

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 26 September 2017

**Public Authority:** Independent Police Complaints Commission

**Address:** 90 High Holborn  
London  
WC1V 6BH

### Decision (including any steps ordered)

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1. The complainant submitted a multi part request for information to the Independent Police Complaints Commission ("IPCC") for copies of all its investigation reports from the last five years, together with information about the costs, procedures and service complaints pertaining to individual investigations. The IPCC 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 IPCC was entitled to rely on section 14(1) of the FOIA to refuse to comply with the request.
3. The Commissioner requires no steps to be taken.

## Request and response

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4. On 7 January 2017, the complainant wrote to the IPCC via the public *Whatdotheyknow*<sup>1</sup> website and requested information in the following terms:

*"The Home Affairs Committee (HAC) have included details within a report, document concerning the IPCC and the "estimated cost" for an independent investigation based on an average investigation. The HAC document was published a number of years ago and it states;*

*29. "The IPCC provided us with an estimated cost for an independent investigation based on an average investigation. Some independent investigations may cost as little as £45,000 while more complex investigations can reach up to £300,000. The figures provided for managed and supervised investigations relate only to the IPCC cost and do not take account of the majority of costs which fall to the appropriate authority, usually the relevant police force. Mode of investigation, Illustrative cost (incurred by the IPCC) Independent £120,000 Managed £14,000, Supervised £3,000"*

*The full details can be found on this page link;  
<http://www.publications.parliament.uk/pa...>*

*I would like to know;*

*1, The cost (estimated cost) for an independent investigation as of 2016/17?*

*2, What type of record [sic] system/s is used to calculate all costs, amounts spent on each independent investigation?*

*3, Who at the IPCC has responsibility for the funding of independent investigation?*

*4, Do any Police forces pay towards or the full costs of independent investigations? (if they do, please supply full details)*

*5, Are there any circumstances (including exceptional circumstances) whereby the IPCC can apply for additional funding (or where additional funding is offered, paid) from Home Office or any other*

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<sup>1</sup> <https://www.whatdotheyknow.com/>

*state body regards independent investigations? If there are, please supply full details [sic].*

*6, When the IPCC are conducting an independent investigation concerning complainant/s who have already had many years of involvement with them (and also the Police) and when there is already a very low level (or even zero level ) of trust, how do the IPCC deal with such cases, how would they handle such an independent investigation. For instance, is there an option available to Commissioners or IPCC to refer such cases to independent third parties?*

*7, During an independent investigation, are Commissioners and investigators under a legal obligation to investigate all lines of enquiry, particularly where there is potential issues and allegations of fraud, dishonesty by police officers and where there is compelling evidence of police making false accounts and allegations?*

*8, Where there is a potential conflict of interest, involving the Home Office, other state body, how is this dealt with by the IPCC?*

*9. How do the IPCC create and set terms of reference for independent investigation/s. Is it normal practice for those to be set by IPCC and or a Commissioner without any input or involvement of complainant/s.*

*(i) How do the IPCC deal with cases where the complainant/s have expressed their concerns with the IPCC's, Commissioner's terms of reference of independent investigation/s, do they work with the Complainant/s, do they allow Complainant/s to have some input and or agreement, are the terms of reference rewritten or amended in such circumstances?*

*10, When the Police carry out investigations they are required to follow IPCC statutory guidance etc. Please supply full details of all policies, procedures, legal requirements, guidance, investigation handbook/s, manual/s etc that IPCC Commissioners and IPCC investigators are required to follow when conducting independent investigations?*

*I would like the IPCC to disclose copies of all policies, procedures, legislation, guidance, investigation handbook/s, manual/s, all other requirements etc (concerning 9 above).*

*11, Has there been any legal action taken against the IPCC by Complainant/s, members of public regarding independent investigations during the last 5 years (between 30 December 2011 / 30 December 2016) relating to any issues, alleged [sic] failures by IPCC staff, investigators or Commissioners? (if there have, how many, what was the outcome of each)*

*(i) Have the IPCC, for whatever reason, in the last 5 years agreed to reinvestigate any of their independent investigations in part / in full because of any issues relating to above. If they have, how many, what were the reasons for each of the partial and or full re investigations.*

*(ii) I would like to know;*

*\* All, any damages, compensation paid in each case;*

*\* Breakdown of all court costs for each case;*

*\* Breakdown of all legal costs (internal, external) in each case (including those paid to barrister and solicitors);*

*I am not requesting any personal or LPP information, just the details of all cases, breakdown of amounts paid by IPCC*

*12, I would like the IPCC to disclose copies of all their independent investigations reports for the last 5 years."*

5. The IPCC responded on 1 February 2017. It stated that it was not obliged to comply with the request on the grounds that it was vexatious within the meaning of section 14(1) of the FOIA. It also considered the request could not be complied with without exceeding the appropriate costs limit, and therefore that section 12(1) of the FOIA also applied.
6. Following an internal review the IPCC wrote to the complainant on 14 March 2017. It upheld its application of section 14(1) and section 12(1) of the FOIA.

## **Scope of the case**

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7. The complainant contacted the Commissioner on 23 May 2017 to complain about the way his request for information had been handled. He denied that his request could be construed as vexatious, saying that he had not previously submitted requests to the IPCC on this subject and that it was not his intent to harass or inconvenience it with the request. He said there was a public interest in the IPCC being transparent with regard to the costs attached to its investigations, which he understood to be considerable. With regard to his request for copies of the reports, he believed the IPCC published almost all its investigation reports and therefore that it would not be unduly onerous for it to provide them in response to his request.
8. The Commissioner has considered the IPCC's application of the exemption at section 14(1) of the FOIA.

9. In the light of her decision on that exemption, she did not consider the application of the exemption at section 12(1) of the FOIA.

## Reasons for decision

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### Section 14 - vexatious or repeated requests

10. Section 14(1) of the FOIA states that section 1(1) of the FOIA does not oblige a public authority to comply with a request for information if the request is vexatious. There is no public interest test.
11. 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 County Council & Dransfield*<sup>2</sup>. The Tribunal commented that the term 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.
12. 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.
13. 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).*
14. The Commissioner has published guidance on dealing with vexatious requests<sup>3</sup>. That guidance includes a number of indicators that may apply

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<sup>2</sup> <https://www.judiciary.gov.uk/judgments/info-commissioner-devon-county-council-tribunal-decision-07022013/>

<sup>3</sup> <https://ico.org.uk/media/for-organisations/documents/1198/dealing-with-vexatious-requests.pdf>

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 or not a request is vexatious.

15. As discussed in the Commissioner's guidance, the relevant consideration is whether the request itself is vexatious, rather than the individual submitting it. 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. 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".*

16. 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".*

#### *The complainant's view*

17. The complainant disputed that the request was vexatious. He provided the Commissioner with a comprehensive submission explaining his position.
18. He told the Commissioner:

*"My request is not vexatious, no previous request concerning this issue have ever been made by me before".*

19. He said there was a serious purpose behind his request which would be furthered by the disclosure of the information:

*"...there is a public interest in the information sought due to issues of trust by the public so far as investigations against the police are concerned, the high costs to the taxpayer. I understand that just one IPCC independent investigation can cost between £30,000 to £80,000. Others can cost well over £100,000. And because of the*

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*public interest in the information concerning high profile cases where there has been evidence of serious corruption by police, the IPCC being the only organisation responsible for holding the police to account on behalf of the public."*

20. In his correspondence with the Commissioner, the complainant set out his objection to the IPCC's decision to dismiss his request as motivated by a wider grievance:

*"The IPCC are claiming that I am behind some type of "campaign" against them. However, not only is this untrue but there is no evidence to show that this is the case."*

21. He referred to the Commissioner's comments in a decision notice<sup>4</sup> which addressed the question of vexatiousness in the context of adversarial relationships:

*"In previous decisions the Commissioner has acknowledged that it is human nature that the making of a request will frequently be driven by a particular agenda or vested interest. Disagreement with a public authority's actions, however, does not necessarily connote that a related request is vexatious. Nor does the fact that there is a fractious relationship between the applicant and public authority".*

22. Regarding 'burdensome', he stated his belief that the request would not be unduly onerous for the IPCC to comply with:

*"Regards the part of my request for copies of all independent reports. It is my understanding that the IPCC publish almost all of those reports. Those reports will be very easy for the IPCC to disclose, would be freely available to them. The request, in full, is nothing other than a genuine attempt to access information which is in the public interest. There is nothing which I have requested within my request which the IPCC could point to which could show that it is intending to harass or vex..."*

#### *The IPCC's view*

23. Refusing to provide the requested information on the basis that section 14(1) of the FOIA applied, the IPCC told the complainant that it considered his request to be vexatious on the grounds that compliance with it would impose a grossly oppressive burden on it.

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<sup>4</sup> [https://ico.org.uk/media/action-weve-taken/decision-notice/2016/1624750/fs\\_50592465.pdf](https://ico.org.uk/media/action-weve-taken/decision-notice/2016/1624750/fs_50592465.pdf)

24. It said that compliance with part 12 of the request would involve the assessment of 906 investigation reports for disclosure. The reports can contain sensitive investigative and operational information and so each would have to be carefully assessed by reference to more than one FOI exemption. It is likely that exempt information could not easily and quickly be separated from non-exempt information.
25. The IPCC estimated that compliance with that part of the request would take in excess of 5000 hours and would impose a grossly oppressive burden on its information handling resources. Its estimate was based on its experience of responding to FOIA requests for individual IPCC investigation reports and associated documents. The estimate took into account the detailed research and analysis involved in redacting IPCC reports in order to balance the competing requirements of the FOIA and the Data Protection Act 1998 (DPA). By their very nature, IPCC reports regularly contain detailed information about policing as well as highly sensitive personal data relating to identifiable individuals, and it is frequently not possible to assess the harm that may result from disclosure of specific content without consulting with a number of potentially affected parties. Compliance with the entirety of the request would cause significant disruption and could be justified only if the public interest in disclosure could be shown to be very strong indeed.
26. The IPCC considered the impact of the request against its purpose and value, when determining whether the effect of complying with it would be disproportionate. It said that it publishes some of its investigation reports on its website, meaning that they are accessible to the complainant (and the wider public) otherwise than under FOIA. Whilst the published reports represent only a small proportion of the total number the complainant has asked for, they nevertheless provide a detailed account of IPCC investigative work across a range of cases. It said that their availability on the IPCC website undermined the complainant's argument that the dearth of investigation information in the public domain justified any expense incurred by his request. On the contrary, the IPCC considered that a disproportionately high cost would be incurred by it in return for the relatively low level of public benefit that would flow from the disclosure. There was, it said, a substantial disparity between the request's professed purpose and its disruptive effect.
27. The complainant's previous information access requests under the FOIA, DPA, and a combination of the two were also taken into consideration by the IPCC when considering the burden to it of complying with the request as a whole. It said that since making this request on 7 January 2017, the complainant had made a further 17 requests for information to the IPCC, five of which had been answered under the FOIA. This brought the number of FOIA requests received by the IPCC from the complainant since October 2009, to 90. A search of the IPCC's police

complaint case tracking system revealed that he was also named in 107 police complaint cases, equating to a similar number of allegations that he had made against various police forces.

28. The IPCC believes there is a clear relationship between the subject matter of the complainant's information access requests and his dissatisfaction with the IPCC's decisions on his police complaint cases. Many of his requests contain allegations to the effect that the IPCC is *"corrupt to the core"* and he singles out specific members of IPCC staff who he alleges have been involved in *"very serious corruption whereby they ignored all of the evidence"*.
29. The IPCC said that to date the complainant had submitted 25 complaints against 13 named IPCC staff members, the FOI team generally and the IPCC as an organisation. While it acknowledged that the complainant is entitled to make complaints against the IPCC, it noted that addressing these complaints adds significantly to the burden of correspondence associated with dealing with him.
30. The IPCC noted that the DPA does not include any provision enabling a data controller to refuse a subject access request as vexatious. However, it believed it was clear that the requests that it had considered under section 7 of the DPA formed part of the same course of unreasonable conduct that had led it to conclude that this FOIA request should be refused under section 14(1) of the FOIA. Many of the complainant's information requests were made under both the FOIA and section 7 of the DPA. Just as his complaints against the police would give rise to further complaints about the handling of those complaints, the IPCC's responses to his related subject access requests have usually resulted in further complaints against the police and the IPCC, and further subject access requests arising from the correspondence generated by the subsequent complaints. To illustrate this point, the IPCC provided the Commissioner with an example of this pattern of behaviour, in relation to a case the Commissioner had previously investigated.
31. The IPCC considered that the complainant's engagement with it could be traced back to legitimate grievances he had about the way the IPCC had dealt with some of his complaints. However, it believed that any benefit the complainant (or the wider public) might derive from it complying with his request was outweighed by the distraction and disruption that his correspondence would cause to the IPCC's capacity to deal with information requests submitted by other individuals.
32. The IPCC said it has been responding to the complainant's correspondence for eight years. It considered that the request under consideration here was part of a steady and persistent series of FOIA requests and that answering it offered no prospect of satisfying the

complainant and would not result in the requests stopping. It acknowledged that an individual request may not be vexatious in isolation, but when considered in the context of a long series of overlapping requests or other correspondence it may form part of a wider pattern of behaviour that makes it vexatious. It considered his request, when taken in context with the many other requests received from him, could fairly be regarded as vexatious.

33. As his requests appear to be linked to his police complaint cases, and correspondence he has received from the IPCC with regard to those cases, it believes that the complainant should have his wider concerns addressed under section 20 (duty to keep the complainant informed) of the Police Reform Act 2002 ("the PRA"), rather than under the FOIA. However, the IPCC's experience of attempting to address his concerns under this duty has been that complying with one request for information results in the submission of further requests, to the point that his excessive demands have the effect of undermining the IPCC's capacity to address the large number of allegations he makes.
34. Against this background, the IPCC felt it reasonable to conclude that responding to the request would not result in the disclosure of meaningful information to the complainant, which would address his central concerns and result in him ceasing his requests for information (on that point, it noted the wide ranging and disjointed nature of the information requested here). Rather, there was a high probability that it would simply lead to the complainant submitting further complaints and correspondence under the PRA, the FOIA and DPA.
35. When the hugely onerous and time-consuming task of locating, assessing and redacting 906 investigation reports was taken into consideration with the complainant's general pattern of requests and related correspondence, the IPCC was satisfied that the request engages section 14(1) of the FOIA.

*The Commissioner's view*

36. 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. A commonly identified feature of vexatious requests is that they can emanate from some sense of grievance or alleged wrong-doing on the part of the authority.
37. 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".*
38. 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.
39. 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.
40. The Commissioner 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.

*Was the request vexatious?*

41. The Commissioner considered both the IPCC's arguments and the complainant's position regarding the information request in this case.
42. As in many cases which give rise to the question of whether or not a request is vexatious, the evidence in the present case showed a history of previous and subsequent information requests. Clearly in this case, the IPCC considers that the context and history strengthens its argument that the request is vexatious.

43. The IPCC has set out a well evidenced case for considering that compliance with part 12 of the request (for copies of its investigation reports) would impose a grossly oppressive burden upon it. It is clearly not the case, as the complainant asserted, that most of the reports are already published and therefore readily accessible. Part 12 of the request clearly meets the criteria for demonstrating a "*grossly oppressive burden*" set out at paragraph 71 of the Commissioner's guidance: the request is for a substantial volume of information, some of which is highly sensitive and likely to be exempt from disclosure and which cannot easily be redacted because it is likely to be scattered throughout the requested, material, which it has been established, is voluminous.
44. It is also not the case that if part 12 of the request were to be disregarded, that the IPCC could go ahead and comply with the remaining points of the request. The IPCC also identified that compliance with the request *as a whole* imposed a burden on it, arising from the resources and staff time that it has already spent on addressing the complainant's numerous information requests and related correspondence, and the resources it would expend if it were to comply with this request.
45. To the extent that some of the requests referenced by the IPCC, in support of its view that the request is vexatious, post-date the request in this case, the Commissioner considered that they are still relevant to explain the nature of the continuing dealings between the parties.
46. The Commissioner acknowledges the impact on the IPCC's administrative resources of dealing with the complainant's request, when considered alongside the voluminous nature of the other requests regularly submitted by him. She accepts that this has caused a significant level of disruption and irritation to it and that dealing with them means that it runs the risk of impacting on service levels afforded to other people who make FOIA requests.
47. Having looked at the pattern of the complainant's requests, the Commissioner also considers that any response given by the IPCC would be unlikely to be the end of the matter and would be likely to lead to follow-up requests from the complainant. She is of the view that this would extend the life of the complainant's use of the FOIA to address his grievances with the IPCC, and would impose a further consequential burden on the IPCC.
48. The Commissioner considers that a public authority should be mindful to take into account the extent to which oversights on its own part might have contributed to a request being generated. If the problems which an authority faces in dealing with a request have, to some degree, resulted from deficiencies in its own handling of previous enquiries by the same

requester, then this will weaken the argument that the request, or its impact upon the public authority, is disproportionate or unjustified. However, the Commissioner has not seen any evidence that that is the case here.

49. The Commissioner recognises that the complainant had his reasons for pursuing information from the IPCC. The complainant is clearly not satisfied with how the IPCC has conducted itself with regard to complaints he has previously submitted to it and he is mistrustful of the way it discharges its functions.
50. The Commissioner has considered whether there is any serious purpose or value for the requested information and notes that the complainant has not identified a specific purpose for requiring it, beyond generic "transparency and accountability" arguments bolstered by his aforementioned distrust of the IPCC and the police. The Commissioner recognises that, properly redacted, the disclosure of the requested information would serve a public interest in that regard. However, she considers there to be a substantial disparity between the request's declared purpose and its disruptive effect, were it to be complied with.
51. The Commissioner considers that the complainant appears to be attempting to pursue grievances about the IPCC's treatment of his complaints publicly, through the FOIA regime and particularly the platform provided by *WhatDoTheyKnow*. The volume and the tone of many of the requests and accompanying correspondence, suggest that he is using the FOIA regime primarily as a means to harass and disrupt the work of the IPCC, rather than to obtain information which will genuinely be of use to him and to the wider public.
52. The Commissioner considers that the FOIA is not an appropriate mechanism for pursuing grievances. If the complainant has serious concerns about how the IPCC has dealt with his previous complaints he may have those concerns formally examined through the mechanism of judicial review and he has been advised of this. The Commissioner considers that there is no wider public interest in them being played out in public, under the FOIA regime.
53. The purpose of section 14 of the FOIA is to protect public authorities and their employees from unreasonable demands 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 their delivering mainstream services or answering legitimate requests. 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 an holistic and broad

approach should be taken in respect of section 14(1), the Commissioner is satisfied that efforts to comply with the request would impose a grossly oppressive burden on the IPCC and that the request meets the Tribunal's definition of "*manifestly unjustified, inappropriate or improper use of a formal procedure*". Consequently she finds that it was vexatious within the meaning of section 14(1).

55. Accordingly, she is satisfied that the IPCC was entitled to apply section 14(1) of the FOIA to refuse to comply with the request.

## Right of appeal

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56. 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@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

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

57. 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.
58. 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**  
**Senior Case Officer**  
**Information Commissioner's Office**  
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