

Freedom of Information Act 2000 (FOIA)

Decision Notice

Date: 21 November 2011

Public Authority: Police Service of Northern Ireland
Address: 65 Knock Road
Belfast
BT5 6LE

Decision (including any steps ordered)

1. The complainant requested guidance on what information can be given to the victims of crime. The Police Service of Northern Ireland (the PSNI) refused to comply with the request, arguing that it was vexatious under section 14(1) of the Act.
2. The Commissioner's decision is that the PSNI wrongly assessed the complainant's request as vexatious.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Respond to the request, either by providing the requested information or by issuing a refusal notice under section 17 of the Act.
4. The public authority must take these steps within 35 calendar days of the date of this Decision Notice. Failure to comply 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.

Request and response

5. The complainant in this case was the victim of a number of incidents which were investigated by various police forces including the PSNI. The complainant is of the view that these incidents have not been properly investigated and has made several requests for information relating to the investigations.

6. On 22 December 2010 the complainant made the following request to the PSNI:

"I would like to request information concerning all guidance given to PSNI from the Home Office and/or any other third parties concerning what details which can be passed on to a victim, ie me as a victim of [details of incident];

- a. Please supply all information, including guidance, (and protocols), on what information I can be given as a victim with regard to FOIA and DPA requests.*
- b. Please confirm if any instructions or guidance exists, (and protocols), on how PSNI, your office handle my case [details of incident] including my requests to DPA, FOI, if so, I would like a copy of this material, information".*

7. The PSNI responded on 25 January 2011, stating that the request was considered vexatious; therefore it was being refused under section 14 of the Act. The PSNI explained that it had taken this view because the request of 22 December 2010 was considered similar to a previous request (made on 19 December 2010) which had been refused as vexatious. The PSNI advised the complainant that:

"...any subsequent requests in this area will be categorised as vexatious and will not be administered in any capacity".

8. On 27 January 2011 the complainant requested an internal review. On 18 February 2011 the PSNI advised the complainant that it had now completed the internal review. The PSNI stated that it had decided to uphold the original decision to refuse the request under section 14 of the Act.

Scope of the case

9. The complainant has asked the Commissioner to consider whether or not his request of 22 December was correctly refused as vexatious. The complainant advised that, although he was the victim of certain incidents, he had been given "little or no detail about those cases" by the PSNI. Therefore the complainant wanted to establish what level of information he should have expected to receive.
10. The complainant has made a number of complaints to the Commissioner in respect of requests he made to the PSNI. The Commissioner has considered each request separately; therefore this Decision Notice relates only to the request made on 22 December 2010. However the

Commissioner's Decision Notice in relation to the request of 19 December¹ is relevant to this complaint as it covers some similar considerations and arguments.

11. The Commissioner is of the view that the request of 22 December should have been considered under the Data Protection Act 1998 (the DPA) as well as under the Act. This is because the complainant has asked whether the PSNI holds any information on handling cases and his cases in particular. The Commissioner therefore considers it likely that some of the relevant information, if held, will be personal data relating to the complainant. This would be exempt from disclosure under the Act by virtue of section 40(1), but should be considered as a subject access request under the DPA. The Commissioner has written to both parties separately about this aspect of the complaint.
12. Therefore the Commissioner's investigation under the Act was limited to the parts of the request which do not relate to the complainant's personal information. The PSNI provided a detailed submission to the Commissioner on 21 April 2011, and provided further information on 5 October 2011.

Reasons for decision

Section 40(1) – personal data of the requester

13. As indicated above, the Commissioner is of the view that some of the requested information, if held, is likely to be personal data relating to the complainant. Section 40(1) of the Act states that information which is the personal data of the requester is exempt from disclosure under the Act.

Section 14 – vexatious requests

14. Section 14(1) of the Act states that a public authority is not obliged to comply with a request if that request is vexatious. The term vexatious is not defined in the Act, but the Commissioner's published guidance sets out five criteria by which a request may be assessed:
 - whether compliance would create a significant burden in terms of expense and distraction
 - whether the request is designed to cause disruption or annoyance

¹ ICO reference FS50387372

- whether the request has the effect of harassing the public authority or its staff
 - whether the request can otherwise fairly be characterised as obsessive
 - whether the request has any serious purpose or value
15. The PSNI provided a detailed submission in relation to the request of 22 December. It also referred the Commissioner to the arguments it had submitted in relation to the 19 December request. The PSNI argued that, as it had considered that request to be vexatious, it followed that the request of 22 December was also vexatious as it was on a similar theme.
16. The Commissioner has issued a Decision Notice in relation to the previous complaint, and found that the PSNI had wrongly assessed that request as vexatious². Consequently the Commissioner ordered the PSNI to comply with that request.
17. In light of this, the Commissioner has also considered the arguments provided by the PSNI in the context of the request of 22 December, and the Commissioner's own findings in relation to that complaint.

Does the request lack any serious purpose or value?

18. The PSNI maintained that the request could be seen to lack serious purpose or value because there were existing processes in place:

"in relation to the appropriate sharing of information between the Police Service and the applicant which are fully compliant with all legislation".

19. The PSNI also stated that it had previously provided the complainant with information relating to its investigation, and that the complainant knew that the PSNI would not release further information.
20. The Commissioner is of the view that it is essential to consider every request received by a public authority, and to avoid making assumptions about the requested information. In this particular case the complainant is not asking for any information about an investigation. Rather, the request focused on what information can be given to the victims of crime. The PSNI has advised the Commissioner that it has existing processes in place, and in fact the complainant appears to seek information about these processes.

² Decision Notice FS50387372

21. Therefore the Commissioner does not agree with the PSNI that the request of 22 December had no serious purpose or value.

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

22. The PSNI argued that compliance with the request would impose a significant burden both in terms of cost and diversion of staff from their core functions. The PSNI argued that it had already amassed a considerable amount of paperwork in dealing with the complainant's correspondence. The PSNI also argued that compliance with the request of 22 December would result in further requests being made.
23. As discussed in relation to the request of 19 December, the PSNI also referred to three other requests submitted by the complainant between October 2010 and February 2011. One request was handled under the DPA, and two under the Act. The PSNI was of the view that this demonstrated the burden placed on it by the complainant's requests.
24. The Commissioner notes that section 14(1) may be relevant where the public authority has considered the burden of compliance with the request both in terms of cost *and* of diverting staff away from the core functions of the authority in question.
25. The request of 22 December asked specifically for instructions or guidance on the provision of information to the victims of crime, and the Commissioner is of the view that compliance with this request alone would be unlikely to constitute either a significant burden or distraction. The Commissioner accepts that complainant has been in correspondence with the PSNI for some time, but notes that the complainant is dissatisfied with the level of information provided to him by the PSNI. Given the circumstances in this particular case the Commissioner considers it not unreasonable that the complainant should seek to understand the normal procedures or policy in place which inform the PSNI's provision of information to victims of crime.
26. The Commissioner is not satisfied that the PSNI has adequately explained how compliance with the request of 22 December would lead to further requests, particularly given that it focused mainly on police procedures, rather than information relating to a particular investigation. Therefore the Commissioner is not satisfied that compliance with this request would impose a significant burden on the PSNI.

Is the request designed to cause disruption or annoyance?

27. The PSNI argued that requests submitted by the complainant were designed to cause disruption to the normal business process as they related to a live investigation.

28. However, the Commissioner has noted above that the request in this case is not for information relating to a particular investigation. Rather, compliance with the request could be expected to improve the complainant's understanding of the "normal business process".
29. In any event, the Commissioner is of the view that this criterion will normally only apply where there is evidence that the complainant *intended* to cause disruption or annoyance. The Commissioner has not been provided with any evidence to suggest that such an intention existed in relation to this request.

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

30. This question focuses on the effect the request had on the PSNI, taking into account the history of the case and the manner of any previous dealings with the complainant. It is important to highlight that whilst the complainant may not have intended to cause harassment or distress, the Commissioner must also consider whether that was in fact the effect it did have. A complainant's reasons for making the request may in themselves be reasonable. However, a request may still be considered to be vexatious because of the effect it has had on the public authority and its staff.

31. The PSNI argued that the complainant used:

"...defensive and accusatory language and constantly requests evidence and explanations of actions undertaken in the processing of his requests."

32. However, the Commissioner expressed the view in the previous Decision Notice that the complainant's correspondence reflected the complainant's dissatisfaction with the service provided by the PSNI. Although the Commissioner accepts that the complainant's language is not always helpful, he considers the examples cited by the PSNI to fall short of that which might be said to have the effect of harassing or causing distress.
33. The Commissioner therefore does not consider that the PSNI has demonstrated that the request of 22 December had the effect of harassing the PSNI or causing distress to staff.

Can the request fairly be seen as obsessive?

34. The Commissioner considers that the nature and frequency of requests in the context of an ongoing dispute can be taken into account when assessing whether a request can fairly be seen as obsessive.

35. The PSNI advised that the complainant had made requests to other public authorities, which showed a “pattern of interaction” with other authorities. However, the Commissioner is required to consider the complainant’s request of 22 December, rather than his correspondence with other public authorities.
36. The PSNI stated that it had been in correspondence with the complainant since May 2010, and that this correspondence was dealt with as normal course of business until the complainant’s request of 13 October 2010. The PSNI argued that this correspondence constituted evidence of obsessive behaviour on the part of the complainant.
37. The Commissioner notes that the correspondence from May to October focused on the PSNI’s investigation of a particular incident involving the complainant. As indicated above the complainant was dissatisfied with the information he received about the PSNI’s investigation and made the request of 22 December to find out what level of information was normally provided to victims. The Commissioner does not consider this to indicate a pattern of obsessive behaviour. Rather, the Commissioner’s view is that the request of 22 December could be considered similar to a “meta-request” in that the requested information may inform the complainant about how his previous correspondence was handled by the PSNI.

Conclusion

38. As set out above, the PSNI was of the view that the request of 22 December was linked to the request of 19 December. The PSNI concluded that the request of 19 December was vexatious, and this conclusion followed through to the request of 22 December.
39. In finding that the request of 19 December was not vexatious, the Commissioner commented that:

“The PSNI did not appear to consider the request on its own merits, but allowed its judgment to be influenced by its relationship with the complainant.”
40. The Commissioner finds that the PSNI failed to consider the request of 22 December on its own merits, but considered it in the context of its refusal of the request of 19 December. In any event, the Commissioner is not satisfied that the PSNI has made sufficient arguments in relation to the decision to refuse the request as vexatious. Accordingly, the Commissioner finds that the request was wrongly assessed as vexatious, and the PSNI ought to have complied with it.

Right of appeal

41. 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

42. 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.

43. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this Decision Notice is sent.

Signed

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