

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 9 April 2019

Public Authority: Home Office
Address: 2 Marsham Street
London
SW1P 4DF

Decision (including any steps ordered)

1. The complainant requested a copy of the Home Office Homicide Index with entries covering an 18 year period. The Home Office refused to provide the requested information, initially citing sections 31 (law enforcement), 38 (health and safety) and 40 (personal information) of the FOIA. Following its internal review, and the complainant's modified request, the Home Office instead cited sections 14(1), (vexatious request) on the grounds that responding to the request would place a grossly oppressive burden on it and 12(1) (cost of compliance). During the course of the Commissioner's investigation, the Home Office advised that it wished to rely only on section 14(1).
2. The Commissioner's decision is that request was vexatious and so section 14(1) applied and the Home Office was not obliged to comply with it. She also finds there was no breach of section 16(1) of FOIA (duty to provide advice and assistance) in this case.
3. The Home Office is not required to take any steps as a result of this decision notice.

Background

4. The Home Office has explained that the Homicide Index is a database that contains details both of victims (who will, by definition, be deceased) and suspects which will include living individuals.
5. It said that the Index is compiled from information provided to the Home Office by the police on a 'CrimSec7' form, one form for each homicide that is committed. The form is sent to the Police Data

Collection Section, who upload the data to the Home Office's homicide database.

6. Only six people in the Home Office have access to the database – three data loaders in the Police and Data Collection Section and three analysts in the Crime and Policing Analysis Unit. The Home Office explained that it has always viewed this information as highly sensitive and has tightly restricted the number of people that have access to the Homicide Index.
7. The Home Office highlighted that the complainant has referred to a US version of homicide data. It said, however, this version is only available to accredited organisations (not freely available as suggested by the complainant), and does not contain the level of detail in the Homicide Index such as names of offenders and suspects.

Request and response

8. On 22 October 2018, the complainant wrote to the Home Office and requested information in the following terms:

"Please provide a copy of the Home Office Homicide Index, with all entries from 1990 to 2018.

Please provide this copy in .csv format.

Please send me this information by e-mail to [email address redacted] in a machine readable format such as .csv or .xlsx where appropriate."

9. The Home Office responded on 13 November 2018. It refused to provide the requested information, citing the following FOIA exemptions:

Section 31 – law enforcement

Section 38 – health and safety

Section 40 – personal information

It said that the public interest tests for sections 31 and 38 favoured maintaining the exemptions.

10. On 14 November 2018, the complainant requested an internal review in which he now asked the Home Office to provide the information in a "redacted form", agreeing to the redaction of details in respect of suspects that have not been convicted and, where necessary, "very recent victims".

11. Following its internal review, the Home Office wrote to the complainant, late, on 8 January 2019. The Home Office maintained its original position in relation to the exemptions cited in its response to the initial request, but stated that providing the information in redacted form (as requested at the internal review stage), would engage sections 12 (cost of compliance) and 14(1) (vexatious request) of FOIA.

Scope of the case

12. The complainant contacted the Commissioner on 9 January 2019 to complain about the way his request for information had been handled, submitting the following grounds:

"The costs of redaction under 12 are not includible under the FOI for cost purposes, contrary to the departments [sic] [ie the Home Office's] suggestions at internal review. While these costs are includable under section 14, the department has not specified why this request would be unduly burdensome, or offered assistance in attempting to bring this request within cost.

For example, the department has said names of suspects would be personal data, which are not disclosable, but does not consider simply removing suspect name fields from the database, which would be a very simple process and not create an undue burden.

If section 14 is cited, under UT ruling Reuben Kirkham v Information Commissioner (Section 12 of FOIA) [2018] UKUT 126 (AAC)¹ advice and assistance must be provided where a request is exempted under grounds of burden. This has not been done in this case.

The Home Office's argument regarding section 38 holds little weight. There is little to suggest that the republication of already public information about the identities of persons that have been murdered (with these names almost always disclosed in the local press already) would have a meaningful impact on relatives. This public information could already be used to try to contact relatives, and this release would not change this possibility.

¹https://assets.publishing.service.gov.uk/media/5ae969fc40f0b631578af0c5/GIA_1055_2016-00.pdf

There is also no adequate consideration of the public interest in openness.

Nor does the departments [sic] arguments concerning section 31 offer any concrete reasons of explanations why the release of this data would inhibit the administration of justice, with no comprehensive public interest test completed. I again also make the point, not fully considered by the department, that much equivalent information has been published in the U.S, in the form of the Supplementary Homicide Report, and there seems no good reasons to withhold the equivalent information here.

As such, a redacted version of this data should be released."

13. During the Commissioner's investigation the Home Office advised:

"[The complainant's] request for an internal review questioned the application of these exemptions, but ended by stating that there was in his view no reason why the information could not be released in redacted form (thereby seeming to accept that some information, at least, was exempt). He asked for the information with appropriate redactions. The internal review therefore considered this as a modified request for a copy of the Homicide Index with exempt information removed. The internal review focused on this revised request, which it in effect refused under section 12(1) (cost limit), with section 14(1) as an alternative."

14. The Home Office also said:

"We recognise that the cost of identifying exempt information and making redactions cannot normally count for the purposes of the cost limit in section 12(1) of the FOIA, because of the way the application of the cost limit is restricted by the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004. However, in this case to retrieve and extract the information specified in [the complainant's] modified request would by definition involve identifying and redacting exempt information. We therefore consider that we could justifiably take into account the costs which this exercise would involve for the purposes of section 12(1).

However, to avoid any doubt on this point, we would wish to rely on section 14(1) (vexatious request) rather than section 12(1). The cost of identifying exempt information and redacting it can be counted for the purposes of 'burden' and 'disproportionate cost' in relation to section 14(1)."

15. The Commissioner will consider a public authority's latest position when investigating FOIA complaints; in this case this means she will consider

the Home Office's reliance on section 14(1) in relation to the modified request submitted at the internal review stage. She will also consider whether there has been a breach of section 16(1) in relation to the duty to provide advice and assistance to requesters.

Reasons for decision

Section 14 - vexatious request

16. Section 14(1) of FOIA states that a public authority is not obliged to comply with a request if the request is vexatious. The term 'vexatious' is not itself defined in the legislation, but in *Information Commissioner v Devon County Council & Dransfield*² 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."

17. The Upper Tribunal concluded that 'vexatious' could be defined as the:

"...manifestly unjustified, inappropriate or improper use of a formal procedure."

18. Therefore the key question is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress. The Commissioner has published guidance³ on section 14 and further considers that it may be relevant where:

- the requester has asked for a substantial volume of information; and,
- the authority has real concerns about potentially exempt information being contained within the requested information, and,

² UKUT 440 (AAC), 28 January 2013

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

- any potentially exempt information cannot easily be isolated because it is scattered throughout the requested material.
19. The Home Office considered the request to be vexatious on the basis that to review and appropriately redact all of the information in scope of the request would impose a disproportionate burden.
 20. The Commissioner's published guidance sets out her view that a public authority may apply section 14(1) where it can make a case that the amount of time required to review and prepare the information for disclosure would impose a grossly oppressive burden on the organisation. However, the Commissioner considers there to be a high threshold for refusing a request on such grounds. This means that the public authority must be able to provide clear and persuasive evidence of such a burden.
 21. The guidance also states that "*the bar for refusing a request as 'grossly oppressive' under section 14(1) is likely to be much higher than for a section 12 refusal*".
 22. The guidance is specific that time spent on redacting exempt material can be taken into account when considering the burden of a request in relation to section 14(1). Whilst section 12(1) (cost of compliance) of FOIA is the main provision for situations where a public authority is concerned about the burden of complying with a request, time spent in relation to any of the exemptions listed in Part II of the FOIA cannot be taken into account when considering citing section 12(1).
 23. The request covers the period 1990 to 2018. The Home Office told the Commissioner that the Homicide Index for this period has around 28,000 entries (lines) and there are at least 150 columns, so there are at least 4.2 million cells of information.
 24. The Home Office considers that the Index contains information, the disclosure of which would prejudice the prevention or detection of crime (section 31(1)(a)) and the apprehension or prosecution of offenders (section 31(1)(b)). It also contains information which, in its view, would be likely to cause distress to relatives of homicide victims, so section 38(1)(a) would also apply to some of the information. From the sample provided to the Commissioner, the database contains information which, as a matter of fact, constitutes the personal data of suspects and, in some cases, that of partners or relatives of victims. Some of this information constitutes special category data (such as racial or ethnic origin or sexual orientation). As an initial view, this information would be likely to be exempt under section 40(2), because its disclosure would contravene the first data protection principle; however, this may need further analysis for each individual.

25. To comply with the modified request would therefore involve the identification and redaction of information to which these exemptions apply. The Home Office argued that this would not be a straightforward process, given that four different exemptions are involved and they require judgement, background knowledge and some familiarity with the data protection legislation to apply correctly.
26. The Home Office is concerned about the amount of information that would be encompassed by the request and the necessity of reviewing this information to ensure that it did not include any content that would be exempt by virtue of sections 31, 38 and 40 of FOIA.
27. Additionally, in relation to section 12(1), the Home Office confirmed it had carried out a sampling exercise and looked at a sample of six entry lines in terms of how long it would take to identify and redact exempt information. The officer who undertook the exercise advised that he has a reasonable level of knowledge of the FOIA exemptions and also data protection legislation, but there are cases where he might need to seek further advice. Subject to that caveat, he estimated that it would take an average of around 15 minutes per entry to make a judgement as to what is exempt and make the necessary redaction using the Home Office's electronic redaction software. With 28,000 entries that gives a total of around 7,000 hours' work. The Home Office stated:

"Quite apart from being way in excess of the section 12(1) cost limit, this is a disproportionate and grossly oppressive burden in terms of answering a single request and would involve a significant diversion of resources in and disruption to the work of at least one team in the Home Office."

28. It also said:

"It could be argued that to redact exempt information we could adopt a more broad brush approach and, rather than examine individual records, simply remove entire columns. There are two problems with this approach. First, not every record will contain information that engages every or indeed any exemption we have cited, so we would be redacting some information which is not exempt and redacting some information where we would not be able to specify which exemption(s) apply. This would be technically in breach of section 1(1) of the FOIA and we do not believe that the Commissioner would favour such a broad approach to the application of the exemptions. Secondly, to ensure that no exempt information remains we would have to redact a large number of columns and it is questionable whether what would be left would be of any use to a requester over and above the published homicide statistics."

Although we consider that 'burden' is sufficient reason to refuse the request under section 14(1), the request also has other features that characterise vexatious requests, in that it adopts a scattergun approach and is something of a 'fishing expedition'.

We conclude that the request, in either its original or modified form, is vexatious and was correctly refused under section 14(1) of the FOIA."

29. In addition, the Home Office explained:

"We acknowledge that there is a public interest in information about homicides. This is met by the regular publication of homicide statistics, which as we have explained to [the complainant] are available at

<https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/articles/homicideinenglandandwales/yearendingmarch2018>.

Statistics for earlier years are also available. The data are drawn from the Homicide Index and there is little or nothing which could be obtained from a fully redacted version of the Index which cannot be obtained from the published statistics."

30. However, the Home Office caveated the above by stating that, if the complainant is interested in any specific information which could be obtained without imposing a disproportionate burden, it will consider any fresh request.

31. The Commissioner has considered the Home Office's submissions, together with the complainant's grounds of complaint, specifically in relation to section 14(1) (as set out in the 'Scope' section of this notice).

32. The Commissioner is mindful that section 14(1) is only applicable to the extent that a request is vexatious, and this is a judgement that must be made on the merits of the request in question. It should not be used as a blanket approach to refuse to consider requests for large amounts of information.

33. Whilst the Home Office gave an estimate of the time it would take to review the requested information for exempt materials, the Commissioner does not consider it necessary to scrutinise that estimate here as she believes it is sufficiently clear from a consideration of the scope of the request that reviewing this information to check for, and redact, exempt material would pose a very significant burden. In her role as DPA and FOIA regulator, she would also not be supportive of any suggestion that this information could be disclosed without being

carefully checked for exempt material. She considers a thorough exercise aimed at avoiding any inappropriate disclosure of personal data, or otherwise exempt material, to be an unavoidable requirement if the complainant's request was complied with.

34. Similarly, if the Home Office was to take the approach of removing entire columns from the requested information in scope (as set out in paragraph 28 of this notice), not only would there be a risk of disclosing personal data or other exempt material, but also of withholding information which should be released. The Commissioner cannot therefore support such an approach.

Conclusion

35. In this case, therefore, the Commissioner finds that the Home Office has demonstrated that compliance with the request would impose a grossly oppressive burden as described in her published guidance. As a result, the Home Office was entitled to rely on section 14(1) to refuse this request.

Section 16 – advice and assistance

36. Section 16 of FOIA provides that a public authority is under a duty to provide advice and assistance, so far as it is reasonable to expect the authority to do so, to persons who have made a request.
37. This duty arises in certain situations. These are broadly: before an applicant has submitted a request for information and is clarifying with the public authority what information it holds; if a request for information is not clear to the public authority; and if complying with a request would exceed the appropriate cost limit under section 12 of the FOIA, a public authority may offer the applicant advice and assistance to refine the request so that it can be complied with within the cost limit.
38. However, the section 45 Code of Practice⁴ provides that a public authority does not have to provide advice and assistance when it has applied section 14 to a request.
39. The Code of Practice is about good practice by public authorities, rather than obligations which arise under FOIA. Although failure to follow the code would not necessarily be a breach of section 16, where a public

⁴https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/744071/CoP_FOI_Code_of_Practice_-_Minor_Amendments_20180926_.pdf

authority has satisfied the provisions of the code it will not be in breach of section 16.

40. The Commissioner recommends that a public authority should treat the code as a minimum standard and go beyond its provisions as a matter of good practice.
41. The Commissioner has considered the duty to offer advice and assistance, and the application of section 14(1), in her guidance on section 14. The Commissioner acknowledges that a public authority does not have to provide advice and assistance if it is relying on section 14(1). However, she considers that if part of the problem was that the requester's request was hard to follow and the public authority was therefore unsure what was being requested, it might consider whether the problem could be solved by providing guidance on how to reframe the request. The Commissioner does not consider that this is the case here.
42. She has also reviewed the Upper Tribunal decision quoted by the complainant. This case relates to information refused under section 12 (cost of compliance) of FOIA and not section 14(1). There is a brief reference to advice and assistance within the decision which states:

"Section 12 protects the authority from burdensome requests...The same could be said of section 14. The two sections deal with different types of burden, but the circumstances of a particular case may be such that a public authority may be entitled to rely on one or other or both of them. Just looking at those provisions, the responsibility rests with the requester to make requests that do not fall foul of sections 12 and 14. There is, however, a counterweight in section 16, which provides the power and the duty for an authority to assist a requester to make a request in appropriate terms. That is what the University did in this case when it indicated to [the appellant] that it would be able to provide the answer to his first question within the appropriate limit in section 12."

43. The Commissioner interprets the above differently to the complainant; she considers that the 'duty to assist' is only referenced in relation to section 12.
44. In the case under consideration in this notice, the Commissioner also notes that the Home Office provided the complainant with a link to publicly available information regarding homicide statistics.
45. The Commissioner is satisfied that the Home Office did not have to provide any advice and assistance as it has cited section 14(1) and therefore has not breached section 16(1).

Other matters

46. Part VI of the section 45 Code of Practice makes it desirable practice that a public authority should have a procedure in place for dealing with complaints about its handling of requests for information, and that the procedure should encourage a prompt determination of the complaint. As she has made clear in her *'Good Practice Guidance No 5'*, the Commissioner considers that these internal reviews should be completed as promptly as possible. While no explicit timescale is laid down by FOIA, the Commissioner has decided that a reasonable time for completing an internal review is 20 working days from the date of the request for review. In exceptional circumstances it may be reasonable to take longer but in no case should the time taken exceed 40 working days. The Commissioner is concerned that in this case, it took over 36 working days for an internal review to be completed, despite the publication of her guidance on the matter.

Right of appeal

47. 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

48. 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.
49. 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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