

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 26 June 2024

**Public Authority:** Northern Ireland Policing Board  
**Address:** Waterside Tower  
31 Clarendon Road  
Belfast  
BT1 3BG

#### **Decision (including any steps ordered)**

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1. The complainant has requested information relating to a quality assurance exercise undertaken by the Northern Ireland Policing Board. The Board refused the request under section 14(1) of FOIA as it maintained that the request was vexatious.
2. The Commissioner's decision is that the request is not vexatious, therefore the Board was not entitled to refuse it under section 14(1). The Commissioner requires the Board to take the following steps to ensure compliance with the legislation.
  - Issue a fresh response to the request that does not cite section 14(1) of FOIA.
3. The public authority must take this step within 30 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of FOIA and may be dealt with as a contempt of court.

## Request and response

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4. The Board is responsible for the management and administration of the ill-health pension retirements of police officers in Northern Ireland, including injury on duty award (IOD) applications.<sup>1</sup>
5. On 30 January 2023, the complainant wrote to the Board and requested information in the following terms:
  - “1. Could I please be supplied with **details** of the initial “standard quality assurance check on all reports and certificates prior to the results being considered by the Committee”
  2. Could I please be supplied with **details** of the inconsistencies referred to or examples of same.
  3. Could I please be supplied with **details** of the “further suitable quality assurance exercise” that was completed in all 8 cases.
  4. Could I please be supplied with **details** of who conducted the “further suitable quality assurance exercise”
  5. What information was given to the Resources Committee in relation to the 8 I.M.R cases that persuaded them to order a re assessment.
  6. Under what Regulation of the Police Service of Northern Ireland (Injury Benefit) Regulations 2006 was this process conducted.”
6. The Board responded on 20 July 2023. It refused the request in reliance on section 14(1) of FOIA as it considered the request to be vexatious.
7. The complainant requested an internal review on 25 July 2023 and the Board provided the outcome of that review on 10 November 2023. Between the complainant submitting their request on 30 January 2023, and the outcome of the internal review, the complainant submitted a further seven requests for information.

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<sup>1</sup> <https://www.nipolicingboard.org.uk/police-pensions-and-injury-benefits>

8. The outcome of the internal review was that the Board maintained its reliance on section 14 of FOIA with regard to the request of 30 January 2023. It advised the complainant that the further seven requests were also being refused as vexatious under section 14 of FOIA.

### **Scope of the case**

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9. The complainant contacted the Commissioner on 12 December 2023 to complain about the way their request for information had been handled.
10. The complainant asked the Commissioner to determine whether or not their request of 30 January 2023 was vexatious under FOIA. They also asked the Commissioner to consider the time taken to respond to the request. They stated that they would not have submitted the further seven requests, had they been advised more promptly that the request of 30 January 2023 was being refused as vexatious.
11. For the avoidance of doubt the Commissioner's decision in this case relates to the request of 30 January 2023.

### **Reasons for decision**

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#### **Section 14(1): vexatious requests**

12. Section 14(1) of 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 in FOIA, although the Commissioner notes that the Upper Tribunal considered the issue of vexatious requests in the case of *Information Commissioner v Devon CC & Dransfield*.<sup>2</sup> 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 established that the concepts of proportionality and justification are relevant to any consideration of whether a request is vexatious.

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

14. The Tribunal found it useful to assess whether a request is vexatious by considering four broad issues:
  - The burden imposed by the request (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.
15. The Tribunal cautioned that these considerations were not meant to be exhaustive. 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 dealing, the lack of proportionality that typically characterise vexatious requests” (paragraph 45).

### **The Board's position**

16. The refusal notice dated 20 July 2023 did not explain why the Board had assessed the request of 30 January as vexatious. However, the internal review letter dated 10 November 2023 did provide some detail regarding burden and value or serious purpose of the request.
17. The Board provided further information to the Commissioner as part of his investigation. By way of background it advised that the directorate dealing with this request is a very small team dealing with a highly specialised area of work. Dealing with FOIA requests places a burden on these staff who are also dealing with a range of other equally important tasks.
18. The Board noted that the complainant had submitted five previous requests between October 2022 and January 2023, a period of five months. The Board commented that each request had been submitted within the statutory timescale for complying with the previous request.
19. The Board confirmed that it had responded to the complainant's previous requests in full, but that in order to do so, staff had been diverted from their main roles. The Board described the requests it receives generally as complex or seeking detailed information, and advised that this means that they can only be considered by, and responded to by, senior officials.

20. The Board observed that the complainant was pursuing a case regarding his own IOD application. It therefore considered that the request could be seen as an “inappropriate use of the formal FOIA procedure”, on the basis that it was prompted by the complainant’s personal circumstances as opposed to matters of wider public importance. The Board pointed out that it was dealing with the complainant’s own case as part of its normal business, therefore it considered that the complainant had other, less burdensome, means by which to pursue his concerns.

### **The complainant’s position**

21. The complainant also provided the Commissioner with contextual information about his request. He explained that he had only begun requesting information from the Board in late 2022, and had continued to request information because he did not consider the Board’s responses to be entirely satisfactory.
22. The complainant said that he made the request of 30 January 2023 because he was concerned about the lawfulness of procedures being employed by the Board.
23. The complainant also drew the Commissioner’s attention to the fact that the Board took six months to respond to his request. During this period the complainant had continued to submit requests for information, which were eventually refused as vexatious. The complainant emphasised that he would not have made the subsequent requests had the Board informed him that it had assessed the request of 30 January 2023 as vexatious within the statutory time for compliance (20 working days).
24. The complainant also advised that he had not made any further requests to the Board after receiving the outcome of the internal review, because he wanted to wait for the Commissioner’s determination as to whether the request of 30 January 2023 was vexatious.

### **The Commissioner’s position**

25. The Commissioner has examined the information provided by the Board and by the complainant. He is mindful that section 14(1) of FOIA exists to protect public authorities from having to deal with requests that have the potential to cause a disproportionate or unjustified level of disruption, irritation or distress. Equally, he acknowledges that refusing a request as vexatious necessarily limits the right of access to official information, so must involve careful consideration of all the circumstances of the case.

26. The Commissioner recognises that, like many public authorities, the Board is under pressure of competing priorities. In particular, current police pension and injury benefit issues are complex and sensitive, with the potential to affect a large number of individuals and involve large sums of money.
27. The Commissioner has examined the request of 30 January 2023 and notes that it seeks factual information relating to a quality assurance exercise undertaken by the Board in 2021. The Board has not suggested that this particular request would be unduly burdensome, but that it continues a pattern of requests which are cumulatively onerous.
28. The Board advised the Commissioner that the complainant made five requests for information in the five months prior to the request of 30 January 2023. The Commissioner has examined these requests and notes that three requests were for specific guidance documents and one was for the date of implementation of an operational policy. The remaining request was for information relating to a Resources Committee meeting held by the Board.
29. The Commissioner acknowledges that the complainant has made several requests over a period of several months. However this is not in itself burdensome, nor is it evidence of an "inappropriate use of FOIA" in terms of the complainant's personal case. The Commissioner recognises that the issue of IOD awards is of great importance to those affected, and it is understandable that such individuals would seek to understand how the Board is dealing with this issue. There is nothing inherently inappropriate about exercising information rights under FOIA in tandem with other channels of communication.
30. The Commissioner also respectfully disagrees with the Board's description of the requests as only able to be handled by senior officials. The Commissioner would expect that requests for factual information such as guidance documents and dates of implementation should be readily obtainable and should not require senior input. The Board has provided the Commissioner with details of the time taken to respond to these requests, and in one case the Board took 6.5 hours to deal with a request for one guidance document. This is almost a full working day and the Commissioner cannot see why consideration of one guidance document would take so long.
31. In the Commissioner's opinion the Board should be careful to avoid conflating the sensitivity of the IOD issue and that of the actual information requested in any particular case. He does, of course, recognise that some requests may indeed be for information that

requires senior input, but this should be decided on a case by case basis.

32. The Commissioner does accept that one of the complainant's previous requests was for an explanation of the Board's interpretation of regulations as opposed to recorded information. The Commissioner would remind the Board that public authorities are only required to consider whether they hold recorded information in response to a request; they are not required to create or generate information where it is not already recorded.
33. Finally, the Commissioner notes the Board's concern that dealing with the request of 30 January 2023 would lead to further correspondence and requests from the complainant. This was also the reason given for not providing an explanation of the Board's reliance on section 14 in the refusal notice. As it transpired the complainant did submit a number of further requests between February 2023 and the issuing of the refusal notice.
34. However, the Commissioner is obliged to point out that the Board took six months to issue the refusal notice. The Commissioner has commented further on this in Procedural Matters below. The Board assured the Commissioner that it did not take the subsequent requests into account when assessing the request of 30 January 2023 as vexatious.
35. The Commissioner considers it more likely than not that the absence of a response from the Board contributed significantly to the complainant's further submission of requests. Had the Board issued a refusal notice within the statutory time for response, explaining the difficulties anticipated by the request, the complainant would have had the option of withdrawing or revising their request. They may also have refrained from submitting further requests. Unfortunately the Board did not provide the complainant with any information that might lead them to reconsider their approach.
36. Additionally, as set out above the Commissioner notes that the complainant's requests were largely for factual information, which should not be especially time consuming to provide.
37. In conclusion, the Commissioner is not persuaded that the complainant's request of 30 January 2023 was vexatious. He acknowledges the Board's position in terms of competing priorities and pressures, but is not persuaded that the request of 30 January 2023 in itself met the threshold of section 14.

38. Furthermore the Commissioner finds that the Board's failure to engage with the complainant was a significant contributory factor. The Commissioner is of the opinion that the Board could have sought to engage more effectively with the complainant prior to the request of 30 January 2023, and between the receipt of that request and the issue of the refusal notice.
39. Accordingly the Commissioner is not satisfied that the Board was entitled to refuse the complainant's request under section 14(1) of FOIA.

## **Procedural matters**

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### **Section 17: refusal notice**

40. Section 17(5) of FOIA states that a public authority relying on section 14(1) to refuse a request must issue a refusal notice stating that fact within the statutory time for compliance, ie 20 working days.
41. As set out above, in this case the Board issued its refusal notice six months after the request was received, clearly exceeding the time for compliance. The Commissioner must therefore find that the Board failed to comply with section 17(5) of FOIA.

## **Other matters**

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42. Although it does not form part of his decision, the Commissioner wishes to offer some good practice advice to the Board. In particular he recommends that the Board review its request handling procedures to explore whether it is employing appropriate and proportionate resources to request handling. For example, the Board may wish to consider whether senior staff need to be involved in requests for information such as guidance documents, or if there is an opportunity to delegate these types of requests to more junior staff.
43. The Commissioner would encourage the Board to ensure that it engages effectively with requesters at the earliest stage in order to manage their expectations. If the Board anticipates that a request is likely to cause disproportionate burden, it should explain this to the requester and, where possible, offer advice and assistance so that the requester may modify their behaviour and any request that they have made or intend to make.



44. The Commissioner wishes to acknowledge that the Board has proactively published a significant amount of information regarding IOD matters on its website. The Commissioner considers this good practice which may help reduce the number of routine requests.
45. The Commissioner also considers it appropriate to provide advice to complainants as well as those proposing to make requests. It is important to bear in mind that public authorities across the UK are being expected to deliver public services in a period of considerable financial pressure. Access to official information under FOIA is an important and established right, but it is not unlimited.
46. In this case the complainant continued to submit requests while waiting for the Board to respond to his request of 30 January 2024. The Commissioner would encourage requesters to contact his office shortly after the statutory time for response has expired, rather than corresponding further with the authority while waiting several months for a response to a request.
47. The Commissioner also considers that requesters should bear in mind that the right of access extends only to recorded information that is held by a public authority at the time the request is submitted. Asking a public authority to explain its position or justify its actions may result in the authority responding that it does not hold recorded information. Therefore the requester may wish to consider what recorded information the authority is reasonably likely to hold that would answer their request.

## Right of appeal

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48. 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](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

49. 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.
50. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Sarah O’Cathain**  
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