

## Freedom of Information Act 2000 (FOIA)

### Decision Notice

**Date:** 12 September 2017

**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 requested information relating to the Injury on Duty Benefit Regulations 2006. The Northern Ireland Policing Board refused the request under section 14(1) of the FOIA since it considered that request to be vexatious. The Commissioner's decision is that the request is vexatious and the Policing Board was entitled to rely on section 14(1). No remedial steps are required.

#### Request and response

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2. The Policing Board is responsible for the management and administration of the ill-health pension retirements of police officers<sup>1</sup>, including injury on duty award (IOD) applications. IOD claims may be submitted by serving police officers, or retrospectively by ex-police officers.<sup>2</sup>
3. The complainant has been in dispute with the Policing Board for several years in relation to his IOD case. The complainant has made various

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<sup>1</sup> <http://www.nipolicingboard.org.uk/index/our-work/pensions-and-administration.htm>

<sup>2</sup> [http://www.nipolicingboard.org.uk/index/our-work/pensions-and-administration/content\\_-\\_pensions\\_injury\\_on\\_duty.htm](http://www.nipolicingboard.org.uk/index/our-work/pensions-and-administration/content_-_pensions_injury_on_duty.htm)

requests for information to the Policing Board, and has complained to the Commissioner about the way some of these requests have been handled.

## Request and response

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4. The complainant submitted the following request for information to the Policing Board on 1 April 2017:

*"1) Reference Judicial Review referred to above what action has NIPB taken or will be taking regarding the implications of the Fisher R case for all IOD applications, reviews, etc applicable to this jurisdiction.*

*2) Does NIPB accept it has a moral and legal responsibility following the decision in the Fisher R Judicial Review to conduct a thorough examination of all relevant IOD applications/reviews. If the Board does so accept, please confirm the period over which it will so act."*

5. The Board responded to the complainant on 5 April 2017, advising that the request was considered vexatious within the meaning of section 14(1) of the FOIA. The Board referred the complainant to previous correspondence dated 12 August 2016, in which it had advised that it would not respond to further requests on the theme of IOD awards. The Board also pointed out that the Information Commissioner had upheld its decision in two previous cases to refuse requests in reliance on section 14.<sup>3</sup> Given the circumstances the Board stated that it was not offering an internal review.

## Scope of the case

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6. The complainant contacted the Commissioner on 30 April 2017 to complain about the Policing Board's decision to categorise his request as vexatious.

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<sup>3</sup> DN FS50543517 and DN FS50651532

## Reasons for decision

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### Section 14(1): vexatious request

7. Section 14(1) of the FOIA states that a public authority is not obliged to comply with a request if the request is vexatious, but the term vexatious is not itself defined in the legislation. In *Information Commissioner v Devon County Council & Dransfield*<sup>4</sup> the Upper Tribunal commented that  
*"The purpose of section 14... must be to protect the resources (in the broadest sense of that word) of the public authority from being squandered on disproportionate use of FOIA."*
8. The Upper Tribunal concluded that 'vexatious' could be defined as the  
*"...manifestly unjustified, inappropriate or improper use of a formal procedure."*
9. The Upper Tribunal decision clearly establishes that the concepts of proportionality and justification are central to any consideration of whether a request is vexatious. The Commissioner's published guidance<sup>5</sup> also sets out a number of indicators that public authorities may find it useful to consider when determining whether a request is vexatious. The guidance emphasises that all the circumstances of the case must be taken into consideration in order to determine whether a request is vexatious.
10. The key question the public authority must ask itself is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress. Where this is not clear, the Commissioner considers that a public authority should weigh the impact of the request upon it and balance this against the purpose and value of the request. Where relevant, public authorities will also need to take into account wider factors such as the background and history of the request.

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<sup>4</sup> UKUT 440 (AAC), 28 January 2013

<sup>5</sup> <https://ico.org.uk/media/for-organisations/documents/1198/dealing-with-vexatious-requests.pdf>

### The Policing Board's position

11. The Policing Board said that the complainant had continued to demonstrate the same patterns of behaviour that had led to the Commissioner's previous decision notices upholding the application of section 14. Although the Policing Board recognised the need to correspond with the complainant in respect of his personal case, it considered that the complainant's behaviour was unreasonably persistent and created a disproportionate burden on the Board's staff and resources.
12. The Policing Board explained that the complainant had continued to communicate with a range of officials including the Chief Executive, the Director of Resources, the Administration Manager and FOI/DPA staff. Consequently the Policing Board had imposed contact restrictions on the complainant under its unacceptable behaviour policy. The Policing Board had advised the complainant that it would only deal with written correspondence rather than telephone calls, and that such correspondence would be dealt with in chronological order.
13. The Policing Board also said that the complainant had continued to submit subject access requests under the Data Protection Act 1998 (the DPA). Again, this meant that the Policing Board was frequently required to respond to the complainant in different contexts: information requests, subject access requests, general correspondence, etc). The Policing Board argued that the complainant's correspondence was so voluminous as to cause a significant strain on the Policing Board's ability to deal with other equally important work.
14. The Policing Board said that between August 2016 and June 2017 it had logged approximately 230 actions in respect of the complainant's case, of which around 130 related to direct communications from him. The Policing Board pointed out that on several occasions the complainant had issued multiple items of correspondence in a single day. These communications included requests for comment and explanation, as well as requests for information relating to various data protection issues. This meant that the Policing Board was required to go through each piece of correspondence to ensure that statutory obligations under the FOIA and the DPA were met, while separating out requests for non-recorded information.
15. The Policing Board argued that the request which is the subject of this decision notice followed this established pattern. The Policing Board accepted that the first part of the request was for recorded information, but argued that the second part of the request was effectively asking the Board to comment on the extent to which the outcome of a judicial

review may affect its functions. The Board did not consider this to be a valid request for recorded information within the meaning of section 8 of the FOIA.

16. The Policing Board was of the view that, even if it responded to the request of 1 April 2017 (to the extent that it was valid), the complainant would remain unsatisfied and would continue to submit further requests and other correspondence. The Policing Board considered that it had sought to engage with the complainant as an individual with a personal case, and as an interested member of the public, but that the complainant's correspondence was excessive and disproportionate.

#### The complainant's position

17. The complainant maintained that his request was not vexatious. He argued that the Board was not entitled to take into account his previous correspondence, and stated that this was the first request for information he had made "for quite some time on IOD issues".

#### The Commissioner's view

18. The Commissioner has been assisted in her considerations by the Upper Tribunal's comments in the case of *Wise v Information Commissioner*.<sup>6</sup>

*"Inherent in the policy behind section 14(1) is the idea of proportionality. There must be an appropriate relationship between such matters as the information sought, the purpose of the request and the time and other resources that would be needed to provide it."*

19. The Commissioner is mindful that she has previously found two requests made by the complainant, to the public authority, and on the same broad topic, to be vexatious. However, the fact that the Commissioner has previously found a request made by the complainant to be vexatious does not provide conclusive evidence that a subsequent request is also vexatious. The Commissioner wishes to emphasise that she has considered the circumstances of this case on its own merits, although there is unavoidably a certain degree of overlap with the arguments and analysis in previous cases.
20. The Commissioner would also stress that she cannot comment on the complainant's wider dispute and personal case. Her remit under section

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<sup>6</sup> GIA/1871/2011

50 of the FOIA is to decide whether a particular request for recorded information has been handled in accordance with the requirements of the legislation. Although it is the request, rather than the requester, that must be assessed to be vexatious in order to rely on section 14, it is appropriate to consider the context of the request as well as the complainant's behaviour. A request may appear reasonable if considered in isolation, but may well be vexatious in the context of voluminous correspondence. For this reason the Commissioner finds that the Policing Board was entitled to take into account the complainant's previous requests and wider correspondence.

21. The Commissioner is of the view that, regrettably, the complainant has continued to demonstrate the behaviour that led to the two previous decision notices. The arguments made by the Policing Board in those cases continue to be relevant in this case. For example, the Commissioner accepted in 2014 the Policing Board's concern that it was likely that the complainant would continue to correspond with the Policing Board on the issue of IOD. Three years later, in February 2017 the Commissioner commented:

*"...the Commissioner considers that the complainant's pattern of submitting continued information requests and other correspondence on the IOD issue may be interpreted as demonstrating obsessive and unreasonable behaviour. It may also be perceived as an attempt to prolong correspondence, which may have the effect of diverting resources from the Policing Board in its duty to engage with the Pensions Ombudsman in respect of complaints."*

22. Unfortunately the Commissioner has seen no evidence to suggest that the complainant has taken account of her findings in the previous cases. The complainant's request of 1 April 2017 asks the Board to accept that it has a "*moral and legal responsibility*" to take action, and asks the Policing Board to confirm when and how it will take this action. The Commissioner considers this to be a clear continuation of the pattern of behaviour previously identified in terms of making assumptions and expecting the public authority to provide comment and justify its position. It is therefore difficult to see how the Commissioner can reach any other view than that the request of 1 April 2017 is similarly vexatious.
23. The Commissioner believes that the Policing Board in this case has provided sufficient evidence to demonstrate that the request is vexatious. Accordingly the Commissioner finds that section 14(1) is engaged in respect of the complainant's request of 1 April 2017, and the Policing Board was not obliged to comply with that request.

## Right of appeal

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24. 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)

25. 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.
26. 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 .....

**Sarah O’Cathain**  
**Senior Case Officer**  
**Information Commissioner’s Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
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