

Freedom of Information Act 2000 (FOIA)

Decision Notice

Date: 8 November 2011

Public Authority: Police Service of Northern Ireland
Address: 65 Knock Road
Belfast
BT5 6LE

Decision (including any steps ordered)

1. The complainant requested information relating to a police investigation. The Police Service of Northern Ireland (the PSNI) refused to comply with the request, arguing that it was vexatious under section 14(1) of the Act.
2. The Commissioner's decision is that the public authority wrongly assessed the complainant's request as vexatious.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Respond to the request, either by providing the requested information or by issuing a refusal notice under section 17 of the Act.
4. The public authority must take these steps within 35 calendar days of the date of this Decision Notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. The complainant in this case was the victim of a number of incidents which are being investigated by various police forces including the PSNI. The complainant is of the view that these incidents have not been properly investigated and has made several requests for information relating to the investigations.

6. On 19 December 2010 the complainant made a request to the PSNI. The request referred to two newspaper articles about an attempt to murder the complainant, and comprised six detailed questions about the ongoing investigation of this incident. The investigation was being undertaken by another police force, as the attempted murder did not occur in Northern Ireland. The complainant wanted to know what information the PSNI held which was relevant to the investigation, and what input the PSNI had provided to the police force in charge of the investigation. The request is reproduced in full at Annex 1 at the end of this Notice.
7. The PSNI responded on 21 January 2011. The PSNI stated that the request was considered vexatious; therefore it was being refused under section 14 of the Act.
8. On 28 January 2011 the complainant wrote to the PSNI to complain about its response. The complainant pointed out that he had made the request "as the victim in this case, a 12 year old unsolved attempted murder case".
9. The PSNI responded on the same day to advise that it would conduct an internal review. On 16 February 2011 the PSNI advised the complainant that it had now completed the internal review. The PSNI stated that it had decided to uphold the original decision to refuse the request under section 14 of the Act.

Scope of the case

10. The complainant has asked the Commissioner to consider whether or not his request of 19 December was correctly refused as vexatious. The complainant advised that, although he was the victim of a number of incidents, he had been given "little or no detail about those cases" by the PSNI. The complainant also said that he had asked for information about the progress of the investigations as a victim.
11. The Commissioner notes that the complainant has made a number of complaints in respect of requests he made to the PSNI. The Commissioner has considered each request separately, therefore this Decision Notice relates only to the request made on 19 December.
12. Having considered the correspondence the Commissioner is of the view that the request of 19 December should have been considered under the Data Protection Act 1998 (the DPA) as well as under the Act. This is because the complainant has requested information about the investigation of an attempt on his own life. Given that he was the victim of this incident the Commissioner considers it likely that some of the

relevant information, if held, will be personal data relating to the complainant. This would be exempt from disclosure under the Act by virtue of section 40(1), but should be considered as a subject access request under the DPA.

13. In light of the above the Commissioner has conducted an assessment under section 42 of the DPA into the PSNI's compliance with that access regime. This does not form part of this Decision Notice, because a section 42 assessment is a separate legal process from a section 50 complaint.
14. Therefore the Commissioner's investigation under the Act is limited to those parts of the request which do not relate to the complainant's personal information. The Commissioner wishes to emphasise that his decision relates only to the issue of whether or not the request was vexatious. The Commissioner has not considered whether the PSNI actually holds any of the requested information, or whether any information which may be held should be disclosed.

Reasons for decision

Section 40(1) – personal data of the requester

15. As indicated above, the Commissioner is of the view that some of the requested information, if held, is likely to be personal data relating to the complainant. Section 40(1) of the Act states that information which is the personal data of the requester is exempt from disclosure under the Act. This is because the DPA provides a right of access to information by relevant individuals, while the Act provides for disclosure of information into the public domain.
16. The Commissioner noted that the PSNI had not relied on the exemption at section 40(1), and asked whether the PSNI had considered this provision. The PSNI advised that it had not considered the request under the DPA because the complainant:

"...did not just seek information regarding himself, but also regarding others".
17. The PSNI maintained that the complainant was aware of the procedures for making a subject access request under the DPA but had instead chosen to submit requests under the Act. The PSNI also argued that, as it considered the request of 19 December to be vexatious it was not required to consider any other requests, including under the DPA.

18. The Commissioner would remind the PSNI that there is no legal provision to refuse a request for the applicant's personal data as vexatious, therefore the PSNI was still obliged to deal with that portion of the request. The Commissioner has considered this issue further in the assessment he carried out under section 42 of the DPA.

Section 14(1) – vexatious requests

19. Section 14(1) of the Act states that a public authority is not obliged to comply with a request if that request is vexatious. The term vexatious is not defined in the Act, but the Commissioner's published guidance sets out five criteria by which a request may be assessed. The Commissioner has considered each criterion below, and has taken into account the representations of both the complainant and the PSNI.
20. The key issue here is whether the request, rather than the requester, is vexatious. However, the wider context of the dealings between the PSNI and the complainant may be relevant, for example where it suggests that the pattern of contact between the complainant and the PSNI means that the request of 19 December can be fairly characterised as vexatious.
21. As indicated above this Decision Notice relates only to the complainant's request of 19 December 2010. The Commissioner notes that between October 2010 and May 2011 there was extensive correspondence between the complainant and the PSNI, including a number of information requests. It is therefore appropriate for the Commissioner to take into account the correspondence until the date the outcome of the internal review was communicated to the complainant, ie 16 February 2011.

Does the request lack any serious purpose or value?

22. The PSNI maintained that the request could be seen to lack serious purpose or value because there were existing processes in place to provide information to the complainant as a victim. The PSNI explained that it was not the lead police force in relation to the investigation which was the focus of the complainant's request. It argued that it should not be expected to discuss its possible involvement with another police force's investigation with the victim. The PSNI also advised that it had made it clear to the complainant that it would not "engage in a public forum, ie FOI, regarding any live investigation".
23. The Commissioner does not accept the PSNI's argument that the complainant should not have requested information that he knew would not be disclosed to him. The fact that the PSNI may not wish to disclose certain information does not itself mean that any request for such

information has no serious purpose. In addition the Commissioner accepts that the complainant does have a serious purpose in making the request: he wishes to be informed about the progress of the investigation into an attempt on his life. The wording of the request clarifies that the complainant is specifically asking about information held by the PSNI, as opposed to any other police force. Therefore the Commissioner is not satisfied that the PSNI has demonstrated that the request had no serious purpose or value.

Would complying with the request impose a significant burden in terms of expense and distraction?

24. The PSNI advised that the complainant had made “numerous” requests to other public authorities on the subject of the attempted murder. The PSNI had been asked to assist some of these authorities in responding to the requests, which had taken up considerable staff time on the part of several senior members of staff. For example, an officer at the rank of Chief Inspector had spent time dealing with these requests, and the hourly cost for this level of employee could be calculated at £66.37.
25. However the Commissioner is of the view that the correct test is whether compliance with the complainant’s request of 19 December would impose such a burden, rather than assistance provided to other authorities in relation to other requests. Therefore the Commissioner does not consider this argument to be relevant to the case in hand.
26. The PSNI also provided the Commissioner with details of three other requests submitted to the PSNI by the complainant between October 2011 and February 2011. One request was handled under the DPA, and two under the Act. The PSNI was of the view that this demonstrated the burden placed on it by the complainant’s requests, despite the fact that the requests handled under the Act were submitted after the request of 19 December.
27. If the PSNI’s concern related only to the *time* that would be taken in complying with this request, the Commissioner considers that it would have been more appropriate for it to consider section 12(1) and, if appropriate, refuse the request on cost grounds. However, section 14(1) is relevant where the concern of the public authority is about the burden of the request both in terms of cost *and* of diverting staff away from the core functions of the public authority. Whilst the request in this case comprised six detailed questions, these questions related to an investigation into an attempted murder. The Commissioner considers that compliance with this request could not be said to fall outside the PSNI’s core duties, which involve investigating serious and violent crimes, and informing victims as to the progress of investigations.

28. The PSNI drew a distinction between keeping a victim informed about the progress of an investigation, and dealing with requests for information, including forensic evidence, the disclosure of which could jeopardise such that investigation. The PSNI also drew the Commissioner's attention to:

"The significant burden, distraction and diversion relate to ongoing requests of this nature for information that will not be provided for reasons related to preserving the integrity of the case."

29. However, the question in this case is whether the request of 19 December was vexatious, not whether information should be disclosed to the complainant. If the PSNI, having treated the request as valid, decided that information should not be disclosed, then it would fall to the PSNI to issue a refusal notice. However, if a request is vexatious, the public authority is not required to comply with it to any extent, whether that be confirming that or denying whether information is held, or deciding if information should be disclosed. The Commissioner considers that arguments relating to whether or not information should be disclosed are premature at this stage. Therefore the Commissioner is not inclined to attach weight to the PSNI's arguments in relation to the effects of disclosure of the requested information as it is not relevant to whether or not the request is vexatious.

30. The PSNI also sought to rely on the Information Tribunal's decision in the case of *Welsh*¹, citing the Tribunal's comment that:

"...there must be a limit to the number of times public authorities can be required to revisit issues that have already been authoritatively determined simply because some piece of as yet undisclosed information can be identified and requested."

31. However it is not apparent in this case that the issues have been "authoritatively determined". Rather, the police investigation is still live and no prosecutions have been brought. Therefore, while the Commissioner accepts the principles set out in *Welsh*, he does not consider them to be of assistance in this case.

32. The Commissioner has previously accepted the application of section 14 in cases where the authority was able to demonstrate that compliance with a particular request would be likely to lead to further requests, thus creating a burden on that authority. However, in this case the PSNI has

¹ *Welsh v Information Commissioner*, EA/2007/0088, para 26

not actually complied with any of the complainant's requests, except for the request which was handled under the DPA. Nor has the PSNI explained how compliance with the request of 19 December would lead to further requests. Therefore the Commissioner is not satisfied that compliance with this request would impose a significant burden on the PSNI.

Is the request designed to cause disruption or annoyance?

33. The PSNI explained that it had considered the complainant's request in the context of the history of correspondence from the complainant. The PSNI argued that requests submitted by the complainant were designed to cause disruption to the normal business process as they related to a live investigation. The PSNI further argued that:

"It is PSNI's experience that one set of questions is followed by another and a formal response is followed by requests for Internal Review. This is significantly disruptive, frustrating and annoying..."

34. The Commissioner is of the view that this criterion will normally only apply where there is evidence that the complainant *intended* to cause disruption or annoyance. In this case the Commissioner has seen no evidence that this is the case, and the complainant has asserted that he had no such intention. The Commissioner notes that the PSNI has acknowledged that individuals have the right to make requests and pursue the appropriate complaints process, but the Commissioner is not satisfied that the PSNI correctly considered this criterion in terms of the arguments made.

Is the request harassing the authority or causing distress to staff?

35. This question focuses on the effect the request had on the PSNI, taking into account the history of the case and the manner of any previous dealings with the complainant. It is important to highlight that whilst the complainant may not have intended to cause distress, the Commissioner must also consider whether that was in fact the effect it did have. A complainant's reasons for making the request may in themselves be reasonable. However, a request may still be considered to be vexatious because of the effect it has had on the public authority and its staff.

36. When asked whether it was seeking to rely on this criterion the PSNI argued that:

"The sheer number of combined requests to UK police alone would suggest evidence to indicate the harassment effect."

37. However, as indicated above the Commissioner does not consider requests made to other authorities to be applicable as evidence that the

complainant's request in this case is vexatious. Therefore the Commissioner has disregarded this argument.

38. The PSNI also drew the Commissioner's attention to the language, tone and frequency of the complainant's communications with PSNI staff. The PSNI maintained that the complainant:

"...uses defensive and accusatory language and constantly requests evidence and explanations of actions undertaken in the processing of his requests."

39. However, having considered the correspondence in this case the Commissioner is of the view that it reflects the complainant's frustration at what he perceives to be shortcomings in the investigation of the attempted murder. Although the Commissioner accepts that the complainant's language is not always helpful, he considers the examples cited by the PSNI to fall short of that which might be said to have the effect of harassing or causing distress.
40. The Commissioner notes that, at the time of the request of 19 December, the complainant had submitted two requests to the PSNI. One was handled under the DPA, the other under the Act. The Commissioner notes that the complainant subsequently challenged the PSNI's responses to each of these requests, but these challenges had not been made at the time the request of 19 December was received. In any event the PSNI has recognised the right of an individual to follow the appeals process in relation to information requests, therefore the Commissioner does not consider this to support the PSNI's argument in relation to the effect of the request of 19 December.
41. In light of the above the Commissioner does not consider that the PSNI has demonstrated that the request of 19 December had the effect of harassing the PSNI or causing distress to staff.

Can the request fairly be seen as obsessive?

42. The PSNI put forward a number of arguments which it considered demonstrated the obsessive behaviour of the complainant. The PSNI reminded the Commissioner that it was aware that the complainant had made requests to a number of public authorities. These requests, while not identical, all related to the complainant's experience as a victim of crime and his treatment by the respective authorities. The PSNI also advised the Commissioner that two other individuals had apparently made requests on behalf of the complainant to other public authorities.
43. The PSNI reminded the Commissioner that the investigations into the various incidents were ongoing, and that the complainant did not appear to accept the information he had been provided with. Rather, the PSNI

believed that the complainant was attempting to conduct his own investigation into the incidents, which the PSNI considered may jeopardise the formal investigations.

44. The Commissioner is of the view that the nature and frequency of requests in the context of an ongoing dispute or campaign are relevant considerations in assessing whether a request can fairly be seen as obsessive. Arguments are more likely to be persuasive where it can be demonstrated that the request in question follows previous requests for similar information, or are on the same theme.
45. The PSNI has provided copies of correspondence from the complainant as evidence of "the history of the request", but the question for the Commissioner is whether the PSNI was correct to categorise the request of 19 December as vexatious at the time of refusal. That this correspondence is largely dated *after* the request of 19 December; therefore it can not be evidence of the history of that request. The Commissioner accepts that the cut-off date is 16 February, when the outcome of the internal review was communicated to the complainant. However, the PSNI's decision to assess the request as vexatious was initially made before the subsequent correspondence, and the internal review upheld this decision.
46. The PSNI did advise the Commissioner that it had been in correspondence with the complainant since May 2010 in relation to an incident which was being investigated by the PSNI. This correspondence was handled by the PSNI under normal course of business until the complainant made his request of 13 October 2010. The PSNI decided to handle this request under the Act and the DPA, and this was followed by the complainant's request of 19 December. The PSNI was of the view that the correspondence between May and December 2010 also provided evidence of obsessive behaviour on the part of the complainant.
47. The Commissioner notes that the correspondence from May to October focused on the PSNI's investigation of a separate incident involving the complainant. The request of 19 December related to a different incident, which is still under investigation by another police force. The information provided by the PSNI suggests that the first piece of correspondence in May 2010 was a request for information on the PSNI investigation, which was treated as normal course of business rather than under the Act or the DPA.
48. In light of the above the Commissioner is of the view that the request of 19 December can be distinguished from the previous correspondence. The PSNI has not provided any evidence to suggest that the complainant had corresponded with the PSNI about the attempted

murder before the request of 19 December. The Commissioner does not consider the request of 19 December to be a continuation of previous correspondence, therefore the Commissioner does not accept that this particular request demonstrated a pattern of obsessive behaviour.

Conclusion

49. As set out above, the PSNI put forward a number of arguments as to why it considered the complainant's request of 19 December to be vexatious. The PSNI was of the clear view that the complainant was acting unreasonably.
50. The complainant's argument is that he made the request of 19 December because he wanted to be informed about the PSNI's involvement in the investigation. The complainant indicated to the Commissioner that he accepted that he may not be entitled to receive certain information, but he felt that the PSNI had dismissed his request without properly considering it.
51. The Commissioner has considered the arguments put forward by both parties in the context of his own guidance², which states:

"...a request will not automatically be vexatious simply because it forms part of a series of requests, whether to one authority or several. There may be genuine reasons for this. For example, a series of successive linked requests may be necessary where disclosures are unclear or raise further questions that the requester could not have foreseen. Similarly, in the context of a dispute, a request may be a reasonable way to obtain new information not otherwise available to the individual. You should not use section 14 as an excuse to avoid awkward questions that have not yet been resolved satisfactorily."

52. The Commissioner is of the view that the PSNI wrongly assessed the complainant's request of 19 December as vexatious. The PSNI did not appear to consider the request on its own merits, but allowed its judgment to be influenced by its relationship with the complainant. The correspondence prior to the request of 19 December related to a separate investigation, and therefore the PSNI should not have treated the request of 19 December as a continuation of that correspondence.

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http://www.ico.gov.uk/for_organisations/guidance_index/freedom_of_information_and_environmental_information.aspx#vexatious

53. In addition, the Commissioner notes that the investigation of the incident is ongoing. Therefore it is difficult to argue that the complainant was seeking to revisit issues which had already been resolved, as this was not the case with the investigation. In its correspondence with the complainant and the Commissioner, the PSNI focused on why any requested information should not be disclosed, rather than why the actual request was vexatious. The Commissioner would remind the PSNI that it had the option of refusing to confirm or deny whether it held relevant information, as well as refusing to disclose information, if it felt that an exemption applied under the Act.
54. In summary, the Commissioner is of the view that the PSNI wrongly assessed the request of 19 December as vexatious.

Right of appeal

55. 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 1234 504

Fax: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

56. 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.
57. 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

Gerrard Tracey
Principal Policy Advisor
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Annex 1

Full text of request made on 19 December 2010

"1. Please confirm if there has been any ballistic link between my attempted murder and that of [named individuals].

2. The reports refer to 'home-made' bullets being used in murders of above named and also in my attempted murder in June 1999. Did RUC and/or PSNI ever establish any kind of link between both cases, whether it be ballistic, weapons used or from ammunition used, forensically linked to either attack, if so, please supply full details.

3. Have the RUC and/or PSNI established that the terrorist outlawed group, the IRA, was behind the Fegan, Downey murders and/or involved in the attack, if so, please supply full details.

4. Have the RUC and/or PSNI established that the terrorist outlawed group, the IRA, was behind my attempted murder in June 1999 and/or involved in the attack, if so, please supply full details.

5. Have the RUC and/or PSNI at any time relayed or passed information to Northumbria Police, which identified the terrorist outlawed group, the IRA, as having been involved in my June 1999 attempted murder, if so, please supply full details.

6. Have the RUC and/or PSNI at any time relayed or passed information to Northern Ireland Office, British Government or any other third parties, including Ministers, which identified the terrorist outlawed group, the IRA, as having been involved in my June 1999 attempted murder, if so, please supply full details.

Please note for the avoidance of doubt, that I would be interested in any information which is held by PSNI, (RUC before them), regarding my 1999 attempted murder case, this request. Please deal with this request under all laws of rights of access to information, including FOIA, DPA and other associated laws."