

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 6 August 2018

Public Authority: Chief Constable of Surrey Police
Address: Surrey Police HQ
PO Box 101
Guildford
Surrey
GU1 9PE

Decision (including any steps ordered)

1. The complainant requested information from Surrey Police relating to the case of an individual who was murdered.
2. The Commissioner's decision is that the request is vexatious and Surrey Police was entitled to apply section 14(1) (vexatious or repeated requests) of the FOIA to refuse the request. She also considers that Surrey Police was not obliged to issue a refusal notice in respect of the request, in accordance with section 17(6) (refusal of request) of the FOIA.
3. The Commissioner requires no steps to be taken as a result of this decision.

Background

4. Under section 17(5) of the FOIA, a public authority relying on a claim that section 14 of the FOIA applies will usually need to issue a refusal notice stating that the request has been refused on the grounds that it is vexatious or repeated¹.

¹ https://ico.org.uk/media/for-organisations/documents/1211/refusing_a_request_writing_a_refusal_notice_foi.pdf

5. With reference to an earlier request for information dated 14 April 2017 from the same complainant, Surrey Police told the Commissioner:

"... I provided a section 17 response to [the complainant]... The response contained a vexatious warning ... An internal review was then carried out... The IR letter was sent to [the complainant] on 14 June 2017".

6. The internal review concluded that the request for information dated 14 April 2017 was vexatious and advised the complainant that Surrey Police would not respond to any further communications from him in relation to the same subject.
7. The Commissioner is satisfied from the context provided that the request in that case was for information relating to the murder victim.

Request and response

8. On 16 May 2018 the complainant wrote to Surrey Police and requested information in the following terms:

"It was reported on the BBC News website in [date redacted] that the initial DNA tests on [name redacted]'s remains, note the use of the plural, proved to be inconclusive. How was that possible? What proof is there that [name redacted] is dead? That has not been published or broadcast by the news media!"

9. Surrey Police responded on 17 May 2018, referring the complainant to its correspondence of 14 June 2017. It noted that the Information Commissioner's contact details were included in that letter.

Scope of the case

10. Following earlier correspondence, the complainant contacted the Commissioner on 17 May 2018 to complain about the way his request for information had been handled.
11. In the circumstances, the Commissioner accepted the case for investigation without an internal review.
12. On 25 May 2018 the complainant again contacted the Commissioner, advising her:

"It may be relevant to state what was in my "vexatious" request last April. The subject heading was "Is [name redacted] Still Alive?" There was no answer to that question".

13. During the course of the Commissioner's investigation, Surrey Police confirmed its application of section 14(1) to the request dated 16 May 2018.
14. The analysis below considers whether the request dated 16 May 2018 was vexatious within the meaning of section 14(1) of the FOIA, and if so, whether Surrey Police was entitled by section 17(6) of the FOIA not to issue a refusal notice.

Reasons for decision

Section 14 vexatious request

15. 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. The section is not subject to a public interest test.
16. 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 CC & Dransfield*. 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 establishes that the concepts of proportionality and justification are relevant to any consideration of whether a request is vexatious.
17. 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.
18. 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).

19. The Commissioner has published guidance² on dealing with vexatious requests. That guidance includes 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.
20. As discussed in the Commissioner's guidance, the relevant consideration is whether the request itself is vexatious, rather than the individual submitting it. A public authority can 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".

21. The Commissioner recognises that sometimes it will not be obvious when a request is vexatious. 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".

22. She also accepts that sometimes a request may be so patently unreasonable or objectionable that it will obviously be vexatious.

The complainant's view

23. The complainant disputed that he had a fixation or an obsession. He explained that he was '*simply extremely curious*'.
24. He subsequently told the Commissioner:

"I wrote in regard to the last case that I was simply extremely curious and that was why I have asked Surrey Police questions which they obviously do not wish to answer. That is not the whole story..."

² <https://ico.org.uk/media/for-organisations/documents/1198/dealing-with-vexatious-requests.pdf>

25. Although not required to do so under the FOIA, he explained the reason for his interest in this matter, which revolved around his belief that the murder victim was not dead.

Surrey Police's view

26. In support of its position in this case, Surrey Police referred to its correspondence of 14 June 2017 – correspondence relating to an earlier request for information from the same complainant.
27. Surrey Police advised the complainant that its correspondence of 14 June 2017 represented a refusal notice for the request in accordance with Section 17(5) of the FOIA.
28. In that refusal notice, Surrey Police told the complainant that he had:
- "... asked questions in relation to a high profile investigation, which led to the trial and conviction of the offender the details of which were reported on a daily basis in the national media".*
29. It also told him that it considered that his continued interest in the case, and the nature of his questions, were obsessive.
30. Referencing what it considered to be the complainant's unreasonable behaviour, Surrey Police told him that it would not tolerate abusive or threatening behaviour towards its staff. Furthermore, it advised him that it would not respond to any further communications from him *"in relation to this subject"*.
31. The complainant continued to contact Surrey Police after the above refusal notice was issued, including submitting the request in this case.
32. In that respect, Surrey Police told the Commissioner:
- "[The complainant] ... should have had no expectation of a further response relating to this subject under FOI".*
33. In its submission to the Commissioner, Surrey Police set out the wider context in which the complainant's request dated 16 May 2018 was received. It told her:
- "As you will see from the attached chronology and other documents, ... [the complainant] was told at an early stage that we would not answer any further requests on the subject, yet he continued to ask for information and in doing so he was rude, threatening to the female members of the team and made continued allegations of wrong doing in the way that we had processed his request".*

34. The chronology provided by Surrey Police detailed emails and telephone calls it had received from the complainant, between April 2017 and June 2018, all relating to the same subject matter.

35. Surrey Police described the complainant as being “*obsessed with this case*” and told the Commissioner:

“... he has harassed my team, both on the telephone and in a barrage of emails”.

36. Surrey Police evidenced that both in April 2017 and on 14 June 2017, it told the complainant that any future requests on the same subject matter would be considered vexatious.

The Commissioner’s view

37. 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.

38. As the Upper Tribunal in *Information Commissioner vs Devon County Council & Dransfield* [2012] UKUT 440 (AAC), (28 January 2013) 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”.

39. 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.

40. 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.

41. The Commissioner does, however, recognise 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?

42. The Commissioner considered both Surrey Police's arguments and the complainant's position regarding the information request in this case.
43. As in many cases which give rise to the question of whether a request is vexatious, the evidence in the present case showed a history of previous information requests. Clearly in this case, Surrey Police considers that the context and history strengthens its argument that the request is vexatious.
44. 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 delivering mainstream services or answering legitimate requests. Furthermore, these requests can also damage the reputation of the legislation itself.
45. The Commissioner accepts that the request under consideration in this case was made some months after the section 17 notice was issued in June 2017.
46. Nevertheless, she recognises the complainant's persistence in contacting Surrey Police, both directly and indirectly, with regard to the topic under consideration. In that respect, she noted that his request appears to be motivated by his belief that the victim is not dead, a belief that is not supported by evidence to the contrary in the public domain. She has also taken into account the evidence she has seen of the tone of his correspondence and the accusations he has made against individuals at Surrey Police.
47. 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 was satisfied that the request was a manifestly unjustified and improper use of the FOIA such as to be vexatious for the purpose of section 14(1).
48. Accordingly she was satisfied that the request, considered in light of all relevant circumstances, was vexatious and Surrey Police was entitled to apply section 14(1) of the FOIA.

Section 17 refusal of request

49. Section 17(6) of the FOIA allows a public authority to refuse to issue refusal notice in instances when:

(a) the public authority is relying on a claim that section 14 applies,

(b) the authority has given the applicant a notice, in relation to a previous request for information, stating that it is relying on such a claim, and

(c) it would in all the circumstances be unreasonable to expect the authority to serve a further notice under subsection (5) in relation to the current request.

50. The Commissioner will usually only consider it unreasonable to expect a public authority to issue a further notice when it has previously warned the requester that it will not respond to any further vexatious requests on the same or similar topics.

51. In this case, Surrey Police provided evidence that, on 14 June 2017, it had issued a refusal notice citing section 14(1). In that correspondence, albeit without specific reference to section 17(6) of the FOIA, it also told the complainant that further requests on, or relating to, the victim would not be responded to.

52. Taking account of all the above the Commissioner has decided that it was reasonable for Surrey Police to apply section 17(6) to this request. She is satisfied that the current request falls within the scope of what was described in the section 17(6) notice.

53. The Commissioner accepts that Surrey Police has given the complainant adequate warning that future requests for information in respect of such matters would not be responded to and so it was not obliged to issue a further notice for this subject matter.

Right of appeal

54. 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
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

55. 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.
56. 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

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