

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 18 May 2021

Public Authority: Chief Constable of Kent Police
Address: Police Headquarters
Sutton Road
Maidstone
ME15 9BZ

Decision (including any steps ordered)

1. In separate requests, made on consecutive days, the complainant requested information relating to murders in Kent in 1987.
2. Kent Police refused to comply with the requests, citing section 14(1) (vexatious request) of the FOIA.
3. The Commissioner's decision is that the requests were vexatious and Kent Police was entitled to apply section 14(1) to refuse the requests.
4. The Commissioner requires no steps to be taken as a result of this decision.

Request and response

5. On 10 April 2020, the complainant wrote to Kent Police and, following a lengthy preamble focusing on a specific investigation, requested information in the following terms:

"1) Have all the leads provided been investigated?"

2) ... have any further rapes been carried out with the same DNA source in Kent, Surrey or Sussex".

6. The request was made using the 'whatdotheyknow' website, and was described as being in relation to murders from 1987.
7. On 11 April 2020, the complainant made a second, multi-part, request for information to Kent Police, on the subject of unsolved murders in Kent. The requests, made using the 'whatdotheyknow' website, were for the following information:

"How many unsolved Murders has there been in Kent between 1st January, 1980 and 31st December, 2019?

How many unsolved Attempted Murders has there been in Kent between 1st January, 1980 and 31st December, 2019?

How many unsolved Threats to Kill has there been reported in Kent between 1st January, 1980 and 31st December, 2019?

How many of these have resulted in a prosecution?

How many unsolved murders are currently being investigated by Kent Police's cold case team?

How many murders has the cold case team resolved since 1st January, 1980?"

8. On 20 April 2020, Kent Police provided a combined response to both requests for information. It refused to provide the requested information, citing the following exemption as its basis for doing so:
 - section 14(1) vexatious request.
9. Following an internal review Kent Police wrote to the complainant on 7 May 2020, confirming its view that section 14(1) of the FOIA applies in respect of both requests.

Scope of the case

10. Following earlier correspondence, the complainant wrote to the Commissioner on 7 May 2020 and 3 June 2020 to complain about the way his requests for information had been handled. The Commissioner acknowledges the delay in processing his application for a decision under section 50 of the FOIA, due to restrictions on processing postal correspondence in the Covid-19 pandemic climate.
11. In support of his complaint, the complainant told the Commissioner:

"The purpose of my questioning is merely to confirm we are only dealing with a double rapist and double murderer".

12. As is her practice, the Commissioner wrote to both parties setting out the scope of her investigation. She told the complainant that her investigation would be to determine whether Kent Police is entitled to rely on section 14(1) as a basis for refusing to comply with the requests in this case.
13. When responding, the complainant did not dispute the proposed scope of the Commissioner's investigation.
14. The analysis below considers whether the requests dated 10 April 2020 and 11 April 2020 were vexatious within the meaning of section 14(1) of the FOIA.

Reasons for decision

Section 14 vexatious request

15. 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. The section is not subject to a public interest test.
16. 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 CC & Dransfield* (Dransfield). The Tribunal commented that vexatious 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.
17. 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.
18. 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).

19. The Commissioner has published guidance on dealing with vexatious requests¹. 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 a request is vexatious.
20. As discussed in the Commissioner's guidance, the relevant consideration is whether the request itself is vexatious, rather than the individual submitting it. A public authority can 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".

21. 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".

Kent Police's view

22. Kent Police recognised that, due to the obvious high interest in policing activity, the service attracts large volumes of requests. In that respect, it told the complainant:

"Whilst Kent Police recognises that all requests will place some pressure on staff this pressure is accepted where a request is proportionate and made in keeping with the spirit of the Act, namely openness and transparency".

¹ <https://ico.org.uk/media/for-organisations/documents/1198/dealing-with-vexatious-requests.pdf>

23. Regarding the requests in this case, Kent Police told the complainant:

"Both these requests were received by Kent Police after a response was issued on 9 April 2020 to a previous request under reference [redacted]. All three requests are on the same subject matter of unsolved murders, with reference to a specific investigation".

24. With respect to the request dated 10 April 2020, it told him:

"The request under reference [redacted] seeks to make assumptions, allegations and accusations about the perceived handling of a police investigation, and states the purpose of the request is to 'embarrass the police'".

25. It went on to say:

"As stated above, a response to the request under reference [redacted] was issued on 9 April 2020. Less than twenty-four hours later you sent a further request on the same subject matter and asked that Kent Police confirm additional information on the same investigation.

These two latest requests under references [redacted] and [redacted] highlight you have chosen to ignore the arguments put forward in the previous response, which evidences these continued requests serve no purpose other than to frustrate the true purpose of the Act and divert resources away from reasonable requests for information".

26. Referencing his history of making requests on the same topic, Kent Police told the complainant:

"Considering the nature of the most recent requests, it is evident that these requests are repetitive in character, ... The final request appears, on the face of it to be seeking information with which to embarrass Kent Police as per your assertions in the request received less than 24 hours previously".

27. In support of its application of section 14, Kent Police told the complainant:

"Whilst it could be argued that each request taken in isolation would not overly inconvenience Kent Police, it is their combined impact which must be considered. In considering the cumulative effect of three requests received from you on the same subject matter in less than three weeks, it can be evidenced that a disproportionate and unjustified level of burden and disruption is being placed onto Kent Police resources, and that continued engagement is very likely

to result in further disruption and unjustified use of limited resources”.

28. Having re-visited its handling of the requests as a result of the complainant's request for internal review, Kent Police acknowledged his interest in the subject matter of the requests for information.
29. In considering whether the requests were disproportionate or unjustified, it highlighted a number of previous responses sent to the complainant on the same topic. Additionally, it addressed the extent to which the requests contained the features that can be considered indicators of a vexatious request.
30. In that respect, in relation to the purpose and value of the request, and whether the purpose and value justifies the impact on the public authority, it told him:

"Kent Police has repeatedly acknowledged that the information is of interest to the requestor, and the public. Considering whether it has value is a different question. ... It is my reasonable belief that the release of this information serves no value other than to satisfy your own curiosity and enthusiasm to write, or contribute to writing a book about the murders. This assessment is supported by assertions made by you that the information would be used to write a book”.

31. It also told him:

"Major Crime, the Chief Constable's (CC) Office and the Freedom of Information (FOI) team have received numerous communications from you in respect of this case, by your admission, since 1995, both within, and outside of the Act. Any reasonable observer might consider this level of contact as constituting harassment. The most recent contact has indeed prompted Kent Police to say 'Enough is enough”.

32. In its submission to the Commissioner, Kent Police referred her to its comprehensive refusal and internal review response which it had provided to the complainant. Additionally it made her aware of the complainant's previous contact with other departments within Kent Police. For example, it described his “substantial contact” with the FOI and Subject Access Request teams, with a total of 25 requests over the last two years. It also referred to his previous contact with other departments such as Professional Standards Department (PSD), namely 39 allegations since 2018.
33. With respect to the requests that are the subject matter of this decision notice, Kent Police told the Commissioner:

"It is [the complainant]'s persistent obsession with the case that is causing irritation and distress and imposing an unnecessary burden on FOI and investigative staff. He has been advised previously concerning the information he seeks yet he has continued to dispute our withholding the data from him..."

34. Mindful of the subject matter of the request, namely a live investigation, Kent Police told the Commissioner:

"In terms of the value to the public of disclosing information, it should be noted that Kent Police has recently revealed an important update in relation to the investigation..."

35. It confirmed that Kent Police would keep the public informed as the case progresses.

36. Acknowledging that the two requests under consideration in this case would not be considered vexatious on their own merits, Kent Police confirmed that it was the persistent nature of the requests, the threat to embarrass Kent Police and the continued contact:

"... which have finally pushed us to this position"

37. Kent Police confirmed that, when it responded on 9 April 2020 to the complainant's earlier request for information on the same subject matter, it had not warned him that requests of this nature may attract a section 14 refusal in the future. However, it told the Commissioner that it had taken that request into account in deciding to apply section 14 in relation to the two requests under consideration in this case.

38. With regard to the reference to the complainant's threat to embarrass Kent Police, the Commissioner acknowledges that, in his preamble to the request dated 10 April 2020 the complainant stated:

"... It seems that the only way to get a murder investigated is to embarrass the Police into doing something"

The Commissioner's view

39. 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.

40. 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".

41. 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.
42. 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.
43. The Commissioner recognises that dealing with unreasonable requests can place a strain on resources and get in the way of delivering mainstream services or answering legitimate requests. Furthermore, these requests can also damage the reputation of the legislation itself.
44. The Commissioner does, however, recognise 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.

Were the requests vexatious?

45. The Commissioner considered both the complainant's position and Kent Police's arguments regarding the information requests in this case.
46. The Commissioner is mindful that the complainant's correspondence of 10 April 2020 asks questions. In that respect, she acknowledges that a question can be a valid request for information. She also accepts that the FOIA only extends to requests for recorded information and does not require public authorities to answer questions generally.
47. The Commissioner recognises that the requested information is clearly of interest to the complainant and he believes that he has a serious purpose behind his requests. She also recognises that, in acknowledging Kent Police's response dated 7 May 2020, he responded, denying that it was his intention to embarrass Kent Police: rather his intention was "to obtain information regarding the double murder". Posing further questions on that topic in the course of his correspondence, he said:

"I really do believe this was in the Public Interest to ask such questions".

48. Although section 14(1) is not subject to a traditional public interest test, it was confirmed by the Upper Tribunal in the Dransfield case that it may be appropriate to ask the question:

"Does the request have a value or serious purpose in terms of the objective public interest in the information sought?"

49. As in many cases which give rise to the question of whether a request is vexatious, the evidence in the present case showed a previous engagement between the parties. Clearly in this case, Kent Police considered that the particular context and history strengthened its argument that, at the time of the requests, the requests were vexatious.

50. 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.

51. 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".

52. In this case, the Commissioner considers that there was nothing vexatious in the nature of the requests themselves. However, although the requests were not vexatious in isolation, the Commissioner considered that they were vexatious when viewed in context.
53. In the circumstances of this case, and based on the evidence of previous patterns of requests, the Commissioner considers that responding to these requests would only be likely to result in further requests and contact on the subject matter, and runs the risk of diverting Kent Police from dealing with other important matters.
54. With regard to the purpose and value of the requests, the Commissioner recognises that there is undoubtedly a public interest in murders being thoroughly investigated and resolved and how this is achieved.

However, in the context of a live investigation, the Commissioner finds the purpose and motive behind the requests carry insufficient weight to be capable of justifying the detrimental impact on the public authority.

55. The Commissioner recognises that Kent Police has responded to previous similar requests made by the complainant. Having investigated its handling of one of those requests, she was satisfied that the exemption cited by Kent Police was appropriately applied².
56. Taking all the above into account, the Commissioner is satisfied that Kent Police has demonstrated to her that the requests in this case are part of a wider pattern of requests and challenges made by the complainant dating back, by the complainant's own admission, to 1995.
57. The purpose of section 14 of the FOIA is to protect public authorities and their employees from unreasonable demands in their everyday business.
58. 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 the requests were a manifestly unjustified and improper use of the FOIA such as to be vexatious.
59. Accordingly, she is satisfied that Kent Police was entitled to apply section 14(1) of the FOIA.

² <https://ico.org.uk/media/action-weve-taken/decision-notices/2018/2259805/fs50724702.pdf>

Right of appeal

60. 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

61. 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.

62. 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

Laura Tomkinson
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF