

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 27 February 2024

**Public Authority:** Independent Office for Police Conduct  
**Address:** 90 High Holborn  
London  
WC1V 6BH

### **Decision (including any steps ordered)**

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1. The complainant requested statistical information from the Independent Office for Police Conduct (IOPC) relating to deaths in custody investigations and their outcomes from the year 2009/10 to the most recent available data. The (IOPC) refused to comply with the request citing section 12 (cost limit) of FOIA.
2. The Commissioner's decision is that the IOPC was entitled to refuse to comply with the request in accordance with section 12(1) of FOIA. The Commissioner also finds that the IOPC complied with its obligations under section 16 to offer advice and assistance.
3. The Commissioner does not require the IOPC to take any steps.

### **Request and response**

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4. On 27 June 2023, the complainant made the following request for information to IOPC:

"I would like to make an FOI request with regards to deaths in custody investigations and their outcomes.

I would like to know from the year 2009/10 till the most recent available data, the outcomes of deaths in custody investigations where officers have been found to have a case to answer. I would

like to know what disciplinary actions were taken for each case whether that be a dismissal or written warning etc.

Can the data be provided in a tabular format in csv or similar document format.”

5. The IOPC responded on 31 July 2023. It stated that it held information within the scope of the request, but that the cost of complying with the request would exceed the cost threshold of £450 for public authorities. In accordance with this finding, IOPC issued a section 12 refusal notice in reply to the complainant’s request for information. IOPC explained that, due to the nature of the request, it was not possible to offer advice and assistance which would enable the information to be provided without exceeding the cost limit.
6. IOPC upheld its initial application of section 12 of FOIA via internal review on 4 September 2023.

## Scope of the case

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7. The complainant contacted the Commissioner on 15 September 2023 to complain about the way their request for information had been handled. The complainant disagrees with IOPC’s application of section 12 of FOIA as they believe that the IOPC already has the information to hand as it publishes outcome reports on a yearly basis.
10. The Commissioner considers the scope of this case to be to determine if IOPC has correctly cited section 12(1) of FOIA in response to the request. The Commissioner has also considered whether IOPC met its obligation to offer advice and assistance, under section 16 of FOIA.

## Reasons for decision

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### Section 12 – cost of compliance

11. Section 12(1) of the FOIA states that a public authority is not obliged to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the “appropriate limit” as set out in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (“the Fees Regulations”).
12. The appropriate limit is set in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 at £600 for central government, legislative bodies and the armed forces and at £450 for all other public authorities. The appropriate limit for IOPC is £450.

13. The Fees Regulations also specify that the cost of complying with a request must be calculated at the rate of £25 per hour, meaning that section 12(1) effectively imposes a time limit of 18 hours for IOPC.
14. Regulation 4(3) of the Fees Regulations states that a public authority can only take into account the cost it reasonably expects to incur in carrying out the following permitted activities in complying with the request:
  - determining whether the information is held;
  - locating the information, or a document containing it;
  - retrieving the information, or a document containing it; and
  - extracting the information from a document containing it.
15. A public authority does not have to make a precise calculation of the costs of complying with a request; instead only an estimate is required. However, it must be a reasonable estimate. In accordance with the First-Tier Tribunal in the case of *Randall v Information Commissioner & Medicines and Healthcare Products Regulatory Agency EA/2007/0004*, the Commissioner considers that any estimate must be "sensible, realistic and supported by cogent evidence". The task for the Commissioner in a section 12 matter is to determine whether the public authority made a reasonable estimate of the cost of complying with the request.
16. Section 12 is not subject to a public interest test; if complying with the request would exceed the cost limit then there is no requirement under FOIA to consider whether there is a public interest in the disclosure of the information.
17. Where a public authority claims that section 12 of FOIA is engaged it should, where reasonable, provide advice and assistance to help the requester refine the request so that it can be dealt with under the appropriate limit, in line with section 16 of FOIA.

**Would the cost of compliance exceed the appropriate limit?**

18. The Commissioner asked the IOPC to provide a detailed estimate of the time/cost taken to provide the information falling within the scope of this request.
19. The complainant requested clarification from IOPC on the data it already publishes annually and why deaths in custody data could not be extracted as follows:

"From what I can see, work has already been done to look at existing <sup>1</sup>IOPC investigations and their outcomes.

My request is essentially to separate out the deaths in custody investigation outcomes from the wider total investigations. I don't see how those numbers would not be easily available given the existing analysis."<sup>i</sup>

20. In its responses to the complainant, the IOPC provided a detailed summary of activities required to facilitate the collation of the data requested from the existing Outcome reports and summarised as follows:

"The data is not straightforward to locate, extract or report on because it cannot be identified and retrieved solely by means of automated searches of our case management system or manipulation of databases. Additionally, the often-complex nature of the investigations; the variable timespan of associated proceedings; as well as the fact that cases can involve a number of subjects and linked misconduct investigations mean that investigations must be manually scrutinised to obtain a true and representative dataset."

21. In its submission to the Commissioner IOPC stated that they had consulted with the performance teams and the data analysts within the IOPC who produce the investigations outcomes reports published annually by the IOPC to determine if they could use these datasets to extract the information within the scope of the request.
22. The IOPC analysts explained that they were unable to locate, extract or validate the sensitive data within the 10 years plus timespan requested by the complainant as only part of the data and information was taken from a live system which had limitations on the level of detail it provided. Collation of the data would be from a combination of automated data sets, an analysis of correspondence, and consultation with key stakeholders. The data recorded for older cases would require extensive checks and validation as some outcomes would have changed since publication as investigations and proceedings have completed.
23. The existing data therefore needed to be re-analysed to produce up to date, high quality and accurate reports suitable for publication and

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<sup>1</sup> [Search results for "Investigations and outcomes" | Independent Office for Police Conduct \(IOPC\)](#)

“reflective of its importance and profile”. An officer from the IOPC would then have to undertake the following:

- Identify the cases from the deaths in or following custody data for each year and check they are within scope of the request.
  - Preliminary scope the number of subject officers involved (up to 5) and for each one, identify details of notices served, case to answer findings, outcome of misconduct proceedings.
  - Interrogate the Outcomes Tracker database for other relevant case data. Validate and cleanse data quality issues – Analyse and resolve anomalies and double check accuracy of information before data retrieval and inclusion.
  - Check the relevant regulatory framework used for outcome decisions and how this impacted on the final case to answer (CTA) decision process.
  - Consult with all key stakeholders and Media teams as necessary to confirm outcomes on each subject involved in case and assure its accuracy.
24. The IOPC further explained that it had undertaken a sampling and scoping exercise using the underlying data outcome reports between 2018/19 to 2021/22 to see if they could provide more recent years information and had identified 65 relevant cases. However, data quality checks showed 13 obvious anomalies requiring further and more in-depth investigation and analysis.
25. The IOPC concluded that a minimum one fifth error rate on the quality of data would be insufficient to provide accuracy on a highly sensitive subject without a manual doublecheck and validation of each line of data which is both a complex and time-consuming exercise. Additionally, there is no average time or formula that can be applied to estimate time required to complete a case as some cases involve numerous and protracted enquiries over several weeks.
26. The IOPC explained that the time already spent in identifying relevant cases, undertaking preliminary outcome tracking work and identifying information gaps and anomalies had already exceeded the cost limit as prescribed by FOIA.
27. The IOPC provided a supporting example of a similar exercise conducted to provide information on an unconnected outcome which had identified 47 cases with a data anomaly. The corresponding data quality and cleanse exercise in this case, took four months to obtain an accurate report on which the IOPC could rely.

28. The IOPC estimated that it would require considerably more than 18 hours to complete this task, even if it restricted it to the years 2018/19 onwards once the time already taken to locate and retrieve the sampling data which had 18 additional data anomalies was considered.
29. Whilst the IOPC has not been able to fully estimate and provide an average time required to check each case due to the additional variables of each case to ensure accuracy, the Commissioner is satisfied that the IOPC arguments are justified.
30. It has explained how the IT system works and what additional work would be required to obtain the requested and accurate information suitable for publication. Even if it took just 16 minutes to locate, extract and validate 65 cases within the sampling exercise alone, (without an identified error), which realistically may not be sufficient time, it would require 1040 minutes or 17.3 hours to ensure it completed the task within the time and cost limits. The cost of extracting all of the data in scope of this broad request would far exceed the cost limit.
31. The Commissioner considers that IOPC estimated reasonably that it would take more than the 18 hours / £450 limit to respond to the request. IOPC was therefore correct to apply section 12(1) of FOIA to the complainant's request.

**Section 16(1) – The duty to provide advice and assistance.**

32. Section 16(1) of FOIA provides that a public authority should give advice and assistance to any person making an information request. Section 16(2) clarifies that, providing an authority conforms to the recommendations as to good practice contained within the section 45 code of practice<sup>2</sup> in providing advice and assistance, it will have complied with section 16(1).
33. Where a public authority claims that section 12 of FOIA is engaged it should, where reasonable, provide advice and assistance to help the requestor refine the request so that it can be dealt with under the appropriate limit in line with section 16 of FOIA.
34. The IOPC explained that, due to the nature of how the information is held, data anomalies within the IT system, and that time limits and costs were already exceeded on the sampling exercise and shortened

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<sup>2</sup> <https://www.gov.uk/government/publications/freedom-of-information-code-of-practice>

time frame alone, that no further meaningful advice could be offered to refine the request at this time. The Commissioner considers that this meets the obligations of section 16 of FOIA.

35. The Commissioner is therefore satisfied that IOPC met its obligations under section 16 of FOIA.

## Right of appeal

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36. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)  
GRC & GRP Tribunals,  
PO Box 9300,  
LEICESTER,  
LE1 8DJ

Tel: 0300 1234504

Fax: 0870 739 5836

Email: [grc@justice.gov.uk](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

37. 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.
38. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Michael Lea**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
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**SK9 5AF**

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