

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 20 March 2017

Public Authority: Dyfed Powys Police
Address: Police Headquarters
PO Box 99
Llangunnor
Carmarthen
Dyfed
SA31 2PF

Decision (including any steps ordered)

1. The complainant has requested evidence of a police procedure which would assure that a Taser weapon deployed by a constable of Dyfed Powys Police would not be used as an instrument of torture as defined in international law. Dyfed Powys Police refused the request in reliance on section 14(1) of the FOIA. The Commissioner's decision is that Dyfed Powys Police has correctly relied on section 14(1) of the FOIA. The Commissioner does not require the public authority to take any steps.

Request and response

2. On 1 February 2016, the complainant wrote to Dyfed Powys Police (DPP) and requested the following information:
"...please provide documentary evidence of a police procedure which would assure that a taser weapon deployed by a constable of Dyfed Powys Police was not being used as an instrument of torture as defined in international law."
3. DPP did not initially respond as it had previously informed the complainant on 22 October 2015 and 19 November 2015, that it would not acknowledge or respond to any further requests relating to the conduct of the force or its officers in relation to compliance with the law.
4. However, following a request from the complainant dated 1 March 2016 for an internal review, DPP wrote to the complainant on 4 March 2016. It stated that it was upholding the original decision that the request was

vexatious and attached a copy of its previous refusal notice (dated 22 October 2015) which it considered remained valid. DPP further informed the complainant that in accordance with section 17(6) FOIA, it was satisfied that it was not necessary for the FOI decision maker to issue a new refusal notice in response to this request

Scope of the case

5. The complainant contacted the Commissioner on 4 March 2016 to complain about the way his request for information had been handled. He considered DPP's response to his request as an out of hand rejection of his legitimate request. The complainant expressed dissatisfaction with the refusal notice which had been attached in relation to the response stating that he considered that it made some serious and untrue allegations which seem to be designed to deter him from holding DPP to account. He added that he had yet to receive any evidence of vexation from DPP.
6. The Commissioner considers the scope of her investigation is to determine whether DPP was correct to rely on section 14(1) in respect of this request. She would also point out, that under section 14(1) FOIA, it is the request, not the requester that is considered vexatious.

Reasons for decision

Section 14(1) - Vexatious requests

7. 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.
8. The term 'vexatious' is not defined in the FOIA, however, the Upper Tribunal in the Information Commissioner vs Devon CC and Dransfield [2012] UKUT 440(AAC), (28 January 2013) took the view that the ordinary dictionary definition of the word 'vexatious' is only of limited use, because the question of whether a request is vexatious ultimately depends on the circumstances surrounding that request.
9. In further exploring the role played by circumstances and whether the request has adequate and proper justification, the Tribunal concluded that 'vexatious' could be defined as the *"...manifestly unjustified, inappropriate or improper use of a formal procedure."* (paragraph 27)
10. Consistent with the Upper Tribunal's decision which established the concepts of 'proportionality' and 'justification' as central to any consideration of whether a request is vexatious, the Commissioner's

guidance for section 14 confirms that the key question to ask when weighing up whether a request is vexatious is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress.

11. Where this is not clear, the public authority should weight the impact of complying with the request and balance this against the purpose and value of the request. In doing this, public authorities will inevitably need to take into account the wider factors such as the background and history of the request.
12. In its consideration of the request, DPP used the Commissioner's guidance to help it determine whether it could rely on section 14 of the FOIA, and in particular, it considered the indicators identified in the guidance which it felt relevant in this particular case. As it felt its response to the complainant's previous requests remained relevant, it considered the following indicators applicable: *"Frequent or overlapping requests"*, *Unreasonable persistence"*, and *"Burden on the authority"*. During the course of the Commissioner's investigation, it also argued that the following indicators were relevant: *"Intransigence"*, *"Personal grudges"* and *"Unfounded accusations"*.
13. The Commissioner would point out that the fact that a number of indicators may apply does not necessarily mean an authority may refuse the request as vexatious. Some factors will be easier to evidence and support than others, with the strength of the factors varying in importance depending on the particular circumstance of each case. Additionally, the list of indicators is not an exhaustive list and public authorities may include their own indicators if they consider them relevant.
14. In relation to the background and history to the request, DPP has informed the Commissioner that the complainant submitted a complaint dated 19 August 2015, initially directed to the Dyfed Powys Police and Crime Commissioner, but forwarded to the Professional Standards Department (DPP) of DPP for investigation. The basis of the complaint related to his treatment at a named police station within the boundaries of DPP, and alleged bullying and threats from a Senior Police Officer.
15. DPP has confirmed and provided evidence that the investigation did not uphold this complaint, the outcome of which was communicated to the complainant on 3 November 2015. DPP also provided details of how to appeal in the event he was dissatisfied with the outcome, and specified the timescale by which to do so. The Commissioner notes that a copy of the investigation report was enclosed, along with a blank appeals form for the complainant to complete should he wish to do so.

16. DPP has provided evidence that whilst the complainant did not wish to appeal the decision, he expressed dissatisfaction with its outcome. This continued past the deadline for an appeal with the complainant again confirming that he was not looking to appeal the decision, but requested that PSD re-open its original investigation on the basis that he was now providing further evidence in support of his complaint.
17. The Commissioner notes that it was at this time, with correspondence between the complainant and PSD continuing, that the complainant submitted his request for information which is the subject of this notice.
18. DPP also informed the Commissioner that the complainant had submitted eight requests for information in October 2015 each relating to the conduct of DPP or its officers in relation to compliance with the law.
19. The Commissioner notes the subject matter of the requests included the following:
 - Number of individuals who have been arrested subsequent to 'stop and account' action by DPP where that individual has refused to divulge information as their inalienable right under ECHR. Procedures for claiming compensation for wrongful and unlawful arrest and confirm whether an individual arrested under such circumstances can bring a charge under a Section 26.
 - Placement of a safety camera and whether it was justified or a money making scam.
 - It has been stated by DPP that it does not consider Article 38 of Magna Carta (1215) in day to day procedures...The corollary of this is that the entire DPP force has been acting unlawfully. Please provide evidence that would prove to the contrary.
 - It has been my experience that DPP officers seem unaware of the Criminal Justice and Courts Act 2015, with particular reference to Section 26, which has serious consequences to currently employed policing methodology and practice. What documented steps are DPP taking to educate police officers in this important change in legislation?
 - What documented steps have been put in place to ensure that the policy of HM Inspector or Constabulary ... is being complied with ... being "*Everyone reporting an offence is presumed to be telling the truth until otherwise proved*".

- Please provide a copy of any order or command that exempts a uniformed officer from displaying collar/shoulder numbers while on duty, or to exempt themselves from that requirement.
- Please provide any guidance that would describe what is meant by "*duty of care*" in the context of keeping the peace and its scope of application. Any guidance on the training of this, and the legitimacy and lawfulness of the imposition of the "*duty of care*" in the context of keeping the peace.

In an internet documentary via YouTube, a UK police employed civilian operating a police speed trap, stated that he had the delegated powers of the police. Please provide documentation in support of this.

20. Having considered the nature of the requests, the Commissioner is satisfied that they relate to the conduct of DPP or its officers in relation to compliance with the law. The Commissioner also notes that some of these requests appear to directly relate to the complainant's complaint against a Senior Police Officer.
21. As part of the background and history to the request, DPP has also referred to two requests for information prior to these eight requests but after the complaint to the PSD. Having considered these requests, the Commissioner can confirm that they also related to the conduct of the police force and its officers in relation to compliance with the law.
22. The first requested details of the number of police officers from DPP who have attended "Common Purpose" training. The complainant alleges that Common Purpose is a right wing organisation dedicated to the advancement of fascist thinking. The second request was for the number of officers investigated for fraudulent use of DVLA data by claiming erroneously that a marker exists on a vehicle as an excuse for an unlawful stop and search on that vehicle, over the past three calendar years. DPP responded to both requests confirming that they do not hold information in respect of either.
23. As part of her investigation of DPP's reliance on section 14(1), the Commissioner has had regard for the indicators DPP has relied on in support of its decision that the request was vexatious.

Frequent or overlapping requests

24. DPP informed the complainant in the autumn of 2015 that the eight requests received within a period of eight working days was evidence of a steady and persistent flow of FOI requests submitted to its FOI Unit all relating to the same issues, namely the conduct of the force or its

officers in relation to compliance with the law. It further argued that these requests have been submitted to the force prior to it having the opportunity to address two earlier requests as outlined in paragraphs 21 and 22 of this notice.

25. DPP argued that when considering the above there is no doubt that when taking into account the context and history between the complainant and DPP, a distinct pattern of behaviour has developed in as much as due to the volume and persistence of the requests, to provide responses would impose a disproportionate and substantial burden on DPP.

Unreasonable persistence

26. DPP considers that the complaint submitted in August 2015, its subsequent investigation, and continued correspondence between the complainant and DPP demonstrate unreasonable persistence.
27. It also considers the complainant's previous 10 requests, with eight within an eight working day period as further evidence in support of this.

Burden on the Authority

28. The eight requests referred to in paragraph 19 of this notice were viewed as a steady and persistent series of FOI requests relating to the same subject. It was considered at the time of these requests that the effort to process and respond to them would be so grossly oppressive in terms of strain and time on resources that the authority could not reasonably be expected to comply.

DPP further argued at the time, that when taking into account the context of the FOI requests and the history between the complainant and the force, a distinct pattern of behaviour had developed in as much as due to the volume and persistence of the requests that to provide responses in respect of these requests would impose a disproportionate and substantial burden on the Authority.

Intransigence

29. DPP considers that the correspondence between the force and the complainant, demonstrate that attempts to advise and assist were rejected out of hand and the requestor showed no willingness to engage. It has used the complainant's previous eight requests in the autumn of 2015 and indeed this one as evidence in support of this, stating that even when he had exhausted its internal FOIA process, he continued to send correspondence in respect of the requests.

30. DPP also considers the correspondence between the complainant and DPP's Professional Standards Department (PSD) after it had communicated the outcome of its investigation of his complaint as further evidence in support of this.

Personal grudges/unfounded accusations

31. The Commissioner's guidance in relation to section 14(1) includes 'personal grudges' as another indicator that a request may fall within the vexatious category. DPP considers that based on the nature of the complaints made by the complainant, that he is targeting a particular employee against whom he has some personal enmity.
32. As described in paragraph 14 of this notice, the complaint was in relation to a senior police officer and contained allegations about the conduct of this officer who was accused of bullying the complainant and breaching his powers as a police officer by threatening to arrest him for obstruction/wasting police time. DPP considers that as the PSD investigation found no evidence to support this allegation against the police officer and concluded that there was no case to answer for misconduct, that this supports its view that the complainant was holding a personal grudge against the officer and making unfounded accusations.
33. In further support of its arguments, DPP has referred to the complainant's letter of 7 January 2016 (after the deadline for the appeal had passed) wishing to re-open the investigation on the basis that he was providing additional evidence against the police officer subject to the investigation which he considered supported the suspicion that the police officer in question was incompetent, a liar or both.
34. The Commissioner has therefore considered the arguments presented by DPP and its reliance on the various indicators outlined in paragraphs 24 to 33 of this notice.

The Commissioner notes that whilst the complaints submitted in the autumn of 2015 fitted the category of frequent and overlapping, that a period of three or four months had elapsed since this particular request. She has not therefore placed much weight on this argument. Similarly, she has not placed much weight on the argument that responding to it would place any significant burden on the authority.

35. However, she considers that the request, when measured against a background of the 10 previous requests, all relating to the same general subject of the conduct of DPP or its officers in relation to compliance with the law, and the nature of the complaint received and investigated by PSD, supports the view that the complainant was demonstrating unreasonable persistence in pursuing his grievance from six months

previously. Additionally, the Commissioner has viewed the complainant's refusal to follow DPP's appeals process as evidence in support of intransigence.

36. Perhaps most significantly of all however, is DPP's arguments that the request emanated from a personal grudge and unfounded allegations against a Senior Police officer some six months previously, and his dissatisfaction with the PSD investigation which, the Commissioner notes, that despite declining to appeal the decision, he continued to correspond with the PSD at the time of the request. The Commissioner's has therefore concluded that the request was vexatious and that DPP was correct to rely on section 14(1) of the FOIA.

Right of appeal

37. 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@hmcts.gsi.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

38. 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.
39. 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

Andrew White
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF