

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 15 September 2011

Public Authority: The Chief Constable
Address: Greater Manchester Police
Chester House
Boyer St
Manchester
M16 0RE

Summary

The complainant asked Greater Manchester Police (the “public authority”) to provide information relating to interpreters. The public authority refused to deal with the request on the grounds that it was vexatious, citing section 14(1) of the Freedom of Information Act 2000 (the “Act”). The Commissioner finds that the public authority failed to provide adequate reasons that the complaint was vexatious and accordingly directs that the public authority either disclose the information or issue a refusal notice in compliance with section 17(1) 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.

Background

2. According to its website¹, the requester is a working committee member of the Professional Interpreter’s Alliance (the “PIA”). As well as requests from this complainant, several other requests received by the public authority have been connected with this organisation.

¹ <http://profintal.org.uk/about.php>

3. On 3 February 2011 the Law Society Gazette reported that:

"The Professional Interpreters Alliance (PIA) has been granted permission to begin a judicial review of a decision by police authorities in Greater Manchester, Merseyside, Lancashire and Cumbria to outsource their interpreting services and enter an exclusive agreement with Applied Language Solutions (ALS).

PIA, which represents the interests of interpreters who are registered with the National Register of Public Service Interpreters, alleges in its judicial review claim that commercial agencies such as ALS 'compromise standards of quality of service by the use of unqualified interpreters'".

4. The following is an extract² from an annual review of the work undertaken by the public authority's Legal Services dated 24 June 2011. Although it postdates the request, it provides some background information about the Judicial Review which was ongoing at the time the request was made:

*"Significant Judicial Review Case
Interpreter's Contract – On 2 August 2010 GMP and a number of other North West police forces entered into a service level agreement (SLA) with a company to outsource the provision of interpreters. Under the SLA, the company agreed to act as a single intermediary to provide a managed service. The decision was challenged on the grounds that the forces failed to comply with section 71(1)(b) of the Race Relations Act 1976 (RRA), that in making the decisions the forces failed to take into account relevant considerations, making decisions which were irrational; and that the forces failed to consult before taking their decisions. Legal Services at GMP took the lead in defending the claim, however the case was ultimately settled, as it was not possible to demonstrate that the forces had complied with the requirement to undertake an Equality Impact Assessment under the Race Relations Act. The defence of the claim involved considerable costs and the claim demonstrated the need to consider equality duties when entering into contractual arrangements".*

The request

5. On 24 February 2011 the complainant made the following information request:

² <http://meetings.gmpa.gov.uk/mgConvert2PDF.aspx?ID=752>

- “1. The force is currently paying £34/hour to foreign spoken word interpreters and £60/hour to BSL interpreters. When were these rates introduced?*
 - 2. Which employee/department decided on the level of the rates payable both to BSL and foreign spoken word interpreters?*
 - 3. On what basis was the level of these rates decided?*
 - 4. Did the GMP carry out an equality impact assessment prior to introducing these rates? If so, please provide me with a copy”.*
6. On 6 April 2011 the public authority responded. It advised her that her request was considered to be vexatious.
 7. On 7 April 2011 the complainant sought an internal review. She provided reasons to justify her claim that her request was not vexatious.
 8. On 11 May 2011 the public authority replied and upheld its previous determination.

The investigation

Scope of the case

9. On 13 May 2011 the complainant contacted the Commissioner to complain about the way her request for information had been handled. The complainant specifically asked the Commissioner to consider whether or not her request was vexatious.

Analysis

Vexatious or repeated requests

10. The public authority has cited section 14(1). This provides that a public authority does not have to comply with a request for information if the request is vexatious. The Commissioner's published guidance explains that the term "vexatious" is intended to have its ordinary meaning and there is no link with legal definitions from other contexts (e.g. vexatious litigants).

11. It is not necessary for all of the criteria in the Commissioner's guidance to be met but, in general, the more criteria that apply, the stronger the case for arguing that a request is vexatious. It is also the case that some arguments will naturally fall under more than one heading.
12. The public authority has provided the complainant with the following reasons for finding her request to be vexatious:

"... over the last 12 months you and others have made numerous requests to this force in relation to Interpreters/Translators, therefore, any request relating to this subject matter is deemed to be obsessive and designed to cause disruption or annoyance to the force/individuals.

... at the time of your request the subject matter was subject to a Judicial Review, therefore, any requests relating to Interpreters/Translators is a clear intention to use the request to reopen issues that have already been considered or being considered."

"I have identified ten previous ... requests submitted by you to this force dating back to January 2009. All of these requests are on the same topic of interpreters and the cost of these interpreters to GMP.

I have also identified several other requests submitted by different individuals during this time period which are largely similar, and in one case identical, to your requests.

This leads me to the conclusion that many or all of these requests are connected.

Including these requests I have identified in excess of forty different requests relating to the use of interpreters by GMP submitted over a two-year period.

Although this request may not be considered as vexatious in isolation, when read in context with the history of other requests it represents a pattern of behaviour that suggests an ongoing campaign aimed at GMP and specifically staff involved with the process of contracting interpreters.

It is likely that this campaign would cause GMP staff undue stress as it is continuing a complaint that has previously been addressed in the correct manner by a judicial review.

I am aware that, at the time of this request, GMP were subject to a judicial review relating to the topic in question. This leads me to believe the intention of this request was solely to re-open a dispute which was already being debated using the appropriate channel.

It is my belief that allowing this campaign of requests to continue would result in undue disturbance being caused to GMP staff associated with the subject matter and the judicial review."

13. Deciding whether a request is vexatious is a flexible balancing exercise, taking into account all the circumstances of the case. In line with his guidance, when assessing whether a request is vexatious, the Commissioner considers the following questions.
 - Could the request fairly be seen as obsessive?
 - Is the request harassing the authority or causing distress to staff?
 - Would complying with the request impose a significant burden?
 - Is the request designed to cause annoyance and disruption?
 - Does the request lack any serious purpose or value?
14. The public authority has clarified to the Commissioner that it wishes to rely on the second and fourth bullet points above.
15. It also advised him that: *"It could also be argued that, due to the fact these issues were currently being assessed as part of a Judicial Review, this request was of little serious value"*.

Is the request harassing the authority or causing distress to staff?

16. The public authority has provided the Commissioner with copies of the requests it has dealt with and which it is relying on to support its contention that this request is vexatious. There are twenty-one of these (including ten from this complainant) and a further two which postdate this request (so will not be considered). These cover a two-year period.
17. It has also provided further evidence which it wished to keep 'confidential'. The Commissioner has carefully considered this evidence and, whilst he can understand the public authority's concerns, he can find no direct correlation between the evidence provided and any of the relevant information requests. He has therefore not relied on this.
18. The Commissioner has noted the salutation, tone and content of all of the requests. At no point does the Commissioner consider that any of these could be reasonably viewed as being 'harassing' in nature, nor

does he believe that they have been made in such a way as to target any particular staff. Whilst it may in practice be the case that particular staff have necessarily been involved in dealing with the requests because of their job role within the public authority, the Commissioner can see no direct intention to target particular staff by the complainant, whose requests are all addressed "Dear Sir / Madam". Some of the other requests were addressed to particular staff, but there is nothing to suggest that any particular members of staff are 'targeted'. The Commissioner also notes that all of the requests are written in a polite and professional manner.

19. The public authority has stated above that it believes the volume of requests received suggests an *"ongoing campaign aimed at GMP and specifically staff involved with the process of contracting interpreters"*. It has further argued that this 'campaign' would cause its staff undue distress as it concerns issues that have been previously addressed in the *'correct manner'* by Judicial Review.
20. The Commissioner notes that, at the time of the request, the Judicial Review was ongoing, therefore it would not be possible to know the findings of the process. Furthermore, he considers that some of the fundamental purposes of freedom of information legislation are to further public debate and encourage public participation in decision-making where possible. The fact that campaigning by the PIA has resulted in a Judicial Review being undertaken demonstrates that the aims of this organisation are considered sufficient to warrant such a review (irrespective of any of the eventual findings of that review). If making information requests has had any bearings on such a process taking place, then this demonstrates to the Commissioner that there has been genuine merit in the requests and that their aim is not purely to cause disruption or harass staff in the way suggested. Whilst the effect of dealing with the request may mean that the public authority has additional work to do, which may in turn impact on key members of specialised staff, the Commissioner does not believe that any of the requests could be described as being intentionally antagonistic either in isolation or as a whole.
21. The Commissioner also notes that the complainant has advised him that the subject matter of her current request did not actually form part of the matters being considered in the Judicial Review. He therefore does not accept the public authority's argument above that the intention behind the request was *"to re-open a dispute which was already being debated"*. Having asked for a précis of the Judicial Review from the public authority, the Commissioner can see no evidence that the request being considered here would have formed part of the issues being considered by the Judicial Review.

22. A further focus of the public authority's argument is that the number of requests is large, which has the effect of harassing staff. The Commissioner does not consider that a total of ten requests by this complainant, over a two-year period, could be said to demonstrate 'harassment'. Furthermore, he does not consider a total of 21 requests from all the parties allegedly acting in concert over a two-year period to be voluminous. The public authority is a large organisation which deals with many requests. According to its own website it processed 989 requests in 2009; 939 in 2010; and 185 in the first two months of this year. Therefore, the Commissioner does not accept that the 21 requests from various requesters, even if acting in concert, could be viewed as voluminous.

Is the request designed to cause annoyance and disruption?

23. The public authority has again relied on the volume of requests made to support this argument. As already stated, it has provided evidence of a total of ten requests made by this complainant, including this one. Four were made in 2009, four in 2010 and two in 2011. It has also again relied on the eleven further requests which it believes are part of the same 'campaign'.
24. As already argued above, the Commissioner does not consider this number of requests to be voluminous.
25. The public authority has also advised the Commissioner that there have been other requests which may possibly be linked to the PIA. However, in its own words it stated:

"These have not been provided, or relied upon for the purpose of this request being deemed vexatious as they cannot be proven at this time to be directly linked to the PIA. The subject of interpreter costs did gain a degree of media interest so it is not believed that all of the requests received on this subject are directly linked to the PIA".

The Commissioner has therefore not considered this argument.

26. The public authority advised the Commissioner that it considers that concerns about the outsourcing of interpreters should have been correctly addressed as part of the Judicial Review. It went on to say that this: *"...mitigates any perceived public interests in the disclosure of the requested information whilst the case was ongoing"*.
27. The Commissioner does not accept this argument. First, public interest is not of any concern as this exclusion does not require a public interest test. Secondly, from what he has been able to ascertain, the

Judicial Review did not concern the subject matters behind this request. Furthermore, without possession of the information requested it would not be possible for the complainant to raise concerns as she does not know whether there are any.

28. The public authority has also advised the Commissioner that:

"... the PIA are a group which believes in engaging in campaigns of 'direct action' to meet their own ends. This is evidenced by following the above link to their website where they openly admit to promoting direct action and 'lobbying'.

Due to the volume of these requests, and timing, it is believed that these requests were simply part of one of these campaigns designed to disrupt GMP as they held a grievance with the organisation".

29. The Commissioner accepts that there may well be a 'campaign' of requests in that several of the parties appear to be connected and the requests obviously follow a similar vein of enquiry. In his guidance on vexatious requests³ the Commissioner considers the relevance of campaigns. In such circumstances his view is that the: *"purpose or value must justify both the request itself and the lengths to which the campaign or pattern of behaviour has been taken".*

30. On its website the PIA states:

"PIA is a national membership organisation for Registered Public Service Interpreters to campaign for their profession."

"The Professional Interpreters' Alliance (PIA) will promote and safeguard the interests of professional public service interpreters registered on the NRPSI [National Register of Public Service Interpreters] and uphold standards within the profession. It will campaign for the protection of title and regulation of the profession by statute, as well as fighting against exploitation of the profession by commercial intermediaries and outsourcing of interpreting services within the public sector. PIA's aim is to unite professional public service interpreters in the whole country and work towards full recognition of interpreting as a regulated profession".

31. The Commissioner finds that the PIA makes its intentions clear and demonstrates that its campaigning does have a particular purpose and

³/Global/faqs/~ /media/documents/library/Freedom_of_Information/Practical_application/VEXATIOUS_REQUE...

aim. It says that it is seeking a Judicial Review of outsourcing in another police force, thereby reinforcing the Commissioner's conclusion that it is not the requester's intent to specifically harass this public authority. It also advises of further action which it may consider in the future. Consequently the Commissioner concludes that there is a real purpose behind the request.

Is the request vexatious?

32. The Commissioner has carefully considered the information put forward by the public authority in support of its reliance on section 14(1). Viewed in isolation, the complainant has only ten requests relating to interpreters over a two-year period. The Commissioner does not find this to be voluminous. Furthermore, if he were to consider the requests provided by the public authority to be in the nature of a 'campaign', he notes that these only amount to a further eleven requests over a two-year period. The Commissioner cannot conclude that this amount of requests, made to a large organisation, can be considered to be voluminous. He has noted the nature of the requests, and the parties they have been addressed to, and he does not agree that the intention of these is one of harassment.
33. Accordingly, the Commissioner finds that the request cannot be characterised as vexatious and that the public authority was not justified in relying on section 14(1).

The Decision

34. The Commissioner's decision is that the public authority did not deal with the request for information in accordance with the Act, in that section 14 did not apply. He also finds that the public authority failed to issue its refusal notice within the 20-day statutory time limit.

Steps required

35. The Commissioner requires the public authority to take the following steps to ensure compliance with the Act:
- the public authority must disclose the requested information or issue a refusal notice in accordance with section 17(1) of the Act.

Failure to comply

36. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Right of Appeal

37. Either party has the right to appeal against this Decision Notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

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 15th day of September 2011

Signed

**Jon Manners
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SK9 5AF**