

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 4 August 2014

**Public Authority:** Association of Chief Police Officers  
**Address:** 1st Floor  
10 Victoria Street  
London  
SW1H 0NN

### Decision (including any steps ordered)

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1. The complainant has requested copies of Taser Deployment Forms, with any 'sensitive' information redacted. The Association of Chief Police Officers ("ACPO") found, because of the burden involved, that the request was vexatious under section 14(1) of the FOIA. The Commissioner's decision is that ACPO was entitled to rely on this exclusion. He requires no steps.

### Request and response

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2. On 18 September 2013, the complainant wrote to ACPO and requested information in the following terms:

*"I am writing to make a request ... for copies of Taser Deployment Forms received by ACPO. More specifically I am requesting:*

1. *For January 1, 2013, until September 18, 2013, a copy of all Taser Deployment Forms received by ACPO from police forces, and attached FME [Force Medical Examiner] reports.*
  2. *The same for the full calendar year 2012.*
- Please let me know if there will be any photocopying costs".*

3. ACPO responded on 17 October 2013. It advised that, on the grounds of burden, it found the request to be vexatious under section 14(1) of the FOIA.
4. Following an internal review ACPO wrote to the complainant on 26 February 2014 maintaining its view.

### **Scope of the case**

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5. The complainant contacted the Commissioner on 29 April 2014 to complain about the way his request for information had been handled. He later confirmed that he wished the Commissioner to consider the application of section 14(1) to his request.

### **Reasons for decision**

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#### **Section 14(1) – vexatious requests**

6. Section 14(1) 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. There is no public interest test.
7. The term “vexatious” is not defined in the FOIA. However, guidance on vexatious requests provided by the Upper Tribunal in *Information Commissioner and Devon County Council vs Mr Alan Dransfield* (GIA/3037/2011)<sup>1</sup> places emphasis on the importance of adopting a holistic approach to the determination of whether or not a request is vexatious.
8. The Upper Tribunal’s judgment proposed four broad issues that public authorities should bear in mind when considering whether FOI requests are vexatious: (i) the burden of meeting the request; (ii) the motive of the requester; (iii) the value or serious purpose of requests; and (iv) any harassment or distress caused. The judgment concurred with an earlier First-tier Tribunal decision in *Lee vs Information Commissioner and King’s College Cambridge* (EA/2012/0015, 0049 and 0085) that vexation implies an unjustified, inappropriate or improper use of a formal procedure.

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<sup>1</sup> <http://www.osscc.gov.uk/Aspx/view.aspx?id=3680>

9. The judgment noted that the four broad issues are "*not intended to be exhaustive, nor are they meant to create an alternative formulaic checklist*". It stated the importance of remembering that Parliament has expressly declined to define the term 'vexatious'. Consequently, the four broad issues, "*should not be taken as imposing any prescriptive and all-encompassing definition upon an inherently flexible concept which can take many different forms.*"
10. The Commissioner's guidance<sup>2</sup> on the application of section 14(1) indicates that the key question for a public authority is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress. The public authority should also take into account the background and history of the request where this is relevant.

### **Burden of requests and level of disruption, irritation or distress**

11. In its refusal notice ACPO explained to the complainant that the forms requested would need to have varying amounts of information redacted on a case-by-case basis. It advised:

*"Each form contains a significant amount of information, including personal and sensitive personal data, which would need to be considered for redaction including, officer details, time and location data, details of individuals involved, operational details including circumstances and outcomes in freetext, and any medical details in the FME which could identify the individual involved"*.

12. It went on to further explain to him:

*"To provide you with the information requested would involve the redaction of at least 671 Taser Deployment forms and associated FME reports which would require one member of staff to be abstracted from normal duties for at least one and a half weeks. This is considered to be a significant burden to ACPO. This burden would extend further to contacting each individual police officer that submitted a form for them to take time to identify and report back whether the disclosure of any unredacted material would prejudice ongoing police investigations or prosecutions. Having spoken with you, it is clear that there is no other way to provide you with the*

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<sup>2</sup>[http://ico.org.uk/for\\_organisations/guidance\\_index/~/\\_media/documents/library/Freedom\\_of\\_Information/Detailed\\_specialist\\_guides/dealing-with-vexatious-requests.ashx](http://ico.org.uk/for_organisations/guidance_index/~/_media/documents/library/Freedom_of_Information/Detailed_specialist_guides/dealing-with-vexatious-requests.ashx)

*information requested which would not pose a significant burden to ACPO.*

*In coming to this conclusion, I have considered the Information Commissioner's latest published guidance, "Dealing with vexatious requests (Section 14)", particularly taking into account the volume of information to be considered for redaction and the resulting burden to ACPO in reviewing and preparing the information for disclosure.*

*Although you may be disappointed by this approach, I would stress that such protection exists within the legislation in order to ensure that applicants use their rights to seek information responsibly and public authorities are no overwhelmed by overburdensome requests".*

13. When requesting an internal review the complainant made detailed arguments as to why he did not believe his request was vexatious. In its internal review ACPO commented on the validity of his reasoning and made the following observations:

*"At the outset, I want to stress that, even though all requests made under FoIA are applicant and motive blind, we do not doubt or question the legitimate motives behind your request; neither do we allege that you are misusing or abusing your rights under the Freedom of Information Act, nor that your request is irresponsible.*

*Similarly, we do not dispute that the police use of Taser is a matter high on the public agenda and one in which informed public debate on issues regarding its deployment and use is of significant importance. And again, we do not allege that your initial request is either frivolous or submitted with the intention to annoy or waste time.*

*We therefore do not doubt that your request has been submitted with a serious purpose and intent with the sole view or retrieving information on a matter that is of the public interest; information that, if it was released, would potentially be beneficial to the wider public debate surrounding the police use of Taser".*

14. In explaining the extent of the burden to the complainant ACPO stated:

*"ACPO is not a large organisation. It consists of senior officers and representatives from across the country working together to provide a professional forum to share ideas and best practice, co-ordinate resources and help deliver effective policing which keeps the public safe. It is important to note that officers and staff that work for ACPO are based around the country. The Business Area*

*and portfolio leads are all serving members of various police forces. Apart from in a few exceptional cases, all of these officers work from their own force, on their own force's computer systems – we are not all based in one building. ACPO officers and staff therefore do not all share a single IT system with a central records depository, electronic document records management system or one corporate file plan.*

*The ACPO Freedom of Information Officer and Decision Maker is the only member of staff within ACPO who is appropriately trained and resourced to handle FoIA requests submitted to ACPO. While there are other staff across ACPO, working within specific Business Areas to help facilitate the handling of requests relevant to those portfolios (such as myself), all of the work preparing information for release (i.e. retrieving, collating, redacting etc.) is done by this one individual.*

*I do not debate the estimate provided in the initial response letter as to the time that would be required to review, redact and prepare the 671 forms for release. I believe that this was a reasonable estimate based on the volume and nature of the information requested, and how it is stored across the ACPO estate.*

*Removing the ACPO FoIA Decision Maker from her normal duties for the estimated one-and-a-half weeks it would take to review and redact the requested information would be extremely burdensome to ACPO and the manner in which it handles and process the other FoIA requests it receives, as well as the associated reporting and procedural activities associated with this role. For example, new requests might not be acknowledged, and existing requests might not be resolved within the appropriate time limit.*

*As an alternative, ACPO might have to consider hiring a member of agency staff (i.e. a "temp") to help carry out the work required to review and redact the information you requested. This would entail the obvious financial "burdens" at a time when budgets are tight and when there is significant public interest in ensuring all public funds are appropriately managed and allocated. Paying an agency firm, as an estimate, thirty pounds an hour for one-and-a-half weeks' work, would exceed £1,600".*

15. In summing up its response to the complainant ACPO advised:

*"Despite the legitimate nature of this request and your clear intent to use the information to further the public understanding of the issues surrounding the police use of Taser, I cannot ignore the detrimental effect that would be incurred if the key member of staff*

*for ACPO were to be removed from their duties for a week and half in order to answer one single request.*

*Again, while I acknowledge the serious purpose and intent of your request, handling this request should not mean that other legitimate requests, submitted by other applicants for their own purposes and aims, should suffer or be delayed by devoting our key resource in handling this request”.*

16. In his guidance (as per footnote 2 above), the Commissioner makes reference to the case of *Independent Police Complaints Commissioner vs The Information Commissioner (EA/2011/0222, 29 March 2012)*. In this case the Tribunal the Tribunal found that, under certain circumstances, it would be appropriate to refuse a burdensome request under section 14. It commented that:

*“A request may be so grossly oppressive in terms of the resources and time demanded by compliance as to be vexatious, regardless of the intentions or bona fides of the requester”.*

17. In cases such as this one, where the public authority is unable to rely on the cost limit for dealing with the request, the Commissioner has indicated in his guidance that 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”. The Commissioner considers that there is a high threshold for refusing a request on such grounds and for the case to be viable a public authority should be able to demonstrate the following:

- 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 ICO AND
- Any potentially exempt information cannot easily be isolated because it is scattered throughout the requested material.

18. The Commissioner notes ACPO’s position regarding these matters which have been covered in its responses to the complainant, as cited above. Based on the size of the organisation itself, and its staffing levels, the Commissioner believes it has demonstrated that the request is voluminous for ACPO to deal with. He also understands that both parties have already accepted that there is sensitive information which would need to be redacted from every form. Not only would this include names, it may also include details about ongoing investigations. ACPO has explained to the Commissioner that:

*"... in addition to the locating and removing of any such [personal] data, the forms often contain information relevant to criminal investigations. As such there is the additional burden in having to contact each and every officer in the case to ensure any disclosure would not cause problems within the court environment, or damage the investigation. The officers themselves are then likely to have to make several enquiries with internal force stakeholders and even the CPS and courts themselves."*

19. Having viewed a sample of the completed forms, the Commissioner also accepts that the redactions needed are scattered throughout the content and that each form would need to be carefully considered on an individual basis.

## **Conclusion**

20. The Commissioner's approach is to assess whether the burden of requests and level of disruption, irritation or distress caused to a public authority by the request, is disproportionate or unjustified, when weighed against the purpose and value of the request. When making this assessment, he will also take into account the context and history of the request, ie the wider circumstances surrounding the request.
21. The Commissioner accepts that there is a considerable volume of information caught by the request which ACPO would need to scrutinise, and make further enquiries about, in order to prepare it for suitable disclosure. Accordingly, he is satisfied that compliance with the request will impose a significant burden on ACPO.
22. As regards the complainant's position, the Commissioner accepts that his request is well intentioned and seeks to serve the public interest. He agrees that it is a responsible use of the FOIA and that burden is the only vexatious element that could be fairly considered in respect of the request. However, he does note that the complainant is of the opinion that burden alone cannot be relied on when considering whether or not a request is vexatious; the Commissioner does not accept this position.
23. The Commissioner has considered both ACPO's arguments and the complainant's position regarding the information request. Taking into consideration the findings of the Upper Tribunal in Dransfield that an holistic and broad approach should be taken in respect of section 14(1), the Commissioner has decided that ACPO was correct to find the request vexatious. Whilst he notes that ACPO has conceded that the request has serious merit he accepts that the burden is such that it can be properly categorised as being grossly oppressive and dealing with the request under such circumstances cannot be justified. Accordingly, whilst he

considers this case to be finely balanced, the Commissioner finds that section 14(1) has been appropriately applied in this instance.

## **Other matters**

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### **Good practice - assistance**

24. As indicated in his guidance, the Commissioner considers that where an authority believes that complying with the request will impose a grossly oppressive burden, it is good practice to negotiate with the requester before claiming section 14(1), to see if they are willing to submit a less burdensome request.
25. In response to enquiries from the Commissioner, the complainant indicated that he may have been willing to submit a more limited request. However, the Commissioner notes that ACPO had previously spoken to the complainant in an effort to progress the case and he was invited to meet them and discuss this further – an offer which he did not take up. The Commissioner was also advised by ACPO that the complainant clearly indicated to them that he wished to gather as much data as possible in order to build up a more accurate picture whereby he could compare annual data.
26. In complying with his guidance the Commissioner is satisfied that ACPO took reasonable steps to assist the complainant in this case.

### **General comments**

27. ACPO has advised the Commissioner that they do not necessarily hold copies of all the Taser forms because although it is requested that the forms are referred to ACPO after deployment, some forces may choose not to do so, or do so at a later date. It is also understood that not all forces submit the accompanying FMEs. The Commissioner notes that the complainant has previously requested - and been provided with - Taser forms from individual forces in response to different requests.



## **Right of appeal**

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28. 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: 0116 249 4253

Email: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

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

29. 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.
30. 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 .....**

**Graham Smith**  
**Deputy Commissioner**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**