

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 26 September 2017

Public Authority: Independent Police Complaints Commission

Address: 90 High Holborn
London
WC1V 6BH

Decision (including any steps ordered)

1. The complainant submitted a multi part request for information to the Independent Police Complaints Commission ("IPCC") for information about applications made to the IPCC by the police to disapply complaints about them. The IPCC refused to comply with the request on the grounds that it was vexatious within the meaning of section 14(1) of the FOIA.
2. The Commissioner's decision is that the IPCC was entitled to rely on section 14(1) of the FOIA to refuse to comply with the request.
3. The Commissioner requires no steps to be taken.

Request and response

4. On 29 April 2017, the complainant wrote to the IPCC via the public *Whatdotheyknow*¹ website and requested information in the following terms:

"This request relates to applications made to IPCC by police to disapply complaint/s. I would like the following information;

Q1: How the IPCC deal with such applications. I would like details A to Z of how such applications are dealt with from start to finish. This should also include; a) number of IPCC staff who are involved with case, all decisions. b) how the IPCC record all decisions, rationale, explanation in case/s. c) what is the staff level (casework managers, team leaders etc) of different staff who deal with cases to disapply, who make decisions, record rationale explanation in such case/s . d) what forms, records or documents are IPCC staff required to complete when dealing with dis applications. Where and how do the IPCC store all of the information (name of all IPCC systems) relating to this part of the request.

Q2: I would like the IPCC to disclose blank copies of all of the forms, documents (showing lay-out, details to be included etc) that are required to be completed relating to Q1 of this request.

Q3: A copy of IPCC staff manual, handbook which covers (deals with) how staff deal with dis applications are dealt with etc.

Q4: I would also like details of what powers, if any, the IPCC have relating to how the investigation is carried out, dealt with by the force after IPCC has refused to disapply complaint/s. Can the IPCC direct, order the police to investigate the complaint in a particular way etc.

Q5: A copy of guidance, rules policy etc that relates to proportionate Investigation/s by police and IPCC which also includes E.g. how the IPCC define a proportionate investigation, the type of complaints which can and cannot be dealt with by way of proportionate investigation."

5. The IPCC responded on 30 May 2017. It stated that it was not obliged to comply with the request on the grounds that it was vexatious within the meaning of section 14(1) of the FOIA. In refusing the request, it said:

¹ <https://www.whatdotheyknow.com/>

"We have considered, therefore, whether your purpose in making the request could justify the resources that would have to be committed to answering it.

In attempting to balance the impact of your request against its purpose and value, I have taken into account the very significant resources that have already been committed by the IPCC to your previous information request, of which they have been in excess of 60 over a seven year period. I have also noted from your previous correspondence that your requests are often motivated by your belief that the IPCC is actively engaged in obstructing and misleading you and that you have persisted in this belief despite the very significant amount of information we have already disclosed to you. It is reasonable to conclude from this history that you will continue with your campaign of enquiries and requests to the IPCC no matter what information is supplied.

Having regard to the guidance and decisions concerning the relevance of such evidence to an assessment under section 14(1), I am in no doubt that the subject matter of your latest request, when combined with the context, frequency and duration of your previous correspondence, provides substantial support for my finding that the disruption that would be caused by compliance cannot be justified."

6. The complainant requested an internal review on 7 June 2017 but heard nothing further from the IPCC.

Scope of the case

7. The complainant contacted the Commissioner on 11 July 2017 to complain about the way his request for information had been handled.
8. Given the wider background to the matter, the Commissioner has considered the IPCC's application of the exemption at section 14(1) of the FOIA without waiting for it to complete an internal review.

Reasons for decision

Section 14 - vexatious or repeated requests

9. 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.
10. The term 'vexatious' is not defined in the FOIA. The Upper Tribunal considered the issue of vexatious requests in the case of the *Information Commissioner v Devon County Council & Dransfield*². The Tribunal commented that the term could be defined as the "*manifestly unjustified, inappropriate or improper use of a formal procedure*". The Tribunal's definition clearly establishes that the concepts of proportionality and justification are relevant to any consideration of whether a request is vexatious.
11. In the Dransfield case, the Upper Tribunal also found it instructive to assess the question of whether a request is truly vexatious by considering four broad issues: (1) the burden imposed by the request (on the public authority and its staff), (2) the motive of the requester, (3) the value or serious purpose of the request and (4) harassment or distress of and to staff.
12. The Upper Tribunal did, however, also caution that these considerations were not meant to be exhaustive. Rather, it stressed the:

"...importance of adopting a holistic and broad approach to the determination of whether a request is vexatious or not, emphasising the attributes of manifest unreasonableness, irresponsibility and, especially where there is a previous course of dealings, the lack of proportionality that typically characterise vexatious requests" (paragraph 45).
13. The Commissioner has published guidance on dealing with vexatious requests³. That guidance includes a number of indicators that may apply

² <https://www.judiciary.gov.uk/judgments/info-commissioner-devon-county-council-tribunal-decision-07022013/>

³ <https://ico.org.uk/media/for-organisations/documents/1198/dealing-with-vexatious-requests.pdf>

in the case of a vexatious request. The fact that a request contains one or more of these indicators will not necessarily mean that it must be vexatious. All the circumstances of the case will need to be considered in reaching a judgement as to whether a request is vexatious.

14. As discussed in the Commissioner's guidance, the relevant consideration is whether the request itself is vexatious, rather than the individual submitting it. However, a public authority may also consider the context of the request and the history of its relationship with the requester when this is relevant. The Commissioner's guidance states:

"The context and history in which a request is made will often be a major factor in determining whether the request is vexatious, and the public authority will need to consider the wider circumstances surrounding the request before making a decision as to whether section 14(1) applies".

15. Sometimes it will be obvious when a request is vexatious, but sometimes it may not. In that respect, the Commissioner's guidance states:

"In cases where the issue is not clear-cut, the key question to ask is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress".

The complainant's view

16. The complainant disputed that the request was vexatious. In his request for an internal review he referred the IPCC to the definition of vexatious in Dransfield and said that his request did not meet that definition.

"I have at no point ever previously requested this information and have made a legitimate request for it so that I (other members of the public) [sic] can understand how the IPCC, it's [sic] staff deal with such cases (including a number of my own cases). There is very little (or no) information about this on IPCC's website nor in public [sic] (on net etc) to help public understand. In fact the IPCC have revoked [sic] their Case Officer Manual from public domain.

Campaign:

The wild claim being made by the IPCC of a "campaign" can also be shown to be false. There is no evidence of a "campaign" and the IPCC have not included any evidence to demonstrate that there is and or [sic] that this request is vexatious..."

17. He further stated that the information he had requested would be readily available to the IPCC and that it would take little effort to deal with the request. He reminded the IPCC that only a request may be deemed vexatious, and not the individual who submits it.

The IPCC's view

18. The IPCC explained that the request was for information relating to the IPCC's handling of applications by the police asking for permission to disapply the requirements of Schedule 3 of the Police Reform Act 2002 ("the PRA") to a complaint against police. Refusing to comply with the request on the basis that section 14(1) of the FOIA applied, the IPCC told the Commissioner that the request engaged each of the criteria for "vexatious" set out in paragraph 11, above.
19. In reaching this decision, it told the Commissioner that it had taken account of the complainant's previous information access requests under the FOIA, Data Protection Act 1998 (DPA), and a combination of the two. It said that since January 2017, the complainant had made 18 requests for information to the IPCC, five of which had been answered under the FOIA. This brought the total number of FOIA requests received by the IPCC from the complainant since October 2009, to 90. A search of the IPCC's police complaint case tracking system revealed that he was also named in 107 police complaint cases, equating to a similar number of complaints that he had made against various police forces. It said that a significant number of these requests had been disapplied under schedule 3 of the PRA, largely on the grounds that they were an abuse of the complaints procedure. The complainant was given "*an official, detailed, written explanation*" in respect of each of these decisions, which generated a significant amount of follow up correspondence from the complainant to both the IPCC and the police forces involved. The IPCC said that when the request was considered in this wider context it was clear that compliance with it would result in a largely disproportionate and unjustified level of disruption to the IPCC.
20. One of the complainant's specific objections to the refusal of his request was that there is very little information in the public domain about applications from the police to disapply complaints against them. The IPCC said that this was not the case. It said that a significant amount of information on the subject is available online in the form of the IPCC's statutory guidance⁴ and its 'Focus' documents, which provide practical guidance on the handling of complaints for the benefit of practitioners and the public.

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https://www.ipcc.gov.uk/sites/default/files/Documents/statutoryguidance/2015_statutory_guidance_english.pdf

21. By way of example, it provided a link to one such publicly available Focus document, which gave guidance to the police on how to apply the grounds for not recording or disapplying/discontinuing a complaint⁵.
22. In addition, the IPCC also said that the application procedure is set out in Regulations made under the Police Reform and Social Responsibility Act 2011, which defines the administrative procedures followed by the IPCC and the police.
23. It was therefore satisfied that, contrary to the complainant's assertion, there was a significant amount of information in the public domain about the disapplication of complaints against the police.
24. The IPCC believes there is a clear relationship between the subject matter of the complainant's information access requests and his dissatisfaction with the IPCC's decisions on his police complaint cases. Many of his requests contain allegations to the effect that the IPCC is "*corrupt to the core*" and he singles out specific members of IPCC staff who he alleges have been involved in "*very serious corruption whereby they ignored all of the evidence*".
25. The IPCC said that to date the complainant had submitted 25 complaints against 13 named IPCC staff members, the FOI team generally and the IPCC as an organisation. While it acknowledged that the complainant is entitled to make complaints against the IPCC, it noted that addressing these complaints adds significantly to the burden of correspondence associated with dealing with him.
26. The IPCC noted that the DPA does not include any provision enabling a data controller to refuse a subject access request as vexatious. However, it believed it was clear that the requests that it had considered under section 7 of the DPA formed part of the same course of unreasonable conduct that had led it to conclude that this FOIA request should be refused under section 14(1) of the FOIA. Many of the complainant's information requests were made under both the FOIA and section 7 of the DPA. Just as his complaints against the police would give rise to further complaints about the handling of those complaints, the IPCC's responses to his related subject access requests have usually resulted in further complaints against the police and the IPCC, and further subject access requests arising from the correspondence generated by the subsequent complaints. To illustrate this point, the

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https://www.ipcc.gov.uk/sites/default/files/Documents/Focus/Focus_June_2014.pdf

IPCC provided the Commissioner with an example of this pattern of behaviour, in relation to a case the Commissioner had previously investigated.

27. The IPCC considered that the complainant's engagement with it could be traced back to legitimate grievances he had about the way the IPCC had dealt with some of his complaints. However, it believed that any benefit the complainant (or the wider public) might derive from it complying with his request was outweighed by the distraction and disruption that his correspondence would cause to the IPCC's capacity to deal with information requests submitted by other individuals.
28. The IPCC said it has been responding to the complainant's correspondence for eight years. It considered that the request under consideration here was part of a steady and persistent series of FOIA requests and that answering it offered no prospect of satisfying the complainant and would not result in the requests stopping. It acknowledged that an individual request may not be vexatious in isolation, but when considered in the context of a long series of overlapping requests or other correspondence it may form part of a wider pattern of behaviour that makes it vexatious. It considered his request, when taken in context with the many other requests received from him, could fairly be regarded as vexatious.
29. As his requests appear to be linked to his police complaint cases and correspondence he has received from the IPCC with regard to those cases, it believes that the complainant should have his wider concerns addressed under section 20 (duty to keep the complainant informed) of the PRA, rather than under the FOIA. However, the IPCC's experience of attempting to address his concerns under this duty has been that complying with one request for information results in the submission of further requests, to the point that his excessive demands have the effect of undermining the IPCC's capacity to address the large number of allegations he makes.
30. Against this background, the IPCC felt it reasonable to conclude that responding to the request would not result in the disclosure of meaningful information to the complainant, which would address his central concerns and result in the cessation of his requests for information. Rather, there was a high probability that it would simply lead to the complainant submitting further complaints and correspondence under the PRA, the FOIA and DPA.
31. It considered that the time and effort to process and respond to the complainant's requests placed a significant burden on its available resources for dealing with FOIA requests, that the continued approaches were obsessive and unreasonable and amounted to an attempt to harass

and disrupt the work of the IPCC. It was satisfied that the request engaged section 14(1) of the FOIA.

The Commissioner's view

32. The Commissioner acknowledges that there are many different reasons why a request may be vexatious, as reflected in her guidance. There are no prescriptive 'rules', although there are generally typical characteristics and circumstances that assist in making a judgement about whether a request is vexatious. A request does not necessarily have to be about the same issue as previous correspondence to be classed as vexatious, but equally, the request may be connected to others by a broad or narrow theme that relates them. A commonly identified feature of vexatious requests is that they can emanate from some sense of grievance or alleged wrong-doing on the part of the authority.
33. As the Upper Tribunal in Dransfield observed:

"There is...no magic formula – all the circumstances need to be considered in reaching what is ultimately a value judgement as to whether the request in issue is vexatious in the sense of being a disproportionate, manifestly unjustified, inappropriate or improper use of FOIA".
34. In her guidance on dealing with vexatious requests, the Commissioner recognises that the FOIA was designed to give individuals a greater right of access to official information with the intention of making public bodies more transparent and accountable.
35. While most people exercise this right responsibly, she acknowledges that a few may misuse or abuse the FOIA by submitting requests which are intended to be annoying or disruptive or which have a disproportionate impact on a public authority.
36. The Commissioner recognises that public authorities must keep in mind that meeting their underlying commitment to transparency and openness may involve absorbing a certain level of disruption and annoyance.

Was the request vexatious?

37. The Commissioner considered both the IPCC's arguments and the complainant's position regarding the information request in this case.
38. As in many cases which give rise to the question of whether or not a request is vexatious, the evidence in the present case showed a history of previous and subsequent information requests. Clearly in this case,

the IPCC considers that the context and history strengthens its argument that the request is vexatious.

39. The IPCC identified that compliance with the request imposed a burden on it, arising from the resources and staff time that it has already spent on addressing the complainant's numerous information requests and related correspondence, and the resources it would expend if it were to comply with this request. It believed the request was motivated by the complainant's wider grievances against the IPCC and that it had no serious motive or purpose beyond harassment and disruption to its work.
40. To the extent that some of the requests referenced by the IPCC in support of its view that the request is vexatious post-date the request in this case, the Commissioner considered that they are still relevant to explain the nature of the continuing dealings between the parties.
41. The Commissioner acknowledges the impact on the IPCC's administrative resources of dealing with the complainant's request, when considered alongside the voluminous nature of the other requests regularly submitted by him. She accepts that this has caused a significant level of disruption and irritation to it and that dealing with them means that it runs the risk of impacting on service levels afforded to other people who make FOIA requests.
42. Having looked at the pattern of the complainant's requests, the Commissioner also considers that any response given by the IPCC would be unlikely to be the end of the matter and would be likely to lead to follow-up requests from the complainant. She is of the view that this would extend the life of the complainant's use of the FOIA to address his grievances with the IPCC, and would impose a further consequential burden on the IPCC.
43. The Commissioner considers that a public authority should be mindful to take into account the extent to which oversights on its own part might have contributed to a request being generated. If the problems which an authority faces in dealing with a request have, to some degree, resulted from deficiencies in its own handling of previous enquiries by the same requester, then this will weaken the argument that the request, or its impact upon the public authority, is disproportionate or unjustified. However, the Commissioner has not seen any evidence that that is the case here.
44. The Commissioner recognises that the complainant had his reasons for pursuing information from the IPCC. The complainant is clearly not satisfied with how the IPCC has conducted itself with regard to complaints he has previously submitted to it and he is mistrustful of the way it discharges its functions. She notes that he has had numerous

complaints against police forces disapplied under schedule 3 of the PRA. However, she understands that in each case the IPCC explained to him why this decision had been reached. She therefore considers that compliance with the request would be unlikely to further his understanding with regard to the treatment of those specific complaints.

45. The Commissioner has considered whether there is any wider serious purpose or value for the requested information and notes that the complainant has not identified a specific purpose for requiring it, beyond stating that there is little relevant information in the public domain. However, as set out in paragraphs 20 – 23, above, the IPCC has demonstrated that there is in fact quite a substantial amount of information about the disapplication of police complaints, in the public domain. The Commissioner therefore considers there to be a substantial disparity between any benefit which might flow from the disclosure, and the disruptive effect of complying with the request.
46. The Commissioner considers that the complainant appears to be attempting to pursue grievances about the IPCC's treatment of his complaints publicly, through the FOIA regime and particularly the platform provided by *WhatDoTheyKnow*. The volume and the tone of many of the requests and accompanying correspondence, suggest that he is using the FOIA regime primarily as a means to harass and disrupt the work of the IPCC, rather than to obtain information which will genuinely be of use to him and to the wider public.
47. The Commissioner considers that the FOIA is not an appropriate mechanism for pursuing grievances. If the complainant has serious concerns about how the IPCC has dealt with his previous complaints he may have those concerns formally examined through the mechanism of judicial review, and he has been advised of this. The Commissioner considers that there is no wider public interest in them being played out in public, under the FOIA regime.
48. The purpose of section 14 of the FOIA is to protect public authorities and their employees from unreasonable demands in their everyday business. In her guidance, the Commissioner recognises that dealing with unreasonable requests can place a strain on public authorities' resources and get in the way of their delivering mainstream services or answering legitimate requests. Furthermore, these requests can also damage the reputation of the legislation itself.
49. On the basis of the evidence provided, and taking into account the findings of the Upper Tribunal in Dransfield that an holistic and broad approach should be taken in respect of section 14(1), the Commissioner is satisfied that the request meets the Tribunal's definition of "*manifestly unjustified, inappropriate or improper use of a formal procedure*" and that it was vexatious within the meaning of section 14(1).

Reference: FS50690461



50. Accordingly, the Commissioner is satisfied that the IPCC was entitled to apply section 14(1) of the FOIA to refuse to comply with the request.

Right of appeal

51. 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: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

52. 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.
53. 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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