

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 7 October 2020

Public Authority: Independent Office for Police Conduct
Address: 90 High Holborn
London
WC1V 6BH

Decision (including any steps ordered)

1. The complainant requested information about a death in police custody. The Independent Office for Police Conduct ('the IOPC') 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 IOPC was entitled to rely on section 14(1) of the FOIA to refuse to comply with the request.
3. The Commissioner requires no steps as a result of this decision.

Background

4. William Cameron died on 8 January 2020, having been taken into custody at Loddon Valley police station and later found unresponsive.
5. On 13 January 2020, the IOPC announced that it had commenced an independent investigation into his death¹.

¹ <https://policeconduct.gov.uk/news/investigation-death-police-custody-38-year-old-man-reading>

Request and response

6. On 12 February 2020, the complainant wrote to the IOPC and requested information in the following terms:

"William Cameron died at Loddon Valley police station, near Reading in Berkshire, on 8 January.

The Independent Office for Police Conduct (IOPC) has confirmed that a police sergeant and a health care professional are subject to a criminal investigation in relation to his death.

REQUEST.

Provide all image information (including video) of the victim taken on or about the time he died.

Also:

State how many staff were employed by you in dealing with FOIA requests in 2018 and 2019.

Give their titles - assistant FOIA officer, supervisor etc."

7. The IOPC responded on 11 March 2020. It disclosed the information described in the second part of the request, about its FOIA staffing. However, it refused to disclose the information described in the first part of the request. It said it considered that part of the request to be vexatious within the meaning of section 14(1) of the FOIA.
8. The complainant requested an internal review of the IOPC's decision to refuse the first part of the request, the same day. The IOPC responded on 8 April 2020, maintaining its decision.

Scope of the case

9. The complainant contacted the Commissioner on 13 April 2020 to complain about the way his request for information had been handled. He disputed that the request was vexatious.
10. The analysis below considers whether the IOPC was entitled to apply section 14(1) of the FOIA to refuse to comply with the first part of the request.

Reasons for decision

Section 14(1) – vexatious request

11. Section 1(1) of the FOIA states that an individual who asks for information is entitled to be informed whether the information is held and, if the information is held, to have that information communicated to them.
12. However, 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."
13. The term "vexatious" is not defined within the FOIA. The Upper Tribunal considered the issue of vexatious requests in *Information Commissioner v Devon CC & Dransfield* [2012] UKUT 440 (AAC). It commented that 'vexatious' could be defined as the "*manifestly unjustified, inappropriate or improper use of a formal procedure*". The Upper Tribunal's approach in this case was subsequently upheld in the Court of Appeal.
14. The *Dransfield* definition establishes that the concepts of proportionality and justification are relevant to any consideration of whether a request is vexatious.
15. *Dransfield* also considered 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. It explained that these considerations were not meant to be exhaustive and also explained 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).
16. The Commissioner has published guidance on dealing with vexatious requests², which includes a number of indicators that may apply in the case of a vexatious request. However, even if a request contains one or

² <https://ico.org.uk/media/for-organisations/documents/1198/dealing-withvexatiousrequests.pdf>

more of these indicators it will not necessarily mean that it must be vexatious.

17. When considering the application of section 14(1) of the FOIA, a public authority can consider the context of the request and the history of its relationship with the requester, as the guidance explains:

"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".

18. However, the Commissioner would stress that, in every case, it must be the request itself that is shown to be vexatious, and not the person making it.

19. In some cases it will be obvious when a request is vexatious but in others it may not. 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 position

20. Whilst the burden of proof always lies with the public authority in demonstrating why a particular request would engage section 14(1) of the FOIA, the Commissioner will consider any arguments that a complainant may wish to make as to why a request was not vexatious.

21. In his complaint to the Commissioner, the complainant stated the following:

"The request was not vexatious, the IOPC has an £80m pa budget and full-time FOIA workers, the fact that I have made multiple requests, all of which have been refused, is not proof of vexatious conduct.

The IOPC admits that the matter is of public interest.

"I would agree that there is a strong public interest in accounting for an investigation into a death in custody, with the result that your request may not be construed as vexatious when considered in isolation. It becomes so, however, when its particulars are considered in combination with your previous interaction with the IOPC."

The IOPC answered question 2, without finding it vexatious, so what is different about question 1?"

The IOPC's position

22. The IOPC told the Commissioner that the investigation to which the first part of the request referred, was at an early stage when the complainant submitted his request, and that it remained ongoing.
23. The IOPC said that the request, while not vexatious when considered in isolation, becomes so when the wider context and history of the IOPC's interactions with the complainant is taken into account.
24. The IOPC said that the complainant repeatedly makes requests to it for sensitive information about live investigations into complaints against the police, which he could have no reasonable expectation of receiving at the time he makes his requests. The IOPC said that it has repeatedly explained to the complainant that information of the type he habitually requests about its investigations cannot be disclosed while they are still live and ongoing (and that some of it may never be placed in the public domain, due to its sensitivity). It said that this position has been supported by the Commissioner in several decision notices which have considered his requests for such information. Despite this, it said he shows no sign of modifying his requesting pattern and he continues to submit requests for sensitive information about what he knows to be live investigations.
25. The IOPC said that the cumulative burden of dealing with the requests, the internal reviews which follow, the complaints to the Commissioner and then to the Tribunal, was unacceptable, disruptive and disproportionate to the value of the requests themselves.
26. The IOPC supplied a schedule of requests demonstrating that it had received a total of 21 separate requests from the complainant between June 2018 and January 2020, when the request in this case was received. It said almost all the information covered by these requests was exempt from disclosure, either because it constituted personal data (and was exempt under section 40(2) of the FOIA) or because it related to ongoing investigations (and was exempt under section 30 of the FOIA). The requests did not appear to have a particular pattern to them, but the manner in which previous requests had been submitted suggested, the IOPC argued, that the complainant was likely to submit further, similar, requests.

27. The IOPC said it had refused 10 of the requests from the complainant under section 14(1) of the FOI for very similar reasons to those set out in this case. It referred the Commissioner in particular to two requests she had recently considered (FS50877467³ and FS50883049⁴). It said that the information requested, and the circumstances of the requests, were similar to those under consideration in this case.
28. In making his requests, and in his general correspondence, the IOPC noted that the complainant had not identified what had motivated him to make the requests, or why the information was of value to him. Whilst the IOPC did not suggest that the complainant was engaging in any sort of broader campaign, it noted that the burden of complying with the requests appeared to exceed the value of the particular information to him.
29. The value of this request, the IOPC further argued, was further diminished by the fact that information about its investigations is published once formal procedures have been completed, albeit with the most sensitive parts redacted. Therefore, any non-exempt information which might have been disclosed in response to the request had section 14(1) not been applied, would be likely to be placed in the public domain at a later date. It said this should be taken into account when considering whether the burden of complying with the request was reasonable at this stage.
30. In summary, the IOPC considered that the complainant was making a disproportionate number of requests for sensitive material about criminal investigations, which he knew would be unlikely to result in the disclosure of significant, or indeed any, information. The requests imposed a considerable burden on the IOPC, in preparing responses and dealing with follow up complaints, without there being a realistic prospect that information might be disclosed. It argued that the complainant was likely to continue to submit such requests and thus continue to impose a burden.

The Commissioner's view

31. In her guidance on dealing with vexatious requests, the Commissioner recognises that the FOIA was designed to give individuals a right of

³ <https://ico.org.uk/media/action-weve-taken/decision-notices/2020/2616939/fs50877467.pdf>

⁴ <https://ico.org.uk/media/action-weve-taken/decision-notices/2020/2617715/fs50883049.pdf>

access to official information with the intention of making public bodies more transparent and accountable.

32. 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.
33. In the Commissioner's view, section 14(1) is designed to protect public authorities by allowing them to refuse any requests which have the potential to cause a disproportionate or unjustified level of disruption, irritation or distress.
34. This will usually involve weighing the evidence about the impact on the authority and balancing this against the purpose and value of the request. This should be judged as objectively as possible: in other words, would a reasonable person think that the purpose and value are enough to justify the impact on the public authority? Where relevant, this will involve the need to take into account wider factors such as the background and history of the request.

Was the request vexatious?

35. As in many cases which give rise to the question of whether a request is vexatious, the evidence in the present case shows a history of engagement between the public authority and the requester. The IOPC considered that the particular context in which the request was submitted, and this history of engagement, strengthened its argument that, at the time the request was submitted, it was vexatious.
36. In her guidance, the Commissioner recognises that the context and history in which a request is made will often be a major factor in determining whether the request is vexatious. She considers that, in practice, this means taking into account factors such as:
 - other requests made by the requester to that public authority (whether complied with or refused);
 - the number and subject matter of those requests;
 - any other previous dealings between the authority and the requester

and assessing whether these weaken or support the argument that the request is vexatious.

37. In her guidance, the Commissioner acknowledges that:

"A request which would not normally be regarded as vexatious in isolation may assume that quality once considered in context".

38. In that respect, the Commissioner is mindful that the request in this case, although not obviously vexatious in itself, was made in the context of a series of requests for similar types of information, which had been refused on the grounds that the information was exempt from disclosure for clearly recognisable reasons.
39. The requests typically sought detailed information on reports and findings relating to investigations of the police, conducted by the IOPC. They were generally refused on the basis of sections 30 (Investigations and proceedings) and 40 (Personal information) of the FOIA, with the IOPC additionally citing section 14(1) (Vexatious request) in more recent cases.
40. The Commissioner also notes that the IOPC was often still in the process of responding to one or more of his earlier requests for information when the complainant submitted a fresh request for information. The request in this case was followed by another request eight days later, and then a further one, two days after that.
41. In terms of burden, the Commissioner gives weight to the IOPC's view that the volume and nature of the complainant's requests and the resources it was required to expend in terms of responding to them, dealing with internal reviews, complaints to the Commissioner and then appeals to the Tribunal, was placing an unwarranted and aggregated burden upon the IOPC.
42. The Commissioner therefore considers that the complainant's previous pattern of requesting is relevant in this case.
43. With respect to the purpose of the request in this case, in her guidance 'Dealing with vexatious requests', the Commissioner acknowledges that public authorities cannot insist on knowing why an applicant wants information before dealing with a request. However:

"... this doesn't mean that an authority can't take into account the wider context in which the request is made and any evidence the applicant is willing to volunteer about the purpose behind their request".
44. The Commissioner recognises that most requesters will have some serious purpose behind their request. In this case, although he has not provided a reason for wanting the information, the complainant has referred to the *"...strong public interest in accounting for an investigation into a death in custody"*.

45. With regard to the purpose and value of the request, the Commissioner recognises that there is undoubtedly a considerable public interest in a death in custody being thoroughly investigated. Given that police officers have unique powers to enforce the law, there is a strong public interest in investigating rigorously any allegations that officers may have acted outside of the law. There is also a strong public interest in understanding the chain of events which led to the death, so that any lessons may be learned. However, the Commissioner considers that this interest is best met by allowing the appropriate authorities, in this case the IOPC, to thoroughly investigate the matter, rather than being required to prematurely disclose the evidence under the remit of the FOIA, before it has been properly considered.
46. The Commissioner accepts that complying with the request, in isolation, would not cause a disproportionate or unjustified level of disruption. Indeed, she notes that the IOPC responded to the second part of the request, despite the burden. The Commissioner also 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.
47. However, the Commissioner notes that, at the time the request was made, the matter it pertained to was the subject of an active investigation by the IOPC – indeed, it had only recently commenced. The investigation might lead to criminal prosecutions being considered and the information described in the request was evidence which would be considered as part of the investigative process.
48. It is the case that the requester has asked for such information before, from the IOPC and from other law enforcement bodies. He has repeatedly been told that information about live investigation cases would be exempt from disclosure, under sections 30 and 40 of the FOIA. The IOPC says that that message has been consistently provided in its responses to his previous requests. The IOPC has also previously told the complainant that certain information about investigations may be published once formal procedures have been completed.
49. Accordingly, the Commissioner gives weight to the IOPC's argument that the complainant would have been aware that a request to the IOPC for live, investigation-related information was, in effect, a futile one, in that he could not, realistically, expect that it would disclose the requested information. In that respect, she cannot ignore the background and history of the request.

50. The Commissioner also notes that the IOPC's website⁵ clearly states the circumstances in which it publishes information about the cases it investigates. It states:

"For most of the cases we investigate, we publish anonymised summaries of our reports. ...

We publish full investigation reports for the most serious and high profile incidents...

We also publish news releases about our investigations".

51. In reaching a decision in this case, the Commissioner has balanced the purpose and value of the request against the detrimental effect on the public authority. She has also considered, in light of the nature and degree of the dealings between the complainant and the IOPC, whether, at the time it was submitted, the request crossed the threshold of what was reasonable.
52. The purpose of section 14 of the FOIA is to protect public authorities and their employees 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 delivering mainstream services or answering legitimate requests.
53. Furthermore, these requests can also damage the reputation of the legislation itself.
54. On the basis of the evidence provided, and taking into account the findings of the Upper Tribunal in *Dransfield* that a holistic and broad approach should be taken in respect of section 14(1), the Commissioner is satisfied that, in this case, the first part of the request was a manifestly unjustified and improper use of the FOIA such as to be vexatious for the purpose of section 14(1).
55. Accordingly, she is satisfied that the IOPC was entitled to apply section 14(1) of the FOIA to refuse to comply with the first part of the request.
56. In its submission, the IOPC argued that, in the event that the Commissioner found that section 14(1) was not engaged, it would wish to rely on sections 30 (Investigations and proceedings) and 40(2) (Personal information) of the FOIA to withhold the information. Since the Commissioner has determined that section 14(1) was applied

⁵ <https://www.policeconduct.gov.uk/investigations/our-investigations>

correctly, she has not gone on to consider the application of these exemptions. However, drawing on her experience of the circumstances in which she would expect those exemptions to be applied, and in view of the type of information requested here, she considers it highly likely that both exemptions would be properly engaged in this case.

Right of appeal

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

58. 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.

59. 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

Samantha Bracegirdle
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