

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 27 March 2023

Public Authority: The Independent Monitoring Board at HMP
Bronzefield

Address: c/o imb@justice.gov.uk

Decision (including any steps ordered)

1. The complainant requested information from the Independent Monitoring Board (IMB) at HMP Bronzefield relating to various aspects including minutes of meetings, Operational Capacity and minimum staffing levels.
2. Bronzefield IMB refused the requests under section 14(1) (vexatious requests) of FOIA.
3. The Commissioner's decision is that Bronzefield IMB was entitled to rely on section 14(1) to refuse the requests.
4. The Commissioner requires no steps to be taken as a result of this decision.

Background

5. The Prison Act 1952 requires every prison to be monitored by an independent Board, appointed by the Secretary of State from members of the community in which the prison is situated.
6. Board members are supported by the IMB Secretariat. The Secretariat explained the functions it performs as follows:

"...the IMB Secretariat provides FOI and data protection support, advice, guidance, and drafting for individual IMBs, in accordance with the Memorandum of Understanding agreed between the IMB Management Board (under direction of the publicly appointed National Chair) and the Ministry of Justice. These services are provided in addition to a range of administrative functions for over

1100 IMB members. It would not be practical, nor necessary, for 1100 members to be trained in the FOIA; although they are the subject matter experts in the material held, it is efficient and proportionate that they work in partnership with the IMB Secretariat's expertise in the FOIA, in order to fulfil the requirements of the Act".

7. The Commissioner understands that, rather than each Board having its own individual website, there is a generic Independent Monitoring Boards (IMB) website. The IMB website provides a generic email address for requesters to use when making an FOI request.
8. The IMB Secretariat told the Commissioner:

"In between 30 August 2022 and 02 September 2022, we received 354 emails from the complainant. These emails came in three sets, and they were addressed to different Independent Monitoring Boards (IMBs). The first set contained 6 individual requests for Board meeting minutes ('the minutes requests'). The second set contained 3 individual requests related to unannounced night visits, Certified Normal Accommodation, and Operational Capacity related to the establishments monitored by IMBs ('the OpCap requests'). The third set contained 2 requests related to minimum staffing levels and the secure operating level of the establishments monitored by IMBs ('the minimum staffing levels requests')".

Request and response

9. On 30 August 2022, the complainant requested information from Bronzefield IMB in the following terms:

"Dear Chair of the IMB,

Please provide me with copies of the Minutes of your monthly meetings for the following

[A]

i. January, 2021

ii. February 2021

iii. March 2021

[B]

i. January, 2022

- ii. February 2022
 - iii. March 2022"
10. From the evidence the complainant provided in support of his complaint, the request was made as part of a batch request. The batch request included details not only of Bronzefield IMB, but also 112 other IMBs.
11. The Commissioner is aware that the complainant also sent requests for information to Bronzefield IMB on 30 August 2022 and 2 September 2022 as follows:

Request dated 30 August 2022:

"Dear IMB Chair.

Your Board is a named authority under the Freedom of Information Act and as an individual Board it therefore has the legal obligation to respond to freedom of information requests.

Pursuant to this; can you please tell me:

1. In the 24-month period from 30th August 2020 to 29th August 2022 how many unannounced night visits (between 10pm and 6am) did your Board conduct - and if 'none' please explain why. By 'unannounced' I mean visits that took place when the attendance of a Board member or members was not at the request of the establishment you monitor, but was an exercise of the right of access 'at any time' the Board possesses and was therefore at the instigation of the Board or a member of it.

2. What is the current

i. Certified Normal Accommodation and

ii. Operational Capacity

of the establishment, your Board is appointed to Monitor?"

Request dated 2 September 2022

"Dear IMB Chair,

As an Independent Monitoring Board you are subject to the Freedom of Information Act and as such you are required by law to respond to my requests made under the Act within 20 days - if you need more information about the Act and your responsibilities in respect thereof please refer to the Information Commissioners website at ico.org.uk

REQUEST

Please provide, for the latest date for which you have figures available, the locally agreed:

a. Minimum Staffing Levels (MSLs); and the b. Secure operating level (SDSOL) For the establishment, or establishments, that your Board has the legal duty to monitor”.

12. The IMB Secretariat provided a combined response on 26 September 2022. Acknowledging receipt of the three multi-part requests, it refused the requests, citing section 14(1) of FOIA, a view that was upheld at internal review.

Scope of the case

13. Schedule 1 of FOIA sets out the bodies or holders of office that are public authorities under FOIA. Schedule 1, Part VI includes:

“Any Independent Monitoring Board established under section 6(2) of the Prison Act 1952”.

14. While any Board established under section 6(2) of the Prison Act 1952, is a public authority in accordance with Schedule 1, the IMB Secretariat is not.
15. Notwithstanding the administrative support provided by the IMB Secretariat, the responsibility for handling FOI requests remains with the individual Board as the public authority for the purposes of FOIA.
16. The Commissioner is satisfied that the requests dated 30 August 2022 and 2 September 2022, comprising 11 separate requests, were all sent to Bronzefield IMB.
17. Bronzefield IMB is therefore the appropriate public authority in this case.
18. During the course of his investigation, the IMB Secretariat provided the Commissioner with the views of Bronzefield IMB. It also provided evidence of the wider impact on the Secretariat itself of the complainant’s multiple requests.
19. This notice covers whether Bronzefield IMB is entitled to refuse to comply with the requests on the basis that the requests are vexatious.
20. The Commissioner has addressed his concerns about the impact of the requests on the IMB Secretariat in ‘Other matters’.

Reasons for decision

Section 14(1) – vexatious requests

21. 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.
22. 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.
23. 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.
24. The 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.
25. 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.
26. 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.
27. The four broad themes considered by the Upper Tribunal in Dransfield were:
 - the burden (on the public authority and its staff);

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

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

- the motive (of the requester);
- the value or serious purpose (of the request); and
- any harassment or distress (of and to staff).

28. 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 public authority's view

29. With regard to the impact of the multi-part requests for information under consideration in this case, Bronzefield IMB variously said:

- that they would have contacted the Secretariat for support and assistance as their first action;
- that the requests would have caused disruption to their primary activities as set out in legislation;
- that complying with the requests would have represented an excessive amount of work and considerable stress;
- that a number of the requests involved information that would only be held by the prison.

30. Bronzefield IMB explained that the timing of the requests coincided with a time of considerable demands on its resources in addition to its usual monitoring duties - including the compilation of its annual report, training of new members and annual leave commitments.

31. It also explained that Boards are made up of volunteers who give their time free of charge to monitor the fair and humane treatment of prisoners. It argued that it considers that its time is limited, and most valuably spent on its core duties.

32. With regard to Bronzefield IMB's reference to contacting the IMB Secretariat for support and assistance, the Commissioner acknowledges that the Secretariat provides individual Boards and their members with administrative support.

33. In that regard, the Secretariat explained:

"This arrangement is in place, in part, because of the voluntary nature of the IMB role and the limited time and resources at the disposal of any individual IMB (or IMB member)".

34. The Secretariat considered that, if the requests were not refused, providing a response would have placed a burden on the individual IMB and that this would be the case "whether they were handled with or without support from the IMB Secretariat".
35. The Secretariat also told the Commissioner that, as the IMB Secretariat is the identified resource for assisting individual IMBs in handling FOI requests, it follows that section 14 of FOIA "must have the power to protect the IMB Secretariat as its resource".

The complainant's view

36. When requesting an internal review, the complainant told the Secretariat:

"[The requests] are not vexatious at all, All I have done is ask a few simply [sic] questions for the disclosure of documents I am entitled to ask for from individual public authorities subject to the Freedom of Information Act".

37. He also considered that the IMB had failed to explain why it considered the requests were vexatious.
38. In bringing his complaint to the Commissioner's attention, the complainant told the Commissioner:

"IMBs are vitally important, appointed by the Justice Secretary to monitor the treatment of those detained in custody, each IMB is also part of the National Preventive Mechanism with obligations owed to the United Nations".

39. With reference to the analogy made in the correspondence he received from the Secretariat, which referenced the Commissioner's guidance on section 14, he considered it irrational to equate IMBs with Parish Councils in terms of proportionality and burden. He told the Commissioner:

"IMBs, monitoring conditions in custody of those detained by the State, with obligations owed to the UN under a Treaty signed by the UK, cannot be equated with a Parish Council".

40. Regarding the amount of information requested, he told the Commissioner:

"In one year I therefore made just ONE request, to each Board, for copies of the minutes taken at SIX monthly meetings spread over 15 month".

41. As noted above, the Commissioner is also aware of other requests made by the complainant to Bronzefield IMB.

The Commissioner's decision

42. 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.
43. With regard to the requests under consideration in this case, Bronzefield IMB has stressed the burden of complying with the requests.
44. The Commissioner accepts that the requests are focused and expressed in reasonable terms. Nor does he find that they are intended to be annoying.
45. With regard to their purpose and value, he accepts that the requests have a purpose to the extent that there is a public interest in holding public authorities to account, for example for their performance, understanding their decisions and for transparency. In this case, he recognises the public interest with regard to the functions of a public authority such as an IMB.
46. He has therefore considered whether dealing with the requests would impose an unreasonable burden on Bronzefield IMB.
47. The Commissioner's guidance recognises that when considering the amount of work that would be involved in dealing with a request, and whether it would impose an unreasonable burden, a public authority needs to take account of the level of resources that it has at its disposal.
48. He recognises that in the case of a small public authority, which only has limited resources, the threshold at which the burden becomes grossly oppressive is lower than for a larger public authority. The Commissioner also accepts that a small public authority may become overwhelmed if numerous requests are made in quick succession.
49. The Commissioner does, however, recognise that public authorities must keep in mind that meeting their underlying commitment to transparency and openness may involve absorbing a certain level of disruption and annoyance.

50. In this case, the Commissioner has taken the size of Bronzefield IMB into account. He has also taken into account that its members are volunteers.
51. On the basis that Bronzefield IMB has access to the Secretariat for administrative support, the Commissioner has included this in his consideration of the level of resources it has at its disposal. In that regard he notes that the complainant was told:

"Individual boards FOI correspondence is managed through the secretariat, by a single member of staff..."
52. He is also mindful that the IMB Secretariat told the Commissioner that disruption to the IMB Secretariat draws resources away from supporting individual IMBs, which in turn reduces the time and resources that IMBs are able to invest in monitoring, reporting, and responding to concerns:

"... which ultimately risks harm to vulnerable detained persons by virtue of the fact that their conditions, treatment, and outcomes could be left unmonitored and unreported by an independent public authority"
53. In a case such as this, where section 14 is cited, the Commissioner recognises that there is no magic formula. Whether the request is vexatious ultimately depends on the circumstances surrounding the request. He considers that the key question is whether the request is likely to cause a disproportionate or unjustified level of disruption irritation or distress.
54. In that respect, the Commissioner has taken into account the time commitment expected from IMB members and to what extent the circumstances created by the complainant's requests represented a burden to Bronzefield IMB.
55. In this case, he accepts that an IMB is a small public authority, tasked with carrying out various legal obligations, with limited resources. In that scenario, he considers that the threshold at which the burden becomes grossly oppressive is lower than for a larger public authority.
56. The Commissioner accepts that a requester cannot be expected to know what resources a public authority has at its disposal. He also accepts that a requester cannot be expected to know about the duties required of a public authority, and their timings, for example with respect to preparing an annual report or providing training to new staff.
57. However, he expects a requester to recognise that requests cost public bodies time, and money, to respond to and that a public authority needs to spend public money responsibly and make best use of its staff (or volunteers') time.

58. In reaching a decision in this case, the Commissioner has taken into account the size of Bronzefield IMB and the voluntary nature of its members. He has also taken into account the breadth of the information requested and the number of requests made within a short timeframe.
59. The Commissioner considers that the complainant's requests in the current case would have disrupted Bronzefield IMB's activities, effectively preventing them from balancing their time proportionately with their primary public functions.
60. On the basis of the evidence provided, and taking into account the findings of the Upper Tribunal in Dransfield that an holistic and broad approach should be taken in respect of section 14(1), the Commissioner is satisfied that there are sufficient grounds for refusing the requests under section 14(1) of FOIA. He considers the requests represent an undue and disproportionate burden on scarce public resources.
61. He finds that Bronzefield IMB was entitled to refuse the requests on the basis that the requests are a manifestly unjustified and improper use of the FOIA such as to be vexatious.

Other matters

62. Disputing that section 14(1) applies in this case, the complainant told the Commissioner:

"They have wrongly joined together applications made for information by myself as an individual, with those made by my employer when in fact the two applications are entirely separate".

63. The Secretariat told the Commissioner:

"Between 18 August 2022 and 25 October 2022, we received 15 sets of email correspondence sent to multiple IMBs (some of these were 'batch' requests via the whatdotheyknow.com website) from both the complainant and their associate. A total of 3424 individual requests were contained in these emails".

64. The Commissioner has reached his decision above without taking into account whether or not the requests were made in concert with another requester.
65. However, while he accepts that the complainant disputes that his requests were made as a joint application with another requester, the Commissioner is satisfied that the IMB experienced a significant increase in the rate and number of freedom of information requests it received from 18 August 2022 to 25 October 2022.

66. Referring to the way the requests were received, the Secretariat, who monitor the receipt of requests to the inbox set up for that purpose, described the volume in which they were received as 'unusual' and 'representing a 'surge' of requests'.
67. The Commissioner notes that the multitude of requests it received were all made around the same time as the ones under consideration in this case. He also notes that the other requests were similar in subject matter to the requests in this case and that in some instances the questions were a duplicate of the ones in the complainant's requests.
68. While not making a formal decision on the issue, the Commissioner considers it unlikely that a small number of separate requesters, connected via their work, would be independently contacting the IMB, at the same time, with similar requests, without it being seen as them working in concert or as part of a campaign.

The role and status of the Secretariat

69. The Commissioner recognises the role performed by the Secretariat in providing administrative support, advice and guidance to the individual IMBs. He acknowledges the burden faced by the IMB Secretariat as a result of the arrangement in place to provide that support.
70. It is not in the Commissioner's remit to make changes to the legislation to amend the bodies subject to FOIA. It is the Cabinet Office who is responsible for updating Schedule 1 of FOIA and any queries regarding the Schedule should be directed to it.

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

**Laura Tomkinson
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