

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 10 March 2020

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

#### **Decision (including any steps ordered)**

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1. The complainant has requested information from the Independent Office for Police Conduct about complaints it had received. The Independent Office for Police Conduct answered some questions and applied sections 12(1) (Cost of compliance exceeds appropriate limit) and 21(1) (Information accessible to applicant by other means) of the FOIA, to the remainder.
2. The Commissioner's decision is that the Independent Office for Police Conduct has applied sections 12(1) and 21(1) of the FOIA appropriately. However, she considers that it has breached sections 16(1) (Duty to provide advice and assistance), 10(1) (Time for compliance with request) and 17(1) (Refusal of request) of the FOIA.
3. The Commissioner does not require the Independent Office for Police Conduct to take any steps as a result of this decision.

## Request and response

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4. On 3 December 2018 the complainant wrote to the Independent Office for Police Conduct (the IOPC) and requested information in the following terms:

*"Please provide the following information for the years 2015, 2016, 2017*

- 1) The number of complaints you have received from the public.*
  - 2) The number of complaints you have received from any other democratic/public organization.*
  - 3) The number of complaints you have accepted and acted upon.*
  - 4) The number of complaints you rejected.*
  - 5) The number of complaints you rejected because they were outwith your responsibility.*
  - 6) The number of complaints you rejected because they were vexatious and frivolous.*
  - 7) The number of complaints you rejected because they were considered offensive.*
  - 8) The number of complaints you rejected because they would exceed the permitted/suggested time allowance for reply.*
  - 9) The number of requests from the police to investigate serious crime/accidents etc".*
5. The IOPC responded on 3 February 2019. It provided information regarding direct complaints and police complaints data and also provided a link to 'Police Complaints: Statistics for England and Wales', explaining that this link provided access to the report for 2016/17 and access to the National Archives website which holds the reports from previous years. It also explained that as this information was available to the complainant, it was applying section 21 (Information accessible by other means) of the FOIA.
6. The IOPC also provided information about the non-recording of complaints. It confirmed that it did not hold information relating to questions 4 and 8 and advised the complainant to contact police forces directly. In addition, the IOPC explained that it was possible to appeal against an appropriate authority's failure to make a recording decision or against a decision to not record the complaint. It confirmed that these are known as non-recording appeals and are dealt with exclusively by it.
7. Furthermore, the IOPC explained that it could provide data about the number of non-recording appeals received and completed by it and reasons given by police forces for not recording a complaint. However, this would not provide an accurate representation of the total number of

complaints which are not recorded by police forces. It advised the complainant to contact police forces directly for their full figures. In addition, the IOPC explained that police forces are also required to refer certain incidents such as death or serious injury to it, regardless of whether there has been a complaint – these are known as referrals. The IOPC also provided the complainant with a link to section 8 of its statutory guidance in relation to the types of incidents referred to it and the mandatory referral criteria.

8. The IOPC also explained that the total number of referrals received by it from police forces could be found in its annual report and that the most recent one covered 2017/18, which could be found on the IOPC website; it provided the complainant with a link. It also explained that this link would allow access to annual reports from previous years. Additionally, it explained that as information was reasonably accessible to the requester, it was applying section 21 of the FOIA to part 9 of his request.
9. Following an internal review the IOPC wrote to the complainant on 7 February 2019. In relation to questions:
  - 1-5: it answered the questions.
  - 6 and 8: it explained that it did not hold the information and advised that it had found the information that most closely approximates to the requested information. It also provided the complainant with links to information.
  - 7: it confirmed that it did not hold the requested information.
  - 9: it upheld its application of section 21.

### **Scope of the case**

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10. On 22 February 2019 the complainant contacted the Commissioner to complain about the way in which his request of 3 December 2018 had been dealt with by the IOPC. However, he had not provided the Commissioner with all of the relevant documentation. The Commissioner contacted him about this.
11. On 18 March 2019 the complainant provided the Commissioner with all of the relevant documentation.
12. In his complaint, the complainant explained that he had received "*a prolix incomprehensible response, which was both perverse and contradictory.*"

13. The Commissioner contacted the IOPC and explained that she considered that the complainant was asking about all the complaints it had received.
14. The IOPC wrote to the complainant again and provided information about complaints it had received about itself. It answered questions 1, 2, 3, 4, 5, 7 and 8. It did not answer question 9 as it had already answered this in its previous response of 3 February 2019. Regarding question 6, the IOPC provided information for 2017 and explained that to provide information for 2015-2016 would exceed the appropriate cost limit.
15. The Commissioner will consider whether the IOPC has applied sections 12(1) to question 6 and 21 to question 9, appropriately. She will also consider the length of time taken to deal with the request.

## Reasons for decision

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### Section 12 - Compliance would exceed the appropriate cost limit

16. Section 12(1) of FOIA provides:

*"Section 1(1) does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit."*

17. This limit is defined by the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the Regulations) as £600 for central government departments and £450 for all other public authorities. This means that the appropriate limit will be exceeded if it would require more than 24 hours work for central government, legislative bodies and the armed forces and 18 hours work for all other public authorities. In the present case the appropriate time limit is 18 hours.
18. Regulation 4(3) of the Fees Regulations states that a public authority can only take into account the costs it reasonably expects to incur in carrying out the following permitted activities in complying with the request:
  - determining whether the information is held;
  - locating the information, or a document which may contain the information;

- retrieving the information, or a document which may contain the information; and
  - extracting the information from a document containing it.
19. Section 12 provides that public authorities are only required to estimate the cost of compliance with a request. The Commissioner considers that the estimate must be reasonable and has followed the approach set out by the Information Tribunal in *Randall v Information Commissioner and Medicines and Healthcare Products Regulatory Agency* (EA/2006/004, 30 October 2007) which states that a reasonable estimate is one that is “*sensible, realistic and supported by cogent evidence*”.
20. Section 12(1) requires a public authority to estimate the cost of complying with the request, rather than provide an exact calculation. The Commissioner must therefore consider whether the cost estimate provided by the IOPC is reasonable. If it is, then section 12(1) is engaged and the IOPC is not obliged to comply with the request.

### **Aggregation of requests**

21. Multiple requests within a single item of correspondence are considered to be separate requests for the purpose of section 12. In the present case, this means that there are nine requests to be considered. If they relate to the same overarching theme, public authorities can aggregate two or more separate requests, in accordance with the conditions laid out in the Fees Regulations. Any unrelated requests should be dealt with separately for the purposes of determining whether the appropriate limit is exceeded.
22. In the Commissioner’s guidance<sup>1</sup> on exceeding the cost limits, she explains that:

*‘Regulation 5(2) of the Fees Regulations requires that the requests which are aggregated relate “to any extent” to the same or similar information. This is quite a wide test but public authorities should still ensure that the requests meet this requirement.*

*A public authority needs to consider each case on its own facts but requests are likely to relate to the same or similar information where, for example, the requestor has expressly linked the requests, or where*

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<sup>1</sup> [https://ico.org.uk/media/for-organisations/documents/1199/costs\\_of\\_compliance\\_exceeds\\_appropriate\\_limit.pdf](https://ico.org.uk/media/for-organisations/documents/1199/costs_of_compliance_exceeds_appropriate_limit.pdf)

*there is an overarching theme or common thread running between the requests in terms of the nature of the information that has been requested'.*

23. The Fees Regulations wording of "*relate, to any extent, to the same or similar information*" makes clear that the requested information does not need to be closely linked to be aggregated, only that the requests can be linked.
24. Although the IOPC did not address this point, having reviewed the wording of the complainant's request, the Commissioner is satisfied that there is an overarching theme in relation to the first eight requests. This is because these requests are for information about complaints received by the IOPC in the years 2015, 2016 and 2017.
25. The Commissioner considers that the ninth request could not be aggregated as it is asking for the number of requests the IOPC has received from the police to investigate "*serious crime/accidents etc*". She notes that the IOPC applied section 21 to this.

### **Would compliance with the request exceed the cost limit?**

26. The IOPC explained that it considered that the cost of complying fully with the sixth request would exceed the cost limit. It explained that it would have to search 374 complaint cases in order to find the relevant data.
27. The IOPC also explained that the data for 2015 and 2016 cannot be located and retrieved by means of automated searches. This is because its records of staff complaints determined during this period would have to be sourced from its email archive and do not include a standard form of words or identifying tag in respect of the internal submission or decision that a complaint was vexatious. An automated key word search of its systems using the word 'vexatious' would return many hundreds or even thousands of emails, even when narrowed only to 2015 and 2016. This is because police complaints, which account for the majority of its correspondence and administrative decisions, are also dispensed with on the ground that they are vexatious.
28. Additionally, the IOPC explained to the complainant that as compliance with this part of the request could not be achieved by means of an automated data query, it would be necessary to carry out a manual search of the relevant files in order to identify which of these 374 complaints were dispensed with on this ground. This work could be completed within 18 hours only if each complaint case could be checked in less than three minutes. It also explained that it had concluded that

section 12(1) applies to the data requested for the years 2015-2016 because it would be likely to take an average of 10 minutes to identify and extract this data.

29. The IOPC confirmed to the Commissioner that it had carried out a sampling exercise involving five files. It confirmed that it took an average of 17 minutes to retrieve relevant data relating to staff complaints.
30. The Commissioner explained to the IOPC again that she considered that it needed to consider all of the complaints it had received – not just those about the police or itself.
31. The IOPC responded, confirming that in order to consider all of the complaints it had received in 2015, 2016 and 2017, would exceed the appropriate cost limit and applied section 12(1). It explained that it would have to identify and assess all correspondence containing any form of grievance or expression of dissatisfaction, as it does not extract complaints data that does not relate to police or staff complaints.
32. The IOPC confirmed that it would have to read all or nearly all of the many thousands of items of correspondence received during 2015, 2016 and 2017. In addition, a complaint that was not about the IOPC itself could be received by any of its 1,014 staff working in any of its directorates. As a starting point, it would be necessary to access the thousands of new police cases that were created during this period and all of the other cases created at an earlier time to which correspondence had been added.
33. Furthermore, the IOPC explained that it considered that there were no key words that could be used to narrow the search; many documents are scanned or received as images that could not be reliably searched. The IOPC also explained that it does not electronically tag correspondence, therefore carrying out relevant activities involved in compiling the data would clearly exceed the cost limit by a very significant margin. Additionally, the IOPC explained that in its view, a request for data about a complaint that is neither a police or staff complaint could not be progressed unless it was focussed on a specific complaint type, as only then would it be possible to produce meaningful data, although the cost limit would still be very likely to apply.

## **Conclusion**

34. The Commissioner notes the IOPC's explanation regarding the estimated time it would take to locate relevant information about police complaints. She further notes the IOPC's additional explanation about



the volume of information it would need to search in order to find all the complaints it had received from 2015 – 2017. Having considered the time estimate the IOPC provided in relation to searching for police complaints alone, the Commissioner considers that it is a reasonable one.

35. The Commissioner therefore considers that section 12(1) is engaged and that the IOPC does not have to comply with the request.

### **Section 16 – Duty to provide advice and assistance**

36. Section 16(1) of the FOIA provides that -

*“It shall be the duty of a public authority to provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made, requests for information to it”.*

37. In order to comply with this duty, where possible a public authority should advise the requester as to how their request could be refined to bring it within the appropriate cost limit.
38. The Commissioner does not consider that the IOPC has explained to the complainant, at the time of his request, whether or not he could have narrowed down his request. The Commissioner therefore considers that the IOPC has breached section 16.
39. However, during her investigation, the IOPC provided the Commissioner with a sampling exercise in relation to locating staff complaints (see paragraph 29). She notes that it took on average 17 minutes per file to extract the relevant information from five files. Given that it would have had to search 374 files, she considers that this would have exceeded the cost limit. She therefore considers that it would not have been possible for the IOPC to have provided advice on how to refine the request any further.

### **Section 21 – Information accessible to applicant by other means**

40. Section 21(1) of FOIA states that:

*“Information which is reasonably accessible to the applicant otherwise than under section 1 is exempt information.*

*(2) For the purposes of subsection (1) -*

*(a) information may be reasonably accessible to the applicant even though it is accessible only on payment, and*



*(b) information is to be taken to be reasonably accessible to the applicant if it is information which the public authority or any other person is obliged by or under any enactment to communicate (otherwise than by making the information available for inspection) to members of the public on request, whether free of charge or on payment."*

41. As section 21 is an absolute exemption it is not subject to public interest considerations.
42. The purpose of this exemption is to ensure that there is no right of access to information via FOIA if it is available to the applicant by other means. The Commissioner's guidance on section 21<sup>2</sup> explains that, unlike consideration of most other exemptions in the FOIA, a public authority can take the individual circumstances of the applicant into account. In order for section 21 to apply there should be another existing, clear mechanism by which the particular applicant can reasonably access the information outside of the FOIA.
43. The Commissioner considers that it is reasonable for a public authority to assume that information is reasonably accessible to the applicant as a member of the general public, until it becomes aware of any particular circumstances or evidence to the contrary.
44. Even if the requested information is fully in the public domain, this does not mean that it is automatically exempt under section 21. Public authorities should consider an applicant's particular circumstances (if and when they become aware of them) when deciding whether publicly available information is in fact reasonably accessible to that individual. For example, the applicant may not have reasonable access to the internet.
45. Furthermore, the Commissioner considers that information, although generally available elsewhere, is only reasonably accessible to the applicant if the public authority:
  - knows that the applicant has already found the information; or
  - is able to provide the applicant with precise directions to the information so that it can be found without difficulty. When

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<sup>2</sup> <https://ico.org.uk/media/for-organisations/documents/1203/information-reasonably-accessible-to-the-applicant-by-other-means-sec21.pdf>

applying section 21 in this context, the key point is that the authority must be able to provide directions to the information.

46. The IOPC explained that initially it had sent the complainant links to the information it was withholding under section 21. It explained that the annual police complaints statistics reports were available via its website (and the National Archives website), they were available at the time of the request and remained accessible. The reports contain relevant information from which a member of the public could find the answer to question 3 of the request in that it shows the number of complaint cases recorded or "*accepted and acted upon*".
47. Additionally, the IOPC explained that its annual report, which contained the answer to question 9, was available on its website. It also explained that the URLs it had provided, directed the requester to the relevant information. However, having looked at the individual publications with a critical eye and in the interests of providing assistance, the IOPC considered that it could have provided more information to direct the requester to the particular information, such as providing page numbers and chapters. It acknowledged that this was particularly relevant to the Annual Report which exceeds 150 pages.
48. The IOPC also explained that the complainant had indicated in his request for internal review that he may not have online facilities, although he had not stated this directly; it also noted that he corresponded with it by post rather than using email. The IOPC also explained that in its internal review, it had pointed out that its Annual Report contained referral statistics and the Annual Police Complaints Statistics Report were also available in hard copy format via HMSO. The complainant would have been required to pay a fee for any publications he ordered from HMSO; however, the IOPC pointed out that section 21(2)(a) provides that information may be regarded as reasonably accessible to the applicant "*even though it is accessible only on payment*".
49. Furthermore, the IOPC acknowledged that it had not provided contact details for the HMSO or explained how a hard copy of the reports could be obtained. It conceded that without online facilities, it may have been difficult for the complainant to fully understand how to obtain a hard copy of the reports. However, the IOPC pointed out that paragraph 18 of the guidance states that: "*It is reasonable for a public authority to assume that information is reasonably accessible to the applicant as a member of the general public until it becomes aware of any particular circumstances to the contrary.*" It noted that it had invited the complainant to inform it if he had difficulty accessing any of the information it had exempted under section 21 but he did not do so.

50. The IOPC confirmed that had it had written to the complainant, providing hard copy versions of the relevant reports or pages.
51. Taking all of the above into account, the Commissioner considers that the IOPC has complied with section 21.
52. The Commissioner will go on to consider the length of time taken to deal with the request.

### **Procedural issues**

53. The complainant submitted his request on 3 December 2018. The IOPC responded on 3 February 2019.

### **Section 10 – Time for compliance**

54. Section 10(1) of the FOIA provides that a public authority must respond to a request promptly and in any event no later than 20 working days after the date of receipt.
55. The Commissioner considers that the IOPC has breached section 10(1) as it took longer than 20 working days to respond to the request.

### **Section 17 – Refusal of a request**

56. Section 17(1) of the FOIA provides that if a public authority wishes to refuse a request it must issue a refusal notice within the 20 working day time for compliance, citing the relevant exemption(s).
57. The Commissioner considers that the IOPC has breached regulation 17(1) as it took longer than 20 working days to inform the complainant that it was relying on an exemption.
58. The Commissioner uses intelligence gathered from individual cases to inform her insight and compliance function. This aligns with the goal in her draft “Openness by design”<sup>3</sup> strategy to improve standards of accountability, openness and transparency in a digital age. The Commissioner aims to increase the impact of FOIA enforcement activity

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<sup>3</sup> <https://ico.org.uk/media/about-the-ico/consultations/2614120/foi-strategy-document.pdf>

through targeting of systemic non-compliance, consistent with the approaches set out in her "Regulatory Action Policy"<sup>4</sup>.

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<sup>4</sup> <https://ico.org.uk/media/about-the-ico/documents/2259467/regulatory-action-policy.pdf>

## Right of appeal

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59. 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@justice.gov.uk](mailto:grc@justice.gov.uk)

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

60. 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.
61. 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 .....**

**Laura Tomkinson**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**