

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 25 July 2013

Public Authority: Chief Constable of South Wales Police

Address: Police Headquarters
Cowbridge Road
Bridgend
CF31 3SU

Decision (including any steps ordered)

1. The complainant requested various information in respect of a number of police officers and undercover police vehicles registered to South Wales Police. South Wales Police refused the request on the basis that it was vexatious citing section 14(1) of the FOIA. The Commissioner's decision is that South Wales Police has correctly relied on section 14(1) of the FOIA. The Commissioner does not require any steps to be taken.

Request and response

2. On 23 June 2012, the complainant wrote to South Wales Police (SWP) and requested the following information in respect of undercover police vehicles registered to SWP for the following dates: Wednesday June 6th, Thursday June 7th and Friday June 8th.
 - 1) *"How many undercover police cars entered [named road A] on the above dates between 6.30am and 11.00pm?"*
 - 2) *How many undercover police cars travelled along [named road B] (northbound) from [named junction A] of the M4 entry to the [named exit B] on the above dates between 7.20am and 7.40pm?"*
 - 3) *How many undercover police cars travelled along [named road B] (southbound) from [named entry B] to [named junction A] of M4 exit on the above dates between 4.30pm and 4.45pm?"*
 - 4) *How many undercover police cars travelled along [named road C] on Monday 11 June between 7.10am and 7.15am?"*

3. On 30 June 2012 the complainant submitted a further request for information in respect of undercover police officers and specified police vehicles on dates ranging from 1 June 2012 to 13 June 2012.
 1. *"For the vehicles listed below, please identify the drivers and vehicle registration plates (if unidentified).*
 2. *Please define the nature of the response for emergency vehicles.*
 3. *Please list the number of undercover police officers within a half mile (800 metres) of the marked vehicles for the observations identified by an asterisk.*
 4. *Were the two emergency police motorbikes [specified date A] driven by the same officers on [specified date B] at 5.55pm in [named road and town] (also on emergency call)?..."*
4. SWP responded on 11 July 2012. It stated that it was refusing both requests on the basis that they were vexatious and cited section 14(1) of the FOIA.
5. Following an internal review, SWP wrote to the complainant on 15 August 2012 upholding its original decision to refuse both requests by virtue of section 14(1) of the FOIA.

Scope of the case

6. The complainant contacted the Commissioner on 6 January 2012 to complain about the way his request for information had been handled. He disputed SWP's claim that the requests were vexatious arguing that his requests are persistent in their endeavour to provide evidence of professional mis-conduct of certain police officers employed by SWP.
7. The Commissioner has therefore considered both the arguments of SWP and the complainant as part of his investigation of this complaint.

Reasons for decision

Section 14(1)

8. Section 14(1) of the FOIA states that section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious. There is no public interest test.
9. The term 'vexatious' is not defined in the FOIA, however, the Upper Tribunal in the Information Commissioner vs Devon CC and Dransfield [2012] UKUT 440(AAC), (28 January 2013) took the view that the ordinary dictionary definition of the word 'vexatious' is only of limited use, because the question of whether a request is vexatious ultimately depends on the circumstances surrounding that request.
10. In further exploring the role played by circumstances and whether the request has adequate and proper justification, the Tribunal concluded that 'vexatious' could be defined as the "*...manifestly unjustified, inappropriate or improper use of a formal procedure.*" (paragraph 27)
11. Consistent with the Upper Tribunal's decision which established the concepts of 'proportionality' and 'justification' as central to any consideration of whether a request is vexatious, the Commissioner's recently amended guidance for section 14 confirms that the key question to ask when weighing up whether a request is vexatious is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress.
12. Where this is not clear, the public authority should weigh the impact on the authority of complying with the request and balance this against the purpose and value of the request. In doing this, public authorities will inevitably need to take into account the wider factors such as the background and history of the request.

Is the request likely to cause a disproportionate or unjustified level of disruption, irritation or distress?

(a) The impact of the request

Burden on the authority

13. SWP has confirmed that complying with the requests themselves, either taken in isolation, or together, will not present a huge burden on its resources. The Commissioner also notes that the tone of the requests is neither abusive nor aggressive and the complainant does not appear to

be targeting either request towards a particular employee or office holder against whom he may hold some personal enmity.

14. The Commissioner does not therefore consider that the effort required to comply with either or both of these requests would be grossly oppressive in terms of the strain on resources.

Unreasonable persistence

15. However, SWP have argued that the circumstances surrounding these requests are indicative of an unreasonable persistence on behalf of the complainant. In support of this claim, SWP has supplied evidence that these requests were the latest in a long series of overlapping requests and other correspondence ultimately escalated to its Professional Standards Department and the Independent Police Complaints Commissioner, ('the IPCC'). SWP considers the complainant's refusal to let this matter drop following the conclusion of this process shows an unreasonable persistence on his part, and in so doing renders these two requests vexatious.
16. In January 2009, the Professional Standards Department investigated the complainant's concerns that he had been subject to police harassment over a ten year period. The alleged harassment took the form of being constantly followed, tracking devices being fitted to his last five cars, a tap being placed on his telephone and a CCTV camera being fitted opposite his home. This complaint was not upheld.
17. The complainant's subsequent appeal to the IPCC was also not upheld. On 24 June 2011, the complainant then made further allegations similar to his original complaint in that he believed his car had been fitted with a tracking device. The complainant also alleged that the harassment had now escalated to include vehicles from the emergency services and that police vehicles were continuing to target his car in an intimidating manner. The IPCC investigation concluded on 27 July 2011 that there was no evidence to support this complaint. The complainant has also been served with a document which confirms that SWP is not conducting any surveillance directed towards him.
18. SWP believes that the complainant, having exhausted both the internal and external complaints processes, has now resorted to submitting requests for information under the FOIA which will neither assist his case nor resolve his issues.
19. SWP has provided evidence of 20 requests for information that it has received from the complainant over the period from January 2011 to June 2012. Of these, 13 were in relation to police drivers and/or police vehicles. In responding to these requests, SWP have conducted a

minimum of 54 searches on vehicles to find out who was driving the vehicle and/or the nature of the journey. The complainant was also notified in his request dated 18 May 2012 that SWP would refuse to comply with any future requests of this nature by virtue of section 14(1) of the FOIA.

20. The Commissioner notes that whilst these requests are not all identical in nature, many of them are very similar to the two subject to this notice and he has reproduced an example below of one of these dated 1 March 2012 to demonstrate their similarity.

"Please identify drivers of the following police vehicles and the time the camera van was in position on [named road A].

- Sunday 19 Feb[ruary] 10:34am, camera van [registration number] in [named road A]...*
- Sunday 26 February 10:28am, police Focus [registration number] exits from [named street A] to [named road A] proceeds to [named road B] roundabout and returns via [named road A]; 1:34pm police van [registration number] on [named road C], 0.5 miles from [named place] travelling west.*

Please identify the vehicles and drivers of the police vehicles

- Friday 24 Feb[ruary] 10.02pm police van on [named road D] between [named town A] and [named town B], travelling towards [named town B];*
 - 10:07pm Focus travelling under [named] railway bridge, [named] Square, leaving [named town A];*
 - 10:09pm Mondeo on [named road D, named town A], travelling towards police station.*
 - Saturday 25th February 8:49am, car on [named road D] travelling towards police station."*
21. SWP considers that even though the complainant may not intentionally be misusing the legislation, the resultant effect is that he is using the legislation as an attempt to further his complaint of harassment which has already been dealt with.
22. SWP has further informed the Commissioner that it considers that there has been an escalation in the number of requests, the frequency of the requests and the number of sightings to which each request relates. SWP further considers that if it had not refused these requests, the

situation would remain on-going and responding to future requests will neither assist his case nor resolve his issues.

The purpose and value of the request

23. The complainant on the other hand has disputed the claim that either or both of the requests are vexatious and considers that he is demonstrating persistence in his endeavour to follow a line of inquiry. The complainant has expressed dissatisfaction with the standard of the investigation of both the Professional Standards Board and the IPCC. He also accepts that he is not being investigated by SWP but considers the matter relates to the professional misconduct of some of its officers. He believes that in refusing these requests, SWP is now blocking access to information that would strengthen his case against the police officers involved.
24. The complainant also confirmed to SWP in his request for an internal review, that he is compiling a list of police drivers that target his car and he considers that this is persistent, current and highly organised. He added that whilst there may be a pattern to his requests, they do not target one individual and differ in reference to date, time and location. The complainant also confirmed to SWP that he is trying to establish the mechanism behind the targeting and suspects that it might be facilitated by unmarked police cars.
25. In relation to the two specific requests subject to this notice, the complainant has confirmed that for the first time, his requests focus on the proximity of the covert police vehicles to his car whenever he has encountered the marked police vehicles. He believes that he met the seven vehicles in his letter of 30 June 2012 at roundabouts or road intersections and any deviation to his journey time by even 20-30 seconds would mean that he would not have seen these vehicles. He believes that the likelihood of these encounters happening by chance is remote but that this pattern of activity has been repeated monthly for a period in excess of 12 months. He further believes that any claim that his observations and complaint lack substance are statistically unjustifiable.
26. On the other hand, whilst SWP acknowledges that the complainant may feel his actions are persistent in trying to resolve his concerns, SWP has stated that the complainant has never been stopped by any of its vehicles or been directly approached by any of its officers. He has been given formal documentation stating that he is not under surveillance, has video equipment installed in his car which allows him to record and request information in relation to every police vehicle or police officer he encounters during his travel. His complaints regarding this matter were not upheld by the Professional Standard Department and his subsequent

appeals to the IPCC were also not upheld. The complainant has also been directed to the Regulation of Investigatory Powers Act and advised of the relevant complaints procedure.

27. SWP considers that these requests centre on re-opening issues that have already been investigated and responded to through formal channels. It therefore considers that the only purpose to these requests is part of a wider campaign which shows an endless wish to debate the original issue which has long been exhausted. SWP believes that there has come a time when the complainant should let the matter drop and continuing his campaign is no longer justifiable.

The balance between the impact of the request on the public authority and the purpose of the request.

28. The Commissioner has considered the balance between the impact of responding to these requests on SWP against the purpose and value of the requests. In doing this, and consistent with the Upper Tribunal's ruling referred to in paragraph 9 of this notice, he has paid particular attention to the circumstances surrounding both requests.
29. The Commissioner acknowledges that the complainant genuinely considers that his requests have a serious purpose and value and notes that complying with the requests, either individually or together, does not represent a significant burden on SWP. The Commissioner also notes that the tone of the requests is neither abusive nor aggressive and that the complainant does not appear to be targeting his requests towards a particular employee or office holder whom he may hold some personal enmity.
30. However, the Commissioner is mindful that the complainant's concerns have already been investigated internally by the Professional Standards Department, and externally by the IPCC, with neither body upholding his complaints. Although he acknowledges that the complainant is not satisfied with the quality of either of these investigations, it is beyond his remit to consider these. The Commissioner also notes that the complainant has been given written documentation from SW confirming that he is not under surveillance by SWP.
31. Additionally, the Commissioner has taken into consideration that the complainant has submitted a total of 20 requests for similar information in the period between January 2011 and June 2012 and believes that the nature of these requests is indicative of an attempt to re-open issues that have already been investigated and responded to through formal channels and as such, demonstrates an unreasonable persistence on the part of the complainant.

32. In the Commissioner's view, the purpose of the request does not outweigh the impact of the request in terms of the disproportionate and unjustified level of disruption, irritation or distress to the public authority. The Commissioner has therefore concluded that they constitute an inappropriate or improper use of the FOIA and in line with the Upper Tribunal's definition of the terms 'vexatious' referred to in paragraph 10 of this notice, that SWP were correct to rely on section 14(1) of the FOIA in respect of both requests.

Right of appeal

33. 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

34. 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.
35. 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

Andrew White
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