

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 9 November 2022

Public Authority: The Independent Office for Police Conduct
Address: PO Box 473
Sale
M33 0BW

Decision (including any steps ordered)

1. The complainant requested information relating to the death of a named individual. The Independent Office for Police Conduct (IOPC) refused to comply with the request, citing section 14(1) (vexatious request) of FOIA.
2. The Commissioner's decision is that the IOPC has correctly applied section 14(1) of FOIA.
3. The Commissioner requires no steps to be taken as a result of this decision.

Request and response

4. On 19 February 2021, the complainant wrote to the IOPC and requested information in the following terms:

"As regards the death of Andre Moura -

a) I would like the IOPC report(s) and all image evidence held, video, stills, audio.

This includes but is not limited to

1. Bodycam
2. In-vehicle recordings

3. Recording as [sic] police station
 4. Footage by the public
 - b) Disclose medical report(s)".
5. The IOPC refused to comply with the request, citing section 14(1) (vexatious request) of FOIA. It maintained that position at internal review, additionally citing sections 30(1)(a)(i) (investigations and proceedings) and section 40(2) (personal information) of FOIA.

Scope of the case

6. Following earlier correspondence, the complainant contacted the Commissioner on 26 July 2022 confirming that he wished to pursue his complaint about the way his request for information had been handled.
7. This notice covers whether the IOPC correctly determined that the request was vexatious.

Reasons for decision

Section 14(1) – vexatious requests

8. Section 14(1) of FOIA states that a public authority is not obliged to comply with a request for information if the request is vexatious.
9. The word "vexatious" is not defined in FOIA. However, as the Commissioner's updated guidance on section 14(1)¹ states, it is established that section 14(1) is designed to protect public authorities by allowing them to refuse any requests which have the potential to cause a disproportionate or unjustified level of disruption, irritation or distress.
10. FOIA gives individuals a greater right of access to official information in order to make bodies more transparent and accountable. As such, it is an important constitutional right. Therefore, engaging section 14(1) is a high hurdle.

¹ <https://ico.org.uk/for-organisations/dealing-with-vexatious-requests-section-14/>

11. However, the ICO recognises that dealing with unreasonable requests can strain resources and get in the way of delivering mainstream services or answering legitimate requests. These requests can also damage the reputation of the legislation itself.
12. The emphasis on protecting public authorities' resources from unreasonable requests was acknowledged by the Upper Tribunal (UT) in the leading case on section 14(1), *Information Commissioner vs Devon County Council & Dransfield* [2012] UKUT 440 (AAC), (28 January 2013) ("*Dransfield*")². Although the case was subsequently appealed to the Court of Appeal, the UT's general guidance was supported, and established the Commissioner's approach.
13. *Dransfield* established that the key question for a public authority to ask itself is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress.
14. The four broad themes considered by the Upper Tribunal in *Dransfield* were:
 - the burden (on the public authority and its staff);
 - the motive (of the requester);
 - the value or serious purpose (of the request); and
 - any harassment or distress (of and to staff).
15. However, the UT emphasised that these four broad themes are not a checklist, and are not exhaustive. They stated:

"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" (paragraph 82).

The complainant's view

16. The complainant made reference to a previous request he had made to the IOPC, for the same information. In that case both the Commissioner and the First-tier Tribunal (FTT) found the request was vexatious.
17. He observed that the matter is with the UT for consideration.

² <https://administrativeappeals.decisions.tribunals.gov.uk/Aspx/view.aspx?id=3680>

18. Although the complainant disputes that the request in this case is vexatious, he did not put forward any substantive arguments in support of that view.

The IOPC's view

19. The IOPC described the requested information as 'comprehensive video and audio evidence held in respect of a criminal investigation'.
20. It acknowledged that the status of the IOPC case at the time of this request was not as it was when the complainant requested the same information on the previous occasion. Nevertheless, it said that the case continues to be proceedings related because the Coroner's inquest and misconduct hearings have yet to be concluded.
21. While accepting that the request dated 19 February 2021 is not vexatious when considered in isolation, the IOPC explained that it becomes so when its context and history are taken into account.
22. It argued that the complainant's persistence in requesting information that he has no realistic prospect of receiving is evidence that he is unreasonable in making his requests. It described his actions as imposing a disproportionate burden on the IOPC.
23. The IOPC considered the following reasons were relevant to its refusal under section 14(1) in this case:
 - there is no reasonable foundation for thinking that the information could be of value to the public at the time of the request;
 - the impact of complying with the request, even after proceedings have ended, could not be justified;
 - the IOPC's commitment to publishing an account of the investigation that is the subject of the request, at the appropriate time;
 - if section 14 did not apply, the request would be refused on the basis that the information engages the exemptions at sections 40(2), 30(1)(a)(i) and 41 (information provided in confidence) and that, where applicable, the public interest in maintaining the exemption outweighs the public interest in disclosure.

The Commissioner's view

24. In cases where a public authority is relying on section 14(1), it is for the public authority to demonstrate why it considers that a request is a disproportionate, manifestly unjustified, inappropriate or improper use of FOIA.

25. In accordance with his guidance, the Commissioner has taken a holistic and broad approach in this case. He has considered the history of the complainant's dealings with the IOPC and his persistence in seeking information that, in light of previous responses he has received from the IOPC, is unlikely to be disclosed to the world at large under FOIA.
26. With respect to the value and purpose of this particular request, the complainant has not submitted any arguments to demonstrate a value and purpose in this request beyond asserting that it is not vexatious. The Commissioner recognises the sensitivity of the issue, but has also taken into account the IOPC's commitment to transparency as evidenced by its publication policy.
27. Having considered the context and history of the request, and the nature of the information within the scope of the request, the Commissioner is satisfied that the request was vexatious and therefore the IOPC was entitled to rely on section 14(1) of FOIA to refuse the request.

Right of appeal

28. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

29. 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.
30. 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