



**First-tier Tribunal
(General Regulatory Chamber)
Information Rights**

Appeal Reference: EA/2020/0015 (P)

Decided without a hearing on 21 January 2020

Before

JUDGE BUCKLEY

ANNE CHAFER

JOHN RANDALL

Between

EDWARD WILLIAMS

Appellant

and

THE INFORMATION COMMISSIONER

Respondent

MODE OF HEARING

The parties and the Tribunal agreed that this matter was suitable for determination on the papers in accordance with rule 32 Chamber's Procedure Rules. The mode of hearing is 'P'.

AMENDED DECISION UNDER RULE 40

1. For the reasons set out below the Tribunal dismisses the appeal.

REASONS

Introduction

1. This is an appeal against the Commissioner's decision notice FS50877467 of 7 January 2020 which held that the Independent Office for Police Conduct ('the IOPC') were entitled to rely on s 14(1) of the Freedom of Information Act 2000 (FOIA). The Commissioner did not require the public authority to take any steps.

Factual background to the appeal

2. The requested information relates to the death of Andre Moura in July 2018. A report on the BBC News website dated 20 August 2019 states that after his arrest he was found 'unresponsive' in a police van and later pronounced dead in hospital. The arrest was captured on mobile phone video footage by a neighbour and shows Mr. Moura being restrained with CS Gas.
3. The matter was investigated by the IOPC. The investigation was concluded in August 2019 and the evidence was referred to the Crown Prosecution Service (CPS) in relation to the actions of five officers. It is not clear exactly when the investigation was concluded but the IOPC does not appear to have announced until 20 August 2019 that it had had concluded its investigation and referred the matter to the CPS.

Requests, Decision Notice and appeal

The Request

4. Mr. Williams made the following request to the IOPC on 19 August 2019:
 - 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 police station
 4. Footage by the public
 - b) Disclose medical report(s)

The IOPC's reply

5. The IOPC replied on 13 September 2019 confirming that it held the requested information. It refused to supply the information relying on s 14 - vexatious requests. Mr. Williams requested an internal review. The IOPC replied by letter dated 25 September 2019 indicating that it would progress the internal review once Mr. Williams had informed it of his reason for requesting an internal review. Mr. Williams referred the matter to the Commissioner on 26 September 2019.

The Decision Notice

6. In a decision notice dated 7 January 2020 the Commissioner decided that the IOPC had correctly applied s 14(1) FOIA (vexatious request).
7. The Commissioner noted that the information in question relates to an individual who died when in police custody. There is a strong public interest in understanding the chain of events as well as any potential lessons learned. Given that police officers have unique powers to enforce the law there is a strong public interest in investigating rigorously any allegations that officers may have acted outside the law.
8. At the time the request was made, the matter was still the subject of an active investigation by the IOPC. No reasonable requestor would expect to be given unrestricted access to the evidence considered by the IOPC, especially when the investigation might lead to criminal prosecutions being considered.
9. The Commissioner was conscious that Mr. Williams had made a number of requests to various bodies associated with law enforcement and should have had a much better understanding of the type of information which is likely to be disclosed to him than a person making a request for the first time. Given that, despite this knowledge Mr. Williams still chose to make such broad requests for information he knew or should have known would almost certainly be refused was, in the view of the Commissioner, evidence that he was being unreasonable in making his requests.
10. The futility of the request was evidenced by the fact that the information likely to be disclosed at the time the request was made was likely to be considerably less than that which could be disclosed once the investigation had been completed. Mr. Williams should have been aware of this but chose to make the request anyway.
11. Accordingly the Commissioner determined that Mr. Williams acted unreasonably in making his request.
12. The Commissioner considers that the way in which Mr. Williams pursues his request is unreasonable. It is correct that the FOIA does not require him to explain why he is seeking an internal review but it is good practice to do so. Mr. Williams regularly makes internal review requests which are cursory and this is replicated in the manner in which he submits complaints to the Commissioner. This indicates the lack of value Mr. Williams places on each individual request.
13. Mr. Williams has sent numerous request to various public authorities based on stories he has read on the internet. If he does not receive all the requested information he tells the public authority to carry out an internal review without making any effort to engage with the reasons why the information was withheld. If the internal review is unsuccessful he asks the Commissioner to issue a decision notice without making any effort to explain the value of the

information. These actions paint a picture of an individual who is casting a wide net in the hope that he will eventually find something useful rather than focusing on particular information which is of interest to him.

14. Mr. Williams has not provided any rationale for wanting the information nor has he demonstrated the use he has made of the information disclosed to him in response to previous requests. The information does not appear to have any value to Mr. Williams or serve any purpose to him.
15. Given that many of the final reports are published by the IOPC once formal proceedings have been concluded, any significant value the requests may have had is outweighed by the burden on the IOPC in considering what information, if any, can be disclosed while the investigations are active.
16. When Mr. Williams engages with the IOPC his communications are at best brusque and at worst could be considered somewhat rude and patronising.
17. Mr. Williams shows no signs of reducing the number of requests he makes or of learning from previous responses to focus his requests on information he stands a reasonable chance of receiving.
18. In order to respond to the request the IOPC will need to collate the information, consider which exemptions apply and consider where the balance of public interest lies. Receiving persistent requests from an individual who is already familiar with its approach is a burden the IOPC should not be expected to bear.
19. Mr Williams is exercising his rights under the FOIA to make requests he knows have little chance of success, but which have the cumulative effect of placing a considerable burden on the IOPC, which far outweighs the value in responding to the request. The Commissioner considered this to be a manifestly unjustified, inappropriate and improper use of the legislation. The Commissioner concluded that such requests are likely to continue. The Commissioner found that the request was vexatious.

Notice of Appeal

20. Mr Williams appealed against the Commissioner's decision notice. His ground of appeal is, in essence, that the Commissioner erred in concluding that the request was vexatious.
21. In particular he states that he has made a number of requests to the IOPC, most of which have been rejected. All were matters of public interest such as death at the hands of the police. He asks the Commissioner to provide a detailed schedule of how much information was released.

22. The Commissioner has made its decision based on what it thinks will happen in the future: this is unlawful. He has not been rude to the IOPC or the Commissioner. He is not under a duty to provide reasons when requesting an internal review. The internal review is not part of FOIA it is a requirement of the commissioner. The request does not even reach the foothills of the Dransfield test.

The ICO's response

23. The Commissioner relied on the reasoning in the Decision Notice. In response to the specific grounds of appeal the Commissioner relies on the Decision Notice and states, in summary, as follows.

24. Mr. Williams has been provided with a schedule of and details of previous requests by the IOPC and the response sets out further detail of these.

25. The Commissioner took a rounded and multi-faceted approach and Mr. William's past and future conduct (as best it can be predicted from past experience) is relevant. The previous refusals were similar in that most requests were likely to contain at least some exempt information, in that many were still under investigation, extremely broad or related to third party individuals. Mr. Williams should have some understanding of these issues but proceeded to make a similar request.

26. Mr. Williams gave no reasons for any of his requests or internal review requests to assist the IOPC in understanding the value or serious purpose behind the requests or why any refusal should be overturned.

27. Internal reviews and appeals to the Commissioner are regularly sought without any apparent consideration as to the merits.

28. There is a clear pattern of behaviour of requests which are strikingly similar in breadth and sensitivity with no modification of the requests in the light of previous responses. There is no indication that Mr. Williams has any desire to stop.

29. The Commissioner came to the view that Mr. Williams' communications were brusque or at times patronising or rude. This is not probative of a vexatious complaint but globally informs the decision.

30. It is difficult to ascertain the value and serious purpose of the request with such little input from Mr. Williams. The nature of information sought is often likely to be exempt under multiple exemptions but may be made public on the finishing of an investigation. The pattern, number and nature of the requests and the responses is indicative of him casting a wide net in the hope of

unearthing useful information as opposed to having any particular focus or purpose.

31. The burden on the IOPC of considering a further widely-drawn request about very recent or ongoing investigations, and to conduct an internal review without any further explanation as to why the information should be released is disproportionate to the value of the request.

Mr William's reply

32. Mr Williams includes a news report dated 21 August 2019 which states that the IOPC has recently concluded their investigation in relation to the death in custody of Andre Moura.
33. The IOPC did not refuse the request on 13 September 2019. It refused to cooperate with the request for an internal review.
34. It is contradictory to conclude that there is a strong public interest in understanding the chain of events and lessons learned and to conclude that no reasonable requestor would expect to be given unrestricted access to the evidence considered by the IOPC.
35. As a matter of law the Commissioner is not entitled to take account of requests made to other public authorities.
36. Para 44 of the Decision Notice is a wholly unreasonable and personalised attack which can only be founded on a vexatious motive. It criticises Mr Williams for exercising his rights in relation to matters of public interest.
37. The Commissioner was wrong to conclude that there was a lack of rationale. FOIA is applicant blind and public interest is the rationale.
38. The Commissioner provides no examples of Mr Williams being rude and patronising.
39. The IOPC does not release reports. It thinks that FOIA does not apply. It has still not, for example, released a report from 2012.
40. There is a strong public interest in Andre Moura's treatment by the police. The video of Andre Moura being arrested for breach of the peace, which is not an offence, shows the public interest in the information.

Issues

41. The issue for the Tribunal to determine is whether or not the request is vexatious.

Legal framework

S 14(1) Vexatious Request

42. Guidance on applying s 14 is given in the decisions of the Upper Tribunal and the Court of Appeal in **Dransfield** ([2012] UKUT 440 (AAC) and [2015] EWCA Civ 454). The tribunal has adapted the following summary of the principles in **Dransfield** from the judgment of the Upper Tribunal in **CP v Information Commissioner** [2016] UKUT 427 (AAC):
43. The Upper Tribunal held that the purpose of section 14 must be to protect the resources of the public authority from being squandered on disproportionate use of FOIA (para 10). That formulation was approved by the Court of Appeal subject to the qualification that this was an aim which could only be realised if 'the high standard set by vexatiousness is satisfied' (para 72 of the CA judgment).
44. The test under section 14 is whether the request is vexatious not whether the requester is vexatious (para 19). The term 'vexatious' in section 14 should carry its ordinary, natural meaning within the particular statutory context of FOIA (para 24). As a starting point, a request which is annoying or irritating to the recipient may be vexatious but that is not a rule. Annoying or irritating requests are not necessarily vexatious given that one of the main purposes of FOIA is to provide citizens with a qualified right of access to official documentation and thereby a means of holding public authorities to account (para 25). The IC's guidance that the key question is whether the request is likely to cause distress, disruption or irritation without any proper or justified cause was a useful starting point as long as the emphasis was on the issue of justification (or not). An important part of the balancing exercise may involve consideration of whether or not there is an adequate or proper justification for the request (para 26).
45. Four broad issues or themes were identified by the Upper Tribunal as of relevance when deciding whether a request is vexatious. These were: (a) the burden (on the public authority and its staff); (b) the motive (of the requester); (c) the value or serious purpose (of the request); and (d) any harassment or distress (of and to staff). These considerations are not exhaustive and are not intended to create a formulaic check-list.
46. Guidance about the motive of the requester, the value or purpose of the request and harassment of or distress to staff is set out in paragraphs 34-39 of the Upper Tribunal's decision.
47. As to burden, the context and history of the particular request, in terms of the previous course of dealings between the individual requester and the public authority in question, must be considered in assessing whether the request is properly to be described as vexatious. In particular, the number, breadth, pattern and duration of previous requests may be a telling factor [para 29]. Thus,

the greater the number of previous FOIA requests that the individual has made to the public authority concerned, the more likely it may be that a further request may properly be found to be vexatious. A requester who consistently submits multiple FOIA requests or associated correspondence within days of each other or who relentlessly bombards the public authority with email traffic is more likely to be found to have made a vexatious request [para 32].

48. Ultimately the question was whether a request was a manifestly unjustified, inappropriate or improper use of FOIA. Answering that question required a broad, holistic approach which emphasised the attributes of manifest unreasonableness, irresponsibility and, especially where there was a previous course of dealings, the lack of proportionality that typically characterises vexatious requests [paras 43 and 45].
49. In the Court of Appeal in Dransfield Arden LJ gave some additional guidance in paragraph 68: 'In my judgment the Upper Tribunal was right not to attempt to provide any comprehensive or exhaustive definition. It would be better to allow the meaning of the phrase to be winnowed out in cases that arise. However, for my own part, in the context of FOIA, I consider that the emphasis should be on an objective standard and that the starting point is that vexatiousness primarily involves making a request which has no reasonable foundation, that is, no reasonable foundation for thinking that the information sought would be of value to the requester or to the public or any section of the public. Parliament has chosen a strong word which therefore means that the hurdle of satisfying it is a high one, and that is consistent with the constitutional nature of the right. The decision maker should consider all the relevant circumstances in order to reach a balanced conclusion as to whether a request is vexatious. If it happens that a relevant motive can be discerned with a sufficient degree of assurance, it may be evidence from which vexatiousness can be inferred. If a requester pursues his rights against an authority out of vengeance for some other decision of its, it may be said that his actions were improperly motivated but it may also be that his request was without any reasonable foundation. But this could not be said, however vengeful the requester, if the request was aimed at the disclosure of important information which ought to be made publicly available...'
50. Nothing in the above paragraph is inconsistent with the Upper Tribunal's decision which similarly emphasised (a) the need to ensure a holistic approach was taken and (b) that the value of the request was an important but not the only factor.
51. The lack of a reasonable foundation to a request was only the starting point to an analysis which must consider all the relevant circumstances. Public interest cannot act as a 'trump card'. Rather, the public interest in the subject matter of a request is a consideration that itself needs to be balanced against the resource

implications of the request, and any other relevant factors, in a holistic determination of whether a request is vexatious.

The role of the tribunal

52. The tribunal's remit is governed by s.58 FOIA. This requires the tribunal to consider whether the decision made by the Commissioner is in accordance with the law or, where the Commissioner's decision involved exercising discretion, whether he should have exercised it differently. The Tribunal may receive evidence that was not before the Commissioner and may make different findings of fact from the Commissioner.

Evidence and submissions from the IOPC

53. In February 2019 the IOPC undertook an internal review in relation to 8 FOIA requests made by Mr. Williams. It states that in its decision letter of 22 February 2019, relating to eight internal reviews, that it has identified the tipping point after which it considered requests from Mr Williams to be vexatious. The following points are taken from that internal review.

54. Since June 2018 there had been 15 requests, ten of which were within five months. All except one led to a request for an internal review. They are becoming increasingly cumulatively burdensome, taking away time from operational work. The requestor often fails to engage with the reasoning provided by the IOPC and automatically requests an internal review. This is evidence of an intransigent mindset.

55. The requests are mainly for investigation reports and associated materials, and the refusals are generally because proceedings or processes were ongoing (whether misconduct, investigatory, inquest or criminal) or, where there are no ongoing processes, because the case is particularly sensitive. The IOPC generally relies on s 30, s 31 and S 40 and highlights that the public interest is served by details being made public through other proceedings or through the application of the IOPC publication policy.

56. The continued seeking of similar information in relation to recent or ongoing investigations where the IOPC consistently explain what information will be published in the context of IOPC's policies, such as the publication policy, and through the application of exemptions to ensure no inappropriate or premature disclosure of information into the public domain occurs, is beginning to engage a disproportionate resource.

57. Further, the following points are taken from the reasons for refusal set out in the letter to Mr. Williams dated 13 September 2019. The IOPC states that the reasons given in the review above apply equally to the current request, namely the

cumulative burden, the intransigent mind-set and that the purpose and value could not justify the impact on the IOPC.

58. The IOPC has explained on numerous occasions the exemptions that apply under FOIA, but Mr. Williams has persisted in making requests for the same type of information. The IOPC has explained its commitment to transparency as demonstrated by its publication policy. There is no indication of the overall purpose behind the requests or any wider value or public interest that could apply. Mr. Williams continues to make a high volume of requests in scattergun approach across the sector without any clear or coherent purpose and with no sign of stopping.
59. The fact that requests are regularly followed up with internal review requests with minimal or no representations suggests a motive of causing unwarranted disruption.
60. It is reasonable to anticipate that the IOPC will receive further requests for investigation related information.
61. The IOPC provided a table listing all 19 FOIA requests received from Mr Williams up to September 2019.

Discussion and conclusions

62. Although we have **dismissed** the appeal, we observe that the IOPC is not entitled to consider all subsequent requests from Mr. Williams to be vexatious. The IOPC must consider each individual request to determine if it is vexatious or not, taking into account all the relevant factors.
63. In reaching our conclusion we note that we need to determine whether the request not the requestor is vexatious, but that some of the factors identified in the case law do require a focus on the context, which includes, for example, motive and other requests made by this requestor.

The factors relevant to vexatiousness

64. The Tribunal considers the factors identified by the Upper Tribunal to be a helpful framework to structure its consideration of whether the request was vexatious but has had regard to the fact that it is not intended to be an exhaustive definition or a checklist for determination of this issue and that a holistic approach must be taken, with no one factor acting as a trump card.

Harassment and distress

65. There is no evidence of harassment or distress. We do not view Mr Williams' correspondence as rude or patronising.

Motive and purpose or value

66. We do not have any evidence before us on which we could base a conclusion that Mr Williams' motive in making the request, or in making requests to the IOPC in general, is to cause annoyance or disruption although that may be the result.
67. Mr Williams does not explain the purpose behind his request in his grounds of appeal. However, in his reply he states that there is a public interest in all his requests, because they relate to subjects such as deaths in police custody, police brutality and child sex grooming scandals.
68. In relation to this specific request he says that he was prompted to make the request after watching the video which shows Mr. Moura being arrested by the Greater Manchester Police for a breach of the peace, which he says is not an offence. Mr. Williams sets out the text from the video where a neighbour complains about one of the officers having 'kneed him several times' and states that it was 'a little excessive'. He states that Mr. Moura is 30 years old, committed no crime and left 4 children. He states that Greater Manchester Police know what happened but the IOPC and the Commissioner do not want anyone else to know.
69. The tribunal has before it the press release of the IOPC dated 20 August 2019 stating that the investigation had been concluded and the matter referred to the CPS. We assume that this had not been made public before 20 August 2019 and therefore as far as Mr. Moura was concerned, the IOPC investigation was still ongoing on 19 August 2019 when he made the request. It is possible that the fact that the investigation had been concluded and the matter referred to the CPS had been made public earlier, so we have considered this position in the alternative.
70. In relation to the specific request in issue we accept that Mr. Williams' motive in making the request stems from a genuine concern about the circumstances surrounding the arrest of Mr. Moura and from a genuine concern about the IOPC's repeated refusals to make reports and related information public. In isolation the request can be seen to have a genuine and serious underlying purpose.
71. However, although the request for information taken in isolation could be seen to have a serious purpose, that is not the approach we must take. We must look at the context. Mr Williams has the benefit of multiple responses from the IOPC highlighting the reason why the IOPC will not disclose reports or information while investigations or proceedings are still ongoing.

72. Despite this he persisted in making the request when he was aware that the matter was still under investigation by the IOPC (or, if the matter had been made public before 20 August, that it had been referred to the CPS). This undermines the argument that his request for information had a serious purpose and does in our view demonstrate an intransigent approach with disregard for any of the previous responses he has received.
73. Further, in terms of the value of the request, given that either the IOPC investigation was still ongoing or a referral had been made to the CPS, we find that there was no value in the public having access to this information at that particular time. Our starting point is that vexatiousness primarily involves making a request which has no reasonable foundation, that is, no reasonable foundation for thinking that the information sought would be of value to the requester or to the public or any section of the public.
74. At a time where releasing the information to the public is likely to jeopardise the chances of any offenders being brought to justice, we cannot see any reasonable foundation for thinking that the information could be of value to the public at that time. It is likely to be of interest to the public, but that is a different issue.
75. In that context, persisting with a request for the evidence underlying an IOPC report in the knowledge that the investigation is ongoing or a referral has just been made to the CPS is, in the light of all the previous responses received by Mr. Williams, a manifestly unjustified and inappropriate use of the FOIA.

Burden

76. We have looked at the request individually, but in a context which includes the other requests to the IOPC, most of which are for similar information (reports and related information) and have been refused on similar grounds.
77. We have not taken account of the large number of requests made by Mr Williams to other public authorities. Without specific information on the content of those requests and responses they are not relevant, in our view, to whether or not this particular request is vexatious.
78. Between June 2018 and September 2019 Mr. Williams made 19 requests, ten of which were within five months. The vast majority led to requests for an internal review. This is not vastly burdensome, but in the light of the description of the work involved by the IOPC we find that there is evidence of a significant burden over an extended period of time in dealing with Mr Williams' requests.
79. Overall we take the view that the burden on the IOPC of dealing with Mr. Williams' repeated requests for reports and related information at a point when investigations are continuing has become disproportionate and wholly unreasonable.

Conclusion

80. We have taken a holistic and broad approach and have looked at the entire course of dealings. We have considered the history of Mr Williams' dealings with the IOPC and we have considered the value and purpose of this particular request. Looking at all these factors we find that the request was vexatious in the sense of being a manifestly unjustified, inappropriate or improper use of the FOIA.

Signed Sophie Buckley

Judge of the First-tier Tribunal

Date: 17 February 2021

Promulgated: 19 February 2021

Amended decision: 2 March 2021