

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 27 November 2019

Public Authority: Police Service of Northern Ireland

Address: 65 Knock Road
Belfast BT5 6LD

Decision (including any steps ordered)

1. The complainant has made several requests for information from the Police Service of Northern Ireland ('PSNI') relating to traffic management companies engaged by the PSNI for events in certain named towns in Northern Ireland. The PSNI responded to 8 of the requests, however it then applied section 14(1) of the FOIA to the complainant's subsequent requests.
2. The Commissioner's decision is that the PSNI has correctly applied section 14 (1) of the FOIA to the complainant's requests and therefore requires no steps to be taken.

Request and response

3. The complainant has made 21 requests to the PSNI since April 2019 in relation to parades held in Mid Ulster and other Districts. The PSNI has provided the complainant with information in response to 8 of these requests. The PSNI wrote to the complainant, listing 13 of these requests and attaching the text of same to the letter, stating that it was applying section 14(1) of the FOIA to the requests.

4. The complainant sought an internal review of the PSNI's decision, the result of which was provided to him on 20 September 2019. The reviewer upheld the original decision.

Scope of the case

5. The complainant contacted the Commissioner on 3 October 2019 to complain about the way his request for information had been handled.
6. The Commissioner has considered the PSNI's handling of the complainant's request, in particular its application of section 14(1) of the FOIA.
7. The complainant also raised with the Commissioner the delays in response to his requests, stating that the PSNI took over 60 days to respond to one request. As the PSNI has addressed and apologised for these delays in its internal review response to the complainant, the Commissioner does not propose to further mention these in this notice.

Reasons for decision

Section 14-vexatious requests

8. Section 14(1) of the FOIA states that a public authority is not obliged to comply with a request for information if the request is vexatious. There is no public interest test.
9. The term 'vexatious' is not defined in the FOIA. The Upper Tribunal (Information Rights) considered in some detail the issue of vexatious requests in the case of the Information Commissioner v Devon CC & Dransfield (GIA/3037/2011). The Tribunal commented that vexatious could be defined as the "manifestly unjustified, inappropriate or improper use of a formal procedure". The Tribunal's definition clearly establishes that the concepts of proportionality and justification are relevant to any consideration of whether a request is vexatious.
10. In the Dransfield case, the Upper Tribunal also found it instructive to assess the question of whether a request is truly vexatious by considering 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.

11. The Upper Tribunal did however also caution that these considerations were not meant to be 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).
12. The Commissioner has identified a number of "indicators" which may be useful in identifying vexatious requests. These are set out in her published guidance on vexatious requests. In brief these consist of, in no particular order: abusive or aggressive language; burden on the authority; personal grudges; unreasonable persistence; unfounded accusations; intransigence; frequent or overlapping requests; deliberate intention to cause annoyance; scattergun approach; disproportionate effort; no obvious intent to obtain information; futile requests; frivolous requests.
13. The fact that a request contains one or more of these indicators will not necessarily mean that it must be vexatious. All the circumstances of a case will need to be considered in reaching a judgement as to whether a request is vexatious.
14. The Commissioner's guidance suggests that if a request is not patently vexatious the key question the public authority must ask itself is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress. 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. Where relevant, public authorities need to take into account wider factors such as the background and history of the request.

The PSNI's position

15. The PSNI states that it has relied upon section 14 (1) in this case because of the continued and recurrent impact of the complainant's requests upon PSNI resources, where there does not appear to be any purpose or value to the requests. The PSNI has asked the complainant if there is something he specifically would like the PSNI to address, most recently in its refusal notice to him of 20 September 2019. In that notice the PSNI explained to the complainant the impacts his continued requests are having on its resources and set out for him the background work it has to undertake to respond to his requests. It also offered the complainant the opportunity to alert it to any specific issue and has stated that it will attempt to address that with him at a local or District level (e.g. a concern about the police response to a particular parade).
16. The PSNI states that, as much of the information sought by the complainant relates to an operational policing response to a parade, it has to undertake redactions to protect its law enforcement capability to respond to parades and its methodology of policing public order situations. As much of the material he has been provided with to date in this regard is heavily redacted, it is rendering any overall release package having little information being supplied to the public and therefore arguably of limited value.
17. The PSNI states that, in one month the complainant submitted a FOI request on the subject matter of parades on the 3rd, 10th, 12th, 17th and 24th June 2019. Each request had to be logged by the Corporate Information Unit and sent to the District Offices in those areas where parades took place. The business area retrieved the information and police officers have to review the information in order to provide their views as to whether there are any operational details within the information which would prejudice the PSNI's ability to carry out its law enforcement functions. The information was then reviewed by a decision maker in the Corporate Information Branch who carried out any necessary redactions and drafted the response letter to the complainant, providing the legislative reasons for withholding the information. All of this requires a lot of PSNI resource especially at the operational policing end where resource is being continually diverted to review this material. As stated above, what was provided to the complainant constitutes a small amount of detail on the PSNI operational response to parades, which the PSNI considers will carry little public interest value as it has no real tangible benefit to the public.

18. The PSNI referred to the ICO's guidance on "Dealing with vexatious requests" and in particular the following paragraphs:

"6. The Freedom of Information Act was designed to give individuals a greater right of access to official information with the intention of making public bodies more transparent and accountable.

7. Whilst most people exercise this right responsibly, a few may misuse or abuse the Act by submitting requests which are intended to be annoying or disruptive or which have a disproportionate impact on a public authority.

8. The Information Commissioner recognises that dealing with unreasonable requests can place a strain on 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."

19. The PSNI as a public authority is aware that it has to absorb a certain amount of disruption or annoyance, and it recognises that many requestors can make legitimate requests independently on the same topic. However, it states that there are times when requests place such a burden on the PSNI that it causes an unjustified impact on its resources and in the PSNI's opinion lack a serious purpose or value.

20. The PSNI explained to the complainant in the refusal notice issued to him the meaning of the following paragraph from the judgement in the case of 'Dransfield' (Upper Tier Tribunal in the case of the Information Commissioner vs Devon County Council and Dransfield [2012] UKUT (AAC) where the Information Tribunal defined the purpose of section 14 of the FOIA:-

"Section 14 ... is concerned with the nature of the request and has the effect of disapplying the citizens right under Section 1 (1) ... the purpose of section 14 ... must be to protect resources (in the broadest sense of the word) of the public authority from being squandered on disproportionate use of FOIA ' (paragraph 10).

21. The PSNI has also considered the Commissioner's further guidance on this case, which states:-

"This being the case, public authorities should not regard section 14 (1) as something which is only applied in the most extreme circumstances, or as a last resort. Rather, we would encourage authorities to consider its use in any case where they believe the request is disproportionate or unjustified. "

22. The PSNI also considered the words of Judge Wikeley in the *Dransfield* case, who confirmed the dictum in the Upper Tribunal case of *Wise v The Information Commissioner* (GIA/1871/2011) which had identified proportionality as the common theme underpinning section 14 (1) and he made particular reference to its comment that:

"Inherent in the policy behind section 14(1) is the idea of proportionality. There must be an appropriate relationship between such matters as the information sought, the purpose of the request, and the time and other resources that would be needed to provide it."

23. In its overall handling of the complainant's requests on this topic, the PSNI considered that the aggregated impact of dealing with all these requests especially within the policing districts was causing an unjustified level of disruption within PSNI as they require a continued diversion of resource at District level and within the PSNI's Corporate Information Branch.

The complainant's position

24. The complainant maintains that his requests do have a serious purpose and that PSNI presence and operational responsibility at public parades is very much in the public interest.

The Commissioner's position

25. Having taken into account the circumstances of this case and the frequency of the complainant's requests, their persistence and the similarity of information being requested, the Commissioner is satisfied that these requests cumulatively are having a detrimental impact on the PSNI's resources. It appears that the information requested would be of limited value to the public, given the PSNI's statement that the majority of material requested within a parade log is operational policing material which contains police tactics, policing methodology, police call signs and police information about the parade, the majority of which it considers to be exempt from disclosure and would be of use to terrorists or those committed to disrupting public order if they were to obtain material which showed how we police parades and public order situations. In its overall handling of the Freedom of Information requests on this topic, the PSNI considered that the aggregated impact of dealing with all these requests especially within the policing districts was causing an unjustified level of disruption within PSNI. These requests are requiring a continued diversion of resource at District level and within the Corporate Information Branch. As the PSNI has given the complainant alternative means of discussion should he wish to raise anything specific, the Commissioner is satisfied overall that section

14(1) of the FOIA has been correctly applied to the complainant's requests.

Right of appeal

26. 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
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

27. 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.
28. 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

Deirdre Collins
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