



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

Appeal Reference: EA/2020/0293

Decided without a hearing on 11 November 2021

Before

JUDGE BUCKLEY

JOHN RANDALL

EMMA YATES

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 of the procedural rules.

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 IC-38381-J7N5 of 7 October 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.

Note – appeal number EA/2020/0015

2. Two members of the current panel formed part of the tribunal that decided appeal number EA/2020/0015 which concerned a similar issue. Given the relevance in the current appeal of the past course of dealings between Mr. Williams and the public authority and the explicit adoption by the IOPC in this appeal of some arguments put forward in the other appeal, this tribunal has, at points, considered and then incorporated parts of the reasoning of the other tribunal from its decision in EA/2020/0015.

Factual background to the appeal

3. The requested information relates to the death of William Cameron on 8 January 2020, who died shortly after having been taken into police custody at Loddon Valley police station.
4. In a statement published on its website on 13 January 2020, the IOPC state that they have begun an investigation. The IOPC state:

The investigation is at an early stage and we are still gathering information. The Coroner has been informed, a post mortem examination carried out and we are awaiting the results.

5. An article in the Guardian published online on 11 February 2020 states in relation to William Cameron’s death:

The Independent Office for Police Conduct (IOPC) has confirmed that a police sergeant and a healthcare professional are subject to a criminal investigation in relation to his death.

Requests, Decision Notice and appeal

The Request

6. Mr. Williams made the following request to the IOPC on 12 February 2020 (titles in square brackets inserted by the tribunal):

William Cameron died at Loddon Valley police station, near Reading in Berkshire, on 8 January.

The Independent Office for Police Conduct (IOPC) has confirmed that a police sergeant and a health care professional are subject to a criminal investigation in relation to his death.

REQUEST.

[Part 1]

Provide all image information (including video) of the victim taken on or about the time he died.

[Part 2]

Also:

State how many staff were employed by you in dealing with FOIA requests in 2018 and 2019.

Give their titles - assistant FOIA officer, supervisor etc

7. The scope of this appeal is confined to part 1 of the request.

The IOPC's reply

8. The IOPC replied on 11 March 2020. It supplied information in response to part 2. In relation to part 1 the IOPC confirmed that it held the request information but that it was refusing to supply it because the request was vexatious under s 14(1) FOIA. The IOPC upheld its decision on internal review on 9 April 2020. Mr. Williams referred the matter to the Commissioner on 13 April 2020.

The Decision Notice

9. In a decision notice dated 7 October 2020 the Commissioner decided that the IOPC had correctly applied s 14(1) FOIA.
10. The Commissioner was mindful that the request, although not obviously vexatious in itself, was made in the context of a series of requests for similar types of information, which had been refused on the grounds that the information was exempt from disclosure for clearly recognisable reasons.
11. The requests typically sought detailed information on reports and findings relating to IOPC investigations. They were generally refused on the basis of sections 30 (investigations and proceedings) and 40 (personal information) with the IOPC additionally citing s 14(1) in more recent cases.
12. The Commissioner noted that the IOPC was often in the process of responding to one or more of Mr. Williams requests for information when he submitted a fresh request. The request in this case was followed by another request eight days later and a further one two days after that.
13. The Commissioner gave weight to the IOPC's view that the volume and nature of Mr. Williams' requests and the resources it was required to spend dealing with requests, internal reviews, complaints to the ICO and appeals to the tribunal was placing an unwarranted and aggregated burden on the IOPC. The Commissioner concluded that the previous pattern of requesting was relevant.
14. The Commissioner recognised that there was a considerable public interest in a death in custody being thoroughly investigated, a strong public interest in investigating rigorously any allegations that police officers may have acted outside

of the law and a strong public interest in understanding the chain of events which led to the death, so that any lessons may be learned. She considered that this interest was best met by allowing the IOPC to thoroughly investigate the matter, rather than being required to disclose the evidence under the remit of the FOIA before it has been properly considered.

15. The Commissioner accepted that complying with the request in isolation would not cause a disproportionate or unjustified level of disruption. She recognised that meeting the commitment to transparency may involve absorbing a certain level of disruption and annoyance.
16. At the time the request was made the matter was subject to an active investigation by the IOPC which might lead to criminal prosecutions being considered and the information described in the request was evidence which would be considered in the investigation.
17. 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.
18. The requestor has asked for such information before from the IOPC and other law enforcement bodies. He has repeatedly been told that information about live investigation cases would be exempt from disclosure under s 30 and 40. The IOPC has previously told Mr. Williams that certain information about investigations may be published once formal procedures have been completed.
19. The Commissioner gave weight to the argument that that complainant would have been aware that a request to the IOPC for live, investigation related information was, in effect, futile.
20. The Commissioner balanced the purpose and value of the request against the detrimental effect on the public authority and considered, in the light of the degree of the dealings between Mr. Williams and the IOPC whether the request crossed the threshold of what was reasonable.
21. The Commissioner was satisfied that the first part of the request was a manifestly unjustified and improper use of FOIA. She was satisfied that the IOPC was entitled to apply s 14(1).

Notice of Appeal

22. In essence Mr. Williams argues that the Commissioner was wrong to conclude that the request was vexatious because:
 - 22.1. The Commissioner's conclusions presuppose that Mr. Williams agrees that the previous refusals were lawful.

- 22.2. Mr Williams does not accept that 'failing to learn' from previous requests satisfies the test in **Dransfield**.
- 22.3. A request for images leading to a man's death at a police station can never be vexatious in any circumstances.
- 22.4. It is not the role of the ICO to protect the public bodies from FOIA requests so they can get on with other things.
- 22.5. The IOPC is well funded and has a number of full-time staff to deal with requests.

The ICO's response

- 23. The Commissioner relies on the reasoning in the Decision Notice.
- 24. The IOPC supplied a schedule of requests demonstrating that it had received a total of 21 separate requests from Mr. Williams between June 2018 and January 2020. Many of the requests typically sought detailed information relating to investigations of the police by IOPC which were generally refused on the basis of ss 30(1)(a) and s 40 FOIA. Another similar matter is currently subject to an appeal to the first tier tribunal.
- 25. As well as the ongoing pattern the Commissioner took into the account the overlapping nature of the requests and that another request was submitted before the IOPC has had the opportunity to respond to another request. The Commissioner acknowledges the diversion of IOPC resources. The IOPC's dedicated resources should not be disproportionately consumed by one particular requestor.
- 26. The Commissioner recognises the serious purpose and value of the subject matter of the request but this cannot act as a trump card so as to tip the balance against a finding of vexatiousness.
- 27. Mr Williams has not provided any explanation of his motives which might have provided some insight in to any serious purpose or value in obtaining the requested information whilst the process remains ongoing and prior to any conclusions being reached. The IOPC explains on its website the type of information it proactively discloses at the conclusions of a matter.
- 28. Given Mr. Williams has failed to moderate his requests in terms of timing or contents and given his awareness that FOIA contains exemptions designed to protect information relating to investigations into police conduct, particularly whilst investigations are ongoing, it can only be determined that the request was an improper use of FOIA.

Mr William's reply

- 29. The IOPC has at least a team head and two full-time information rights workers. It is not overburdened in dealing with a request about a death in police custody.

30. The position of the IOPC and the Commissioner is that Mr. Williams should learn to 'take no for an answer' regarding FOIA requests regarding matters of public interest such as deaths in police custody. It is not vexatious to disagree that a request is futile.
31. Mr. Williams' position is that the IOPC is a failing organisation which deliberately or negligently either:
 - 31.1. Fails to issue reports in reasonable good time
 - 31.2. Issue reports which do not comply with the law
32. The IOPC's and the ICO's entire position is based on the proposition that a request for information before a report is published is vexatious. This is not a lawful basis for applying s 14. Given the time taken by the IOPC to publish appeal decisions there is no sensible basis for the IOPC/ICO position of 'wait for the report'.
33. Neither the IOPC nor the ICO have provided a single example of a request made by Mr. Williams to the IOPC that was not a matter of public interest. None of the requests were overlapping.

Issues

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

Legal framework

S 14(1) Vexatious Request

35. 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).
36. 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).
37. 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).

38. The ICO'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).
39. 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.
40. 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.
41. 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).
42. 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).
43. 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...

44. 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.
45. 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

46. 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 representations from the IOPC

47. The IOPC sets out its position in its letter to the Commissioner dated 2 September 2020 and in its letter to Mr. Williams dated 13 September 2019. In essence its position is that Mr. Williams request is not vexatious when considered in isolation but becomes so when the context and history is taken into account. The IOPC has refused ten other requests from Mr. Williams under s 14 (1) for very similar reasons. The IOPC provided an annex detailing the 24 requests they have received from Mr. Williams.
48. The IOPC relies on the following:
 - 48.1. The cumulative burden of the requests
 - 48.2. The extent to which they reveal an intransigent mindset

- 48.3. Evidence that their purpose and value could not justify the impact on the IOPC.
49. The IOPC state that it has explained on numerous occasions the sensitivities that limit the disclosure of specific investigation information and the exemptions that apply under FOIA, but Mr. Williams has persisted in making requests for the same type of information.
50. The IOPC has explained its commitment to transparency as demonstrated by its publication policy. The IOPC has published three updates on the progress of its investigation. The matter has been referred to the CPS for consideration of whether any officer should be prosecuted and their decision is awaited. The press release states that the IOPC will consider publishing their findings after all potential coronial, criminal and conduct proceedings have been concluded.
51. Mr. William has not provided any 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 a scattergun approach across the sector without any clear or coherent purpose and with no sign of stopping.
52. In virtually every case Mr. Willams follows up his request with an internal review request with minimal or no representations. The internal review requests are regularly submitted within minutes of receiving the response, indicating strongly that Mr. Williams has not fully considered the rationale for refusal. This behaviour appears to be replicated across the WDTK (WhatDoTheyKnow) based requests which suggests a motive of causing unwarranted disruption.
53. It is reasonable to anticipate that the IOPC will receive further requests for investigation related information.
54. The IOPC rely in addition on the reasons set out in their earlier decision letter of 22 February 2019 in relation to eight FOIA internal reviews where it says it identified the tipping point after which it considered requests from Mr Williams to be vexatious. The salient points from that letter were summarised by the first tier tribunal in its decision in EA/2020/0015 as follows:

The following points are taken from that internal review.

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.

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.

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.

Discussion and conclusions

55. Our conclusions apply to the request, not the requestor. 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.

56. As stated above, in the light of the adoption by the IOPC of arguments put forward in EA/2020/0015 and the relevance of, for example, the course of dealings between the parties, some of our conclusions and part of our reasoning mirrors that of the tribunal in EA/2020/0015. In all cases we have considered and reached these conclusions as a panel independently from the previous tribunal and in relation to the particular request in issue in this appeal.

The factors relevant to vexatiousness

57. 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

58. There is no evidence of harassment or distress.

Motive and purpose or value

59. Mr. Williams' motive in seeking this information is not set out explicitly in his grounds of appeal or reply. He states that a request for images leading up to a man's death can never be vexatious, unless the tribunal thinks that death at a police station is a trivial matter. In his reply he refers to the public interest in deaths in police custody and states:

I believe that the IOPC is a failing organisation which deliberately or negligently either:
Fails to issue reports in a reasonable good time.
Issue reports which do not comply with the law.

60. It is unclear to the tribunal why Mr. Williams might think that the disclosure, at such an early stage in the investigation, of photographs or video of Mr. Cameron

taken on or about the time he died could illuminate any of these concerns. However, the tribunal infers that Mr. Williams' motive is genuine, in the sense that we infer that his reason for making the request stems broadly from his concerns about the general public interest in preventing or properly investigating deaths in custody and/or from his concerns about the IOPC as a body.

61. Mr. Williams has a tendency to submit a request for an internal review within minutes of receiving a refusal. This is the case in many of his requests to the IOPC and to other public authorities. The request for an internal review often contains no or no detailed reasoning on why Mr. Williams disagrees with the refusal.
62. The IOPC submits that this is strong evidence that Mr. Williams has not fully considered the rationale for refusal and suggests a motive of causing unwarranted disruption.
63. We do not have sufficient evidence before us on which we could properly infer that Mr Williams' motive in making the request, or in making requests to the IOPC in general, is to cause disruption, although that may be the result.
64. Although the public interest is not a trump card, it is relevant to consider whether there is any reasonable foundation for thinking that the information sought would be of value to the requester or to the public, whether there is adequate or proper justification for the request, or whether the request is aimed at the disclosure of important information which ought to be made publicly available.
65. In this regard it is relevant to consider exactly what has been requested and when. This is a request made 5 weeks after Mr. Cameron's death. At that date the IOPC has confirmed that two individuals would be investigated for gross negligence and manslaughter and misconduct in public office. The response to the internal review was provided on 9 April 2020, only 3 months after the death. The investigation was ongoing in September 2020.
66. The request was for all images, including video, of Mr. Cameron taken on or about the time he died. Whilst the public might be interested in seeing these images, the tribunal does not agree that this is a request for information which 'ought to be made publicly available' at a time when the investigation had only just begun. We do not accept that a request for images taken on or about the time of death to be released at such an early stage in the investigation does have adequate and proper justification. We find that there was no value in the public having access to this information at that particular time.
67. 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.

68. 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.
69. Further, Mr Williams has had the benefit of multiple responses from the IOPC highlighting the reasons why the IOPC, in the ordinary case, will determine under s 30 that it is not in the public interest to disclose reports, evidence or related information while investigations or proceedings are still ongoing. Despite this he persisted in making the request when he was aware that the matter was still under investigation by the IOPC. Mr. Williams has not identified any particular features of this individual case which might tip the public interest in favour of disclosure *at this early stage*. 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.
70. In that context we find that requesting the images of Mr. Cameron taken on or about the time he died, in the knowledge that the criminal and/or IOPC investigation is ongoing, in the absence of any particular factors that might favour disclosure at such an early stage and in the light of all the previous responses received by Mr. Williams, is a manifestly unjustified and inappropriate use of the FOIA.

Burden

71. When considering the burden on the IOPC of responding to the request, we take into account the context of the course of dealings between the IOPC and Mr. Williams. Most of the other requests made to the IOPC are for similar information (reports and related information) which have mainly been refused on the grounds of s 30, s40 and s 14.
72. Between June 2018 and January 2020 Mr. Williams made 21 requests, ten of which were made within five months. Most 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.
73. We accept that the IOPC, like many other public authorities, has a dedicated team dealing with data protection and freedom of information matters. This does not mean that we can discount the burden of responding to Mr. Williams's requests. We agree with the Commissioner that the resources dedicated to dealing with such matters should not be disproportionately consumed by one particular requestor.
74. 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

75. We have looked at this request in the context of the course of dealings between Mr. Williams and the IOPC. We have taken the view that the burden of responding to Mr. Williams' requests has become disproportionate and unreasonable, even though the IOPC has a team dedicated to dealing with such requests and other related matters. Whilst we acknowledge that Mr. Williams is motivated by the public interest in avoiding or investigating deaths in custody, we have concluded that persisting with a request for these images at a time when in the criminal and/or IOPC investigation is ongoing, is, in the light of all the previous responses received by Mr. Williams, a manifestly unjustified and inappropriate use of the FOIA.
76. Taking a holistic approach, and looking at all the factors considered above, 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: 1 December 2021

Promulgated: 3 December 2021