

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 15 February 2022

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

Decision (including any steps ordered)

1. The complainant requested statistical information on disciplinary recommendations made against police officers, from the Independent Office for Police Conduct (IOPC). The IOPC refused to comply with the request, citing section 22 (Information intended for future publication) of FOIA.
2. The Commissioner's decision is that the IOPC was entitled to rely on section 22 of FOIA to refuse the refined request.
3. No steps are required as a result of this decision.

Background

4. Prior to making the request which is the subject of this decision notice, on 2 February 2021, the complainant made a request for similar information¹ from the IOPC, which it refused on the grounds that
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¹ The Commissioner has considered his complaint about the handling of that request under reference IC-155143-F1Z0. A separate decision about this is being issued at the same time as this notice.

compliance would exceed the appropriate cost limit established under section 12 of FOIA. The IOPC commented in respect of that request:

“Work is currently underway to collate data regarding investigation outcomes for publication on our website. The intended publication will report on the number of cases where the final decision was that there was a case to answer (CTA) ... We consider that the intended future publication will meet most of the requirements of your request. Although we do not have an exact date of publication at this time, we can confirm that the work required is at an advanced stage with publication dates being considered.”

5. The complainant decided to submit a refined request² with a reduced timeframe in the hope that compliance would not exceed the cost limit. It is that request which is considered in this decision notice.

Request and response

6. On 3 March 2021, and quoting from his earlier request, the complainant submitted the following request for information to the IOPC:

“You mention in response to my 2nd and 3rd questions (see below) that you have data available from the period 2009/10 to 2017/18. If that is the case, I am happy to modify my request to just those dates where data is available within the cost limits.

- Can you provide the number of police officers involved in deaths in custody investigations that you have recommended for disciplinary action e.g misconduct or gross misconduct.
- Can these numbers be broken down by financial year from 2010/11 to 2020/21 (most recent available) Can you also provide the number of those police officers (in above question) whose disciplinary recommendations have been upheld for each financial year from 2010/11 to 2020/21(most recent available)

Note: As mentioned above please now consider the requested dates for both questions above to be from 2009/10 to 2017/18.”

² In accordance with his guidance on section 12, the Commissioner considers that a refined request is a new request, and should be treated by the public authority as such.

7. The IOPC responded on 5 March 2021, stating that work was currently underway to collate the information within these date parameters for publication on its website. In view of this, it said section 22 (Information intended for future publication) of FOIA was engaged in respect of the request and that it was not in the public interest to divert staff resources from other tasks to accelerate publication in response to the request.
8. On 22 March 2021, the complainant requested an internal review of this decision. He asked the IOPC to either provide him with evidence of its settled intention to publish the information he had requested, or to disclose the information to him.
9. On 23 April 2021 the IOPC provided the outcome of the internal review. It maintained its position that it was not required to disclose the requested information in view of the exemption at section 22 and its settled intention to publish.

Scope of the case

10. The complainant contacted the Commissioner on 30 April 2021 to complain about the way his request for information had been handled. He disagreed with the IOPC's application of section 22 to refuse the refined request, explaining that he was not satisfied that it had a settled intention to publish the requested information.
11. The analysis below considers whether the IOPC was entitled to rely on section 22 to refuse the request dated 3 March 2021.
12. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of FOIA. FOIA is concerned with transparency and provides for the disclosure of information held by public authorities. It gives an individual the right to access recorded information (other than their own personal data) held by public authorities. FOIA does not require public authorities to generate information or to answer questions, provide explanations or give opinions, unless this is recorded information that they already hold. Furthermore, it is not the Commissioner's role to make a ruling on how a public authority deploys its resources, on how it chooses to hold its information, or the strength of its business reasons for holding information in the way that it does as opposed to any other way.

Reasons for decision

Section 22 – Information intended for future publication

13. Section 22(1) of the FOIA states that information is exempt information if:

“(a) the information is held by the public authority with a view to its publication, by the authority or any other person, at some future date (whether determined or not)

(b) the information was already held with a view to such publication at the time when the request for information was made, and

(c) it is reasonable in all the circumstances that the information should be withheld from disclosure until the date referred to in (a).”

14. Each of the three criteria must be met for the exemption to be engaged. It is also subject to a public interest test, meaning that the information must nevertheless be disclosed if the public interest in doing so is stronger than that in maintaining the exemption.

15. In its response to the complainant’s earlier request, the IOPC said that it was in the process of preparing information “regarding investigation outcomes” for publication. It said that the intended publication would “meet most of the requirements” of the request.

16. For section 22 to apply, the information that the IOPC intends to publish must include all the information it holds which is specified in the request. It is not sufficient to intend to publish some, but not all, of the information held. The Commissioner therefore asked the IOPC to comment on this point and, specifically, whether the published data would include all the information described in the request.

17. In its response, the IOPC explained that the information it intended publishing would satisfy the request. It acknowledged that its response that ‘most’ of the complainant’s requirements would be met was misleading. This term was used because it believed the complainant’s request was phrased in such a way that it did not reflect the nuances of the data the IOPC collected.

“The terms used were simplified and do not represent exactly the data that is available. For example he uses the phrase “the number of police officers [that have] ... been recommended for disciplinary action”. From this we can presume he is referring to investigations

where we have found a case to answer, but this finding involves additional steps that have perhaps not been considered.

Our initial finding may be disputed by the appropriate authority and this can result in the decision changing. Alternatively we may make recommendations or directions despite objections from the appropriate authority. Such decisions can have a significant effect on individuals and usually involve a lot of correspondence between the IOPC and the Appropriate Authority, sometimes with legal advice. Some of this data can be retrieved from fixed fields but the final CTA decision requires interpretation. There is a need therefore for manual consideration of each subject on a case by case basis to ensure the relevant data is extracted and accurately represented in the report. We therefore felt it necessary to describe in detail what our statistics represent and how we were defining "recommended for disciplinary action".

18. The IOPC said that this detailed explanation regarding what would be published was given to the complainant in response to his earlier request. When he then refined the request, reducing its timeframe, the complainant made no objection to the definitions the IOPC employed or its explanations of what the data it would be publishing would comprise. The IOPC was therefore satisfied that its intended publication of outcomes for the years 2009/10 to 2017/18 will meet the requirements of the complainant's request.
19. The IOPC confirmed to the Commissioner that it held the requested information at the time the request was received and that its intention at that time was that it would be published. It had explained to the complainant in the refusal notices for the earlier request and the refined request, that preparations for publication were at an advanced stage, although it could not give an actual date for publication.
20. The IOPC commented that the complainant seemed not to believe that it had a settled intention to publish and that he had demanded documentary evidence, such as an email signed by a senior manager, to prove its intention. The IOPC had not provided him with this, as the request correspondence which explained, in some detail, its position, was signed by its Head of Policy and Public Affairs. However, the IOPC provided the Commissioner with an email chain between the Research Team and the FOI Team, discussing the proposed response to the request, where it is clearly stated that its existing arrangements for publishing the data were at an advanced stage. It also supplied an email chain between the Research Team and the Communications Team where the publication arrangements were discussed. The earliest correspondence it supplied pre-dates the complainant's request.

21. The IOPC also provided the Commissioner with the date of publication that it is currently working towards, although it said that this might be subject to change.
22. From the information the IOPC has provided to him, the Commissioner is satisfied that the first two criteria of section 22(1) are met; the IOPC holds the requested information with a view to publishing it at some future date and the information was held with a view to such publication when the complainant submitted his request.
23. The Commissioner has therefore gone on to consider whether, at the time of the request, it was reasonable that the information should be withheld from disclosure until its publication. The Commissioner's published guidance on section 22³ acknowledges that there is some overlap between the factors to consider when deciding what is reasonable, and those which are relevant to the application of the public interest test. However, the Commissioner's guidance goes on to suggest that when determining whether or not it is reasonable, in all the circumstances, to withhold information, a public authority should consider whether or not it is sensible, in line with accepted practices, and fair to all concerned. Of relevance here, the guidance advises that an authority may also wish to give thought to whether it is the right decision to manage the availability of the information by planning and controlling its publication.
24. In support of its position on this, the IOPC said:

"Our accompanying evidence of the intention to publish outlines the discussions we have with our Communications Team in terms of scheduling the report for publication. We recognise that there is a lot of public interest, therefore it is key that it is not misrepresented or misleading to the public. We have explained above some of the complexities and nuances of the data and it is for this reason that our outcomes statistics are accompanied with a detailed narrative to fully explain what it represents.

...

In recent times, our Media Team have had to manage situations where statistical information released under the FOIA has been

³ <https://ico.org.uk/media/for-organisations/documents/1172/information-intended-for-future-publication-and-research-information-sections-22-and-22a-foi.pdf>

misrepresented by journalists who have either misunderstood, or have deliberately ignored, our detailed explanations and caveats of the data and what it does and does not represent, instead placing their own interpretation and analysis to form an inaccurate picture. We consider there is a real risk that releasing this data in advance of the formal publication and the surrounding narrative, could be distorted in the media which is categorically against the public interest.

Nor do we consider that this FOIA request is a reason to accelerate our publication. We have explained already⁴ the requirements of locating, retrieving and validating this data and it is vital due to the public interest that it is accurate and undergoes the appropriate checks and balances in line with our publication and validation processes. Furthermore the timing of its publication must take into account its profile and the capacity of relevant teams, such as our Research, Media and Communications to handle and respond to enquiries about the data.”

25. Having considered the IOPC’s position, the Commissioner accepts that withholding the information at the time of the request was sensible and it was in line with the IOPC’s accepted practices. This is because it is the IOPC’s practice to publish data with accompanying comprehensive and clear information to contextualise it. With regard to fairness, the Commissioner notes that at the time of the request, although the IOPC had done a lot of work to prepare the information for publication, further work was required. However, the genuine intention at that stage had been that it be published in autumn 2021, meaning that, had it been possible to keep to that timescale, the complainant would not have had too long to wait for its availability following the refusal of his request.
26. Taking all the above into account, the Commissioner considers that the IOPC has demonstrated that the three criteria at section 22(1) have been met, and therefore that section 22(1) of the FOIA is engaged.

Public interest test

27. The exemption at section 22(1) is qualified by a public interest test. Therefore, the Commissioner has considered whether in all the

⁴ ie in its response regarding IC-155143-F1Z0

circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosure.

Public interest arguments in favour of disclosing the information

28. The complainant argued that disclosure would serve the public interest in police transparency and accountability, in view of widespread concerns about deaths in custody.
29. The IOPC acknowledged that disclosure of information about its decision making processes served the interests of transparency and accountability and would reassure the public that police misconduct allegations are thoroughly investigated, and that anyone found responsible for any death is properly held to account.

Public interest arguments in favour of maintaining the exemption

30. The IOPC said that there is a settled intention to publish this information on its website and to follow this with subsequent, regular publications. Premature release, without the proper contextualisation, would be likely to result in inaccurately interpreted information, due to its complexity, which could mislead the public. Rather, the data needs to be released in a managed format. The public interest is best served through publishing the data at an appropriate time within its publications schedule, with appropriate contextual narrative.
31. Additionally, time spent on accelerating publication of this information before it is fully finalised and authorised would result in staff time being diverted from other important activities, which would not be in the public interest.

Balance of the public interest

32. The IOPC concluded that the public interest arguments for maintaining the exemption at section 22 outweighed those favouring disclosure.
33. The Commissioner considers that there is a public interest in there being an effective and transparent police disciplinary system. He recognises the related interest in maintaining public confidence in the reputation of the police service, in upholding high standards in policing, in deterring misconduct and protecting the public. However, the judgement to be made here is not about whether there is a strong public interest in publishing the data at all – it is clear that there is – but about whether there is a significant public interest in publishing the information prematurely, prior to the IOPC having concluded the work it considers is necessary to validate and contextualise the data.

34. Given the serious nature of the information under consideration, the Commissioner considers that there is a strong public interest in the IOPC being permitted to publish information on police disciplinary matters, including the information requested in this case, in line with its planned timetable. This will ensure that the IOPC has the time it needs to verify the accuracy of the data and to determine how best to present the information alongside context and guidance so as to minimise the risk of the information being misinterpreted. This is a complex process.
35. The Commissioner is not persuaded that there is a particularly compelling public interest reason for the IOPC to publish the data before this work has been completed and finalised. Requiring it to prematurely disclose the information under FOIA would risk presenting a misleading picture, with every chance of it being open to misinterpretation or being misunderstood by the public.
36. While the complainant is being asked to wait a little longer for the information to be published, going forward, the IOPC intends to publish the information on a regular basis, and so similar data should be accessible in a more timely fashion.
37. From the information it supplied in support of the application of section 12 to the initial request, the Commissioner also accepts that disclosure of the information at the time of the request would have had a significant impact on the IOPC's resources, and would divert its staff from conducting other tasks. This would not be in the public interest.
38. Taking all the above into consideration, the Commissioner has concluded that the public interest favours maintaining the exemption. The IOPC was therefore entitled to rely on section 22(1) of FOIA to refuse the request.

Right of appeal

39. 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

40. 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.
41. 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

Samantha Bracegirdle
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