

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 7 January 2020

Public Authority: Independent Office for Police Conduct
Address: 90 High Holborn
London
WC1V 6BH

Decision (including any steps ordered)

1. The complainant has requested information about an investigation into a death in custody. The Independent Office for Police Conduct ("the IOPC") refused the request as vexatious.
2. The Commissioner's decision is that the request was vexatious and therefore the IOPC was entitled to rely on section 14(1) of the FOIA to refuse it.
3. The Commissioner does not require any further steps.

Request and response

4. On 19 August 2019 the complainant requested information of the following description related to Andre Moura:

"I would like the IOPC report(s) and all image evidence held, video, stills, audio. This includes but is not limited to:

- 1) Bodycam*
- 2) In-vehicle recordings*
- 3) Recording as police station*
- 4) Footage by the public*

"Disclose medical report(s)."

5. On 13 September 2019, the IOPC responded. It refused to provide the requested information, relying on section 14(1) of the FOIA to do so as it considered the request to be vexatious.
6. The complainant requested an internal review on the same day. The IOPC refused to carry out an internal review because the complainant had not set out why he was dissatisfied with its response or challenged any of the arguments it had put forward.

Scope of the case

7. The complainant contacted the Commissioner on 26 September 2019 to complain about the way his request for information had been handled.
8. Having viewed the correspondence between the parties up to that point, the Commissioner considered that requiring the IOPC to carry out an internal review would serve no useful purpose. She therefore exercised her discretion and accepted the complaint without an internal review.
9. The Commissioner considers that the scope of her investigation is to determine whether the request was vexatious.

Background

10. It was reported in the media that Andre Moura was arrested by police in July 2018. The report stated that, having been restrained by the officers who arrested him, Mr Moura was found to be “unresponsive” when he arrived at the police station. Despite being transferred to hospital, he was pronounced dead the following morning.¹ On 20 August 2019, the IOPC announced that it had passed files on five police officers, involved in the arrest, to the Crown Prosecution Service so that criminal prosecutions could be considered.²

¹ <https://www.bbc.co.uk/news/uk-england-manchester-49409350>

² <https://www.policeconduct.gov.uk/news/five-officers-referred-cps-following-death-man-greater-manchester>

Reasons for decision

Section 14 – Vexatious Request

11. Section 1(1) of the FOIA states that:

Any person making a request for information to a public authority is entitled –

- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and*
- (b) if that is the case, to have that information communicated to him.*

12. Section 14 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.

13. The term “vexatious” is not defined within the FOIA. The Upper Tribunal considered the issue of vexatious requests in *Information Commissioner v Devon CC & Dransfield* [2012] UKUT 440 (AAC). It commented that “vexatious” could be defined as the “manifestly unjustified, inappropriate or improper use of a formal procedure”. The Upper Tribunal’s approach in this case was subsequently upheld in the Court of Appeal.
14. The *Dransfield* definition establishes that the concepts of proportionality and justification are relevant to any consideration of whether a request is vexatious.
15. *Dransfield* also considered 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. It explained that these considerations were not meant to be exhaustive and also explained 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).

16. The Commissioner has published guidance on dealing with vexatious requests³, which includes a number of indicators that may apply in the case of a vexatious request. However, even if a request contains one or more of these indicators it will not necessarily mean that it must be vexatious.
17. When considering the application of section 14(1), a public authority can consider the context of the request and the history of its relationship with the requester, as the guidance explains: *"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"*.
18. However, the Commissioner is also keen to stress that in every case, it is the request itself that is vexatious and not the person making it.
19. In some cases it will be obvious when a request is vexatious but in others it may not. 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."*

The complainant's position

20. In seeking an internal review and in making a complaint to the Commissioner, the complainant did not advance any arguments of his own as to why the request was not vexatious nor did he counter any of the IOPC's arguments as to why the request was vexatious.
21. The text of the complainant's internal review request was:

"Please pass this on to the person who conducts Freedom of Information reviews.

"I am writing to request an internal review of Independent Office for Police Conduct's handling of my FOI request 'Andre Moura Gtr Manc police.'."

"A full history of my FOI request and all correspondence is available on the Internet at this address: [URL redacted]"

22. When complaining to the Commissioner, the complainant only said:

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

*"I apply for a DN. You may disclose the following email address:
[address redacted], [URL redacted]"*

*"I applied for an IR but the IOPC declined. I am not obliged to
provide reasons for asking for an IR, the FOIA does not require me
to do so."*

23. Whilst the burden of proof always lies with the public authority in demonstrating why a particular request would engage section 14(1), the Commissioner accepts that complainants may wish to advance their own arguments as to why the request was not vexatious.
24. The Commissioner therefore wrote to the complainant at the outset of her investigation to provide him with an opportunity to make a submission as to why his request was not vexatious. This correspondence was neither acknowledged nor responded to.

The IOPC's position

25. The IOPC argued to the Commissioner that the complainant appeared to be "fishing" for information by submitting relatively broad requests in the hope of capturing something of interest. The manner in which he both made and pursued requests was unreasonable and creating a considerable burden on the IOPC in responding.
26. In particular, the IOPC argued, the complainant was persistently requesting information which no reasonable person would have a realistic expectation of receiving because of its sensitive nature.
27. In its initial response, justifying its use of section 14(1) to refuse the request, the IOPC told the complainant that:

"Your request seeks reports and detailed evidence from this case. Such information engages a number of FOIA exemptions even after all related proceedings are complete. We have explained to you on numerous occasions the sensitivities that limit our disclosure of specific investigation information and the exemptions that apply under the FOIA; however you have persisted in making requests for the same type of information in the expectation, which you confirm in your correspondence, that you are entitled to receive all or nearly all of that information. This is unrealistic."

28. The IOPC supplied a schedule of requests demonstrating that it had received a total of 19 separate requests from the complainant between June 2018 and August 2019, when the above request was received. Almost all the information covered by these requests had been refused, either because it was personal data or because it related to ongoing investigations. The requests did not appear to have a particular pattern

to them but the manner in which previous requests had been submitted suggested, the IOPC argued, that further, similar, requests from the complainant were likely.

29. In making his requests and his general correspondence, the IOPC noted that the complainant had not identified what had motivated him to make the requests, or why the information was of value to him. Whilst the IOPC did not consider that the complainant was engaging in any sort of broader campaign, it noted that the burden of complying with the requests appeared to exceed the value of the information to the complainant.
30. The value of the information, the IOPC further argued, was further reduced by the fact that many of its reports are subsequently published, once formal procedures have been completed and with the most sensitive parts redacted. Therefore the information which would be likely to have been disclosed in response to the request would be likely to be placed in the public domain at a later date anyway – decreasing the value of the request but increasing the burden on the IOPC.
31. Finally, the IOPC drew the Commissioner's attention to the complainant's habit of requesting internal reviews without giving any indication as to which part of the decision he disagreed with or why. In one particular instance, it noted that, having sent the complainant a considered refusal notice in relation to a previous request, carefully setting out why particular information was exempt, he sought an internal review just four minutes later without providing any reasons as to why he disagreed with the IOPC's stance.
32. Indeed, the IOPC noted that in one piece of correspondence:

*"The [complainant]'s response to the refusal in relation to FOIA request 1007180 includes a further example of intransigence. Towards the end of the email it states: "...Thank you for you [sic] help, pls reply within 20 working days. I will be taking this matter to the ICO **when you refuse**, so please give a detailed Internal Review reply, this helps the ICO come to a quick decision." This suggests that the Requester is disinterested in the response provided by the internal review and assumes come-what-may that he will be referring this matter to the ICO."* [emphasis added]
33. In summary, based on the requests it had received from this complainant as well as others made by him and visible on the whatdotheyknow.com website, the IOPC considered that the complainant was making a disproportionate number of requests for sensitive material. The requests would be unlikely to result in the disclosure of significant information but were creating a considerable

burden on the IOPC in preparing responses. It argued that the complainant was likely to continue to submit such requests and thus continue to impose a burden.

The Commissioner's view

34. The Commissioner considers that the request, when considered in context, was vexatious.
35. It would have been helpful if the complainant had seen fit to provide his own submission as to why he did not consider his request to have been vexatious. The Commissioner has reminded herself that the burden of proof always lies with the public authority to demonstrate why any exemption applies. Nevertheless, given that the complainant has had ample opportunity to provide counter-arguments, the Commissioner is left with little option but to accept the statements go unchallenged by the complainant.
36. The Commissioner notes that the information in question relates to an individual who died when in police custody. Such instances should be few and far between and there is thus a strong public interest in understanding the chain of events as well as any potential lessons learned. Given that police officers have unique powers to enforce the law, there is a strong public interest in investigating rigorously any allegations that officers may have acted outside of the law.
37. That having been said, the Commissioner also notes that, at the time the request was made, the matter was still the subject of an active investigation by the IOPC. In the Commissioner's view, no reasonable requestor would be expected to be given unrestricted access to the evidence considered by the IOPC – especially when the investigation might (and, subsequent to the request being made, did) lead to criminal prosecutions being considered.
38. In its submission, the IOPC argued that, in the event that the Commissioner found that section 14(1) was not engaged, it would wish to rely on sections 30 (Investigations) and 40(2) (Personal Data) to withhold the information. As the request was vexatious, the Commissioner does not need to make a decision as to whether the IOPC would be able to rely on those exemptions – but, given the type of information requested, she considers it highly likely that both exemptions (and possibly others) would be engaged. In short, at the time the request was made, the information was highly sensitive.
39. The Commissioner is conscious that the complainant has made a number of requests to various bodies associated with law enforcement. She therefore considers that the complainant should have a much better

understanding of the type of information which is likely to be disclosed to him than a person making a request for the first time. The fact that, despite this knowledge, the complainant still chooses to make such broad requests for information he knows (or should know) he will almost certainly not receive is, in the Commissioner's view, evidence that he is being unreasonable in making his requests – including this one.

40. The futility of the request is evidenced by the fact that the information likely to be disclosed (if there was any) at the time the request was made was likely to be considerably less than that disclosed once the investigation had been completed – as the public interest balance will usually shift toward disclosure once formal proceedings have concluded. The complainant should be aware of this concept from previous requests – but chooses to make the request anyway.
41. Having determined that the complainant acted unreasonably in *making* the request, the Commissioner further considers that the way the complainant *pursues* his request is also unreasonable.
42. Whilst the complainant is technically correct to say that the FOIA does not require him to explain why he is seeking an internal review, the Commissioner considers it good practice for requestors to do so – as this helps the public authority focus its review, resolve minor errors and to clarify any misunderstandings which may arise from its initial response.
43. The complainant regularly makes internal review requests which might charitably be described as “cursory” – and the Commissioner notes that this behaviour is replicated in the manner in which he submits complaints to her office. Such behaviour, in the Commissioner's view, indicates the lack of value the complainant is placing on each individual requests.
44. As evidenced by the various correspondence trails publicly visible on the whatdotheyknow.com website, the complainant has sent numerous requests to various public authorities based on stories he has read on the internet. If he does not receive every piece of information he has requested, he tells the public authority to carry out an internal review – without making any effort to engage with the reasons why the information was withheld in the first place. Should the internal review not produce a favourable outcome, the complainant then asks the Commissioner to issue a decision notice without making any effort to explain the value of the information either to himself or to the world at large. These actions paint a picture of an individual casting a wide net in the hope that he will eventually find something useful, rather than focusing on particular information which is of interest to him.

45. The complainant has not provided any rationale for wanting the information. Nor has he demonstrated the use he has made of the information which has been disclosed to him as a result of previous requests. Thus the information does not appear to have any value to the complainant or serve any purpose to him. Any information the complainant does receive is banked and then he moves on to his next request. Given that many of the final reports are published by the IOPC in any case, once formal proceedings have been concluded, any significant value the complainant's requests may initially have had is outweighed by the burden on the IOPC in considering what information (if any) can be disclosed whilst investigations are still active.
46. On the rare occasions where the complainant does choose to engage with the IOPC, his communications are, at best "brusque" and, at worst, could be considered somewhat rude and patronising. Whilst the Commissioner does not consider this alone to be sufficient to render the request vexatious, it is further evidence of the unreasonable and inappropriate manner in which the complainant goes about submitting and pursuing his requests.
47. The Commissioner is inclined to agree with the IOPC that the complainant shows no signs of reducing the number of requests he makes – or of learning from previous requests to focus his new requests on information he stands a reasonable chance of receiving.
48. The Commissioner is conscious that, in order to respond to the request, the IOPC will need to collate all the information, consider which exemptions apply and consider where the balance of the public interest might lie – even if it ultimately ends up not disclosing any information. Receiving one such request from an unfamiliar requestor is a burden the IOPC may be expected to bear. However, receiving persistent requests, from an individual who is already familiar with its approach to information of that type, is burden which the IOPC should not be expected to continue to bear.
49. The complainant could, of course, have explained to the Commissioner why such a course of behaviour was reasonable and why he chooses to make and pursue requests in this manner. He chose not to and, in the absence of such arguments, the Commissioner struggles to understand why such behaviour should be considered reasonable.
50. The Commissioner considers that the complainant is exercising his rights under the FOIA to make requests which he knows have little chance of success, but which have the cumulative effect (even if not the intent) of placing a considerable burden on the IOPC. A burden which far outweighs the value in responding to the request. This is a use of the legislation which is manifestly unjustified, inappropriate and improper.

51. Given that such requests are likely to continue, the Commissioner considers that the IOPC is entitled to draw a line the sand with this request. She therefore finds that the request was vexatious and thus the IOPC was entitled to rely on section 14(1) of the FOIA to refuse it.

Right of appeal

52. 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

53. 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.
54. 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

Phillip Angell
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