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Mr David Hansen
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Date: 2nd October 2009

Tel No.: (DDI) 01622 654413

FOI Ref: 4167/2009

INFORMATION REQUEST 4167-2009

Mr Hansen,

I am writing in regard to your communication received by Kent Police on 29th May 2009. This communication contained a request for the following information:

<http://www.kent.police.uk/Climate%20Camp/Climate%20Camp.html> stated this morning, in a statement dated 27 March 2009, that "In addition the Chief Constable has requested the National Police Improvement Agency carry out a strategic level review of the policing of Climate Camp. This will be conducted by a senior officer from another force and will involve the consideration of the issues raised in the report published by the Liberal Democrat party regarding the overall policing of this event, as well as the strategy and tactics used in the operation."

I have made a copy of the page, in case it should "mysteriously" disappear".

Please provide me with a copy of the reports by the NPIA, which according to <http://www.indexonensorship.org/2009/05/police-shelve-review-on-kingsnorth-protest/> have been completed and delivered to Kent Police. Please provide copies of the original report and the revised one.

I am very conscious that this reply finds you sometime after both the statutory limit for responding to requests has passed, and also after the 17th of July, which was the date of expiry that we set as the public interest test extension date. I note that you have also requested an internal review into the handling of your request. I am now in a position to provide a full response to your request, and I will address the issues concerning delays in responding first.

The main issue that delayed our response to your request concerned staffing difficulties within this unit. This had previously been conveyed to you in relation earlier requests but the fact that these issues were continuing to cause delays warrants further explanation.

In the early part of this year, the Freedom of Information Team was undergoing staffing difficulties after experienced staff moved on into other roles. Recruiting, vetting and finalising staff into posts in the police service can take some time and it must be acknowledged that there are few if any candidates in the employment market who can be found with prior knowledge of information law. Having sourced candidates with the right potential, it is then necessary to train them while in the role and this requires further expenditure of time and resources. This situation has resulted in lengthy delays in processing some requests and a number of these are currently in a backlog awaiting attention.

The Freedom of Information Act has been in force since 2005 and is now becoming a mature piece of legislation, with a substantial body of case law to inform decisions. The numbers of requests received by forces nationally have seen a steady increase and we know from liaison with colleagues in other forces that the quality of the requests we receive, and the quantity of work that must be taken in responding to such requests, has increased significantly during recent years. Certainly it is the case in Kent Police that, as the Force has become more aware and more committed to the purposes of openness and accountability which underlie the legislation, we are increasingly careful to ensure that the information we release is as complete and as accurate as possible.

Kent Police have now replaced staff and increased resources to the unit handling FOI requests, and we are working hard to deal with new business while reducing the backlog of existing requests. We apologise for any inconvenience that these delays have caused to applicants. We are currently working with the Information Commissioner's Office to discuss and resolve these difficulties.

Kent Police have dealt with a number of enquiries from you regarding the policing of the Camp for Climate Change. I note from our records that prior to receipt of this request, we had also recently received requests from you concerning essentially the same matter (i.e., the policing operation) on March 13th and 1st April 2009.

As well as your request of the 29th May 2009, on the 22nd June you communicated with Kent Police again, this time requesting to know the date of the release of the 'compendium of information' document concerning the policing of the climate camp, which had been referred to as intended for future publication in previous responses to yourself and other applicants.

Please provide the estimated date when this "compendium of information" will be made available. It is now 10 1/2 months since the Climate Camp and it is clear that Kent Police have a lot to hide, which no-doubt explains the constant delays in putting up this "compendium of information".

This was not identified as a separate FOI request, as it primarily requested comment. No date was ever set for the release of the Compendium of Information, which was finally released on the same date as the NPJA documents. This was principally because some of the information included was still being updated and corrected, which would impact upon both documents, in particular important information concerning the numbers of stop and searches carried out during the operation. As this was a dynamic situation it would have been difficult to convey that to you at the time, although it would have been possible to provide a simple 'information not held response'.

I acknowledge that Kent Police could have treated this as a separate FOI enquiry, but we did not. This was caused by confusion in terms of the fact that we were already dealing with the latest in a string of communications from you. No date was ever set for publication and so no recorded information would have been held in regard to your request. The document was always intended for future publication and so it would have been appropriate to issue a formal notice stating this, although there would have been little point. Even if Kent Police had been requested to provide this information previously and had refused to do so, as it was 'information intended for future publication' (and therefore exempt under Section 22 of the Act), there was no requirement for us to set an actual date of publication and it would not have been possible to do so when information was being dynamically compiled. The Act requires only that the information should be published within a reasonable time and we considered that it was reasonable to delay publication until the information was ready. It should also be noted that Kent Police were under no obligation to produce such a document and this was only undertaken in the interests of openness and accountability.

On the 28th June, you requested that a review be conducted into the handling of your (principal) request concerning the NPIA debrief and review documents.

I am writing to request an internal review of Kent Police's handling of my FOI enquiry 'Kingsnorth NPIA report'. This has not been responded to within the maximum permitted time and thus, once again, Kent Police are criminals.

This message appeared to relate to the request received on 29th May, although you did not refer to the reference number provided in our acknowledgement.

As you may by now be aware, there were two exercises that examined the Kent Police operation to police the camp for climate change held at Kingsnorth Power Station in July/August 2008 (Operation Oasis), and these both resulted in reports that to one extent or another, were captured by your request.

The first was a debriefing exercise of officers involved in the operation. This exercise was conducted by Chief Inspector Mike Ismay of the National Policing Improvement Agency (NPIA) in October 2008 and a draft report followed. As you are now aware, the latest version of this document has now been published on the Kent Police website at <http://www.kent.police.uk> under the heading 'Climate Camp'. Your request therefore asked for copies of reports and any draft reports held by Kent Police on the 28th May 2009.

On the 7th July, our Freedom of Information Administrator wrote to you, advising that the Authority needed to determine the public interest in confirming or denying whether the information was held, and citing the Law Enforcement exemption at section 31 of the Act. This message was erroneous and incorrectly adapted from a standard notice. As the existence of the information (in terms of the report) was already a matter of public statement and knowledge, there was no need to consider whether it was appropriate to confirm or deny that the information was held. The statement should have simply identified that there was a need to consider the public interest in the release of draft documentation, which may have released information prejudicial to law enforcement tactics or other related interests.

It must be considered in relation to any document that relates to a policing operation that it may be necessary to consider the public interest in relation to the release of any information contained therein that may prejudice law enforcement, as referred to in Section 31 of the Act.

The specific subsection of the Act that may have applied is section 31(1)(a):

(1) Information which is not exempt information by virtue of section 30 is exempt information if its disclosure under this Act would, or would be likely to, prejudice—

(a) the prevention or detection of crime,

Therefore it had been determined that, in relation to the first report and the release of any draft documents, it was necessary to extend the deadline beyond the original due date in order to consider the public interest in relation to that exemption.

During these considerations, it was quickly determined that there would be no substantial prejudice to Law Enforcement by the release of information contained in any of the documents. However, it was further necessary to consider whether the release of documents created as part of the process of audit, inspections and reviews would represent a different harm, by negatively affecting the review process itself.

It is part of the process of audit, inspections and reviews that initial views and findings are submitted to the body being scrutinised, so that they may have an opportunity to correct any misconceptions or misunderstandings. It is possible to foresee that, should it become common

practice to release such documents, this could have a chilling effect on the willingness of public authorities to submit to, cooperate and communicate freely with such exercises, as this may impede the free and frank exchange of views for the purpose of deliberation and so this could engage the exemption at Section 36(2)(b) and (c) of the Act (Prejudice to the Effective Conduct of Public Affairs).

However, in this specific case the alterations did not present any significant harm in this regard and given the considerable public interest surrounding the policing of the climate camp event and the processes that have subsequently been engaged with the intention to further improve policing at such events, there is substantial public benefit in the release of some information relating to how this process is achieved. Even so, as with all requests for information, such a disclosure is made on a case-by-case basis and this release of information does not set a precedent for the routine release of draft inspection or review documents.

Further to the above, the Department of Constitutional Affairs guidance highlights the following in relation to requests for copies of documents:

It is important to bear in mind however, that the Freedom Of Information Act applies to information, and not to documents. Whilst the information requested is likely to be contained in a document, this does not mean that the document has to be released with exempt material redacted from it. Rather, it may be more appropriate to release solely the information that can be released by creating a new document with only that information contained. This is likely to be particularly relevant where the majority of the information contained in the document does not fall within the scope of the applicant's request.

*DCA Guidance, People's Rights, Freedom of Information
Chapter 08 – Responding to the Request for Information*

In accordance with that guidance, we consulted with the NPIA to construct a summary of all changes to the draft documents, which is attached at Appendix 1. This will also make it easier for you to identify the amendments, which I consider accords with our duty to assist under Section 16 of the Act. We are indebted to the FOI team at the NPIA for their assistance in producing this summary.

Although the Chief Constable acknowledged to the NPIA the usefulness of the debriefing report, a number of issues had been raised in the intervening period by Parliament, the media and the public concerning the policing operation that were not captured by the scope of the first report.

To address this, in March 2009, the Chief Constable contacted the IPCC and the NPIA and asked for a second examination of Operation Oasis, this time intended to address strategic level issues. Assistant Chief Constable Andrew Holt of South Yorkshire Police, an officer with considerable experience in public order policing, undertook to carry out this work.

To an extent, this review superseded the work being undertaken with regard to the earlier debriefing document, so it should be noted that the latest version of the first report is not entirely a finished and polished product.

The terms of reference for the strategic level review were drawn up in April 2009 and the review itself followed that. I note again that your request was submitted on the 29th May 2009. A hard copy first draft of the Strategic Level review document was not presented to Assistant Chief Constable Andy Adams until the end of June. The final version was received around the 14th July and published within a few days.

The Freedom of Information Act allows access to recorded information that existed at the time when the request was received. From this response it should be clear that your request was

submitted prior to some information existing, or prior to it actually being held by Kent Police. There has been some inaccurate reporting in the media that Kent Police was delaying the release of these documents and I hope that this response provides some clarity and reassurance that this was not the case. It had always been the Chief Constable's stated intention from the outset to proactively release the final report on the Kent Police Website and in the interests of openness and accountability this has now been published, in company with the previous debriefing report and the Compendium of Information. This includes the Chief Constable's comments concerning the outcome of the review.

On the 22nd July, you contacted the force again, this time enquiring about your previous questions concerning the Compendium of Information.

I am writing to request an internal review of Kent Police's handling of my FOI enquiry 'Climate camp "compendium of information"'. As I expected of this criminal organisation Kent Police has broken the law yet again by yet again failing to respond to my enquiry within the maximum time allowed. The promised "compendium of information" is not available on the web site either. It is now nearly a year since the illegal activities of Kent Police at the Climate Camp and it has been clear for a long time that Kent Police are trying to cover up their illegal activities and hoping that people will forget all about them.

I have already acknowledged earlier in this letter that Kent Police had not identified your request for the release date of the Compendium as an FOI request. This is partly due to the regularity of communications from you surrounding the policing operation and your manner in presenting these communications in that your requests for information regularly ask for comment rather than recorded information and are couched in terms of attacks upon the Force, which only serve to obfuscate your requests.

When we applied the public interest test to your request concerning the review documents, we identified that you were due to receive a response by the 17th July. On the 22nd July, you contacted us again to point out that you had not yet received this response. On that same day, I contacted you to inform you that much of the information you had requested had been published on the Kent Police website, including the Compendium of Information.

With this response letter I consider that all of the information pertinent to your requests has now been provided to you. I acknowledge that we have not communicated sufficiently with you and that opportunities were missed to deal with your requests more quickly by informing you that information was not yet held or was intended for future publication. I apologise that this has been the case and we are taking steps to improve our communications with our applicants and to deal with requests in a more timely manner.

However, while responding to your numerous requests over the last months, and reviewing the progress of these most recent communications, I have become of the opinion that it is not reasonable to expect staff in public authorities to respond to requests that are submitted in a manner calculated to attack and cause offence.

I can now inform you that this too, contributed to delays in responding to your requests, as I was forced to consider whether I should regard your requests as vexatious in terms of Section 14 of the Act, as follows;

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

Section 14 - Vexatious or repeated requests

The Information Commissioner's guidance regarding vexatious requests states that clearly unreasonable requests can strain an organisation's resources, damage the credibility of the FOIA and get in the way of answering other requests.

Factors that may be considered include, but are not limited to;

Whether the request can fairly be seen as obsessive?

Whether the request is harassing the authority or causing distress to staff?

Whether complying with the request would impose a significant burden in terms of expense and distraction?

Whether the request is designed to cause disruption or annoyance?

Does the request lack any serious purpose or value?

The ICO's guidance advocates taking account of the wider context and history of the request when considering the questions. 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.

When considering the above, I am of the opinion that a number of these factors may be considered in relation to the whole corpus of your requests.

As already stated, your requests are often attempts to elicit comment, and are framed as attacks upon the Authority and by extension its staff. While no obviously offensive language is employed, your use of terms such as 'criminal' and 'illegal' are clearly designed to offend staff working for an organisation dedicated to upholding the law. I have taken issue to such statements in previous responses to you and yet you have continued to employ such terms, although your comments are completely unnecessary to making a request under the Freedom of Information Act.

Many of your communications demand that your requests are dealt with separately. However, public authorities, to a degree, have the right to aggregate requests when they concern essentially the same subject matter, for example, for the considerations of cost to the authority. Your method of communication has made it difficult to engage with you, and it is my view that this is deliberately calculated, as you have no desire to engage with this organisation in a reasonable manner.

Furthermore, your requests are routed via the public forum website 'whatdotheyknow.com'. This website is a useful tool to the purposes of freedom of information as it is often useful for such requests to be dealt with in a public manner. However, it is my opinion that your intention is to abuse the legislation by employing it as a vehicle through which to conduct, on a public forum, an aggressive and offensive dialogue with Kent Police. This is not the purpose of the Act and I believe that it does indeed undermine the credibility of this important legislation.

The purpose of the Act is to promote openness and accountability in public authorities and to provide access to the public to information where there is public benefit in that information being released. With that spirit in mind, Kent Police have indulged your requests thus far and have always been sympathetic to the public interest in releasing information related to the policing of the Climate Camp, from the planning stage to the debriefing and review period. The purposes of openness and accountability have been well served by our release of the debriefing and review documents, and other associated material such as the Compendium of Information.

As stated, we were considering whether your requests could be fairly characterised as vexatious when we received the next 'request' from you dated 19th August, which served to confirm my opinion;

I have now had a chance to study the information which has recently been dragged out of Kent Police about the various police attacks on the fine upstanding citizens attending the Climate Camp. I hope that you will be able to assist me with my enquiries into the theft and attempted theft of items before the climate camp started. This is documented at <http://www.indymedia.org.uk/en/2008/08/405125.html> which speaks for itself.

With a sense of the absurd which Franz Kafka would have been proud of, in the NPIA report these events are mentioned in "THE MAIN AREAS THAT WENT WELL" section of the report. "It was seen by Kent Police that the pro-active execution of a search warrant on the Camp in the initial stages of the operation deprived protesters of resources." Page 12.

The South Yorkshire Police report mentions these activities on page 23, without criticism. Both reports are at <http://www.kent.police.uk/Climate%20Camp/Climate%20Camp.html>

Please answer the following questions:

1) What happened to the two people who were falsely arrested for trying to prevent the police attack? Were they charged? If so, what did the courts do?

2) Have Kent Police apologised to these two people and the three who, it is alleged, were assaulted by police officers using pepper spray?

3) What evidence was presented to the tame magistrate who, I imagine, was responsible for "authorising" this assault?

4) What is the name of this tame magistrate? What court do they pontificate in?

5) Please provide a copy of the search warrant (this will presumably need to be provided as an image).

6) Have Kent Police apologised to the Climate Camp in general over this assault?

7) <http://www.kent.police.uk/Climate%20Camp/Climate%20Camp.html> states that, "I also recognise the report identifies several areas for learning." Has Kent Police learnt anything from these thefts, attempted thefts and assaults, or does Kent Police still think that this is something which "went well"?

Once again, with the exception of question 5, these questions ask for comment, which it has been previously explained to you is not a form of information that a public authority is required to provide under the Act.

I refuse to accept this as a valid request, and therefore I will not issue a separate response for your convenience. Once again, you have chosen to use unhelpful and unnecessary pejorative terminology such as 'tame magistrate', 'thefts', and 'assaults'.

In my view, this communication clearly proves that your purpose is primarily to harass this public authority and its staff and your questions have little serious purpose or value. Such requests waste the valuable time of our staff and impede genuine users of the legislation. Clearly, any information we were to provide would simply result in another communication from

you as you seek to extend your dialogue with the Force. There is a reasonable limit to which authorities should have to respond to requests that seek to examine in detail every aspect of an issue. Even if this request were not couched in pejorative terminology, I consider that Kent Police has now arrived at that limit with your requests.

In my view, to accede to comply with this request would be to accept the vexatious and inaccurate assertions contained therein. I therefore consider that this request is vexatious in nature and Kent Police is not required to comply with the request by providing any information that may be held in regard to it, although it is clear that we are unlikely to hold any information in regard to most of these questions, as most of them appear to have been informed by inaccurate or at least unsubstantiated reportage.

This letter therefore acts as a refusal notice to comply with your request and informs you that Kent Police are no longer prepared to communicate with you on this basis. Furthermore, any future requests on any subject that are couched in similar terms, will also be refused as vexatious under Section 14 of the Act.

You retain the right to complain. A member of staff who has not previously been involved with this request will conduct an internal review of this decision and will endeavour to reply within 20 working days. However, when considering the circumstances, we are not prepared to accept a request for an internal review via the means you have employed to date. You may request a review by writing to:

Head of the Information Compliance Unit
Professional Standards Department
Kent Police Headquarters
Sutton Road,
Maidstone Kent
ME15 9BZ

If you are still dissatisfied following our internal review, you have the right under section 50 of the Act to complain directly to the Information Commissioner. Before considering your complaint, the Information Commissioner would normally expect you to have exhausted the complaints procedures provided by Kent Police.

The Information Commissioner can be contacted at:

FOI Compliance Team (complaints)
Wycliffe House
Water Lane
Wilmslow
Cheshire SK9 5AF

Yours sincerely,

Nigel Amos
Freedom of Information Adviser