

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 15 February 2018

Public Authority: Commissioner of the Metropolitan Police Service

Address: New Scotland Yard
Broadway
London
SW1H 0BG

Decision (including any steps ordered)

1. The complainant made two information requests about Jean Charles de Menezes and Cressida Dick to the Metropolitan Police Service (the "MPS"). The MPS found the requests to be vexatious under section 14(1) of the FOIA. The Commissioner's decision is that it was entitled to do so. No steps are required.

Background

2. Jean Charles Menezes was an electrician who was fatally shot at Stockwell Tube station in south London on 22 July 2005 by MPS officers who mistook him for a suicide bomber¹.
 3. Cressida Dick is the current Commissioner of the MPS.
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¹ <http://www.bbc.co.uk/news/uk-33080187>

Request and response

4. Following previous requests² the complainant made the following two information requests:

7 October 2017

"<http://www.independent.co.uk/news/uk/crime/seven-mistakes-that-cost-de-menezes-his-life-1064466.html>

<http://www.telegraph.co.uk/news/uknews/law-and-order/5309282/Anti-terror-chief-John-McDowall-cleared-of-credit-card-misuse.html>

Thank you for your reply. Again for clarification please provide the following information under the FOIA 2000 in connection with the Charles De Menezes extra judicial execution.

Q Confirm whether the surveillance team, SO12, had been shown a quality picture of Osman, the man they were hunting at briefing at Scotland Yard at 5am, and whether all of them had a copy at the scene? The SO12 officers had a video with them to record those coming in and out of the flats. That could have been cross referenced to the photographs of Osman and the obvious differences established. But the SO12 officer, code named Frank, failed to film the Brazilian as he walked past his surveillance van because he had put down his camera so he could urinate- how long was he urinating for ie was it all throughout the surveillance?

2 What time were all 15 officers at the prime suspects address, and why was a warrant to search his premises not actioned?

3 The plan, according to John McDowall, who was in charge of the operation and is now deputy assistant commissioner at the Metropolitan Police, was that firearms teams would be outside the flats and would stop and question everyone who left. But the order was never communicated to the armed officers. Instead surveillance officers, with no training in stopping and questioning suspects were deployed- confirm if true?

4 A fourth opportunity to stop Mr de Menezes - without the need for lethal force - came after he had boarded the No 2 bus. At that point

² Previous related requests, and two subsequent ones, are reproduced in the non-confidential annex at the end of this notice.

officers told the control room at Scotland Yard that Mr de Menezes was not the suspect they were looking for- please confirm if that is accurate and true? And that the police's decision not to stop Mr de Menezes before he got on any public transport led to his death?

5 The gold commander in the control room, Cressida Dick, said that Mr de Menezes was to be stopped from getting on the Tube "at all costs" - Why? Yet surveillance officers said they were never asked to stop and search Mr de Menezes outside - something they say they would have been able to do if asked. The jury said that the police's failure to use surveillance officers to intervene also contributed to his death.

6 In short, did Cressida Dick instruct any of her officers "not to shoot", stop him from getting on the Tube "at all costs"- if so please confirm, why she failed to mention this first to the IPCC investigation and at the public enquest [sic]? By the failure did she mislead the tribunal and whether all the above failings are not the foundations of familiar professional police whispers by very experienced police officers?

7 The surveillance officer who had been tailing the Brazilian, code named Ken, denied making such a statement that "this is definitely our man" over the radio with signals that were weak, faint and fuzzy- confirm if at all true?

8 Six witnesses who were sat in the same carriage as Mr de Menezes said they heard no warnings from the fire armed officers- confirm truth? One, Anna Dunwoodie, said she was "very, very clear" that there were no shouts of "armed police" from the officers before they opened fire. Ms Dunwoodie also said she had no recollection of Mr de Menezes standing up and walking towards the officers.

9 What is the total combined cost thus far of both the IPCC and public enquiry?

Cressida Dick, who has since also been promoted to Commissioner, said: I pray it doesn't happen, but it is possible that an innocent member of the public might die in circumstances like this. Has an offence of perjury, perverting the course of justice, gross public misconduct been committed by a very serious offence of murder or manslaughter?"

8 October 2017

"Please confirm from records whether the chief Commander Cressida Dick (CD) according to wiki not only advised "not to shoot" and "keep him alive" on the day in question but also instructed her

officers to stop him from getting on the tube station "at all costs"?

There were at least six witnesses who were sat in the same carriage as Mr de Menezes said they heard no warnings. One, Anna Dunwoodie, said she was "very, very clear" that there were no shouts of "armed police" from the officers before they opened fire. Ms Dunwoodie also said she had no recollection of Mr de Menezes standing up and walking towards the officers.

Why did CD fail to mention all these facts to the IPCC investigation and subsequently to the public enquiry maintaining a charade that her officers "did nothing wrong"?

Second, confirm if the briefing given at 5 am at NSY of photo id of the prime suspect Osman was different to the scheduled surveillance pictures? Please also forward, if possible all three distinguishing identity documents.

Third, if the quality of the picture were in doubt with additional use of the surveillance video, why did CD insist that Mr de Menezes was 'VERY LIKE' the terrorist?

It is submitted, rather than only having to show that the objective circumstances prevailing at the time rendered their belief unreasonable, in practice, a subjective test also holds states clearly responsible for human rights violations. Victims have shown that the police officers involved did not have a particular state of mind (honest belief in an attack, self-defence or otherwise) - isn't all true that the police demonstrably had no evidence or possible motive for the killing of an innocent young man?"

5. On 13 October 2017 the MPS responded. It advised the complainant that it considered the requests to be vexatious under section 14(1) of the FOIA.
6. Following an internal review the MPS wrote to the complainant on 31 October 2017. It maintained its position.

Scope of the case

7. The complainant contacted the Commissioner on 31 October 2017 to complain about the way his requests for information had been handled. He advised as follows:

"The original review was defective since the information officer is also the same reviewer.

Second, I provided background reason for the information request, put simply I wish to clarify as to what specific instruction she provided to her untrained officers on the day of the shooting. And whether she instructed her officers 'not to shoot', and 'keep Mr Menezes alive at all costs'. These are not accusations but of grave public interest as an 'entirely innocent man was executed' by an extra-judicial killing so described by the National Archive.

Third, it is clear with due respect, that fail to appreciate that [sic] an investigation by the IPCC can be re-opened where there is fraud, new evidence and indeed public interest ie a miscarriage of justice. I refer to the email reply from professor Nick Hardwick, the then Chair of the flawed investigation.

In any event there was another opportunity for the commander to set the record straight rather than the desperate, if not pertinent defence that 'they did nothing wrong', followed by reticence attack in her standing testimony at the public enquiry in 2008/9, where again the questions were not addressed by the commander, particularly where issues of perjury, perverting the course of justice and misconduct in public office remain open-securing three promotions with all her colleagues without a shade of regret".

8. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the FOIA. The FOIA is to do with transparency and provides for the disclosure of information held by public authorities. It gives an individual the right to access recorded information (other than their own personal data) held by public authorities. The FOIA does not require public authorities to generate information or to answer questions, provide explanations or give opinions, unless this is recorded information that they already hold.
9. The Commissioner has commented on internal reviews in "Other matters" at the end of this notice. She will consider the application of section 14 below.

Reasons for decision

Section 14 – vexatious requests

10. Section 14(1) of the FOIA states that section 1(1) of the FOIA does not oblige a public authority to comply with a request for information if the request is vexatious. There is no public interest test.

11. 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*³. 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.
12. 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.
13. 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).
14. The Commissioner has published guidance on dealing with vexatious requests⁴. That guidance includes a number of indicators that may apply 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 or not a request is vexatious.
15. 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

³ <https://www.judiciary.gov.uk/judgments/info-commissioner-devon-county-council-tribunal-decision-07022013/>

⁴ <https://ico.org.uk/media/for-organisations/documents/1198/dealing-withvexatious-requests.pdf>

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".

16. 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

17. The complainant disputes that the requests are vexatious. When asking for an internal review he said:

"Allegations of serious corruption is not vexatious and in the public interest, as such you are obstructing justice and complicit in an act of provocation.

...I seek further redress to the specif [sic] matters highlighted, this relates to the public enquiry not the preceding IPCC investigation".

And within his grounds of complaint (see paragraph 7 above) he provides the Commissioner with a further submission explaining his views.

The MPS's view

18. In its refusal notice, the MPS referred the complainant to previous requests he had made on the same subject matter (see non-confidential annex) and explained its position as follows:

Request of 12 July 2017

"On 12 July 2017, you made a request for information that concerned the operation that led to the fatal shooting of Mr Jean Charles de Menezes and then Commander Cressida Dick's involvement in that operation. On 24 July 2017, I provided you with access to published documents that addressed your questions about the investigation into the fatal shooting of Jean Charles de Menezes and any criminal / disciplinary action taken in respect of any police officer".

Request of 24 July 2017

"On 24 July 2017, you wrote to me and asked that I clarify whether any criminal or disciplinary action had been taken against any police officer. On 27 July 2017, I provided you with the text from the websites provided to you on 24 July 2017. This text explained whether any criminal / disciplinary had been taken in respect of any police officer".

Requests of 28 and 31 July 2017

"On 28 July 2017 and 31 July 2017, you requested the notes of the meeting between the Prime Minister and then Commissioner Blair on 21 July 2005. You further requested information about Mr Hussain Osman and how the MPS recorded the death of Jean Charles de Menezes. These requests were grouped together and considered as one request. On 05 September 2017, I explained that I could not determine whether the notes of the meeting between the Prime Minister and Lord Blair were held within the 18 hour research / cost limit of the Act. I further explained that your request about Hussain Osman could be considered if you resubmitted a refined request. In responding to your questions about the operation that led to the fatal shooting of Jean Charles de Menezes' death, I provided you with access to the published information that I had previously disclosed to you on 24 July 2017 and 27 July 2017".

Request of 6 September 2017

"On 06 September 2017, you wrote to me and requested that the MPS confirm that it holds the notes of the meeting between the Prime Minister and Lord Blair on 21 July 2005. You further requested that the MPS confirm that it holds records about Mr Hussain Osman. You also submitted a new request which concerned the reason that Commissioner Dick opted to take a lower salary than offered to her. On 15 September 2017, I wrote to you and reiterated my explanation of 05 September 2017 that I could not determine whether the notes of the meeting between the Prime Minister and then Commissioner Blair were held within the 18 hour research / cost limit of the Act. I further explained that the MPS did hold information about Mr Hussain Osman and stated that you could resubmit a refined request for this information. This had been explained to you on 05 September 2017. I answered your request about Commissioner's Dick's salary".

Request of 15 September 2017

"On 15 September 2017, you wrote to me and requested information about the vetting process that relates to the promotions that Commissioner Cressida Dick attained following the fatal shooting of Jean Charles de Menezes. You further requested information about the

evidence provided by Cressida Dick in respect of the fatal shooting of Jean Charles de Menezes and whether the reduced salary that Commissioner Dick opted to take, was limited to one year. Your final question asked whether I, prior to making the disclosure decisions in respect of your request, had read and understood the record of proceedings in respect of the inquest into Mr Jean Charles de Menezes' death. On 29 September 2017, I refused your request and explained that I considered your request met the criteria for a vexatious/unjustified request. I further stated that the MPS was not required to consider the information requested in relation to this request or respond to future requests about the same or similar subject”.

19. In respect of the two current requests, the MPS again advised the complainant that the fatal shooting of Jean Charles de Menezes had been fully investigated by the Independent Police Complaints Commission (“IPCC”) and the inquest into the death has been concluded. It confirmed that the findings of both these proceedings had been published and provided to him on three occasions. It considered that, through a series of requests, he was attempting to reopen or address an issue that has already been comprehensively addressed through both the IPCC investigation and inquest. It further explained that the requests were all on the same subject matter, that they overlapped and that they had all been addressed by the provision of the same information on a number of occasions.
20. The MPS also reminded the complainant that it had previously written to him to notify him that further requests on the subject of Commissioner Cressida Dick and Mr Jean Charles de Menezes would be deemed vexatious and that it would not respond to requests on this subject matter, adding:

“Please note that this notice does not preclude you from making a request about a different subject in future”.

21. At internal review the MPS explained that, due to budgetary constraints and limited staffing resources, it was unable to deal with repeated requests concerning the same subject matter particularly when the requested information has already been disclosed to the complainant. It added:

“You have made accusations about individuals. I consider that the public interest has been met by the criminal and disciplinary investigations that have already been conducted concerning the matters you have raised and by extensive independent scrutiny following the death of Jean Charles de Menezes.

Having reviewed your requests and our responses, it would appear that you may not have read our responses in full as we have

highlighted on several occasions where we have previously provided you with a response or directed you to where the information can be located in the public domain".

22. The MPS provided the Commissioner with a further submission. It explained that between July and November 2017 the complainant made eight requests which all relate to the subject matter of Mr Jean Charles de Menezes and the then Commander Cressida Dick. It advised that it had responded to five of these and had provided the information requested, or links to where it can be found in the public domain, as well as guidance and assistance. It advised her that it believed it had fulfilled its requirements under the FOIA and had also demonstrated that it is committed to openness and transparency.
23. Taking into account the context and history of the requests, the MPS argued that the current requests are unreasonable because they put a strain on MPS resources and also damage the credibility of the FOIA. It told the Commissioner:

"It is only right that the MPS should use its resources wisely when managing FOIA requests and principles have been established within the judicial framework of the legislation to protect authorities when requests are a burden on its staff, have no serious purpose or value or harass and/or distress staff. It is vital that the motives of the requestor are taken into account when considering these issues".

Would complying with the request impose a significant burden?

24. The MPS advised the Commissioner that requiring a member of staff to respond to these requests is having an undesired effect as it is diverting them from dealing with FOIA requests made by other members of the public. It said that this was especially the case when information has already been provided, questions have been addressed and advice has been provided to some repeated requests.
25. It explained that:

"The additional work being undertaken in order to meet [the complainant]'s requests/questions has constituted an unnecessary amount of work and a significant distraction from the day to day business which has placed a strain on our time and resources is contributing to the aggregated burden. The MPS regularly deals with in excess of 490 (figure to date) FOIA requests a month, and the burden placed on the MPS by the increasing number of requests. To submit further requests for related material imposes an additional burden on the MPS, and has the effect of distracting and diverting MPS staff from further requests. This point is given greater weight by the fact that, due to the similar subject matter of

the requests ... While the intention of the requester may not be to harass either the MPS or individuals, this is indeed the effect of the requests.

The public interest in undertaking the work does not override the significant burden more so at a time when budgets are tight. The MPS is required to ensure resources are spent wisely and clear in its respect and appreciation to meet the requirements of FOIA. In consideration of this request, I find it places a burden in terms of diverting staff and distracting staff from their usual work, this is particularly so as [the complainant]'s questions have been answered".

Is it fair to regard the requests as obsessive?

26. The Commissioners guidance states:

"A request may not be vexatious in isolation, but when considered in context (for example if it is the latest in a long series of overlapping request or other correspondence) it may form part of a wider pattern of behaviour that makes it vexatious".

27. The MPS believes that the context and history of the requests evidence that the complainant demonstrate that he is obsessive in his persistence to obtain information about this subject matter.

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

28. The MPS has advised the Commissioner that the repeated requests include accusations and complaints which are having an undesired effect of harassing staff dealing with his correspondence. It told her that the correspondence was: *"... distressful in particular to two of our Information Managers who are now subject to formal public complaints with our Directorate of Professional Standards in relation to the [complainant]'s FOIA requests and complaints".*

Are the requests designed to cause a disruption or annoyance?

29. The MPS accepts that the complainant has not made a large number of requests, however, it argues that it is the nature of these requests which they find to be vexatious. It finds that his persistence about topics which relate to the same subject matter cause: *"... a disproportionate and unjustified level of disruption as the issues have already been covered in previous requests".* And also that, when considered alone, although they may appear to be simple, any responses that they have given to him have led to further requests and complaints.

Do the requests lack any serious purpose or value?

30. The MPS has argued that these requests lack any serious purpose or value as follows:

"The fatal shooting of Jean Charles de Menezes has been fully investigated by the Independent Police Complaints Commission (IPCC) and the inquest into his death has been concluded. The findings of both proceedings are published for all to see. The MPS has also on three occasions provided [the complainant] the information.

Although [the complainant] may have reasonable and genuine desire on the subject matter, I believe the requests serve no purpose or value as [the complainant] is reopening issues that have already been comprehensively addressed through the IPCC investigation and inquest.

[The complainant] has made six requests on this subject matter which overlap or are repeated. The requests have been addressed by the provision of the same information on a number of occasions. I feel there is nothing to gain from repeating them especially as the MPS has complied with the requests".

The Commissioner's view

31. 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, which seems to be the case here.

32. 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".

33. 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. 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.

34. 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.

Are the requests vexatious?

35. The Commissioner has considered both the complainant's position and the MPS's arguments regarding the information requested in this case. 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 information requests on the same subject matter. Clearly in this case, the MPS considers that the context and history strengthens its argument that these requests are vexatious.
36. The Commissioner considers that the complainant is clearly dissatisfied with the outcome of both the IPCC investigation and the inquest and appears to be attempting to pursue his own investigation into the shooting as he does not accept the findings of these two independent authorities. The subject matter and the tone of the requests and accompanying correspondence, suggest that he is using the FOIA regime primarily as a means of trying to reopen matters which have already been independently investigated.
37. The Commissioner considers that the FOIA is not an appropriate mechanism for pursuing such matters. If the complainant has serious concerns about how the IPCC and/or inquest dealt with the shooting he may seek to have those concerns formally examined through the mechanism of judicial review. The Commissioner considers that there is no wider public interest in them being played out via the FOIA regime.
38. One of the purposes 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.
39. Having read the various requests and the MPS's responses to these, the Commissioner is also satisfied that the MPS has attempted to respond to the requests as fully as possible. It has either provided specific

responses, directed him to where relevant information which explains matters is held or has advised that to locate the information would exceed the cost limit at section 12 of the FOIA (which is something which the complainant could have specifically challenged at the time had he so wished). Nevertheless, the complainant shows an emerging pattern of submitting further requests in quick succession, repeating the same questions and making accusations and derogatory comments.

40. 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 efforts to comply with the request would impose a grossly oppressive burden on the IPCC and that the requests meet the Tribunal's definition of "*manifestly unjustified, inappropriate or improper use of a formal procedure*". Consequently she finds that they were vexatious within the meaning of section 14(1).
41. Accordingly, she is satisfied that the MPS was entitled to apply section 14(1) of the FOIA to refuse to comply with these requests.

Other matters

Internal reviews

42. In his correspondence to the Commissioner the complainant states that the internal review: "*was defective since the information officer is also the same reviewer*". However, from looking at the information provided by the complainant, the two requests under consideration here were responded to by a different officer than the one who conducted the internal review. If these comments related to one of his earlier requests then this evidence was not provided. In any event, the Commissioner would advise him as follows.
43. The Commissioner has no specific authority to specify who should undertake an internal review within a public authority. However, it is her view that, ideally, it should be carried out by someone senior to the person who dealt with the original request. Where this is not possible it should be undertaken by someone trained in, and who understands, the FOIA.

Right of appeal

44. 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

45. 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.
46. 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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