

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 7 March 2016

Public Authority: Chief Constable of Nottinghamshire Police

Address: Police HQ
Sherwood Lodge
Arnold
Nottingham
NG5 8PP

Decision (including any steps ordered)

1. The complainant has requested information regarding an investigation. Nottinghamshire Police applied section 14(2) (repeated requests).
2. The Commissioner's decision is that Nottinghamshire Police has applied section 14(2) appropriately to the request.
3. The Commissioner requires Nottinghamshire Police to take the following steps to ensure compliance with the legislation.
 - Issue a fresh response to question 1 of the request.
4. Nottinghamshire Police 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

5. The complainant was charged with rape and found guilty. On appeal his conviction was overturned.
 6. The case was reported in the media and the complainant was named.
-

Request and response

7. On 31 January 2015 the complainant wrote to Nottinghamshire Police (NP) and requested information in the following terms:

"1) Was Operation [redacted], the Nottinghamshire Police investigation into [name redacted] which commenced in July 2011, [the] subject of an internal/external review under any formal policy or informal or casual agreement?

2) If a review of Operation [redacted] was conducted, who commissioned the review, when did it take place and by whom?

3) What were the findings from the review?

4) What were the recommendations resulting from the review?

5) If a review has not yet taken place, is there an intention to do so and if so, in what time frame?

6) Have any officers or Police Staff involved in Operation [redacted] been subject of any formal or informal investigation or sanctions resulting from the overturned conviction and failings of this operation?"

8. NP responded on 21 February 2015. In relation to questions 1-5 it cited section 14(2) (repeated request) and in relation to question 6 confirmed that investigations were on-going. NP also explained that it considered that the request was for the same information as a previous request of 15 December 2014 and that if it received any further requests for this information, it may consider the application of section 14(1) (vexatious requests).

9. Following an internal review NP wrote to the complainant on 26 March 2015. It upheld its original decision, explaining that it considered that although the present request was not exactly the same as the December 2014 request, it met the threshold for section 14(2) ie the request was identical or substantially similar to the 2014 request. NP also explained that in the spirit of the FOIA but outside of its scope, it was able to confirm that no internal/external reviews had been carried out.

Scope of the case

10. The complainant contacted the Commissioner on 2 April 2015 to complain about the way his request for information had been handled. He explained that he did not consider that NP had the right to apply

section 14(2) or to claim that it would consider applying section 14(1) to any further requests.

11. The complainant also explained that he was dissatisfied as his wife had made a separate request relating to his present request and it was apparent that there had been at least a partial review. He also expressed dissatisfaction with the police officers responsible for the collation and disclosure of the requested information.
12. However, the Commissioner cannot investigate what the complainant's wife was informed of or how certain police officers have acted.
13. The Commissioner will consider whether NP has applied section 14(2) of the FOIA appropriately.

Reasons for decision

14. Section 14(2) of FOIA states that:

"Where a public authority has previously complied with a request for information which was made by any person, it is not obliged to comply with a subsequent identical or substantially similar request from that person unless a reasonable interval has elapsed between compliance with the previous request and the making of the current request."

15. In order for section 14(2) to apply the following criteria must be fulfilled:
 - the request is identical or substantially similar to a previous request from the same requester;
 - the public authority must have provided the information or confirmed that it does not hold the information in response to a previous request from the requester and;
 - a reasonable interval has not elapsed between the making of the new request and compliance with the previous request.

Was the present request made by the same person?

16. The Commissioner has considered the December 2014 request (please Appendix 1 for the full request) and is satisfied that it is from the same person as the present request.

Is the present request identical or substantially similar to the previous request?

17. The complainant explained that he considered that his present request was a completely new one. He pointed to question 1 of his December 2014 request which asked whether or not NP had "*an internal 'Serious Case Review' policy for offences such as Murder, Rape etc*" whereas in his present request he asked "*Was [redacted], the Nottinghamshire Police investigation into [name redacted] which commenced in July 2011, [the] subject of an internal/external review under any formal policy or informal or casual agreement?*".
18. In his guidance "Dealing with repeat requests (section 14(2))"¹ (the guidance) the Commissioner considers that a request will be identical or substantially similar to an earlier request if either:
 - the wording is different but the scope of the request (the criteria, limits or parameters which define the information being sought) is the same as for a previous request or
 - the scope of the request does not differ significantly from that of the previous request (regardless of how the request is phrased).
19. The Commissioner also considers that if there is an overlap in the scope of the requests but they are not identical, the question about whether they are identical or substantially similar will depend on the significance of those differences.
20. Furthermore, the Commissioner considers that section 14(2) cannot be applied to requests where only the subject or theme is identical or substantially similar. In the Information Tribunal (the tribunal) case of *Robert Brown v ICO (EA/2006/0088, 2 October 2007)* an applicant submitted an extensive number of requests to the National Archives. Each request referred to a particular document and asked for any information in it relating to the Princess Margaret Townsend affair and any illegitimate child born to the Princess in 1955. The tribunal held that section 14(2) was not engaged and commented that: "*TNA relies on section 14(2) to assert that all of the Appellant's individual requests were identical or substantially similar requests, and that therefore, it*

¹ <https://ico.org.uk/media/for-organisations/documents/1195/dealing-with-repeat-requests.pdf>

was not obliged to comply with them. In our view this misconstrues section 14(2). The Appellant's requests were for information about 'Princess Margaret Townsend Affair; and or any illegitimate child born on or about 05/01/55 to Princess Margaret' from specific records. If TNA had complied with the request in relation to one specific record and the Appellant had then repeated the request for the information from the same record, section 14(2) would apply."

21. The Commissioner has considered both of the requests. He notes that questions 4, 5, 6 and 7 in the December 2014 request which were answered by NP, are identical to questions 2, 3, 4 and 5 of the present request. However, in relation to question 1 of the present request, the Commissioner does not consider that this is identical or substantially similar to the previous request, for the purposes of section 14(2). He notes that question 3 of the December 2014 request asks whether operation [redacted] was the subject of an internal/external review under the "Serious Case Review" policy but in question 1 of the present request, the complainant asks whether operation [redacted] was the subject of an external/internal review under any formal policy or informal or casual agreement.
22. As the Commissioner considers that questions 2, 3, 4 and 5 are identical to questions 3, 4, 5 and 6 of the previous request, for the purposes of section 14(2), he will go on to consider whether there has been a reasonable interval between the requests.

Has a reasonable interval elapsed between compliance with the previous request and the making of the current request?

23. The Commissioner notes that in relation to questions 4, 5, 6 and 7 of the previous request, NP provided the complainant with information. When considering whether a reasonable interval has elapsed between compliance with the previous request and the making of the current request, the Commissioner notes in his guidance that if a request is identical or substantially similar to a previous request by the same individual, it cannot be refused as repeated unless a reasonable interval has elapsed between the respective requests.
24. As the FOIA does not define what is meant by a reasonable interval the Commissioner's view is that this should be determined by taking the following into account;
 - The likelihood that the information will differ significantly from that provided in response to the previous request.

- The amount of time that has passed (where it is unlikely that the information will differ in any significant way) since the authority complied with the previous request.
25. In this case, the Commissioner considers that, given the way questions 4, 5, 6 and 7 in the December 2014 request and questions 2, 3, 4 and 5 in the present request are phrased, the initial answers provided by NP would not have changed. The Commissioner went on to consider the amount of time that has passed since NP complied with the previous request. He notes that NP complied with the previous request on 13 January 2015 and that the complainant made the current request on 31 January 2015.
 26. Having considered the above, the Commissioner is satisfied that a reasonable interval had not elapsed between compliance with the previous request and the making of the current request.
 27. The Commissioner notes that in its internal review, NP explained to the complainant that, outside of the FOIA but in the spirit of it, it could confirm that it had not conducted any internal/external reviews. However, he also notes that NP did not answer whether any review had been conducted under any informal or casual agreement, in relation to question 1 of the current request.
 28. The Commissioner also considers that the request is a multipart request.
 29. In his guidance, the Commissioner explains that he considers that a public authority needs to treat each element of a multipart request as a separate request and can only refuse any repeated elements under section 14(2).
 30. The Commissioner notes that NP has answered the question 6 in the current request, as it had not applied section 14(2) to it.
 31. Taking the above into account, the Commissioner considers that NP has applied section 14(2) appropriately to questions 2, 3, 4 and 5 of the present request. However, he considers that question 1 is not identical or substantially similar to the December 2014 request, for the purposes of section 14(2).
 32. The Commissioner therefore considers that NP must issue a fresh response to question 1 of the present request.
-

Other matters

33. The Commissioner notes that the request is related to the complainant. However, he considers that although this could have been considered under section 40(1) (personal information), it could also be considered under section 14(2).
34. The Commissioner also notes that the complainant considers that NP should not have stated that it might consider the application of section 14(1) to any future requests. However, the Commissioner considers that it is good practice for a public authority to inform an applicant if it considers that it might apply section 14(1) to future requests on the same topic.

Right of appeal

35. 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

36. 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.
37. 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

Jon Manners
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Appendix 1- Request of 15 December 2014

"1) Please specify whether or not Nottinghamshire Police have an internal 'Serious Case Review policy' for offences such as Murder, Rape etc.

2) If such a policy exists, please disclose the contents (Redacted if necessary).

3) Was Operation [redacted], the Nottinghamshire Police investigation into [name redacted] which commenced in July 2011, [the] subject of an internal/external review under the 'Serious Case Review' policy?

4) If a review of Operation [redacted] was conducted, who commissioned the review, when did it take place and by whom?

5) What were the findings from the review?

6) What were the recommendations resulting from the review?

7) If a review has not yet taken place, is there an intention to do so and if so, in what time frame?"