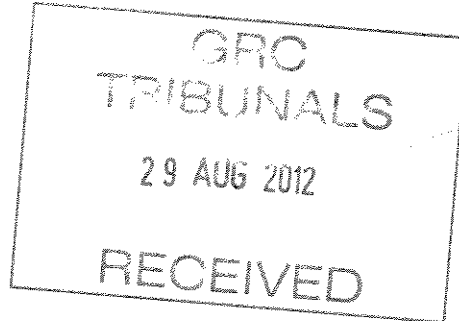


Our Ref: RB / EA/2012/0163
Your Ref: EA/2012/0163

GRC & GRP Tribunals
PO Box 9300
Leicester
LE1 8DJ



28 August 2012

Dear Sirs

Belchamber v Information Commissioner EA/2012/0163

In accordance with Rule 23 of the Tribunal Procedure (First Tier Tribunal) (General Regulatory Chamber) Rules 2009, I attach the Commissioner's Response to the Notice of Appeal in the above matter.

I further enclose a bundle of documents prepared by the Commissioner together with a proposed set of directions for approval.

The Commissioner has set out his position in his response and does not propose to make any further submissions in this matter.

I confirm that a copy of this letter and attached documents have been sent to the Appellant.

I would be grateful if you would acknowledge receipt of this letter.

Yours Faithfully

Richard Bailey
Information Commissioner's Office
richard.bailey@ico.gsi.gov.uk
Tel: 01625 545779



FSC

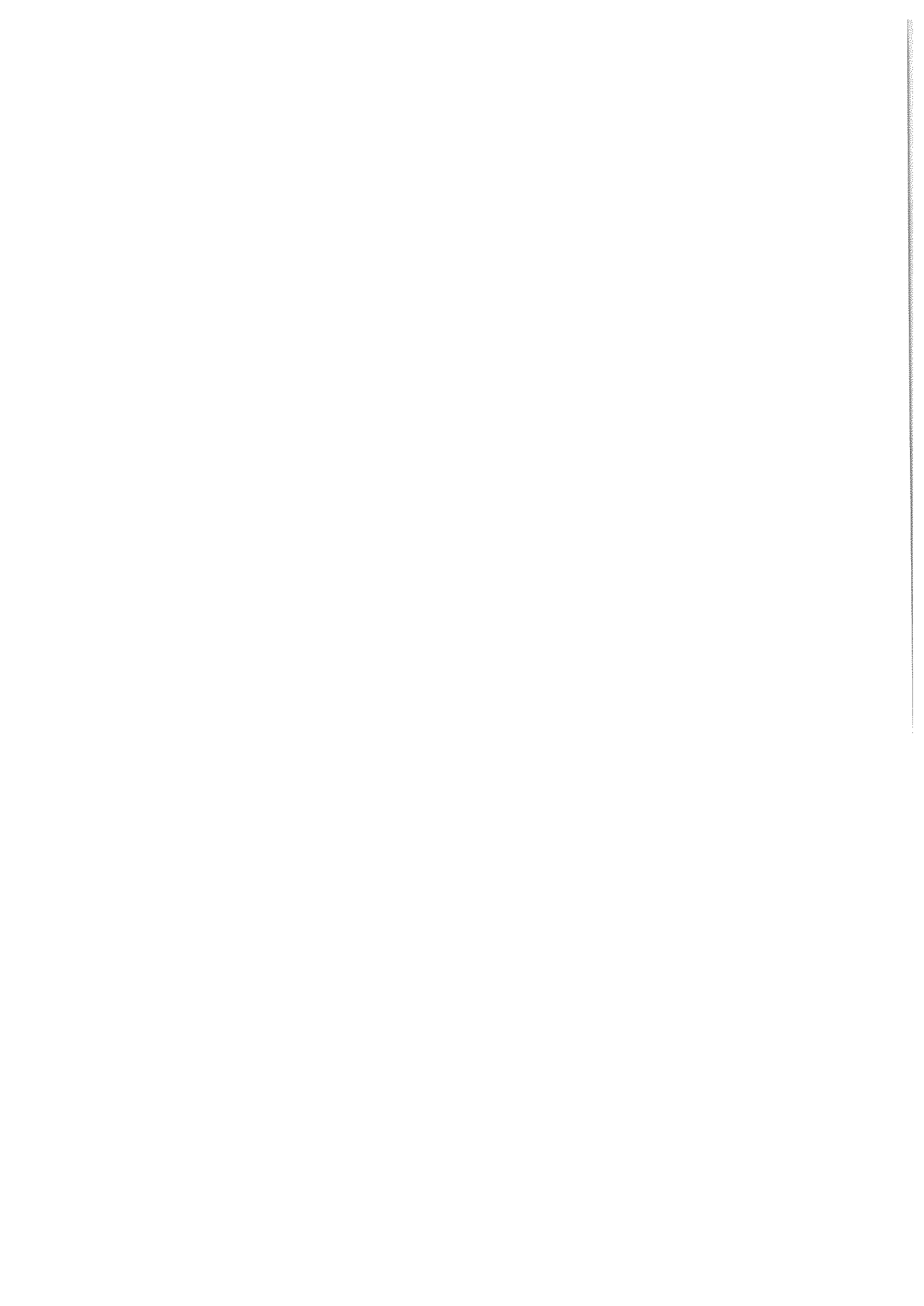
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**IN THE MATTER OF AN APPEAL TO THE FIRST TIER TRIBUNAL
(INFORMATION RIGHTS)
UNDER SECTION 57 OF THE FREEDOM OF INFORMATION ACT 2000**

EA/2012/0163

B E T W E E N:-

IAN BELCHAMBER

Appellant

-And-

THE INFORMATION COMMISSIONER

Respondent

**RESPONSE
BY THE INFORMATION COMMISSIONER**

Introduction

1. This Response is served in accordance with Rule 23 of the Tribunal Procedure (First Tier Tribunal) (General Regulatory Chamber) Rules 2009.
2. Ian Belchamber ("The Appellant") is appealing against the Information Commissioner's ("the Commissioner") Decision Notice under reference FS50433957. The appeal is brought under section 57 of the Freedom of Information Act 2000 ("the Act").
3. The Commissioner intends to oppose this appeal. The grounds upon which he relies are set out below.

Legislative Framework

4. The Act came into force on 1st January 2005.
5. Under section 1(1) of the Act a person who has made a request to a ‘public authority’ for information is, subject to other provisions of the Act: (a) entitled to be informed in writing whether it holds the information requested (section 1(1) (a)) and (b) if it does, to have that information communicated to him (section 1(1) (b)).
6. The duty to provide the requested information imposed under section 1(1) (b) will not arise where the information is itself exempted under provisions contained in Part II of the Act. The exemptions provided for under Part II fall into two classes: absolute exemptions and qualified exemptions. Where the information is subject to a qualified exemption, it will only be exempted from disclosure if, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information (this is the public interest test – see section 2(2) of the Act).

Request by Complainant

7. By email dated 25 November 2012 the Appellant wrote to the Dorset Police (‘the Constabulary’) making a request for information on the costs involved

with the 'Driver Awareness Scheme' operated by the Constabulary. The full text of the request is set out in paragraph 10 of the request.

8. The Constabulary refused the request, relying upon section 12(1) of the Act. Following an internal review, the Constabulary decided that the Appellant's request was vexatious and sought to rely upon section 14 of the Act.
9. The complainant complained to the Commissioner on 31 January 2012 challenging the decision to withhold the information requested.

The Commissioner's Decision

10. The Commissioner served a Decision Notice dated 12 July 2012 in relation to this matter in accordance with s. 50 of the Act. The Commissioner held in his decision notice that the Constabulary correctly determined the request to be vexatious and that therefore section 14 of the Act was correctly relied upon.

The Notice of Appeal

11. The Commissioner believes that the Appellant's grounds of appeal may be summarised as follows:-

The Commissioner erred in concluding that the Appellant's request was vexatious and that section 14 was correctly relied upon.

The Commissioner's response to the Grounds of Appeal

12. Generally, the Commissioner relies on the Decision Notice as setting out his findings and the reasons for those findings. The Commissioner nevertheless makes the following observations in respect of the Appellant's grounds of appeal:-

19. Section 14(1) provides the following:-

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

13. The Commissioner's general approach, based upon his guidance in relation to section 14, is to consider the argument and evidence that the public authority is able to provide in response to 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 in terms of expense and distraction?

Is the request designed to cause disruption and annoyance?

Does the request lack any serious purpose or value?

14. Whilst the Commissioner would accept that his guidance is not binding on the Tribunal, the five factors considered have been consistently approved by the Tribunal in previous appeals.
15. The Commissioner believes that it is not necessary for all of the above criteria to apply but in general the more that apply the stronger the case will be that a particular request is vexatious.
16. The Appellant argues, in paragraph 1 of his grounds of appeal that there is nothing in the Commissioner's decision notice to support an argument that the Appellant's request is vexatious and instead is only attempting to show that the Appellant is vexatious. The Commissioner disputes this. The Commissioner maintains that he clearly set out in his decision notice why the request, having taken into account the context and history of the request, was considered to be vexatious.

Could the request fairly be seen as obsessive?

17. The Appellant firstly argues that "*the background has nothing to do with the request*". The Commissioner would submit that it is reasonable to take into account the history and context of the request when considering whether the same is vexatious.

18. Indeed this was the view of the Tribunal in *Gowers v the London Borough of Camden*¹ at paragraph 29 “...it is not only the request itself that must be examined, but also its context and history” .This approach was maintained by the Tribunal in *Rigby v ICO and Blackpool, Fylde and Wyre Hospitals NHS Trust*² which said “it is entirely appropriate and indeed necessary when considering whether a request is vexatious, to view that request in context” (paragraph 40). In the case of *Welsh v the Information Commissioner*³, the Tribunal said “...it is possible for a request to be valid if made by one person, but vexatious if made by another, valid if made to one person, vexatious if made to another...” (paragraph 21).
19. The Constabulary advised the Commissioner that it estimated that the correspondence between the Appellant and the Constabulary involved “about 400 requests for information and many thousands of emails”. The Appellant argues that this estimate “is a totally absurd and ridiculous exaggeration”.
20. The Commissioner understands from the Constabulary that the Appellant has been contacting Dorset Police on the subject of speed cameras in particular and road safety in general for a period in excess of 7 years. The Commissioner has seen nothing to suggest that that the Constabulary’s estimate above is untrue and would maintain that he is entitled to accept the word of the Constabulary in this regard.

¹ EA/2007/0114

² EA/2009/0103

³ EA/2007/0088

21. In the event that the Tribunal wish to see further evidence regarding the volume and nature of the correspondence with the Constabulary, the Commissioner would suggest that the Constabulary be joined as Second Respondent. In the event that the Constabulary's estimate is accepted, the Commissioner notes that the Appellant accepts in his grounds of appeal that such a level of correspondence "*certainly would be obsessive and excessive*".
22. In any event, it would appear that the level of correspondence has been considerable over a long period of time, a factor which can be legitimately taken into account when considering the context and history of the request.
23. The Commissioner notes that the Appellant has stated that he "*will continue to request information until the requests are properly answered*". This supports the view of the Commissioner in his decision notice that the Appellant will likely continue to request information relating to the same matters. Whilst the Commissioner notes the Appellant's argument that the reason for continuing is that he believes that he is "*not getting proper answers*", the Commissioner would nevertheless contend that the request, in context, could be fairly seen as obsessive.
24. The Commissioner further maintains that he was correct to conclude that it is unlikely that the Constabulary would ever be able to satisfy the Appellant unless

it agreed to adopt a different approach to road safety. Indeed the Appellant accepts in his grounds of appeal that he would “*not be happy until Dorset Police adopt a different approach*”.

25. The Constabulary have also referred the Commissioner to the fact that the Appellant has copied requests and emails to large numbers of public officials.
26. In light of the above, the Commissioner maintains that he was correct to conclude that, on balance, the request could fairly be seen as obsessive.

Is the request harassing the authority or causing distress?

27. The Commissioner notes that the Appellant in his grounds of appeal disputes that his request had the effect of harassing the Constabulary or causing distress to its staff. However, even though the Appellant genuinely believes that the request and contextual behaviour was entirely justified, the effect of the request could still be seen as harassing or causing distress.
28. The Commissioner notes that the Appellant does not appear to dispute the “*accusatory tone*” of his communications which the Appellant believes “*is a result of raising concern of bad practice and not receiving any explanation /denial*” and accepts that this has “*deteriorated due to the length of time this has been going on*”.

29. The Commissioner maintains that it was reasonable to conclude when taking into account the context of the past history of requests and the nature of the communications between the Appellant and the Constabulary relating to the request for a member of staff at the Constabulary to regard the correspondence as harassing. Again, in the event that the Tribunal wish to hear further evidence regarding the effect of the request, it may wish to consider joining the Constabulary as Second Respondent.

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

30. The Appellant argues that any burden imposed by the request “*needs to be undertaken anyway*” as he believes that the information he has requested should be made available in any event. However, it is not the Commissioner’s role to determine how the Constabulary organises its affairs or the information it voluntarily provides. The Commissioner’s jurisdiction is limited to determining whether, on the facts of each case the Act has been complied with in response to a request.

31. The Commissioner maintains that he was correct to conclude, on the facts of this particular case, that, when taking into account the request in the context of

the past history of requests and volume of related communications, the request made on 25 November 2011 would impose a significant burden on the Constabulary.

Does the request lack serious purpose or value?

32. The Appellant raises issues in his grounds of appeal regarding this factor. However, the Commissioner concluded in his decision notice that he was satisfied that the Appellant had a serious purpose in making the request for information.

Is the request designed to cause disruption or annoyance?

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33. The Commissioner notes from the Appellant's grounds of appeal that he does not appear to dispute that he is part of a campaign via his website and that he has encouraged others to join it though argues that such a campaign is justified in this case as he believes that there is "*something that seriously needs to be improved*".

34. It is often the case that the criteria considered when deciding whether a request is vexatious taking into account the context and history of a request overlap. The Commissioner would submit that, based upon the evidence relating to the other factors outlined above (including the volume and nature of the

communications), it would be reasonable to conclude that the way in which the Appellant has conducted his campaign (even though he may have a serious purpose in making the request) suggests an intention and motivation to cause disruption or annoyance.

Conclusion

35. Taking into account his conclusions in respect of four of the criteria outlined above, the Commissioner remains satisfied that the Appellant's request, on the particular facts of this case, was vexatious. The Commissioner therefore maintains that he was correct to conclude that section 14 of the Act is engaged.
36. In light of the above, the Commissioner invites the Tribunal to dismiss the Appeal.

Oral / Written hearing

42. The Commissioner believes that it would be appropriate and proportionate for this appeal to be decided on the papers.

DATED this 28th day of August 2012

Name and address of Respondent / Address for service:-

Richard Bailey
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF
Email: Richard.bailey@ico.gsi.gov.uk

**IN THE MATTER OF AN APPEAL TO THE FIRST TIER TRIBUNAL
UNDER SECTION 57 OF THE FREEDOM OF INFORMATION ACT 2000**

BETWEEN:

Appeal No. EA/2012/0163

IAN BELCHAMBER

Appellant

And

INFORMATION COMMISSIONER

Respondent

DIRECTIONS

1. The matter is to be considered on the papers.
2. By 13 September 2012 the Appellant is to serve upon the Tribunal and the Commissioner any further written submissions s/he wishes the Tribunal to consider in reaching its determination. The Appellant should attach to his/her submissions copies of any documents on which s/he wishes to rely unless these are already included in the bundle prepared by the Commissioner. If the number of those documents exceeds ten in number they should be included in a paginated bundle, with an index, and three copies should be sent to the Tribunal in addition to the copy sent to the Commissioner.
3. If either party wishes to make additional representations they should do so in writing by 20 September 2012.

28.8.12

