

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 14 December 2022

Public Authority: The Independent Office for Police Conduct
Address: PO Box 473
Sale
M33 0BW

Decision (including any steps ordered)

1. The complainant requested information relating to the death of a named individual. The Independent Office for Police Conduct (IOPC) refused to comply with the request, citing section 14(1) (vexatious request) of FOIA.
2. The Commissioner's decision is that the IOPC has correctly applied section 14(1) of FOIA.
3. The Commissioner requires no steps to be taken as a result of this decision.

Request and response

4. On 14 September 2022, the complainant wrote to the IOPC and requested information in the following terms:

"Disclose all audio or video recordings relating to shooting of [redacted]. This only includes videos recorded at the incident up to one hour before and after the actual shooting.

Please note that this request is made for the purposes of journalism. There is a substantial public interest in this matter. [redacted]."

5. The IOPC refused to comply with the request, citing section 14(1) (vexatious request) of FOIA.
6. On 13 October 2022, the complainant requested the IOPC conduct an internal review of its response. The IOPC then wrote to the complainant on 17 October 2022, noting that the complainant had “not indicated why you are dissatisfied with our response to this request” and asking that the complainant clarify the grounds on which they were complaining.
7. The complainant did not respond to the IOPC’s correspondence of 17 October 2022.

Scope of the case

8. The complainant contacted the Commissioner on 17 October 2022, to complain about the way their request for information had been handled.
9. This notice covers whether the IOPC correctly determined that the request was vexatious.

Reasons for decision

Section 14(1) – vexatious requests

10. Section 14(1) of FOIA states that a public authority is not obliged to comply with a request for information if the request is vexatious.
11. The word “vexatious” is not defined in FOIA. However, as the Commissioner’s updated guidance on section 14(1)¹ states, it is established that 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.
12. FOIA gives individuals a greater right of access to official information in order to make bodies more transparent and accountable. As such, it is an important constitutional right. Therefore, engaging section 14(1) is a high hurdle.

¹ <https://ico.org.uk/for-organisations/dealing-with-vexatious-requests-section-14/>

13. However, the ICO recognises that dealing with unreasonable requests can strain resources and get in the way of delivering mainstream services or answering legitimate requests. These requests can also damage the reputation of the legislation itself.
14. The emphasis on protecting public authorities' resources from unreasonable requests was acknowledged by the Upper Tribunal (UT) in the leading case on section 14(1), *Information Commissioner vs Devon County Council & Dransfield* [2012] UKUT 440 (AAC), (28 January 2013) ("Dransfield")². Although the case was subsequently appealed to the Court of Appeal, the UT's general guidance was supported, and established the Commissioner's approach.
15. Dransfield established that the key question for a public authority to ask itself is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress.
16. The four broad themes considered by the Upper Tribunal in Dransfield were:
 - the burden (on the public authority and its staff);
 - the motive (of the requester);
 - the value or serious purpose (of the request); and
 - any harassment or distress (of and to staff).
17. However, the UT emphasised that these four broad themes are not a checklist, and are not exhaustive. They stated:

"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" (paragraph 82).

The complainant's view

18. The complainant is of the view that the IOPC's decision to refuse the request is "wrong and vexatious".

The IOPC's view

² <https://administrativeappeals.decisions.tribunals.gov.uk/Aspx/view.aspx?id=3680>

19. The IOPC believe the request to be vexatious as it was "one of a series of similar requests for information that [redacted] knows or ought to know he would be very unlikely to receive" and referred to the complainant's "unreasonable persistence in seeking this particular information".
20. In its response to the complainant of 13 October 2022, the IOPC advised that the request was being refused as vexatious under section 14(1) "... after considering the particulars of your request and its relationship to your other requests we have refused as vexatious".
21. The initial response advised the complainant that "If section 14(1) was not engaged we would instead be refusing this request under section 30(1)(a)(i) as you are seeking evidence from a live IOPC investigation" and that "In a sensitive case of this nature, there are very good reasons for anticipating that the premature disclosure of underlying evidence would have a damaging effect".
22. The IOPC also explained, in the initial response, that compliance with the request would "... place a considerable burden on operational staff" with regard to "the retrieval and assessment of video evidence" and consideration of whether any "... disclosure of any part it may have the potential to prejudice the investigation or its outcomes, or would be exempt for any other reason" and, as such, "the burden of dealing with this request would be disproportionate and wholly unreasonable".
23. In its submissions to the Commissioner, the IOPC referred to its previous correspondence to the Commissioner about another, similar, complaint from the complainant, when they stated:

"Based on our responses to the numerous other requests he has made to the IOPC, [redacted] can reasonably be expected to know that he is requesting information that would only be released with very significant redaction if it was accessible to him at all. He has nevertheless persisted in requesting this and other detailed evidence and raising complaints and appeals when he does not receive what he wants. The burden of complying with numerous requests of this type from [redacted] is clearly not justified by their likely outcome and this lack of proportionality is critical to our finding that the request of [redacted] is vexatious."
24. The IOPC also referenced a previous First Tier Tribunal appeal (ref [redacted]), stating that the complainant:

"... has the benefit of multiple responses from the IOPC highlighting the reason why the IOPC will not disclose reports or information while investigations or proceedings are still ongoing".

25. The IOPC also explained that by failing to respond to its correspondence of 17 October 2022, the complainant had failed “to engage with the complaints process in a meaningful way” and that it considered this “lack of engagement with our reasons for refusal to be part of the same pattern of behaviour that we have identified as characterising this and many of his other requests as vexatious”.

The Commissioner’s view

26. In cases where a public authority is relying on section 14(1), it is for the public authority to demonstrate why it considers that a request is a disproportionate, manifestly unjustified, inappropriate or improper use of FOIA.
27. In accordance with his guidance, the Commissioner has taken a holistic and broad approach in this case. He has considered the history of the complainant’s dealings with the IOPC and his persistence in seeking information that, in light of previous responses he has received from the IOPC, is unlikely to be disclosed to the world at large under FOIA.
28. With respect to the value and purpose of this particular request, the complainant has not submitted any arguments to demonstrate a value and purpose in this request beyond asserting that it is of public interest and the IOPC have countered this by explaining that:
- “... the public interest would not support disclosure of any part of the requested information, at least while the evidence gathering process is ongoing, and probably beyond that time as well”.
29. Having considered the context and history of the request and the nature of the information within scope of the request, the Commissioner is satisfied that the request was vexatious and therefore the IOPC was entitled to rely on section 14(1) of FOIA to refuse the request.

Right of appeal

30. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

31. 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.
32. 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

Michael Lea
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