

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 5 August 2015

Public Authority: Chief Constable of Avon and Somerset
Constabulary

Address: Force Headquarters
PO Box 37
Valley Road
Portishead
Bristol
BS20 8QJ

Decision (including any steps ordered)

1. The complainant has requested information relating to the injury on duty ("IOD") award review conducted by Avon and Somerset Constabulary ("the Constabulary"). The Constabulary considered that the request was vexatious and relied on section 14(1) of the FOIA to refuse to comply with it. The Commissioner's decision is that the Constabulary was not entitled to refuse to comply with the request under section 14(1) of the FOIA.
2. The Commissioner requires the Constabulary to take the following steps to ensure compliance with the legislation.
 - The Constabulary should disclose to the complainant any recorded information it holds which is relevant to her request or it should issue a new refusal notice which is compliant with the provisions of section 17 of the FOIA.
3. The Constabulary must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Background

4. Where a police officer has to leave the police service because of injuries sustained on duty they may be offered an IOD pension and an additional award to compensate them for any potential loss of future earnings. The award is calculated on a case by case basis and comprises a gratuity and a monthly payment. The gratuity is banded on a scale of one to four, with four being the highest. The award was originally funded centrally by the Home Office, but is now funded from the budget of each police force.
5. Both the pension and the award are paid for life, but the Police (Injury Benefit) Regulations 2006 ("PIBR") make provision for a review of the award by the police force concerned to ensure that the correct banding still applies over the life of the award, which can cover many years. Where significant changes have taken place which affect an individual's potential earnings, the banding may be increased or decreased as appropriate.
6. In 2014, following the publication of new Home Office guidance on the issue, the Constabulary took a decision to conduct a pilot review of the IOD awards it paid to 16 former officers. It was the first police force in England and Wales to do so. The decision has proved controversial among the former officers. The Constabulary says that awards may be increased as well as decreased, according to individual circumstances. However, many former officers are concerned that they will only be disadvantaged by the review.

Request and response

7. On 26 January 2015, the complainant wrote to the Constabulary via the What Do They Know Website¹ ("WDTK"), a website for submitting and archiving FOIA requests. She requested the following information:

"Please provide all correspondence between [two names redacted] both of Human Resources department and the legal department within Avon and Somerset Constabulary, concerning the administration of injury on duty awards.

¹ <https://www.whatdotheyknow.com/>

Correspondence will include emails, 419s and letters, ranging from 1 January 2014 until 26 January 2015."

8. The Constabulary issued a refusal notice on 2 March 2015, stating that it was not obliged to comply with the request because it was vexatious within the meaning of section 14(1) of the FOIA. It explained that its resources were being placed under significant and unjustified strain by the number of requests it had received from the complainant and others relating to its IOD award review.
9. The complainant requested an internal review and the Constabulary upheld its decision on 26 March 2015.

Scope of the case

10. The complainant contacted the Commissioner on 26 March 2015 to complain about the way her request for information had been handled. She expressed the view that the Constabulary is routinely designating any requests for information relating to its IOD award review as vexatious within the meaning of section 14(1), to impede scrutiny of the review process.
11. The focus of this notice is on the Constabulary's application of section 14(1).

Reasons for decision

Section 14(1)

12. Section 14(1) of the FOIA states that section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious.
13. The FOIA does not define the term vexatious, but it was discussed before the Upper Tribunal in the case of *Information Commissioner vs Devon County Council & Dransfield* [2012] UKUT 440 (AAC), (28 January 2013)².

² <http://www.osspsc.gov.uk/Aspx/view.aspx?id=3680>

14. In that case the Upper Tribunal defined a vexatious request as one that is a "*manifestly unjustified, inappropriate or improper use of a formal procedure*". The Tribunal made clear that the decision of whether a request is vexatious must be based on the circumstances surrounding the request.
15. 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) the harassment of, or distress to, staff.
16. The Upper Tribunal cautioned 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 request*" (paragraph 45).
17. In the Commissioner's view the key question for public authorities to consider when determining if a request is vexatious is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress.
18. The Commissioner has also identified a number of "indicators" which may be useful in identifying vexatious requests. These are set out in his published guidance on vexatious requests³. 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.
19. The Commissioner recognises that there is nothing in the FOIA which prevents the aggregation of requests from disparate sources for the purposes of section 14.

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http://ico.org.uk/~media/documents/library/Freedom_of_Information/Detail_ed_specialist_guides/dealing-with-vexatious-requests.ashx

20. The Constabulary considered this request with a number of other requests which it argued were made by individuals acting in concert. In reviewing its arguments the Commissioner has also noted the approach taken by the Information Tribunal when reviewing a number of decision notices involving Walberswick Parish Council⁴. In these cases the Tribunal accepted that a number of applicants were acting together in pursuance of a campaign, and that this was a relevant consideration as to whether the requests were vexatious.
21. Section 14 of the FOIA does not specifically contain a provision that if two or more requests are made "*by different persons who appear to the public authority to be acting in concert or in pursuance of a campaign*" then the requests may be considered together. The Commissioner must therefore assess the degree to which it can be said that the complainant and other requesters are acting in concert, before going on to consider whether it is reasonable for the Constabulary to refuse the complainant's request on this basis.

Evidence from the parties

The complainant's view

22. The complainant is a former police officer whose IOD award was being reviewed by the Constabulary.
23. She accepted that the Constabulary had the right to review awards paid to pensioners in line with the provisions of the PIBR. However, she considered that while the review provisions existed to cater for changes in the degree of disablement of an individual, the Constabulary's review was motivated by a desire to reduce expenditure on disabled former officers. She believed that the selection of only higher paid pensioners to take part in the review, together with comments allegedly made by the

⁴ http://www.informationtribunal.gov.uk/DBFiles/Decision/i1092/EA-2013-0080_02-10-2013.pdf

[http://www.informationtribunal.gov.uk/DBFiles/Decision/i1113/MacCarthy,%20John%20EA.2013.0079%20\(31.10.13\).pdf](http://www.informationtribunal.gov.uk/DBFiles/Decision/i1113/MacCarthy,%20John%20EA.2013.0079%20(31.10.13).pdf)

[http://www.informationtribunal.gov.uk/DBFiles/Decision/i1060/Harvey,%20Stephanie%20EA.2013.0022%20\(07.08.13\).pdf](http://www.informationtribunal.gov.uk/DBFiles/Decision/i1060/Harvey,%20Stephanie%20EA.2013.0022%20(07.08.13).pdf)

force's Police and Crime Commissioner that such payments are of no benefit to local people, supported this interpretation.

24. Between 28 July 2014 and 26 January 2015 the complainant had submitted five FOIA requests to the Constabulary. Three of the requests related directly to the IOD award review, one asked for information about the FOIA officer and one asked for minutes of finance meetings. Two of the requests asked for wide ranging information which was not centrally recorded, and were refused on grounds that the costs in complying with them would exceed the appropriate limit. It was only with the complainant's fifth request (for copies of correspondence between two individuals) that the Constabulary determined that section 14 applied.
25. The complainant believed that the Constabulary's approach to the reviews breached the PIBR and that the Constabulary was applying section 14 to avoid disclosing information which demonstrated the review was unlawful. Against this background she felt there was a significant public interest in transparency regarding the review process.
26. Commenting on the volume of requests the Constabulary had received, the complainant stated her belief that the review would eventually be extended to consider the awards paid to around 480 former officers. She felt that the review therefore had the potential to negatively and significantly affect the income of a great many people and their families, and that it was to be expected that there would be interest in the process from more than just those under immediate review. She commented:

"Any competent organisation would have readily foreseen there would be a sizeable increase in requests for information, whether by means of Freedom of Information Act requests or otherwise."
27. She also argued that the volume of requests which the Constabulary had received was evidence of widespread public concern about the reviews and that it was therefore in the public interest that the Constabulary be open and transparent about the review process.
28. The complainant rejected the Constabulary's contention that it was being subjected to a coordinated campaign by individuals acting in collaboration. She stated that she was acting alone.
29. She disagreed that the information she requested was not relevant to the IOD review and stated that as an affected party she was the best arbiter of what was and was not relevant to her concerns.

Avon and Somerset Constabulary's view

30. The Constabulary set out the wider context in which the complainant's request was received. In the wake of new Home Office guidance, in 2014

the Constabulary decided to conduct a pilot review of IOD awards made to 16 former officers, the complainant being one. It provided full details of the review process to each of the former officers and ensured they had direct contact with the Human Resources department, so that they could raise any individual concerns they had. It also published a substantial amount of information relating to the reviews: the information sent to reviewees, the questionnaire to be completed by reviewees, and correspondence between the Constabulary and the National Association of Retired Police Officers, the Crime Commissioner and Damian Green MP. Once the 16 reviews have been completed it said that it intends to publish further relevant documentation.

31. It was the Constabulary's view that the volume, timing, frequency, wording and nature of the requests submitted by a number of requesters (the complainant being one) suggested they were acting in concert against the Constabulary in pursuance of a common aim. The cumulative effect of the requests was designed to cause disruption with the intent that the Constabulary's FOIA team should face overwhelming difficulties complying with its legislative requirements towards other service users. It also considered that requests were being submitted as part of a large scale "fishing expedition" for information which could be used against it. It believed that the principle aim of the disruption and the fishing expedition was to pressure the Constabulary to abandon the IOD award review.
32. The Constabulary commented that taken individually, the majority of the requests would not be deemed vexatious. Rather, it was the cumulative effect of a concerted campaign that rendered individual component requests, vexatious. The Constabulary referred to the Commissioner's guidance on this point:

"A request which would not normally be regarded as vexatious in isolation may assume that quality once considered in context. An example of this would be where an individual is placing a significant strain on an authority's resources by submitting a long and frequent series of requests, and the most recent request, although not obviously vexatious in itself, is contributing to that aggregated burden"⁵

⁵ <https://ico.org.uk/media/for-organisations/documents/1198/dealing-with-vexatious-requests.pdf> paragraph 56

33. The Constabulary stated that the complainant had submitted six requests which followed this pattern and that it was only on receipt of her fifth request that it took the decision to apply section 14.
34. The Constabulary said that the requests amounted to a fishing expedition. It said that the complainant was utilising the FOIA in a persistent manner due to a general belief that the review process was unlawful but noted that none of her requests tackled the question of the legality of the reviews themselves. It felt this was evidence of her using the FOIA primarily as a means to pursue a grievance rather than as a mechanism for obtaining information. When considered in the context of the other requesters' requests, compliance with the complainant's request became unduly burdensome

Evidence of complainant acting in concert with others

35. The Constabulary drew the Commissioner's attention to evidence that the requesters were known to each other online. It noted that the complainant followed up a request submitted by another requester, via WDTK, with a supplementary question. It suggested that the complainant's knowledge of the request was indicative of her collaborating with the original requester.
36. It referred the Commissioner to an IOD Pensioners' Association website⁶ which had recently been created to represent the interests of former officers from different constabularies who have been injured on duty.
37. It said there was a clear link between the website and the FOIA requests, as information disclosed by the Constabulary in response to earlier FOIA requests had been placed on the website and was openly commented on by contributors.
38. It also provided to the Commissioner links to discussions on the IOD Pensioners' Association Facebook page⁷ in which discontent with the Constabulary's review was openly voiced. Posts on the page encouraged former officers to submit FOIA and subject access requests to the Constabulary, and the Constabulary's responses were discussed.

⁶ <http://iodpa.org/>

⁷ <https://www.facebook.com/pages/IODpaorg/421461824680086>

39. The complainant had been active on the page, commenting on and "liking" posts. Other individuals who had submitted requests to the Constabulary, had also commented on posts on the Facebook page. The Constabulary believed that this demonstrated that the complainant and the other individuals were aware of each other's interactions with the Constabulary over the IOD reviews.
40. It pointed to a particular post on the Facebook page early on 29 April 2015 by the page "owner", stating *"We have been asked to put a shout out to anyone from Avon and Somerset who is an IOD. Please contact us ASAP, your message will be treated in the utmost confidence"*.
41. This post was "liked" by the complainant (and others), indicating that she had seen it. A thank you post to those who had contacted IODPA was posted on the page later in the day. The Constabulary noted that this post was also "liked" by at least two other individuals that it had received FOIA requests from.
42. It further noted that on the same day, 29 April 2015, it received 18 requests for internal reviews from four individuals. Over the coming week it received a further eight requests for internal reviews from 4 individuals. It said that in each case it had issued the refusal notices in question (citing section 14) between 25 February 2015 and 3 March 2015. It suggested that the length of time between the refusal notices being issued and the internal review requests being submitted (nearly two months later, and all within a week of each other and employing similar wording) further pointed to a coordinated call to action having been made, and believed that this had come via the IODPA Facebook group posting on the 29 April. This, it said, was further evidence of people acting in concert, in furtherance of a campaign.
43. The Constabulary noted that it was a feature of the requests that most were made through the WDTK website. The Constabulary argued that given the volume of requests it was receiving, and based on its wider experience of receiving FOIA requests, it would have expected more variety in the medium by which requests were submitted, and that the majority of requests would be submitted from personal email accounts, if requests were not being coordinated in some way.
44. It also noted that the wording and the focus of some FOIA requests were very similar to those received from other individuals. For example, the complainant had also made a request for information about the Constabulary's FOIA functions which was of no apparent relevance to the IOD review, but it was a feature of the requests made by other requesters, at around the same time. Requests for correspondence between particular named individuals involved in the review were also a feature of the wider requests it had received, which it said suggested a

coordinated approach between requesters. A specific question about the review questionnaire was also repeated by three different requesters.

45. The Constabulary explained that it had initially tried to accommodate requesters by dealing with their requests and wherever appropriate, information had been disclosed. However, it had become aware of a clear pattern whereby when information was disclosed, the disclosure generated a further request from the requester. It was a feature of this cluster of requests that the further request did not appear to grow from or build on the information disclosed in response to the previous request (although requesters would sometimes build their requests around disclosures made to other requesters).
46. The Constabulary was concerned that there was potentially no end point to the requests. No matter how much information was disclosed to the group of requesters, further questions were submitted, almost regardless of the content of previous disclosures. Each answer generated another request, using similar wording to other requests already received, and frequently of peripheral or no relevance to the issue of IOD reviews (in the complainant's case – requests about the Constabulary's FOIA officer; leave arrangements for medical review staff).
47. The Constabulary believed this to be a deliberate and coordinated tactic by a group of people trying to disrupt and overwhelm its FOIA service provision, rather than representing a genuine desire for the information requested.
48. The Constabulary said that it would not have expected the review of awards paid to just 16 former officers to generate such a large number of requests for information. It cited the large number of requests it had received as evidence that a wider campaign had been orchestrated. It referred the Commissioner to a similar review it conducted during 2005/06, which generated only a handful of FOIA requests, many of which were forwarded to it via elected representatives. It said that while it understood that police pensioners from other forces may have an interest in what the Constabulary was doing, information would be of limited relevance as its review process would not be applied to them. Each police force was expected to put in place its own processes and procedures for conducting its own review.
49. The Constabulary also noted a distinct reduction in the number of requests received once it started to designate requests for information as vexatious, and considered this to be further evidence of people acting together and sharing information about the responses they were receiving.

The Commissioner's decision

50. The Commissioner acknowledges that at the time it originally considered the request the Constabulary was experiencing exceptionally high numbers of FOIA requests, and this was genuinely problematic for it.
51. As stated in paragraph 21, the matter for the Commissioner to determine here is the degree to which it can be said that the complainant and other requesters are acting in concert. If he is satisfied that they are, he must consider whether it is reasonable for the Constabulary to refuse the complainant's request on this basis.
52. In addressing the first point the Commissioner has looked at the IODPA website. IODPA appears to have been established in February 2015 – there are no website posts which pre date February 2015, and the first IODPA Facebook post is dated 7 February 2015. The Commissioner notes that IODPA was set up to help former police officers who have been injured while on duty, to network and to support each other in the wake of proposed changes to their pensions and awards. It describes itself as having a campaigning remit, albeit it is not clear how formally established the association is.
53. The IODPA Facebook page can be "liked" by anyone with a Facebook account. Posts of relevance to IODPA are made daily by the page owner and anyone can comment on them, whether they have "liked" the page or not.
54. The Constabulary's award review is discussed frequently on the IODPA Facebook page. When someone comments on or "likes" a post their name is visible and the Commissioner notes that the complainant and other requesters who the Constabulary suspects of acting in concert are among those whose names regularly appear on the page, suggesting they frequently visit the page. Furthermore, he notes that the same individuals appear to have submitted multiple complaints to him about the Constabulary's handling of their requests.
55. The Commissioner has noted several posts on the Facebook page which appear to be a call to action for group members. He has seen posts on the group encouraging members to make FOIA and subject access requests to the Constabulary. One post, dated 11 May 2015, included a link to the ICO website and a template letter. He also notes that he received a five complaints relating to 51 requests which were submitted to the Constabulary in the first 10 days of February 2015 (the Facebook page having been established at the start of February). Prior to that his records show that he had only received one complaint about the Constabulary in 2015 which related to the IOD issue, despite the fact the review had been underway for more than six months.

56. The Commissioner is therefore satisfied that there is a link between IODPA, the wider requests made to the Constabulary and the complaints submitted to the ICO.
57. However, the request under consideration here was submitted to the Constabulary on 26 January 2015. This pre-dates the creation of the IODPA website and Facebook page (the first post is dated 7 February 2015). The Commissioner accepts that it is possible that the complainant and other requesters were known to and in touch with each other prior to the setting up of the IODPA website and Facebook page (indeed, this might have been what inspired the creation of both), but the Constabulary has not supplied any evidence to support this. The tone of the complainant's comments on the Facebook page does not suggest that she had been part of such a network. While it is clear that the complainant was aware of the activism encouraged by IODPA from February onwards, there is no evidence to show that either the IODPA website or Facebook page were involved in orchestrating this particular request, which is what the Constabulary had argued.
58. The Commissioner has looked at the other evidence offered by the Constabulary. It stated that the supplementary question the complainant submitted following on from one submitted by another requester was evidence of her acting in concert with the original requester. The Commissioner notes that the original request and response are shown on the Constabulary's own website in its previous FOIA request section⁸. Anyone with an interest in knowing what the Constabulary had been asked about the IOD reviews and what responses it had given could easily retrieve the information. The Commissioner therefore considers this only to be evidence of the complainant having conducted research, rather than of her acting in concert with the original requester.
59. The Constabulary mentioned that the wording and focus of some requests was similar, and that this was suggestive of requesters acting together. The Commissioner notes that the complainant did submit a request for information about the FOIA Officer. This information was, on the face of it, irrelevant to the IOD award reviews, yet it was a feature of the requests of at least two other requesters, who were also concerned with the IOD award reviews.

⁸ <https://www.avonandsomerset.police.uk/about-us/freedom-of-information/previous-foi-requests/injury-on-duty-pensions/police-injury-pension-reviews/>

60. However, that particular request was submitted by the complainant on 28 July 2014, which was quite considerably earlier than the other similar requests (which, as far as the Commissioner can see, all appear to have been submitted in 2015). While the complainant's request may subsequently have formed the basis for the requests submitted by the other requesters, there is no evidence to suggest that she herself was collaborating with anyone when making the request.
61. Similarly, with reference to the Constabulary's assertion that information disclosed in response to requests had found its way onto the IODPA website, it did not show which, if any, of the complainant's requests were involved.
62. Taking all of the above into account, the Commissioner is therefore not satisfied that the complainant can be considered to have been acting in concert with other requesters when making the particular request under consideration here. The Constabulary was therefore not entitled to consider the cumulative effect of the other requests it had received when determining whether the complainant's request was vexatious.
63. The Constabulary did not supply any grounds for considering the request vexatious when considered on its own merits (in fact, as noted in paragraph 32, it stated quite the opposite). The Commissioner has looked at the request alone and in the context of the complainant's other requests. As previously stated, she had made five requests between July 2014 and January 2015. They were made with intervals in between, clearly described the information she required, were civil in tone and the complainant had a legitimate interest in information relating to the IOD review. The threshold for considering a particular request to be vexatious is necessarily high, as doing so disengages the rights set out at section 1. In the absence of any wider arguments from the Constabulary the Commissioner does not consider this request would meet any of the other thresholds for being considered "vexatious".
64. The Commissioner therefore considers the Constabulary was not entitled to rely upon section 14 to refuse to comply with the request.

Right of appeal

65. 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@hmcts.gsi.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

66. 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.
67. 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

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