

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 6 July 2017

Public Authority: National Police Chiefs' Council
1st Floor
10 Victoria Street
London
SW1H 0NN

Decision (including any steps ordered)

1. The complainant has requested referral forms for any proposed projects assistance for Bahrain. The National Police Chiefs' Council did not comply with the request citing section 14(1) (vexatious requests) of FOIA.
2. The Commissioner's decision is that the National Police Chiefs' Council has applied section 14(1) of FOIA appropriately.
3. The Commissioner does not require the National Police Chiefs' Council to take any steps as a result of this decision.

Request and response

4. On 8 June 2016, the complainant wrote to the National Police Chiefs' Council (NPCC) and requested information in the following terms:

"I would like to make a FOI request for the following: All International Police Assistance Board (IPAB) referral forms detailing any proposed assistance for Bahrain in 2015 and 2016."
5. On 14 June 2016 NPCC responded. It explained that it was not complying with the request for information, citing section 14(1) (vexatious requests) of FOIA. It also explained that it has to maintain a fair approach to all applicants and therefore would not be able to process repeated requests for substantially similar information, within 60 working days.

6. NPCC explained to the complainant that he had the right to an internal review and provided the details. However, the complainant did not request an internal review. The Commissioner contacted the complainant about this. The complainant explained that a work colleague had already had an internal review carried out for a similar request and that the NPCC had upheld its application of section 14(2)(repeated requests) of FOIA in that case. He therefore considered that there was no point in requesting an internal review.
7. The Commissioner explained to the complainant that he should have requested an internal review. The Commissioner contacted the NPCC about this; it helpfully confirmed that if it had carried out an internal review, it would have upheld the application of section 14(1) to the present request.

Background

8. Reprieve is an organisation of human rights defenders. Founded in 1999, it provides free legal and investigative support to some of the world's most vulnerable people: those facing execution and those victimised by states' counter-terror policies – rendition, torture, extrajudicial imprisonment and extrajudicial killing.
9. The complainant works for Reprieve.

Scope of the case

10. The complainant contacted the Commissioner on 15 July 2016 to complain about the way his request for information had been handled. Initially, the complainant had not sent in the necessary documentation and the Commissioner contacted him about this.
 11. The complainant sent the required documentation on 17 July 2016. He explained that it appeared that NPCC was refusing to process any requests from any individuals it associated with Reprieve, if the request related in any way to Bahrain, unless the individuals waited 60 days between the previous refusal of one request and submission of a new related request.
 12. The Commissioner will consider NPCC's application of section 14(1) and the way it handled the request generally.
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Reasons for decision

13. Section 14(1) of FOIA states that section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious.
14. The term "vexatious" is not defined in the FOIA. The Upper Tribunal (UT) considered vexatious requests in the *Information Commissioner v Devon CC & Dransfield* (UKUT 440 (AAC), 28 January 2013). It commented that "vexatious" could be defined as the "manifestly unjustified, inappropriate or improper use of a formal procedure". The UT's definition clearly establishes that the concepts of proportionality and justification are relevant to any consideration of whether a request is vexatious.
15. The UT 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. The UT 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 requests,¹ 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 section 14(1) the relevant consideration is whether the request is vexatious rather than the individual submitting it. 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

¹ <https://ico.org.uk/media/for-organisations/documents/1198/dealing-with-vexatious-requests.pdf>

public authority will need to consider the wider circumstances surrounding the request before making a decision as to whether section 14(1) applies”.

18. 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”.

Evidence from the parties

19. The complainant argued that his request was not vexatious. He explained that, in its response to his request, NPCC appeared to be adopting a policy that anything received from Reprieve in relation to Bahrain would be subject to section 14(1), especially if there was not a 60 working day interval between each request. He argued that this was not what section 14(1) allowed.
20. The complainant also pointed out that section 14(1) applies to the request itself, not the individual who submitted it. In addition, the complainant explained that the key question is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress; the public authority may take into account the context and history of the request where this is relevant.
21. Furthermore, the complainant argued that the present request was not vexatious as it was made by a different individual – the fact that both the requester and his colleague work for the same organisation does not make his request vexatious.
22. The complainant also argued that the purpose of Reprieve's work is clearly relevant to assessing whether the request is vexatious. He also explained that the NPCC had not claimed that it would be disproportionate to process the request.
23. The complainant pointed to the *Dransfield* decision which states:
- “... the emphasis should be on an objective standard and that the starting point is that vexatiousness primarily involves making a request which has no reasonable foundation, that is, no reasonable foundation for thinking that the information sought would be of value to the requester or to the public or any section of the public.”*
24. The complainant explained that a decision-maker has to consider all of the relevant circumstances in order to reach a balanced conclusion.

25. The NPCC argued that the request for information was vexatious, for the purposes of section 14(1). It explained that it considered that the complainant was acting in concert with a work colleague, requesting information that had been refused two days previously and was the subject of internal review. NPCC also explained that it considered this was done deliberately with the intention of causing annoyance to it and undermining its processes.
26. In addition, the NPCC explained that the complainant and his colleague both work for Reprieve. It explained that the organisation's website describes itself as a small organisation and named the complainant and his colleague's job titles. The NPCC argued that there was no suggestion that the complainant and his colleague were working in anything other than their employed roles within Reprieve.
27. The NPCC pointed to a request it had received on 6 June 2016 from the complainant's colleague:

"I am requesting a copy of any IPAB referral forms for any proposed projects with Bahrain in the time period 01/01/2015 - 01/06/2016.

I expect this to include secondments of UK personnel to Bahrain (e.g. referral form reference 409), visits for Bahraini personnel to the UK, and any other proposals involving Bahrain that are recorded on IPAB referral forms."

28. The NPCC explained that it had responded on 8 June 2016, the same day it had received the present request, citing section 14(2)(repeat requests) of FOIA as its reason for non-compliance.
29. The NPCC explained that it considered that the complainant was working in concert with his colleague. It argued that the complainant was trying to obtain information that was already the subject of an internal review at the time, as his colleague had requested one on 8 June 2016. The NPCC also argued that the complainant had submitted the present request in order to circumvent the refusal notice sent to his colleague.
30. The NPCC explained the principle of two persons acting in concert was one recognised within the FOIA. It pointed to section 12(4)(b) (cost of compliance) which states:

"The Secretary of State may by regulation provide that, in such circumstances as may be prescribed, where two or more request for information are made to a public authority –

(a) by one person, or

(b) by different persons who appear to the public authority to be acting in concert or in pursuance of a campaign,

The estimated cost of complying with any of the requests is to be taken to be the estimated total cost of complying with them all".

31. Furthermore, the NPCC argued that the FOIA requests from the complainant and his colleague were substantially the same as:
 - Both seek International Police Assistance Board referral forms for Bahrain.
 - The information in scope is identical.
 - The date range is substantially similar in both requests ie the complainant's colleague's date range was: 01/01/2015 – 01/06/2016 (18 months); the complainant's date range was 01/01/2015 – 08/06/2016 (18 months + 8 days).
32. The NPCC also pointed out that less than 46 hours had elapsed between the present request from complainant and its compliance with his work colleague's similar request. Furthermore, the NPCC explained that it considered that this was not a reasonable interval, as there was very little likelihood of any information caught within the scope of the request changing. It also argued that this demonstrated collusion between both individuals to undermine and circumvent NPCC processes and FOIA legislation.
33. In addition, the NPCC explained that section 14(2) specifically relates to one individual and therefore cannot be used in these circumstances, even though both the complainant and his colleague both work in the same organisation, working on the same subject area.
34. The NPCC also argued that the FOIA specifically sought to prevent public authorities from repeatedly responding to substantially similar requests which imposes an additional burden of reprocessing duplicate requests, on them. It pointed out that FOIA recognises that there is a balance between the public right of access to information held by public authorities and the burden that responding to information requests places on a public authority.
35. Furthermore, the NPCC explained that two questions arose:
 - Is it fair and reasonable for an organisation to be able to keep making requests in this way, even though someone from the organisation has already received a response from the public authority?
 - Was it the intention of lawmakers to prevent individuals making repeat requests, but to allow organisations to make repeat requests as often as they like, irrespective of the burden that places on public authorities?

36. The NPCC also explained that its view is that organisations should not be permitted to repeatedly make FOI requests, creating a significant burden in terms of expense and distraction and therefore section 14(1) applies.

The Commissioner's view

37. The Commissioner acknowledges that there are many different reasons why a request may be vexatious, as reflected in her guidance. There are no prescriptive 'rules', although there are generally typical characteristics and circumstances that assist in making a judgement about whether a request is vexatious. A request does not necessarily have to be about the same issue as previous correspondence to be classed as vexatious, but equally, the request may be connected to others by a broad or narrow theme that relates them. A commonly identified feature of vexatious requests is that they can emanate from some sense of grievance or alleged wrong-doing on the part of the authority.

38. As the UT in *Dransfield* observed:

"There is...no magic formula – 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".

39. In her guidance, the Commissioner recognises that the FOIA was designed to give individuals a greater right of access to official information with the intention of making public bodies more transparent and accountable.
40. While most people exercise this right responsibly, she acknowledges that a few may misuse or abuse the FOIA by submitting requests which are intended to be annoying or disruptive or which have a disproportionate impact on a public authority.
41. The Commissioner recognises that public authorities must keep in mind that meeting their underlying commitment to transparency and openness may involve absorbing a certain level of disruption and annoyance.
42. The Commissioner also recognises that dealing with unreasonable requests can place a strain on public authorities' resources and get in the way of delivering mainstream services or answering legitimate requests. Furthermore, these requests can also damage the reputation of the legislation itself.

Was the request vexatious?

43. The Commissioner has considered both the NPCC's and complainant's arguments regarding the information request.
44. She notes the complainant's argument regarding NPCC stating that it would not consider any Bahrain-related requests from individuals working for Reprieve, unless 60 days had elapsed. However, the Commissioner notes that section 14(1) does not make any provision for this timescale.
45. The Commissioner also notes the complainant's argument that when considering whether section 14(1) applies, the work of Reprieve should be taken into account. However, she notes that section 14(1) does not make any provision for this consideration.
46. As in many cases which give rise to the question of whether a request is vexatious, the evidence in the present case showed a history of previous information requests between the parties.
47. Clearly in this case, the NPCC considers that the context strengthens its argument that the request is vexatious.
48. The Commissioner considered that, viewed in isolation, the request in this case may not seem to impose an unreasonable burden and is arguably not without a serious purpose.
49. However, she notes that the complainant submitted this request against a background of another related request from his work colleague, on behalf of Reprieve which at the time of the present request, was subject to an internal review.
50. The Commissioner also notes the NPCC's reference to section 12, which provides that two persons acting in concert was one recognised within the FOI Act – see paragraph 34 above. She notes that section 14(1) does not contain this provision.
51. The Commissioner has considered the NPCC's explanation that it could not apply section 14(2) to the request as it applies to individuals and not organisations. Her view is that, if two or more individuals submit identical or substantially similar requests for the purposes of section 14(2), on behalf of the organisation they work for, provided one of the requests has been responded to by the public authority, it is not obliged to keep responding to identical or other substantially similar requests.
52. However, if requests are received from two or more individuals on behalf of an organisation they work for and are different, then a public authority has to deal with each request separately.

53. The Commissioner also considers that expecting public authorities to respond to identical or substantially similar requests from people who are making the requests on behalf of the same employer, would be a waste of the already limited resources available to public authorities.
54. On the basis of the evidence provided and taking into account the findings of the UT in *Dransfield* that an holistic and broad approach should be taken in respect of section 14(1), the Commissioner was satisfied that the request was a manifestly unjustified and improper use of the FOIA and is therefore vexatious for the purpose of section 14(1).
55. The Commissioner therefore considers that the NPCC has applied section 14(1) appropriately.

Other matters

56. The Commissioner notes that in this case the complainant did not request an internal review, even though NPCC had informed him of his right to do so.
57. If an applicant is dissatisfied with a public authority's response, she expects her/him to request an internal review. She notes that in this case, although NPCC had informed the applicant of his rights, he decided not to request one.
58. The Commissioner considers that if an applicant does not request an internal review, a public authority is entitled to consider that an applicant accepts its response. In this case, she notes that NPCC was prepared to confirm that even if it had carried out an internal review, it would have upheld its application of section 14(1).
59. The Commissioner also notes that in its refusal notice, the NPCC explained to the complainant that it would not be able to process repeated requests for substantially similar information within 60 working days. She notes that this relates to the complainant's colleague having already submitted a request regarding Bahrain, which it had refused under section 14(2).
60. Section 14(2) states:

"Where a public authority has previously complied with a request for information which was made by any person, it is not obliged to comply with a subsequent identical or substantially similar request from that person unless a reasonable interval has elapsed between compliance with the previous request and the making of the current request. "

61. The Commissioner notes that section 14(2) does not set out a specific timescale. She considers that often it will be obvious that a reasonable interval has not elapsed because the requests have been submitted within a relatively short time of each other. However, the Commissioner notes that the NPCC has stated that it will not deal with any request regarding Bahrain until a time period of 60 days has elapsed between complying with one request and the making of a further request.
62. The Commissioner considers that a public authority cannot set down an absolute timescale with regards to what is considered as a "reasonable interval" for the purposes of section 14(2). She considers that a public authority should take into account the specific circumstances surrounding each particular request.

Right of appeal

63. 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

64. 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.

65. 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
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