

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 25 March 2024

Public Authority: Chief Constable of South Wales Police
Address: Police Headquarters
Cowbridge Road
Bridgend
CF31 3SU

Decision (including any steps ordered)

1. The complainant has submitted a request for information relating to a cold case murder investigation to South Wales Police. The Commissioner's decision is that South Wales Police are entitled to rely on section 14(1) (vexatious request) of the FOIA to refuse to provide the requested information.

Request and response

2. The complainant made the following information request to South Wales Police on 13 June 2023:-
 1. (a) A freedom of info request asking the police what forensic tests they have done on the exhibits seized during the original investigation and list some of the items you know were seized. Ask them to confirm the types of tests carried out, the date

(b) and if any DNA profile was identified from the tests. If a profile was obtained, where is that profile held, is it currently on the national DNA database?
 2. The fingerprint on the bottle, you know that a fingerprint was lifted from the bottle, if this fingerprint was compared to you and your co-defendants to ascertain that it did not belong to you, was a search of

the national database made at the time and if so on what date was the search carried out? What was the result of the search, did it identify a match to anybody on the database or any of the original suspects? Where is the fingerprint sample now held? Is the fingerprint on the national database?

3. Would like to inform me of the date of the last cold case review of the case, who carried out the review and the outcome, ask for a copy of the investigation report.
 4. Would like copies of any reviews of the case since 1988 to present day including reports from the reviews carried out by police forces besides South Wales Police.
 5. What happened to the clothes found on the night in question allegedly belonging to the real killer found in Denton Road?
3. South Wales Police refused on 31 July 2023 to provide the requested information, citing section 14(1) (vexatious request) of the FOIA as its basis for doing so.
 4. The complainant sought an internal review of South Wales Police's response on 1 August 2023. That internal review response was issued on 29 August 2023. The reviewer upheld the original decision.
 5. The complainant later clarified on 10 October 2023 that, in relation to part 4 of their request they were only seeking the 6 reports and not any accompanying documents. South Wales Police treated this as a refined request and provided its response on 14 November 2023. It still refused to provide the requested information and cited section 14(1) as the basis for this refusal and maintained this in its further internal review response dated 12 December 2023.

Reasons for decision

Section 14(1) – vexatious requests

6. 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.

7. The word "vexatious" is not defined in FOIA. However, as the Commissioner's updated guidance on section 14(1)¹ states, it is established that 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.
8. 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.
9. 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.
10. 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*")². Although the case was subsequently appealed to the Court of Appeal, the UT's general guidance was supported, and established the Commissioner's approach.
11. *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.
12. The four broad themes considered by the Upper Tribunal in *Dransfield* were:
 - 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).

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

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

13. 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 PA's view

14. South Wales Police have informed the Commissioner that in relation to part 4 of the complainant's request alone, there are 884 pages in total. It would take a considerable amount of time to read through each page carefully to ensure any exempt information is identified and the appropriate exemption applied. This would involve the interrogation of all the reports to identify what is and is not suitable for disclosure and the reasons why/why not.
15. Due to the amount of information held, South Wales Police stated that it is not possible to quantify the time it would take to ensure appropriate disclosure/non-disclosure. However, South Wales Police has informed the Commissioner that it would involve resources in Joint Legal Services, the Crime and Criminal Investigation team and the Freedom of Information team. South Wales Police have estimated that reading through all the reports would take in excess of 20 hours.
16. South Wales Police conducted a review of 20 pages to try and realistically estimate how long it would take to prepare all the reports for disclosure. It stated that reading through and making relevant notes for 20 pages took 28 minutes, even without redacting information or applying exemptions. Based on that review it would take at least 20 hours to read through the reports and that is before consideration of exemptions/public interest test etc.

The complainant's view

17. It is the complainant's view that they are entitled to receive the requested information as it is of extremely significant personal importance to them.

The Commissioner's decision

18. The Commissioner has published guidance 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.

19. Sometimes it will be obvious when a request is vexatious, but sometimes it may not. The Commissioner therefore considers that the key question to consider is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress. This will usually involve weighing the evidence about the impact on the authority and balancing this against the purpose and value of the request. This should be judged as objectively as possible; in other words, would a reasonable person think that the purpose and value are enough to justify the impact on the public authority.
20. In particular, the Commissioner accepts that there may be cases where a request could be considered to be vexatious because the amount of time required to review and prepare the information for disclosure would place a grossly oppressive burden on the public authority. This is the position adopted by South Wales Police in this case.
21. The Commissioner believes that there is a high threshold for refusing a request on such grounds. This means that a public authority is most likely to have a viable case where:
 - the requester has asked for a substantial volume of information and
 - the authority has real concerns about potentially exempt information, which it will be able to substantiate if asked to do so by the Commissioner and
 - any potentially exempt information cannot easily be isolated because it is scattered throughout the requested material.
22. It is South Wales Police's position that to comply with the request would be an unreasonable burden and would require a disproportionate effort which cannot be justified by the purpose and value of the request.
23. In the Commissioner's opinion, South Wales Police have evidenced that compliance with this request would clearly involve a significant diversion of resources which they could not reasonably be expected to absorb without it having a knock on effect for its other business areas. He is therefore satisfied that South Wales Police have demonstrated that complying with the request would place a grossly excessive burden on it which is not capable of being justified by the request's underlying purpose or value. They have also evidenced the criteria as set out in paragraph 21 above and therefore in the Commissioner's view have met the high threshold as outlined in that paragraph.
24. The Commissioner has considered both the complainant's position and South Wales Police's arguments regarding the information request in this case. In reaching a decision he has balanced the purpose and value of the request against the detrimental effect on South Wales Police of

responding to it. Although he acknowledges that there is serious purpose and value to the complainant's request, and the information is likely to be of interest to the wider public, the Commissioner finds that the request is vexatious on the grounds of burden, and that South Wales Police were entitled to rely on section 14(1) of FOIA to refuse it.

Right of appeal

25. 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@justice.gov.uk

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

26. 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.
27. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Deirdre Collins
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