

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 23 April 2014

Public Authority: The Chief Constable of Sussex Police
Address: Church Lane
Lewes
East Sussex
BN7 2DZ

Decision (including any steps ordered)

1. The complainant requested information relating to a Sussex Police investigation into the circumstances surrounding a death at Beachy Head, Sussex and a subsequent inquest. The police refused the request on the basis that it was vexatious, citing section 14(1) FOIA.
2. The Commissioner's decision is that Sussex Police correctly relied on section 14(1) FOIA.
3. The Commissioner does not require any steps to be taken.

Request and response

4. The complainant wrote to the Commissioner following extensive correspondence with Sussex Police and other public authorities arising from the death of his son at Beachy Head in 2011. The police investigated the matter, as did the Coroner for East Sussex, and an inquest was held in 2012. However, the complainant continues to have concerns about some of the findings made by the police and the Coroner and some of the evidence presented to them by the relevant public authorities.
5. On the following dates the complainant wrote to Sussex Police and requested information in the following terms:

21 June 2013

To ask if Sussex Police obtained a Court Order to monitor the telephones of [the complainant] and [name].

15 July 2013

To ask for Full details of the call made from [name's] telephone [number] on [date] at 2045. Where was the call made from and where was it received by [name].

Also on 15 July 2013

To ask for Full details of the ANPR Serial [number] of [date] at [time] noted by Sussex Police at [time] as quoted in the Sussex Police Investigation Report into the death of [name] page 7 of 11, headed vi. Police failed to utilise ANPR to track the travel route or to locate [name's] car.

Also on 23 June 2013

1. *Were the two uniformed Sussex Policeman in Court armed at the Inquest into the death of [name] in [date]?*
2. *Were journalists informed of this fact? Their lives were in danger should an incident have occurred?*
3. *What was the basis of the placing of armed police at an Inquest?*
4. *I was not informed, why?*
5. *[name] family, [name] weren't informed, why?*
6. *Were medics on call should there have been a shooting?*
7. *Is it normal to have uniformed and armed Police at Inquests in Eastbourne?*
8. *Were armed Sussex Police guarding [name] after her false accusations that [name] was going to kill [names]?*
9. *Why didn't Sussex Police inform [name] of this Statement? It put [name] life in danger.*
10. *Did they check with the Met Police and CO19 regarding previous false allegations from [name]? Had they done so it would have been found that [name] had volunteered not to reapply for [name] SGL and thus hold any firearms to protect [name] and the Met from future allegations in 2009.*
11. *Were they ordered to shoot [name] on sight?*

6. Sussex Police responded on 12 August 2013 saying that they considered the 24 June 2013 request to be vexatious and applied the section 14(1) FOIA exemption (Vexatious or repeated requests). The police said that they regarded the information request as obsessive in terms of the volume and frequency of requests, with the clear intention to use the

information to reopen issues that had already been debated and fully investigated.

7. The police did not conduct a separate internal review and told the Commissioner, on 28 October 2013, that they considered that a review at that stage would serve no useful purpose. Accordingly the police were content for the Commissioner to proceed with his investigation.

Scope of the case

8. The complainant contacted the Commissioner on 31 July 2013, 13 August 2013 and 11 October 2013 to complain about the way his request for information had been handled and about the lack of an internal review by the police.
9. The Commissioner considered the application by the police of the section 14(1) FOIA exemption. The police told the Commissioner on 3 February 2014 that, in the event that its reliance on the section 14(1) FOIA exemption was not upheld, it would seek in the alternative to apply the section 30(1) FOIA exemption (Investigations and proceedings conducted by public authorities) to the requested information. The police also made reference to the section 31 FOIA (Law enforcement) and section 40 FOIA (Personal information) exemptions. In view of his findings on the section 14(1) FOIA exemption, the Commissioner did not proceed to consider the application of other exemptions.
10. The police told the Commissioner that they hold no record of a deployment of armed officers as alleged by the complainant in his 23 June 2013 information request.

Reasons for decision

Section 14(1)

11. 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. There is no public interest test.
12. The term 'vexatious' is not defined in the FOIA, however, the Upper Tribunal in *Information Commissioner vs Devon CC and Dransfield* [2012] UKUT 440(AAC), (28 January 2013) took the view that the ordinary dictionary definition of the word 'vexatious' is only of limited use, because the question of whether a request is vexatious ultimately depends on the circumstances surrounding that request.

13. In further exploring the role played by circumstances and whether the request has adequate and proper justification, the Tribunal concluded that 'vexatious' could be defined as the "*...manifestly unjustified, inappropriate or improper use of a formal procedure*" (paragraph 27).
14. Consistent with the Upper Tribunal's decision, which established the concepts of 'proportionality' and 'justification' as central to any consideration of whether a request is vexatious, the Commissioner's guidance for section 14 FOIA confirms that the key question to ask when weighing up whether a request is vexatious is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress.
15. Where this is not clear, the public authority should weigh the impact on the authority of complying with the request and balance this against the purpose and value of the request. In doing this, public authorities will inevitably need to take into account the wider factors such as the background and history of the request.

Is the request likely to cause a disproportionate or unjustified level of disruption, irritation or distress?

16. As regards the impact of the requests, the police told the Commissioner that there had been numerous repeated requests, complaints and challenges made by the complainant to a wide range of its own staff and also to other organisations. In his own communications with the Commissioner's staff, the complainant confirmed that he had made a considerable number of information requests connected with this matter.
17. The Commissioner found that the resources needed to comply with the requests would present a significant but not overwhelming burden for the police. He also saw that the tone of the requests was neither abusive nor aggressive nor was there any evidence that the complainant intended to cause disruption or distress to the police and other relevant public authorities, or to harass individual members of their staffs.

Unreasonable persistence

18. The police said that the circumstances surrounding the information requests indicated an unreasonable persistence on the part of the complainant. The police told the Commissioner that the decision to treat the requests as vexatious was not made merely because of these requests but also in the light of previous ones. The police said that they had fully investigated the matter of the tragic death of the complainant's son, and that their findings had been considered by the Coroner and through the judicial process. The police said that the constant attempts

by the complainant to reopen the investigation or challenge its conclusions outside of the judicial process were clearly obsessive.

19. The police told the Commissioner that it had carried out a full investigation which had included the historical tracking of the movements of relevant persons using a number of policing tactics but including the analysis of vehicle movements and mobile phone records. The police said that, at the conclusion of its investigation, a full case had been presented to the East Sussex Coroner. An Inquest had been held and had concurred with the police finding of suicide with no other parties involved.
20. The police said that the complainant had refused to accept that verdict and had repeatedly made complaints to the Coroner, the case officers, the police complaints department and senior police officers.
21. The police said that in the light of the complainant's continuing contact and complaints regarding the investigation and challenge to the lawful process of the inquest they had decided not to respond further to his emails. They added that this was a decision they rarely took, and then only as a last resort, once all other options have been exhausted.
22. The police added that, outside of the FOIA processes, considerable information had been provided to the complainant both from the Coroner and also from the police investigation team in relation to the death of his son. They said that the complainant's scrutiny of the released papers had then led to further questioning and challenges.

The purpose and value of the request

23. In his communications with the Commissioner the complainant has emphasised his concerns that some aspects of the matter have not, in his view, been properly investigated and that some facts that he believes to be significant have been overlooked. He disputed the claim that his requests were vexatious and considered that he was demonstrating a proper persistence in his endeavours to follow an essential and neglected line of inquiry. He believed that, in refusing his information requests, the police are blocking access to information that would strengthen his case that the investigations into his son's death were flawed.
24. The police consider that the information requests centre on re-opening issues that have already been investigated and responded to by themselves and the Coroner and have little value.

The balance between the impact of the request on the public authority and the purpose of the request.

25. The Commissioner considered the balance between the impact on the police of responding to these requests against the purpose and value of the requests. In doing this, and consistent with the Upper Tribunal's ruling in *Dransfield*, he paid particular attention to the circumstances surrounding the requests.
26. The Commissioner accepted that the complainant's requests have a serious purpose and value and notes that complying with the requests would not represent a disproportionate burden on the police. The Commissioner also notes that the tone of the requests is not objectionable.
27. The police told the Commissioner that it continues to correspond with the complainant on other matters that he had also raised.
28. However, the Commissioner is mindful that the complainant's concerns have already been comprehensively investigated by the police, and the results independently scrutinised by the Coroner, and that neither upheld the complainant's concerns. The Commissioner recognises that the complainant is not satisfied with the quality of these investigations, and understands that he is asking for the Coroner's Inquest to be reopened, but makes clear that it is beyond his own remit to consider these matters.
29. The Commissioner considered that the information requests were indicative of an attempt to re-open issues that had already been investigated and responded to thoroughly and subjected to independent scrutiny and found that they demonstrated unreasonable persistence on the part of the complainant.
30. In the Commissioner's view and seen in context, the serious purpose of the request did not outweigh its impact in terms of the continuing pattern of a disproportionate and unjustified level of disruption, irritation or distress to the public authority. The Commissioner has therefore concluded that the information requests constitute an inappropriate or improper use of the FOIA and, in line with the Upper Tribunal's definition of the term 'vexatious' in *Dransfield* referred to above, decided that the police were correct to rely on section 14(1) of the FOIA in respect of these requests.

Right of appeal

31. 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: 0116 249 4253

Email: GRC@hmcts.gsi.gov.uk

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

32. 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.
33. 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

Jon Manners
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