

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 8 February 2023

Public Authority: Chief Constable of Northumbria Police
Address: Northumbria Police Headquarters
Middle Engine Lane
Wallsend
Tyne & Wear
NE28 9NT

Decision (including any steps ordered)

1. The complainant made a request for copies of all case information in relation to a murder which took place in 1969.
2. Northumbria Police refused the request under sections 30(1) (investigations and proceedings conducted by public authorities), 38(1)(a) (health and safety) and 40(2) (personal data) of FOIA.
3. However, during the Commissioner's investigation, Northumbria Police changed its position and refused the request under section 14(1) (vexatious requests) of FOIA.
4. The Commissioner's decision is that the request is vexatious and therefore Northumbria Police was entitled to rely upon section 14(1) of FOIA to refuse it.
5. However, by relying on this exemption, which it had not mentioned to the complainant at or before internal review, Northumbria Police breached section 17(1) of FOIA.
6. Northumbria Police also breached section 10 of FOIA by failing to respond to the complainant's request within 20 working days of receipt.
7. The Commissioner does not require any steps to be taken.

Request and response

8. On 11 April 2022, the complainant made the following request:

"This is a further request for all the case information available related to the murder of XXX in January 1969 in South Shields under the Freedom of Information Act (FOIA) 2000.

Her body was discovered on XXX at XXX. XXX was charged and convicted of this murder and then released under license when it was determined the evidence him was insufficient and the case substantially flawed.

We are currently producing a Netflix show about this case and have uncovered further information as to further suspects/perpetrators potentially involved in this case which we believe were either missed by the police at the time, not pursued in any detail or ignored.

We would also like to know the name of the person (and contact details) or department responsible in the Northumbria Police who would be the point of contact for further information relating to this case.

This information we seek is:

- all witness and interview statements
- full list of witnesses and formal suspects interviewed
- forensic evidence and reports
- audio or film interviews
- photographs
- any available details of the legal agreement made with XXX or further information received from him prior to his early release under license
- internal police memorandums."

9. Northumbria Police responded on 1 June 2022, refused the request, relying on sections 30(1), 38(1)(a) and 40(2) of FOIA.

10. Northumbria Police upheld its position on internal review dated 18 October 2022.

Scope of the case

11. The complainant contacted the Commissioner on 14 July 2022 to complain about the way their request for information had been handled.
12. Subsequent to this, during the Commissioner's investigation, Northumbria Police revised its position. It removed reliance on section 30(1) and cited sections 31(1)(a) and (b) in its place. It maintained reliance on sections 38(1) and 40(2) and further determined that the request was vexatious. Rather than cause further delays, the complainant has not been advised regarding this revision.
13. As section 14(1) has been applied to the request information in its entirety this notice considers whether Northumbria Police correctly determined that the request was vexatious.

Reasons for decision

Section 14(1) – vexatious requests

14. 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.
15. The word "vexatious" is not defined in FOIA. However, as the Commissioner's 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.
16. 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.
17. 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.
18. Most people exercise their right of access responsibly. However, a few may misuse or abuse FOIA by submitting requests which are intended to be annoying, disruptive or which have a disproportionate impact on a

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

public authority. The Commissioner's guidance on what may typify a vexatious request stresses, however, that it is always the request itself, and not the requestor, which is vexatious. However, a public authority may also consider the context of the request and the history of its relationship with the requester when this is relevant.

19. 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.
20. 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.
21. 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).
22. However, the UT emphasised that these four broad themes are not a checklist and are not exhaustive. Rather, it stressed 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).
23. Sometimes it will be obvious that a request is vexatious and other times it will not. In considering such borderline cases, the key is to weigh up any purpose and value that the request represents against any

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

disruption, irritation, or distress that compliance with the request may cause the public authority. In doing this the Commissioner considers that a public authority should weigh the impact of the request on it and balance this against the purpose and value of the request. The UT stated in Dransfield that:

“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).

Northumbria Police's arguments

24. Northumbria Police explained that the complainant had made the same request in 2016 and 2018 but was now indicating that they possessed further evidence which could render the conviction unsafe. The complainant has been invited to present the evidence to specialist investigators at Northumbria Police for assessment but has refused to do so.
25. In its submission to the Commissioner, Northumbria Police argued that complying with the request would impose an unreasonable burden on its resources.
26. Northumbria Police explained that it had located five large box files containing data directly pertaining to the case which had been retrieved from long term storage so that the content could be assessed. It was evident upon receipt of the boxes of data that the information contained within was largely un-indexed with no reference provided either on the outside or within the boxes as to the content. Having viewed the boxes via an online meeting, the Commissioner accepts that this is the case.
27. Staff within the Information Management Department of Northumbria Police initially undertook a task of broadly assessing the data and providing basic details as to the content. This identified items such as witness contact cards, photographs, witness statements, forensic reports as well as data pertaining to missing persons recorded in other forces. The assessment was not at document level and did not identify individual documents but instead broadly assessed “sets” of similar documents. This work took approximately four hours.
28. Upon examination of the data, it was estimated that there were in excess of 1,500 witness contact cards, each one containing details of the individual contacted, date and time they were contacted, whether any follow up actions were relevant, and what those actions were, along with further details related to the officers and staff who had completed the record.

29. There were also extensive numbers of statements, many of which were typed onto "onion skin" paper, a type of thin paper which was used at the time, and which was specifically used for typing and for holding carbon copies together. It is extremely fragile in its nature and does not lend itself to copying or digital scanning as it often results in a copy where the detail and content is illegible as it is translucent in nature.
30. Northumbria Police also noted a significant number of handwritten notes (many of which were illegible due to the age of the documents) which also had a significant degree of fragility.
31. Additional items included photographs, as well as details relating to missing person reports from across the country.
32. For the data to be assessed and prepared for disclosure, it would be necessary first to index each item held. Northumbria Police estimated that there were more than 10,000 items held and it would take approximately three minutes to assess and record each item in order to index it appropriately. It was estimated that this initial element of the preparation for disclosure would take approximately 500 hours.
33. Following on from the indexing, any third-party data contained in each item would require in depth assessment. This would include assessing the personal data held and redacting where appropriate in accordance with section 40(2) of FOIA. Each item of data would need manual assessment in terms of copying, reading, taking steps to identify if section 40(2) applied, redacting where necessary and then printing for disclosure.
34. Northumbria Police assessed a sample of 20 contact cards (as they were the easiest to copy) and it took approximately eight minutes per contact card to copy, redact, check, and then prepare a clean version for disclosure. There are approximately 1,500 contact cards and it was estimated that this work alone would take 200 hours. There would then be further work to assess whether the third parties may still be alive in order to ensure the correct application of section 40(2) of FOIA.
35. Northumbria Police explained that it was clear that exempt information was scattered throughout the data and as such once documents that could be copied and redacted in anticipation of disclosure were prepared in this way, a checking mechanism would be required to ensure that no data that ought not to be disclosed was missed. Further checking would also need to be undertaken to ensure that data which was not exempt had not been redacted.
36. In addition, Northumbria Police explained that much of the data is held in a format that does not allow for copying in either traditional

photocopy format or via electronic scanning and there are no electronic copies in existence that would allow for more effective redaction and disclosure. Other items that do not contain personal information, such as plans of buildings, are large and fragile in their nature and would require specialist equipment (which Northumbria Police does not have at its disposal) to allow for appropriate copying and disclosure.

37. Northumbria Police explained that estimating the time it would take to prepare data for disclosure was exceptionally difficult due to the variance in terms of size, format, fragility, relevance and content of each document, but that the estimates made were based on the sampling exercises described.
38. In conclusion, Northumbria Police stated that to prepare the data for disclosure would require indexing, assessing, copying, redacting, checking, preparing a final document, and producing that document or data in a format where it can be disclosed. It estimated that it would take on average approximately 12 minutes per item to prepare the data for disclosure. Accordingly, Northumbria Police estimated that to comply with the scope of the request, the assessment and preparation of 10,000 documents for disclosure would take approximately 2,000 hours.
39. Northumbria Police explained that, as a public authority, it does not have an infinite amount of resource, with two only full-time individuals employed in the Freedom of Information Team to manage the workload within this business area. Support is provided by a Supervisor and the Head of Information Management.
40. It is the volume of data within the scope of the request and its nature and fragility which has led Northumbria Police to argue that the burden placed on it in complying with the request is a grossly oppressive one where it has been estimated that it would take one member of staff approximately 54 weeks at 37 hours per week to process this request. This level of distraction would undoubtedly hinder the ability of Northumbria Police to effectively manage its Freedom of Information workload causing a detrimental impact upon the service provided to other applicants utilising the legislation.
41. As result, Northumbria Police decided to refuse to comply with the request on the basis of section 14(1) of FOIA.
42. Northumbria Police also explained that if the requested information were disclosed, and it did transpire that there was further evidence which made the conviction unsafe, it would be impossible for there to be a fair trial due to the amount of information in the public domain as a result of the request. Therefore, the disclosure would be futile and defeat the

alleged purpose of the disclosure which, according to the complainant, was to prove the innocence of the convicted party.

The complainant's view

43. The complainant is of the view that there has been a miscarriage of justice in the case in question, stating they have "uncovered further information as to further suspects/perpetrators potentially involved in this case which we believe were either missed by the police at the time, not pursued in any detail or ignored."

The Commissioner's decision

44. 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. As previously discussed, there is a high bar for engaging section 14(1).

Value or serious purpose

45. In cases where the issue of whether a request is vexatious is not clear cut, the key test is to determine whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation, or distress.
46. When considering this issue, the Upper Tribunal in Dransfield asked itself, "Does the request have a value or serious purpose in terms of there being an objective public interest in the information sought?" (paragraph 38). The public interest can encompass a wide range of values and principles relating to what is in the best interests of society, including, but not limited to:
- holding public authorities to account for their performance;
 - understanding their decisions;
 - transparency; and
 - ensuring justice.
47. In this instance the request appears to focus on an issue of concern about the allegedly unsafe conviction of an individual and it is one where it would be expected that a public authority would demonstrate openness and transparency. The complainant has a clear belief that a miscarriage of justice has occurred, and believes the request is a legitimate pursuit to uncover this.

48. However, even if the request does have a value or serious purpose, there may be factors that reduce that value. One such factor is the burden the request places on the public authority.

Burden

49. Northumbria Police argued that the amount of work that would be involved in dealing with the request would place a "grossly oppressive" burden on them.

50. During his investigation, the Commissioner has seen the boxes of evidence held by Northumbria Police and has also seen examples of the data held within the boxes. The Commissioner is satisfied that the information is not indexed, the boxes are not labelled, and that the data is scattered within the boxes. The Commissioner has also seen examples of the data, for example, the number of contact cards and the fragility of the statements and plans.

51. The Commissioner can also see that it would be necessary to review all of the information in order to establish whether any exemptions under FOIA applied (particularly in respect of personal data).

52. The Commissioner accepts that there are cases where a request could be considered to be vexatious, because the amount of time required to review and prepare the information for disclosure would place a grossly oppressive burden on the public authority. This is the position adopted by Northumbria Police in this case.

53. The Commissioner considers that there is a high threshold for refusing a request on such grounds and a public authority is most likely to have grounds for refusal when:

- The requestor has asked for a substantial volume of information, and
- The authority has real concerns about potentially exempt information, which it will be able to substantiate if asked to do so by the ICO, and
- Any potentially exempt information cannot easily be isolated because it is scattered through the material.

54. The volume of information that needs to be considered can be cited as a valid reason for refusing the request. Requests considered by the Commissioner previously in which this argument has been supported have involved exceptional circumstances; large volumes of information and a task of redacting that would not be straightforward but rather complex and very time consuming.

55. The Commissioner considers that this is the case here. The request is very wide and the nature of the data and the way it is held makes the task of preparing the information for disclosure extremely time-consuming.
56. In terms of size and work involved, therefore, Northumbria Police has convinced the Commissioner that preparing this information for disclosure would impose a grossly oppressive burden.

Context & history

57. The context and history of the request is often a major factor in determining whether a request is vexatious and may support the view that section 14(1) applies.
58. The Commissioner does accept there may be a serious value to the request, as he does not doubt is the case here. However, when considered in the context of the purpose of the request, which is to assist in bringing other perpetrators to justice, the fact that the complainant is unwilling to share the new evidence with Northumbria Police but wishes instead to make a television programme about it, would mean that a fair trial would not be possible. Therefore, the request would defeat its own purpose.

Commissioner's conclusion

59. In summary, the Commissioner has taken into account all of the above, and determined whether, on a holistic basis, he considers that the request is one that typically characterises a vexatious request; he finds that it does. While the request may have a value and serious purpose, there are several factors that reduce that value, namely, the burden that the request would place on Northumbria Police and the fact that disclosure would defeat the purpose of the request.
60. In the Commissioner's opinion, the request would place a grossly oppressive burden on Northumbria Police and cause a disproportionate or unjustified level of disruption and therefore Northumbria Police was entitled to rely on section 14(1) of FOIA to refuse the request.
61. As the Commissioner has found that section 14(1) of FOIA applies to the request in its entirety he has not considered Northumbria Police's arguments in respect of the other exemptions cited.

Breach of section 17 for late reliance on section 14(1)

62. Section 1(1) of FOIA states:

- “(1) Any person making a request for information to a public authority is entitled –
- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
 - (b) if that is the case, to have that information communicated to him.”

63. Section 17(1) of FOIA states:

- “(1) A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which –
- (a) states that fact,
 - (b) specifies the exemption in question, and
 - (c) states (if that would not otherwise be apparent) why the exemption applies.”

64. Breaches of section 17 will also be found if the public authority seeks to rely on another exemption during the investigation which it had not mentioned at or before internal review.
65. In this case, Northumbria Police relied on section 14(1) during the Commissioner’s investigation but not previously. It has therefore breached section 17(1) of FOIA.

Procedural Matters

66. Northumbria Police breached section 10 of FOIA by failing to respond to the complainant’s request within 20 working days of receipt.

Other Matters

67. The Commissioner notes that the complainant requested an internal review on 13 July 2022 and that Northumbria Police failed to carry out an internal review until the Commissioner intervened on 14 September 2022, but that even then, the internal review response was not provided until 18 October 2022.
68. The section 45 Code of Practice advises public authorities to carry out an internal review promptly and within 20 working days. As Northumbria

Police failed to do this and took considerably longer, the Commissioner would like to remind Northumbria Police of the requirements of this Code.

69. The Commissioner will use intelligence gathered from individual cases to inform his insight and compliance function. This will align with the goal in his draft Openness by Design strategy³ to improve standards of accountability, openness and transparency in a digital age. The Commissioner aims to increase the impact of FOIA enforcement activity through targeting of systemic non-compliance, consistent with the approaches set out in our Regulatory Action Policy⁴.

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

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

Right of appeal

71. 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

72. 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.

73. 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

Carolyn Howes
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF