

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 2 November 2023

**Public Authority:** Independent Office for Police Conduct  
**Address:** PO Box 473  
Sale  
M33 0BW

#### Decision (including any steps ordered)

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1. The complainant has requested information about a shooting from the Independent Office for Police Conduct ("IOPC"). The IOPC refused to comply with the request on the basis that it was vexatious under section 14(1) of FOIA.
2. The Commissioner's decision is that the IOPC was entitled to rely on section 14(1) of FOIA. No steps are required.

#### Request and response

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3. On 26 July 2023, the complainant wrote to the IOPC and requested the following information:

"disclose all video and other image information relating to shooting of Chris Kaba.

According to your website, the investigation was complete in March.

Knowing how an unarmed person was shot dead by MPS is clearly in the public interest.

Any video evidence will be played at criminal trial if one is held, and at the mandatory public inquest (with a jury).

Coroners and Justice Act 2009

7 Whether jury required

(1) An inquest into a death must be held without a jury unless subsection (2) or (3) applies.

(2) An inquest into a death must be held with a jury if the senior coroner has reason to suspect—

(a) that the deceased died while in custody or otherwise in state detention, and that either—

(i) the death was a violent or unnatural one, or

(ii) the cause of death is unknown,

(b) that the death resulted from an act or omission of—

(i) a police officer, or

(ii) a member of a service police force,

in the purported execution of the officer's or member's duty as such, or".

4. On 18 August 2023, the IOPC responded. It advised the complainant that his request was vexatious on the grounds that it was substantially similar to other requests he had made to it, which had also been refused as vexatious.
5. The complainant requested an internal review on 18 August 2023.
6. The IOPC provided an internal review on 15 September 2023 in which it maintained its position.

### **Scope of the case**

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7. The complainant contacted the Commissioner on 15 September 2023, saying only: "The request was not vexatious".
8. The Commissioner will consider whether or not the request was vexatious below.

## Reasons for decision

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### Section 14(1) – Vexatious requests

9. Section 14(1) of FOIA states that a public authority is not obliged to comply with a request for information if the request is vexatious.
10. The word “vexatious” is not defined in FOIA. However, as the Commissioner’s updated guidance on section 14(1)<sup>1</sup> states, section 14(1) is designed to protect public authorities by allowing them to refuse any requests which have the potential to cause a disproportionate or unjustified level of disruption, irritation or distress.
11. FOIA gives individuals a greater right of access to official information in order to make bodies more transparent and accountable. As such, it is an important constitutional right. Therefore, engaging section 14(1) is a high hurdle.
12. However, the ICO recognises that dealing with unreasonable requests can strain resources and get in the way of delivering mainstream services or answering legitimate requests. These requests can also damage the reputation of the legislation itself.
13. The emphasis on protecting public authorities’ resources from unreasonable requests was acknowledged by the Upper Tribunal (UT) in the leading case on section 14(1), *Information Commissioner vs Devon County Council & Dransfield* [2012] UKUT 440 (AAC), (28 January 2013) (“Dransfield”)<sup>2</sup>. Although the case was subsequently appealed to the Court of Appeal, the UT’s general guidance was supported, and established the Commissioner’s approach.
14. Dransfield established that the key question for a public authority to ask itself is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress.
15. The four broad themes considered by the Upper Tribunal in Dransfield were:

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<sup>1</sup> <https://ico.org.uk/for-organisations/dealing-with-vexatious-requests-section-14/>

<sup>2</sup> <https://administrativeappeals.decisions.tribunals.gov.uk/Aspx/view.aspx?id=3680>

- the burden (on the public authority and its staff);
- the motive (of the requester);
- the value or serious purpose (of the request); and
- any harassment or distress (of and to staff).

16. However, the UT emphasised that these four broad themes are not a checklist, and are not exhaustive. They stated:

“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” (paragraph 82).

### **The complainant's view**

17. The complainant did not provide any rationale either when requesting an internal review or when raising his complaint with the Commissioner.

### **The IOPC's view**

18. In its refusal notice the IOPC explained to the complainant:

“ We note that you made a substantially similar request on 14 September 2022. We refused the request under section 14(1) of the FOIA after considering its relationship to your other requests we have refused as vexatious. We noted that you had made numerous similar requests for material from IOPC investigations that you ought to know you would be very unlikely to receive.

At that time, our investigation was live and we noted that if section 14(1) was not engaged we would have refused the request in any case under section 30(1)(a)(i) because it constituted a request for evidence from an on-going homicide investigation and the public interest would be firmly against disclosure under the FOIA.

As noted in the wording of your latest request, our independent investigation is now complete, and our latest statement regarding this case was made in March 2023. This states that a file of evidence has been referred to the CPS for a charging decision. It is clear therefore that although our investigation is complete, this is still very much a live and ongoing matter.

We consider that it would be clear to any reasonable person that disclosure of underlying evidence relating to this case into the public domain under the FOIA at this time would be highly likely to cause prejudice to any outstanding decisions or proceedings .

In the light of our previous responses relating to your requests for IOPC investigation evidence and your continued persistence in seeking this type of information, even though you must be aware that it is exempt for good reason, we conclude that your request is a manifestly unjustified and inappropriate use of the FOIA.

Consequently we have decided to refuse your request as it engages section 14(1) of the FOIA”.

19. In its internal review the IOPC it added:

“In your email of 26 July you have given no reasons or information in support of your review request.

It is significant to note that we would not be treating this request as vexatious had you not made numerous similar requests of this nature, including a request for the same evidence for this investigation, that you ought to know you would be very unlikely to receive.

We would add that although your request is not vexatious when considered in isolation we consider that it becomes so when its context and history are taken into account.

Based on our responses to the numerous other requests you have made to the IOPC, we consider that you should reasonably be expected to know that underlying evidence relating to a matter which is still live would not be accessible to you under the FOIA. You have nevertheless persisted in requesting detailed evidence and raising complaints and appeals when you do not receive it. The burden of complying with the volume of requests of this type is clearly not justified by their likely outcome and this lack of proportionality is critical to our finding that this request is vexatious”.

### **The Commissioner’s view**

20. The Commissioner has considered the arguments above and, as the IOPC has referred to it, he also taken into account its response to the earlier request mentioned in paragraph 18, which was for the same video footage.

21. In this regard, as referenced by the IOPC, the Commissioner notes the following considerations from First Tier Tribunal appeal EA/2020/0015:

“At a time where releasing the information to the public is likely to jeopardise the chances of any offenders being brought to

justice, we cannot see any reasonable foundation for thinking that the information could be of value to the public at that time. It is likely to be of interest to the public, but that is a different issue" (paragraph 74).

22. At the time of this request, the Commissioner understands that the evidence had been referred to the CPS for a charging decision. Therefore, these arguments are of direct relevance to the request being considered here.
23. In cases where a public authority is relying on section 14(1), it is for the public authority to demonstrate why it considers that a request is a disproportionate, manifestly unjustified, inappropriate or improper use of FOIA.
24. In accordance with his guidance, the Commissioner has taken a holistic and broad approach in this case. He has considered the history of the complainant's dealings with the IOPC and his persistence in seeking information that, in light of previous responses he has received from the IOPC, is unlikely to be disclosed to the world at large under FOIA. The Commissioner is mindful that the request in this case, although not obviously vexatious in itself, was made in the context of a series of requests for similar types of information, which had been refused on the grounds that the information was exempt from disclosure for clearly recognisable reasons.
25. With respect to the value and purpose of this particular request, the complainant has not submitted any arguments to demonstrate a value and purpose in this request beyond asserting that it is not vexatious. The Commissioner recognises the sensitivity of the issue, but has also taken into account the IOPC's commitment to transparency as evidenced by its publication policy.
26. Having considered the context and history of the request, and the nature of the information within the scope of the request, the Commissioner is satisfied that the request was vexatious and therefore the IOPC was entitled to rely on section 14(1) of FOIA to refuse the request.

## Right of appeal

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27. 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: 0203 936 8963

Fax: 0870 739 5836

Email: [grc@justice.gov.uk](mailto:grc@justice.gov.uk)

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

28. 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.
29. 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 .....**

**Carolyn Howes**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**