

Carl Melling LLM MBA ACIS

Information Assurance Manager

Police Headquarters, Saunders Lane, Hutton, Preston PR4 5SB

Tel: 01772 413332 Fax: 01772 412123 E-mail: carl.melling@lancashire.pnn.police.uk

Mr Paul Ponting

Sent via email to : paul@danoli.com

Previous correspondence :

request-416910-2496d969@whatdotheyknow.com

26 October, 2017

Dear Mr Ponting

FREEDOM OF INFORMATION APPLICATION REFERENCE NO: ICDS/FOI/003705/17

I refer to your Freedom of Information Act (FOIA) request, reference above and your email of the 7th August seeking an Internal Review of the response which has previously been provided.

I apologise that you have not received a response before now, and within the 20 working days, in accordance with advice to public authorities issued by the Information Commissioner.

Your request, received on the 10th July, 2017, was as follows:

I have brought a complaint against Lancashire Constabulary for an incident whereby it was alleged (by a serving police officer), that CID had installed concealed CCTV recording equipment in a public toilet (within the cubicles) in the Lancashire area.

Police have refused to investigate, this is being dealt with separately.

What I want to know is:

What authority would be required to install CCTV in such a sensitive area that is used by adults and children?

What protection would be provided to vulnerable adults and children using such public toilets.

Are the ICO aware of this incident and if so, what justification would be provided.

The response provided on the 7th August, 2017, contained a refusal notice as per Section 17(5) of the Act on the grounds that it was believed that the request was vexatious; accordingly citing Section 14(1).

A review of your request and the response provided has now been undertaken.

I note that the original response was provided in a timely manner.

In considering your review it is acknowledged that the request in itself may not necessarily be particularly onerous for the Force to respond to. However, this request was one of a number all received within a few days. It is believed that these requests can all be linked to issues about which you have been in correspondence with the Force and others, in some cases over some considerable period of time. It is in this context that your request is considered to be vexatious. Whilst it is necessary to consider each request on its merits, as the context and background are relevant to each of your requests that were considered to be vexatious, the salient issues set out within this letter are common to each response.

In formulating this response, due consideration has been given to the Information Commissioner's Guidance document on dealing with vexatious requests. Specifically, reference has been made to relevant judgements on the issue. The FOIA does not define 'vexatious' but the Upper Tribunal has provided guidance, in what is identified as the lead case on the meaning. In *Information Commissioner v Devon CC and Dransfield*, the Upper Tribunal interpreted "vexatious requests" as being manifestly unjustified, or involving inappropriate or improper use of a formal procedure. The Upper Tribunal considered four broad criteria for assessing whether a request was vexatious, namely:

- (i) the burden imposed by the request on the public authority and its staff;
- (ii) the motive of the requester;
- (iii) the value or serious purpose of the request; and,
- (iv) whether there is harassment of or distress to the public authority's staff.

The Commissioner's guidance highlights that "*the key question is whether the request is likely to cause a disproportionate or unjustified level of distress, disruption or irritation*". It is noted that the Upper Tribunal stressed the importance of taking a holistic approach and that subsequently the Upper Tribunal's approach was broadly endorsed by the Court of Appeal, which recognised the need for a decision maker to consider "*all the relevant circumstances*".

Accordingly, the history of your previous information requests and in particular your engagement with the Constabulary has been considered. It is believed that if responses were provided to your FOIA requests, then this would likely result in further correspondence or that the information might be used in a disruptive manner or a manner that might result in disruption. It is noted that whilst you may have outstanding complaints, the information which you seek is not necessary for those complaints to be properly considered. To comply with this request would likely result

in a further disproportionate burden on resources and a detrimental impact on Police Officers/ staff for the reasons which are stated below.

Burden

As initially highlighted there is no significant burden imposed by responding to this request. The request is quite specific. However, the request should be seen in context and this is one of a number of requests. If a response was provided to this request it would likely result in further correspondence of one description or another. The provision of information is likely to contribute towards a course of perpetual engagement with the Force because you will continue to remain dissatisfied with the actions of the force, whatever action is taken and even where such actions may be considered reasonable and appropriate by others.

This creates a burden on those colleagues seeking to deal with information requests in a timely manner from other members of the public, who are already subject to considerable demand. In the original response, an example was provided of your engagement with the Information and Compliance Team in relation to a previous request where you persisted with an Internal Review and provided inaccurate information which required more work to be undertaken when the position had already been established and relayed to you.

In particular there is a greater and more significant burden to other colleagues who will likely be required to deal with subsequent correspondence/ complaints. This creates an unnecessary cost and burden on the public purse. The ICO has highlighted that the emphasis on protecting public authorities' resources from unreasonable requests was acknowledged by the Upper Tribunal in the case of *Information Commissioner vs Devon County Council & Dransfield [2012] UKUT 440 (AAC)*, (28 January 2013) when it defined the purpose of section 14 as follows;

'Section 14...is concerned with the nature of the request and has the effect of disapplying the citizen's right under Section 1(1)... The purpose of Section 14...must be to protect the resources (in the broadest sense of that word) of the public authority from being squandered on disproportionate use of FOIA...' (paragraph 10).

In considering this point, it is noted that you have made in excess of 50 complaints against the police, and this figure continues to grow. The correspondence has been on-going for some considerable time, and the frequency in recent years is such that the Constabulary has placed restrictions in relation to the manner in which communication and engagement with yourself is undertaken.

It is also noted that a number of complaints have not been upheld or the complaints have not been upheld on substantive issues. But the effect has been that matters have had to be reviewed and addressed with the same outcome. In some of these cases, following your dissatisfaction of the review, a further new complaint about has been made about those that have 'investigated the initial complaint'.

The motive, value or serious purpose of the request

It is acknowledged that you will believe that there may be a serious purpose behind your recent requests. In terms of the application of the Act, and the basis of the grounds for refusal, the Force is required to balance your perceived justification for making the request against the potential imposition on the Force and the legitimate and reasonable use of the FOIA.

The nature of the requests that you have submitted might be considered as probing, seeking to find or locate anything which might add to your grievance and enable you to further correspond with the Force to resurrect matters previously investigated and where you remain dissatisfied with the outcome. In this instance, your requests may be seen to form part of a 'campaign', in which you seek to find information to justify your grievances, and the effort to respond may be a disproportionate one.

It is no longer clear that your motives are solely to address issues which might have been a legitimate concern at some previous point. The motive for your requests now seem to be to further a campaign, one element of which appears to be to 'target' Police Officers.

Harassing or causing distress to the staff

In the case of Dransfield, it was highlighted that whilst a finding of vexatiousness does not depend on there having been harassment or distress of the public authority's staff, vexatiousness may be evidenced:

"...by obsessive conduct that harasses or distresses staff, uses intemperate language, makes wide-ranging and unsubstantiated allegations of criminal behaviour or is in any other respects extremely offensive..."

Your conduct and actions following engagement with Police Officers appears to fall within the scope of this description. Some of your allegations are un-substantiated allegations that the Force or specific officers have been engaged in deliberate misrepresentation, or criminal acts, mishandling of complaints, deceit and lying.

This is evidenced by the specific measures that have been put in place regarding officers' initial response when they come in to contact with you. As highlighted within the original response one aspect of your on-going campaign is the publication of personal data, in an accusatory manner about specific police officers. Where you have obtained information you have sought to publish this information, in a way that would cause distress to individuals who have merely sought to carry out their role and duties.

This letter therefore serves to act as a further refusal in accordance with Section 17(5) of the Freedom of Information Act, on the grounds of Section 14(1) that the request is vexatious. Section 14(1) does not oblige a public authority to comply with a request for information if the request is vexatious.

If you are not content with the outcome of this review, you may write to the Information Commissioner. The Information Commissioner can be contacted at: The Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF.

Yours sincerely

Carl Melling
Information Assurance Manager