

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 20 February 2024

Public Authority: Chief Constable of Thames Valley Police
Address: Headquarters
Oxford Road
Kidlington
OX5 2MX

Decision (including any steps ordered)

1. The complainant requested information relating to a review of what personal information is shared in the event of road traffic collisions. Thames Valley Police ('TVP') provided a number of responses throughout the course of the request and the Commissioner's investigation, which are set out in this notice. Ultimately, it cited section 14(1) of FOIA – vexatious request.
2. The Commissioner's decision is that the request was vexatious under section 14(1) of FOIA.
3. The Commissioner does not require any steps as a result of this notice.

Request and response

4. On 23 August 2023, the complainant wrote to TVP and requested information in the following terms:

“Please provide all information relating to your information disclosure process which I understand is under review.

this [sic] will include, but not be restricted to, when and why the review commenced (the basis of this review and the need for same) the exchanges on the subject (arguments, considerations etc.), the instructions you have received not to disclose, the aspects and issues arising. The information should include internal (within TVP) and external (with others) exchanges.

To which areas does the review apply - I understand RTC [Road traffic collision] / Traffic reports are an area affected."

5. TVP responded on 5 September 2023. It stated that under section 8(1)(c) of FOIA, this question was not deemed to be a request for recorded information under FOIA and did not specify which disclosure process the complainant was referring to.
6. The complainant requested an internal review on 6 September 2023. He said his request had clearly stated that he was interested in the RTC/Traffic reports disclosure process. He provided an email from the Traffic Enquiries division of TVP, dated 23 August 2023, which set out that the review of the disclosure process was still underway and that TVP had been instructed not to give out any information until it had been completed.
7. Following an internal review TVP wrote to the complainant on 27 September 2023. It now stated that no information was held and said:

"Although no actual disclosure process review is being undertaken it is only right that we provide confirmation that the legal gateway in respect of disclosure to the insurance industry in respect of purely sharing the personal details of those that were involved in a collision when this has not already happened is being addressed. We have however determined that this does not fall into the scope of your request as it is not actually reviewing the disclosure process."

Scope of the case

8. The complainant contacted the Commissioner on 28 September 2023 to complain about the way his request for information had been handled. He disputed that no information was held by TVP pursuant to his request and said that he believed the information was being "deliberately withheld".
9. Given the apparently conflicting responses provided to the complainant, the Commissioner made some preliminary enquiries with TVP on 11 December 2023. As a result, TVP wrote to the complainant on 13 December 2023, seeking to clarify what information he was seeking. Specifically, TVP said:

"The ICO have asked me to contact you to clarify certain matters as it would appear that there is some confusion and misunderstanding.

In order to rectify this it will help to first go back to the start and the basics in respect of what the law requires us to do when an FOI request is received so we fully understand a requests [sic] context and scope.

From my reading of your request, it is my understanding that the terms 'information disclosure process' and 'review' were used by yourself due to the contents of an email you received from our Traffic Team on the 23rd August.

If my understanding is correct, then I can confirm that this email was specifically referring to a review being conducted in respect of an issue brought to Chief Constables attention by NPCC [National Police Chiefs Council]. (See attached) [See paragraph 10 below].

As a result, it is my view that the information which you seek would relate to this NPCC matter.

I would appreciate it if you can provide formal confirmation that you are satisfied with this interpretation and it meets with your expectations, so I can conduct further enquiries and issue you with a revised response.

I would however like to take this opportunity to refer you back to another FOI response from me on the 31st October 2023 under [reference redacted] which relates to one of your more recent FOI requests but is connected to this matter.

I trust this helps to move this issue forward."

10. The NPCC letter of 30 May 2023 referenced above covers the topic of police disclosure of information (ie exchange of personal details after a road collision) in relation to Section 170 of the Road Traffic Act 1988. The letter explains that the ICO had advised that such data cannot be shared under Part 3, of the Data Protection Act 2018, as had previously been understood. This is because it is not shared for 'law enforcement purposes' but, rather, to support civil claims or proceedings. The NPCC advised it was raising the matter with all police forces so that this practice would cease and in the knowledge that each force may wish to seek its own legal advice.
11. The Commissioner does not intend to include every exchange that occurred during his investigation, given that all parties are fully aware of what occurred, and will instead detail only the key developments.
12. The complainant responded with an eight page letter to TVP's request to clarify his request/ensure that the correct interpretation had been made.

13. TVP subsequently arranged a telephone call at 11.00 am on 20 December 2023 with the complainant to ensure it had correctly interpreted his request and to discuss his concerns. The Commissioner understands this call was just shy of 90 minutes in duration.
14. TVP reported from its perspective that the call seemed to have been productive and said that some information had been disclosed to the complainant as a result. The Commissioner contacted the complainant for his view on 8 January 2024.
15. On 15 January 2024, the complainant told the Commissioner he remained dissatisfied with TVP's handling of his request.
16. At the Commissioner's request, TVP set out its position to the complainant on 17 January 2024. At that stage, it confirmed that the disclosed emails contained some redactions under section 40(2) of FOIA – the exemption for personal information – and provided the Commissioner with copies. It also confirmed to the complainant that other information exists which is exempt under section 43 of FOIA. This is (incorrectly) described in the letter to the complainant as being the exemption for legal professional privilege (see paragraph 20, below). TVP stated that this aspect had been excluded as the complainant had accepted that this information would be exempt from disclosure during the telephone conversation.
17. Subsequently, TVP located further emails in scope and disclosed those to the complainant, again with section 40(2) redactions. In total, there were three disclosures made, including those pertaining to 17 January 2024, all of which the Commissioner has received copies of.
18. On 30 January 2024, the complainant set out in writing that he was still dissatisfied with TVP's revised response, including the extent of the section 40(2) redactions in the disclosed emails. He also said he was not satisfied that information had been withheld in its entirety under section 43 of FOIA.
19. Later that day, the Commissioner confirmed to both parties that he would investigate TVP's reliance on sections 40(2) and 43 of FOIA.
20. Subsequently, the Commissioner considered that TVP may have intended to refer to section 42, which is the correct exemption for legal professional privilege, as opposed to section 43 (which relates to commercial interests) Having checked this with TVP, the Commissioner subsequently amended the scope of his investigation on 5 February 2024 to consideration of section 40(2) – personal information and section 42 – legal professional privilege and informed the complainant.
21. The complainant then contacted the Commissioner and disputed the purpose of the call he had had with TVP on 20 December 2023. He

disagreed that the call had been to clarify his request; the Commissioner acknowledged that this is the complainant's viewpoint. However, the Commissioner's and TVP's position is reinforced by the email sent by TVP to the complainant on 13 December 2023, which clearly identified the need to clarify his request and was a precursor to the telephone call which took place a week later.

22. However, as the Commissioner explained, both in writing and during the complainant's telephone call to him, the purpose of the call with TVP was not critical to his investigation. The complainant has since expressed concern that the content of the call did not include a discussion of his requests. The Commissioner was not part of the call, but is satisfied that it resulted in more information being disclosed, with some information exempted, and that is what the Commissioner will consider.
23. On 7 February 2024, TVP revised its position again and informed the Commissioner that it now wished to rely on section 14(1) – vexatious requests.
24. Following the combined cases of the Home Office v Information Commissioner (GIA/2098/2010) and DEFRA v Information Commissioner (GIA/1694/2010) in the Upper Tribunal ('UT'), a public authority is able to claim a new non-disclosure provision, either before the Commissioner or the First-tier Tribunal, and both must consider any such new claims.
25. Therefore, as is his usual practice, the Commissioner asked TVP to inform the complainant of its revised position. TVP did so on 15 February 2024.
26. On 16 February 2024, the complainant submitted a typed 18-page response to TVP (copied to the Commissioner), setting out his views on the public authority's reliance on section 14(1) and raising a number of further queries labelled 'A' through to 'R'. The Commissioner notes that the complainant has commented on other related requests (including Data Protection Subject Access Requests) within this submission.
27. The Commissioner has considered whether TVP was entitled to rely on section 14(1) of FOIA.

Reasons for decision

Section 14(1) – vexatious requests

28. 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.

29. The word “vexatious” is not defined in FOIA. However, as the Commissioner’s guidance on section 14(1)¹ states, the exemption is designed to protect public authorities by allowing them to refuse requests which have the potential to cause a disproportionate or unjustified level of disruption, irritation, or distress.
30. 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.
31. Most people exercise their right of access responsibly. However, a few may misuse or abuse FOIA by submitting requests which are intended to be annoying, disruptive or which have a disproportionate impact on a public authority. These requests can also damage the reputation of the legislation itself. The Commissioner’s guidance on what may typify a vexatious request stresses that it is always the request itself, and not the requestor, which is vexatious. 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.
32. The emphasis on protecting public authorities’ resources from unreasonable requests was acknowledged by the 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.
33. 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.
34. The four broad themes considered by the UT 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).

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

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

35. However, the UT emphasised that these four broad themes are not a checklist, and are not 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).
36. The Commissioner's guidance on dealing with vexatious requests sets out 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.
37. Sometimes it will be obvious when a request is vexatious, but sometimes it may not. The Commissioner therefore considers that the key question to consider is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress. 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.

The complainant's position

38. The complainant's position is set out in an 18-page response as referenced earlier, which all parties have had sight of. The Commissioner is not able to reproduce the complainant's concerns here given the detail in which he has responded, but has reviewed and taken his submissions into account, where they relate to this request. He would reassure the complainant that, as set out in paragraph 24, public authorities are able to change their position at any time, including at First-tier Tribunal stage.
39. From the submissions, it is evident that the complainant believes TVP is attempting to "block" his requests. He said:

"I simply wanted the information. TVP's subsequent conduct causes me to suspect the erroneous responses were intentional, designed to erect hurdles and potentially stop me in my tracks."

TVP's position

40. It is TVP's position that to comply with the request would be "an unreasonable burden and would require a disproportionate effort". It said it considers that the following elements of section 14 of FOIA have been met:-

- Frequent or overlapping requests
- Unreasonable persistence
- Unfounded accusations
- Burdensome

41. TVP submitted details of the various request submitted by the complainant and extracts from some of his emails. It explained to the Commissioner that:

“We have provided evidence to you and you are aware that this individual has been bombarding our organisation with numerous emails; has been unreasonably persistent; has made unfounded accusations against members of staff and is making frequent FOI requests and then sending further emails to correspond and dispute our approach to the disclosure of police data. He is doing so to further his agenda due to his perception that we are treating him and his company differently and being unfair in respect of our disclosure regimes. This FOI request and others and his whole interaction with our force which has been going on for some time is due to his ultimate aim of circumventing existing disclosure regimes that we have in place and undermining our approach to such matters in an unhelpful manner and this matter has become a significant burden on our organisation. This individual has also previously outlined their acceptance of certain explanations only to revert back to complaining about our approach to disclosure of police data. We believe this provides us with adequate evidence to engage the Section 14 exemption to this subject matter and it is our view that no public interest exists. This is purely an issue whereby the applicant’s motive is to unfairly undermine our processes in respect of releasing police information. He is the only [redacted] company taking this approach to such matters with us but we also believe that he is doing so with other forces and the NPCC.”

Details of the detrimental impact of complying with the request

42. Additionally, TVP provided details of the detrimental impact of complying with the request, explaining that the complainant has made six FOIA requests on the same subject all stemming from his dissatisfaction with TVP’s disclosure and access regimes. It said that it considers the complainant’s motive for making these FOIA requests is to vent his continued dissatisfaction with TVP’s processes and endeavour to circumvent these procedures and undermine its reasons for refusing disclosure.
43. TVP provided both the complainant and the Commissioner with details of the requests it had taken into consideration in declaring this request vexatious. There are six requests in addition to the one under

consideration here, all of which cover the same subject matter. However, five of those post-date this request of 23 August 2023, with one being submitted on 3 April 2023.

44. When considering burden, the Commissioner has only taken account of the request which pre-dates the one under consideration here. However, he is satisfied that the further requests and associated correspondence submitted after 23 August 2023 indicate that complying with this request would be unlikely to bring about an end to the complainant's approaches – it is likely that he will continue to make requests, further adding to the burden on TVP's resources.
45. TVP said that it had tried to be reasonable and had also spent over 90 minutes discussing the complainant's concerns on the telephone. TVP said that the complainant seems to believe there is some collusion against him and his company; it stated that this is unfounded and not true. Rather, it said it is "purely the case that we have struggled to manage his expectations and the wording of his requests have been difficult to navigate due to their complicated and protracted nature; frequent correspondence and his continued perception of wrongdoing on our part".
46. TVP said the complainant has appealed almost all of the original FOIA requests and also added new requests at the same time as appealing, which has caused confusion. TVP referenced that the complainant has also submitted a duplicate complaint to the one under consideration here to the Commissioner (this has been closed as a duplicate case).
47. TVP referenced that the complainant is raising the same issues with other police forces which it believes supports its position, but also highlights the same detrimental impact this is having on a number of public authorities.
48. The officer at TVP said he had personally spent "countless hours" trying to respond to the complainant's concerns and appeal requests. TVP said that the complainant's various FOIA requests and appeals, together with all the communication relating to these matters, have been burdensome on its resources.

Why this impact would be unjustified or disproportionate in relation to the request itself and its inherent purpose or value

49. TVP submitted the following arguments:

"The volume of email communication relating to these matters and the actual FOI requests/appeals which follow is causing a disproportionate and unjustified level of disruption to our organisation and we have no choice but to try and bring this to a conclusion from a FOI legal perspective.

There have been existing procedures in place for some time surrounding access to police data for insurance purposes. [The complainant] is trying to circumvent these processes for his own business purposes and there are no public benefit in doing so as disclosure is possible if he simply followed our force processes. He has wanted to engage in lengthy communication to argue his points but the fact remains that this is due to his personal endeavour to find a way to undermine our strict standards when it comes to the release of personal data.

It is also fair to state that the tone when he emails has not helped matters. We are doing our best to manage a situation which is clearly unmanageable due to his approach to this whole subject.”

Details of any wider context and history to the request

50. TVP made the following submissions:

“As outlined above, this is about disclosure of police data to the insurance industry and [the complainant’s] sole endeavour to undermine our regime. No other company in his sector is using FOI as a means to challenge our approach and this is impacting on our time and resources to answer his FOI requests.

[The complainant] has engaged with Public Access, Traffic Dept, The Chief Constables Office and Professional Standards, when addressing these access & disclosure legal issues so this is about the collective detrimental impact this issue is having when trying to manage his expectations when he is focused on undermining the procedures we have in place in respect of access to police information. Ultimately he is trying to get access for [redacted] purposes and is not prepared to use the correct processes which have been put in place to share with the [redacted] industry. He is using FOI in an endeavour to find a way of undermining our legal approach when we are purely trying to be responsible data controllers in respect of the way we release police data outside of our domain.

It is the case that we have struggled to manage his expectations and the wording of his requests have been difficult to interpret and understand due to his continued perception of wrongdoing on our part.

Although we know you have access to some emails, I have provided a separate document with some email extracts to highlight the level of debate in respect of this issue via email. We are obviously happy to provide access to the entire emails,

however we trust these extracts highlight our concerns about the individuals [sic] disproportionate approach which we believe shows that Section 14 is engaged.”

The Commissioner's view

51. The Commissioner is mindful that the complainant has a business reason for requesting the information and that, whilst he may consider there is a serious purpose and value to his requests, the Commissioner must also take into account that there is another route (for which he understands a fee is payable) by which he can access much of the information he is seeking.
52. The Commissioner has seen no evidence that other businesses and individuals are seeking to use FOIA or DPA Subject Access Requests to try to secure similar information and he understands that the established access route operates effectively, and as intended. He has therefore concluded that there is little purpose or value to the complainant's request under consideration here.
53. TVP has evidenced a pattern of overlapping and frequent requests from the complainant on this subject, characterised by additional emails and queries often being submitted before the public authority has had chance to respond to the initial request. The complainant seeks to challenge much of what he has been told and the tone of some of his emails to TVP are accusatory and have caused distress to some of its staff members involved in handling his requests and associated correspondence.
54. The Commissioner understands that the complainant believes he is being treated differently (and less favourably) to other requesters, by TVP. However, the Commissioner notes that TVP spent 90 minutes speaking to the complainant about this request and other related requests and concerns, with a view to resolving those issues and attempting to build a more productive working relationship. It has clearly devoted significant time and effort to trying to address the complainant's concerns about the request.
55. It is unfortunate that TVP initially misinterpreted the request and that this resulted in conflicting response and internal review outcomes. However, once TVP had spoken to the complainant to identify exactly what information he was seeking (a position the Commissioner acknowledges the complainant disputes), it was able to provide the non-exempt information in scope.
56. The Commissioner considers that dealing with the complainant's requests has become burdensome to TVP and is detracting from its ability to respond to other requesters. He recognises that it has said it is

struggling to manage the complainant's expectations and that the lengthy emails and wording of his requests have also been difficult to navigate. Together with the complainant's challenging approach and continued perception of wrongdoing on TVP's part, the Commissioner accepts that there comes a point whereby TVP's previous endeavours to manage the complainant's expectations and requests have become disproportionate.

57. In the Commissioner's view, this point has now been reached. He therefore finds that TVP was entitled to rely on section 14(1) of FOIA.

Other matters

58. Although they do not form part of this notice the Commissioner wishes to highlight the following matters, as they were a recurring theme throughout his investigation.
59. The complainant made an allegation of a section 77 offence under FOIA (the offence of altering etc. records with intent to prevent disclosure). This allegation was reviewed by the Commissioner's Criminal Investigations Team which found no evidence to substantiate the allegation that an offence had been committed. The complainant was informed and no further action was taken on that point.
60. The complainant repeatedly tried to resurrect this matter at various points throughout the investigation, despite it being explained that the section 77 decision was final, that there is no right to appeal it and that it is not part of the FOIA case officer's remit which is to investigate and determine section 50 FOIA complaints.
61. Responding to the complainant's attempts to re-open that part of his complaint added significantly to the time it took the case officer to deal with his overall complaint.

Right of appeal

62. 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

63. 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.

64. 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
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF