter to ATI team

12 March 2010 – 10 page letter to Leader of the County Council (also sent by email to ATI team)

16 March 2010 – 4 page letter to Leader of Council

29 April 2010 – 5 page letter to Leader of Council and Chief Executive

19 July 2010 – 2 page letter to ATI team, copied to Leader of Council