

Freedom of Information Act 2000 (FOIA)

Date: 15 August 2018

Public Authority: Independent Office for Police Conduct
Address: 90 High Holborn
London
WC1V 6BH

Decision (including any steps ordered)

1. The complainant has requested information about cases that have been referred to the Independent Office for Police Conduct. The Independent Office for Police Conduct did not comply with the request, citing section 14(1) (vexatious requests) of the FOIA.
2. The Commissioner's decision is that the Independent Office for Police Conduct has applied section 14(1) of the FOIA appropriately.
3. The Commissioner does not require the Independent Office for Police Conduct to take any further steps as a result of this decision.

Background

4. The Independent Office for Police Conduct (IOPC) (formerly known as the Independent Police Complaint's Commission) is responsible for overseeing the police complaints system and investigating the most serious incidents and complaints involving the police.

Request and response

5. On 20 October 2017, the complainant wrote to the IOPC, and requested information in the following terms:

"Can you please inform me what cases have been referred to IPCC Commissioners, what the determinations/decisions made by the Commissioners were?

Can you please detail all the changes made by the IPCC and the police complaints process since the IPCC's creation/inception – including

changes made to procedures, practices, guidance, processes.

Can you please provide me with copies of request and processes followed by [sic] the IPCC re. my requests for cases involving me to be referred to Commissioners – especially in relation to [name redacted] falsely stating that Commissioners do not look into individual cases (to paraphrase).”

6. The IOPC responded on 14 November 2017. It explained that it was refusing to comply with the request, citing section 14(1) (vexatious requests) of the FOIA.
7. Following an internal review the IOPC wrote to the complainant on 27 December 2017. It upheld its original position.

Scope of the case

8. The complainant contacted the Commissioner on 19 January 2018 to complain about the way his request for information had been handled. He explained that he considered that even though his requests for information were made to assist him in his dispute with the IOPC, this was irrelevant.
9. During the Commissioner’s investigation, the IOPC reconsidered its response in relation to part 3 of the request: “Can you please provide me with copies of request and processes followed by [sic] the IPCC re. my requests for cases involving me to be referred to Commissioners – especially in relation to [name redacted] falsely stating that Commissioners do not look into individual cases (to paraphrase).”
10. The IOPC contacted the complainant and explained that it should have dealt with part 3 of his request as his personal data under section 7 of the Data Protection Act 1998. It also explained that it had interpreted part 3 of his request to refer to correspondence between the IOPC staff and Commissioners, in which the complainant and his cases were referred to, that also included an express request for a Commissioner to consider or review his cases and that as such, it considered that any such correspondence would be likely to contain his personal data.
11. The IOPC also confirmed to the complainant that it had considered a number of predominantly non-recording appeal cases in relation to him. It explained that Commissioners would not routinely be involved in non-recording appeal cases, therefore there was no process. The IOPC also confirmed that in relation to the complainant’s cases there was no correspondence held that would fall within the scope of his request, as his cases have not been referred to Commissioners.

12. As the complainant has not complained about the IOPC's response in relation to part 3 of his request, the Commissioner will not consider it any further.
13. The Commissioner will consider whether the IOPC has applied section 14(1) appropriately in relation to parts 1 and 2 of the request and the way in which it handled the request generally.

Reasons for decision

Section 14(1) – vexatious requests

14. 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.
15. The term "vexatious" is not defined in the FOIA. However, 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.
16. 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 and 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).
17. The Commissioner has published guidance on dealing with vexatious requests,¹ (the guidance) which includes a number of indicators that

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

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.

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

19. 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".

20. Furthermore, the Commissioner considers that although FOIA is generally purpose and applicant blind, for the purposes of applying section 14(1), a public authority may take into account the motive of the requester as well as their identity.

Evidence from the parties

The complainant's view

21. In his request for an internal review of 17 November 2017 the complainant argued that his request was not vexatious. He explained that the IOPC

- Was trying to assert that his disputes with it and police forces were without any possible or reasonable foundation despite overwhelming evidence to the contrary and general condemnations of the police and the police complaints system including reports by the Home Affairs Select Committee and the decision to "rebrand" the IPCC along with numerous acceptances of complaints against staff and the police complaints system.
- Classifying his request as vexatious was obviously preposterous as the request was reasonable especially in the context of the failures and flaws in the police and the police complaints system including the most egregious examples of police corruption in miscarriages of justice.

22. The complainant also explained that despite numerous barriers, obstructions and crude blatant manipulations and abuses of the complaints system, a police force had accepted that complaints he had made were justified and had upheld them.
23. Additionally, the complainant explained to the Commissioner even though his requests for information were to assist him in his disputes with the IOPC, this was irrelevant.

The public authority's view

24. The IOPC explained that the complainant was involved in a single incident and that more than 100 of his cases with it stem from that incident and his subsequent dissatisfaction with the use of the restorative justice process to resolve the matter. It went on to explain that a large number of his cases were complaints about the way in which police officers decided to handle his other complaints, often about relatively minor grievances.
25. The IOPC also pointed out that at the time of its response to the Commissioner in the present FOIA case, it had already opened 223 cases in relation to the complainant since 2011; of these 196 were appeals, the vast majority of which were against the police's failure to record his complaints. It also explained that recording a complaint meant that it would be dealt with in accordance with the Police Reform Act 2002 and associated legislation. However, this does not necessarily mean that the complaint has any merit; simply that it falls within the scope of the legislation.
26. Additionally, the IOPC explained that in 2014 alone, the complainant raised 121 appeals regarding the handling of his complaints. All of these appeals were related to the earlier incident.
27. The IOPC explained that the present request, when taken at face value, may not appear to be vexatious. However, it argued that when considered in the context of the series of information requests and correspondence received from the complainant, it demonstrated a wider pattern of behaviour that made it vexatious.

28. The IOPC pointed to a previous decision notice regarding a different requester, where its application of section 14(1) had been upheld by the Commissioner in decision notice FS50690461². It argued that the complainant in the present request was an even more prolific correspondent than the requester in the previous case. It acknowledged that the complainant had the right to use the police complaints procedure to raise his concerns about police conduct he may have experienced; however it explained that the present complainant's grievances were relatively minor compared to the grievance of the other requester.
29. Additionally, the IOPC explained that since 2012 it had received 53 information requests from the complainant of which 21 were FOIA requests (the rest being subject access requests). It explained that the volume and tone of many of the FOIA requests and accompanying correspondence suggested that he was using the FOIA regime primarily as a means to harass and disrupt its work, rather than to obtain information which would genuinely be of use to him and to the wider public.
30. The IOPC also explained that, having reviewed a number of his previous requests, it was apparent that there were recurring themes, in particular questioning its processes and integrity, which it believed to be associated with an unwillingness to accept its case decisions and a desire to persist with futile attempts to have his cases escalated or reopened. It provided the Commissioner with examples.
31. On 16 March 2016 the complainant asked:

"What reforms have been finalised/recommended re. the admitted blatant dysfunction and corruption of the police complaints system? What staff have been replaced re. these reforms? What complaints against the IPCC, its staff or forces are to be reviewed – including refusals to call in complaints by the IPCC and complaints to and about the IIU? What board members have considered resigning?"
32. On 21 June 2017 the complainant asked:

"Can you please explain what decisions were made to justify not replacing the IPCC with the OPC but merely re-branding the IPCC when

² <https://ico.org.uk/media/action-weve-taken/decision-notices/2017/2014942/fs50690461.pdf>

the IPCC was discredited being demonstrably and blatantly dysfunctional and corrupt?"

33. On 25 August 2017, the complainant asked:

"How many complaints against police officers or IPCC personnel have been deemed to be vexatious since the creation of the IPCC? How many of these claims have been reviewed/are planned to be reviewed either before or in the light of the rebranding of the IPCC?"

34. Furthermore, the IOPC explained that a review of other requests received by it from the complainant showed that responses to SARs often resulted in further unsubstantiated complaints and allegations about the staff who handled his cases and the staff who handled his information requests.

35. The IOPC argued that the complainant's pattern of behaviour suggested a tendency to use material disclosed to him under the FOIA process to make new complaints against the police. It explained that such complaints were often about matters that have been conclusively resolved, many of which lead to non-recording appeals, thus entering into the cycle of correspondence as described.

36. The IOPC also explained that it appeared that over time, the complainant's interactions with the police complaints system had shifted to complaining about matters that related less and less to his original grievances. It explained that he had gradually exhausted all avenues of redress and that it considered that his continued information requests have become part of a persistent campaign to try and provoke a response and reignite concluded matters.

37. In addition, the IOPC explained that it considered that there was a clear relationship between the subject matter of the complainant's information requests and his dissatisfaction with its decisions regarding his police appeals and internal staff conduct complaint cases. It also confirmed that it had already been explained to the complainant that persistent requests for information regarding reviewing or escalating cases would not result in reconsideration of his concluded cases.

38. The IOPC went on to explain that it had also considered the guidance and considered the following indicators applied in the present case.

Unreasonable persistence

39. The IOPC argued that, as evidenced, the complainant appeared to be using information requests as a way of attempting to reopen grievances

that have been concluded; the theme and purpose of this particular request was to try to establish if there was a way of escalating his cases. It also explained that it believed that his question regarding the changes in processes was an attempt to further question and query the handling of his own cases in a futile attempt to continue his grievances.

Intransigence

40. The IOPC argued that the present request, in the context of the complainant's correspondence history, reveals an unwillingness to accept advice and assistance provided by previous FOIA responses on similar themes. It pointed out that the process for challenging its decisions in relation to appeal cases has been explained to the complainant, to no avail. The IOPC also explained that the complainant had failed to expand upon or substantiate numerous complaint allegations made about IOPC staff. Additionally, it argued this demonstrated that the complainant had become unreasonably entrenched in his issues and that continued responses would only exacerbate this position rather than resolve it.

Frequent or overlapping requests

41. The IOPC explained that the complainant sends frequent correspondence to various teams within it, including its Information Rights Team, which also impacts on its Internal Investigations Unit. It argued that this demonstrated the unreasonably persistent nature of the complainant's correspondence and the disproportionate time and resource required to manage this correspondence.

Scattergun approach

42. The IOPC also explained that it considered that the complainant's history with it and other organisations such as the police, suggests he corresponds with others in the same way, continually raising issues that have been concluded, seeking random nuances as a way of trying to reignite or reopen matters to try to extend his grievances.
43. In addition, the IOPC explained that due to the complainant's frequent subject access requests, it was confident that he had received all case related information and correspondence containing his personal data that he was entitled to.

The Commissioner's view

44. 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.

45. 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".

46. 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.

47. 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.

48. 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.

49. 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?

50. The Commissioner has considered both the IOPC's and complainant's arguments regarding the information request.

51. She notes the complainant's arguments regarding it being irrelevant that he is using the requested information to assist him in his disputes with the IOPC. However, as explained in paragraph 18, when considering

whether a request is vexatious for the purposes of section 14(1), the Commissioner considers that a public authority is entitled to consider the motive(s) of the requester.

52. The Commissioner also notes the complainant's arguments regarding the IOPC's alleged assertion about his disputes with it and police forces being without any possible or reasonable foundation, despite overwhelming evidence to the contrary and general condemnations of the police and the police complaints system including reports by the Home Affairs Select Committee and the decision to "rebrand" the IPCC along with numerous acceptances of complaints against staff and the police complaints system. She also notes the complainant's views about why he considers the IOPC is incorrect to classify his request as vexatious, especially in the context of the failures and flaws in the police and the police complaints system including, what the complainant considers to be, the most egregious examples of police corruption in miscarriages of justice.
53. 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. Clearly in this case, the IOPC considers that the context of the request strengthens its argument that the request is vexatious.
54. The Commissioner considers that, given the scope of the request, the Commissioner can envisage that it would impose a significant burden but is arguably not without a serious purpose.
55. However, from the evidence submitted by the IOPC the Commissioner is satisfied that the request in this case appears to be a means for the complainant to assist him in his disputes with the IOPC regarding the way it has handled his past cases with it. The Commissioner notes that in his complaint to her, the complainant confirmed that he was making his FOIA requests to assist him with his disputes with the IOPC.
56. The Commissioner considers that there are other more appropriate avenues for the complainant to use if he wishes to complain about the IOPC's handling of his cases.
57. The Commissioner also notes the complainant's point about a police force accepting his complaints. However, she notes that the complainant has not explained how this relates to his present request or complaint.
58. In *Dransfield* the UT expressed the view that it may be appropriate to ask the following question: '*Does the request have a value or serious purpose in terms of the objective public interest in the information sought?*'

59. When considering the application of section 14(1), the Commissioner will also weigh the purpose and value of the request against the burden on the authority in complying with it. In this case, taking into account the history and context of the request as shown by the evidence provided by the IOPC, she considers that the burden on the IOPC in complying with the request would be disproportionate.
60. The Commissioner also notes the IOPC's reference to a separate previous case where it had applied section 14(1) and this had been upheld by her. The Commissioner considers each complaint to her on a case by case basis.
61. The Commissioner is satisfied that the request in this case is a means for the complainant to further his own disputes with the IOPC, which can be considered an inappropriate use of information rights under the FOIA. Taking into consideration the findings of the UT in *Dransfield* that a holistic and broad approach should be taken in respect of section 14(1), the Commissioner considers that the IOPC was correct to find the request vexatious.
62. The Commissioner therefore considers that the IOPC has applied section 14(1) appropriately.

Other matters

63. The complainant requested an internal review on 17 November 2017 and the IOPC responded on 27 December 2017.
64. Part VI of the section 45 Code of Practice (the code) makes it good practice for a public authority to have a procedure in place for dealing with complaints about its handling of requests for information.
65. While no explicit timescale is laid down in the code, the Commissioner has decided that a reasonable time for completing an internal review is 20 working days from the date of receipt of the request for review. In exceptional circumstances it may be reasonable to take longer but in no case should the time taken exceed 40 working days. The Commissioner is concerned that it took over 20 working days for the IOPC to complete the internal review.

Right of appeal

66. 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

67. 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.
68. 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

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