

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 19 April 2018

**Public Authority:** Chief Constable of Surrey Police

**Address:** Mount Browne  
Sandy Lane  
Guildford  
GU3 1HG

### Decision (including any steps ordered)

---

1. The complainant requested detailed information relating to all crimes reported in Surrey for a period of several years. Surrey Police refused the request as vexatious under section 14(1) of the FOIA on the basis of the burden that it would impose.
2. The Commissioner's decision is that the request was vexatious and so section 14(1) applied and Surrey Police was not obliged to comply with it.

### Request and response

---

3. On 26 October 2017 the complainant wrote to Surrey Police and requested information in the following terms:

*"Under the freedom of information act could you please provide me with the following information in an XLSX data file for the following...*

*Type of Data: Reported Crimes for all of Surrey*

*Period: 1st January 2010 to today (the day you run the query against the database)...*

*Fields Required:*

*Crime ID*

*Committed Date of Crime*

*Committed Time of Crime*

*Latitude*

*Longitude*

*Postal Code*

*Location*

*Street Name*

*Borough*

*Ward/Parish*

*Area Code*

*Area sub code*

*Crime Category*

*Crime Sub Category 1*

*Crime Sub Category 2*

*Police Who Recorded Crime (Area)*

*Police Who Recorded Crime (Region)*

*Sex of offender*

*Age of offender*

*Number of offenders*

*Sex of offenders*

*Ethnic Group of offenders*

*Nationality of offenders*

*Outcome Status"*

4. Surrey Police responded on 8 November 2017 and refused the request, citing the exemption provided by section 40(2) (personal information) of the FOIA.
5. The complainant responded on 9 November 2017 and requested an internal review. Surrey Police responded with the outcome of the review on 23 November 2017. The conclusion of this was that the refusal of the request under section 40(2) was upheld.

## Scope of the case

---

6. The complainant contacted the Commissioner on 24 November 2017 to complain about the refusal of his information request. The complainant's reasoning was that almost all of the information he had requested was already available on *police.uk*, so it should have been possible for Surrey Police to disclose the information he had requested.
7. After contacting the ICO, the complainant made further information requests to Surrey Police similar to the above request, but with a reduced scope. However, the complainant confirmed that he wished to continue with his complaint in relation to the request above and this notice concerns only that request.
8. During the investigation of this case, Surrey Police changed its position and notified the Commissioner and the complainant that it was relying on section 14(1) of the FOIA as it believed that the request was vexatious. The complainant subsequently confirmed that he wished the ICO to consider whether Surrey Police had cited section 14(1) correctly and the following analysis covers that section.

## Reasons for decision

---

### Section 14

9. Section 14(1) of the FOIA states that a public authority is not obliged to comply with a request for information if it is vexatious. The term "vexatious" is not defined in the FOIA. The Upper Tribunal considered the issue of vexatious requests in the case of *Information Commissioner v Devon CC & Dransfield* (UKUT 440 (AAC), 28 January 2013). In that case the Upper Tribunal defined a vexatious request as one that is a "*manifestly unjustified, inappropriate or improper use of a formal procedure*". The Tribunal's definition establishes that the concepts of proportionality and justification are relevant to any consideration of whether a request is vexatious.

10. In the Commissioner's view, the key question for public authorities to consider when determining if a request is vexatious is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress.
11. The reasoning from Surrey Police in this case concerned the burden that it believed the request would impose in terms of preparing the information for disclosure. In particular it believed that it would be necessary to spend significant time on redacting exempt information before the remainder could be disclosed.
12. The Commissioner's guidance on section 14(1)<sup>1</sup> states at paragraph 68 that a public authority "*may apply section 14(1) where 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 on the organisation*". The guidance goes on to state the following about situations of this kind "... *we consider there to be a high threshold for refusing a request on such grounds*" and "*we would expect the authority to provide us with clear evidence to substantiate its claim that the request is grossly oppressive*". It also states that "*the bar for refusing a request as 'grossly oppressive' under section 14(1) is likely to be much higher than for a section 12 refusal*".
13. The guidance is specific that time spent on redacting exempt material can be taken into account when considering the burden of a request. Whilst section 12(1) (costs) of the FOIA is the main provision for situations where a public authority is concerned about the burden of complying with a request, time spent in relation to any of the exemptions listed in Part II of the FOIA cannot be taken into account when considering citing section 12(1).
14. The concern of Surrey Police in this case was about the amount of information that would be encompassed by the request and what it believed was the necessity of reviewing this information to ensure that it did not include any content that would be exempt by virtue of section 40(2) (personal information) of the FOIA. The complainant in essence argued that it would not be necessary for the information to be reviewed for exempt material prior to disclosure as very similar information was already available on *police.uk*.

---

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

15. The task for the Commissioner here is to consider the representations from the parties and form a view on the degree of burden that the request would impose. Having done so, she must decide whether the burden meets the threshold of grossly oppressive as set out in her guidance, and hence the request was vexatious under section 14(1) of the FOIA.
16. The Commissioner notes that it is clear that the request does encompass a very large volume of information. The complainant specified all crimes within the Surrey Police area for a period of almost eight years. Surrey Police estimated that this request covered approximately 456,000 records. Even aside from any other factors, the Commissioner's view is that such a broad request may not represent a reasonable use of the right of access provided by the FOIA. The complainant would have had more chance of success with a request that specified a far shorter time frame.
17. The request also asks for a great deal of detail. Surrey Police believed that it would be necessary to carefully read through this information to check for any content that could be linked to individuals and hence may be exempt under section 40(2).
18. The Commissioner's view is that there is clear potential for the level of detail requested by the complainant to include content that could be linked to an individual, and hence to possibly be personal data according to the definition in section 1(1) of the Data Protection Act 1998 (DPA). For example, the combination of details on location, the crime itself and information about the offenders could result in people close to that location, such as a neighbour, who have some existing knowledge about that crime to link the disclosed information to the victim. Alternatively, the details may describe a crime that was high profile and was the subject of media attention. Disclosure of the requested details could be linked to the victim and may lead to further details about the home address of the victim being disclosed than what had previously been included in the media coverage. Information of this kind may be exempt under section 40(2) of the FOIA.
19. Also notable is the significant possibility that the requested information will include *sensitive* personal data, as defined in section 2 of the DPA. Additional safeguards apply in relation to sensitive personal data. Situations in which it would be appropriate to disclose sensitive personal data into the public domain through the FOIA are likely to be extremely rare.
20. Whilst Surrey Police gave an estimate of the time it would take to review the requested information for exempt materials, the Commissioner does not consider it necessary to scrutinise that estimate here as she believes

it sufficiently clear from a consideration of the scope of the request that reviewing this information to check for, and if necessary redact, exempt material would pose a very significant burden. In her role as DPA regulator she would also not be supportive of any suggestion that this information could be disclosed without being carefully checked for personal data. She considers a thorough exercise aimed at avoiding any inappropriate disclosure of personal data to be an unavoidable requirement if the complainant's request was complied with.

21. The complainant believed that the information he had requested could be disclosed without being checked for personal data as very similar information was already available at *police.uk*. On this point, the Commissioner notes that by making his request the complainant clearly believed that he would access additional information to that already available. In any event, if the information that the complainant requested was already available, this would mean that it was exempt by virtue of section 21 of the FOIA. As already mentioned, the Commissioner is also very clear that this information would require careful checking to guard against inappropriate disclosures of personal data, whatever similarity it has to information disclosed elsewhere.
22. Turning to the conclusion, all information requests impose some burden and public authorities have to accept that in order to comply with their FOIA obligations. However, in some cases the burden imposed by a request will be disproportionate to its value. For the reasons covered above, the Commissioner considers it clear that compliance with the complainant's request would impose a very weighty burden upon Surrey Police. That burden could only be justified where there was very clear grounds for this. In this case, the Commissioner does not consider there to be any such grounds. She notes again that similar information is available elsewhere. Whilst this does not encompass all the details sought by the complainant, it does largely satisfy the undoubted public interest in disclosure of crime related information and further weakens the argument that Surrey Police should be required to expend the resources necessary to comply with the complainant's broad information request.
23. The Commissioner's decision is that as a result of its time frame and the likelihood that the detail it specifies would encompass personal data, this is a request that would impose a grossly oppressive and disproportionate burden upon Surrey Police. It was, therefore, vexatious under section 14(1) of the FOIA and Surrey Police was not obliged to comply with it.

## Right of appeal

---

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

Website: <http://www.justice.gov.uk/tribunals/general-regulatory-chamber>

25. 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.
26. 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 .....**

**Ben Tomes**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**