

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 26 May 2022

Public Authority: College of Policing
Address: Central House
Beckwith Knowle
Otley Road
Harrogate
HG3 1UF

Decision (including any steps ordered)

1. The complainant requested a copy of training materials relating to two counter-corruption training courses. The College of Policing refused to provide the requested information, citing section 14 (vexatious request) of FOIA.
2. The Commissioner's decision is that the College of Policing was entitled to rely on section 14(1) to refuse the request.
3. The Commissioner requires no steps to be taken as a result of this decision.

Request and response

4. On 22 April 2021, the complainant wrote to the College of Policing (the College) and requested information in the following terms:

"Please disclose an electronic copy of all training materials used as part of the following courses:

- Counter-corruption investigators course
(<https://www.college.police.uk/career-lea...>)
- Counter-corruption lead investigator course
(<https://www.college.police.uk/career-lea...>)

I am sure that some of the information within the scope of my request will be exempt, but I am equally certain that much of it will not be”.

5. The request was made using the 'whatdotheyknow' website.
6. The College responded on 18 May 2021. It refused to provide the requested information. It cited section 14(1) (vexatious request) of FOIA as its basis for doing so.
7. The complainant requested an internal review on 18 May 2021 on the basis that the College appeared to be in breach of section 16 (advice and assistance) of FOIA.
8. Following an internal review the College wrote to the complainant on 16 June 2021 maintaining its original position with regard to its application of section 14. With respect to the complainant's comments about section 16 of FOIA, it disagreed that there was a breach.

Scope of the case

9. The complainant contacted the Commissioner on 16 June 2021 to complain about the way his request for information had been handled. He considered that the College's response to his request breached both sections 14 and 16 of FOIA.
10. During the course of the Commissioner's investigation, the College confirmed its application of section 14 on the grounds of burden.
11. The analysis below considers the College's application of section 14 of FOIA to the requested information. It also considers whether it was reasonable to expect it to provide advice and assistance (section 16 of FOIA).

Reasons for decision

Section 14 vexatious and repeated requests

12. Section 14(1) of FOIA is designed to protect public authorities by allowing them to refuse any requests which have the potential to cause a disproportionate or unjustified level of disruption, irritation or distress.
13. FOIA gives individuals a greater right of access to official information in order to make bodies more transparent and accountable. As such it is an important constitutional right. Therefore, engaging section 14(1) is a high hurdle.

14. Most people exercise their right of access responsibly. However, a few may misuse or abuse FOIA by submitting requests which are intended to be annoying, disruptive or have a disproportionate impact on a public authority.
15. In his published guidance on dealing with vexatious requests¹, the Commissioner considers the key question the public authority must ask itself is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress.
16. In that respect, his guidance advises public authorities that:

“A useful starting point is to assess the value or purpose of the request before you look at the impact handling the request would have on you”.
17. The emphasis on protecting public authorities’ resources from unreasonable requests was acknowledged by the Upper Tribunal in the leading case on section 14(1), Information Commissioner vs Devon County Council & Dransfield [2012] UKUT 440 (ACC), (28 January 2013).
18. 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) harassment or distress of and to staff.
19. The Upper Tribunal did, however, also caution that these considerations were not meant to be exhaustive. The Upper Tribunal emphasised that:

“all the circumstances need to be considered in reaching what is ultimately a value judgement as to whether the request in issue is vexatious in the sense of being a disproportionate, manifestly unjustified, inappropriate or improper use of FOIA” (paragraph 82).

The College’s view

¹ <https://ico.org.uk/for-organisations/guidance-index/freedom-of-information-and-environmental-information-regulations/dealing-with-vexatious-requests-section-14/>

20. In correspondence with the complainant, the College told him that to provide him with the requested information "would involve extensive reading and redaction of over approximately 300 documents, video and audio files".
21. Taking into account the volume of information to be considered for redaction and the resulting burden to the College in reviewing and preparing the information for possible disclosure, it considered it was entitled to treat the request as "over burdensome to the organisation".
22. In its submission to the Commissioner, the College acknowledged that the information is likely to be of interest and value to the complainant and disclosing the material requested would be likely to have a positive impact on its commitment to openness and transparency.
23. It also acknowledged that there is a wider public interest in knowing more about the work that it does and the training that is available on the topic of counter-corruption.
24. It told the Commissioner:

"It is for these reasons that I do not deem this request to be frivolous, futile or that the applicant was making a deliberate attempt to cause annoyance by sending this request".
25. Instead, it explained that its decision to apply section 14 in this case relates to what it described as:

"... the burden that would be placed on the College and the disproportionate effort in considering the vast amount of material within the scope of this request".
26. Having revisited its handling of the request, the College told the Commissioner that the original estimate of 300 files "appears to have been a very conservative one".
27. It explained that, following the Commissioner's intervention, and in order to provide a more accurate assessment, it had utilised the properties setting data within each of the courses specified in the request.
28. It told the Commissioner that one of the courses comprises:

"84 separate files, 15 folders, totals 672 MB (704,897,223 bytes) of information and includes over 700 separate pages of material".
29. Similarly, it told him that the other course consists of 984 files across 137 folders and totals 3.06 GB (3,286,269,104 bytes) of information.

30. It argued that much of the material within the scope of the request, by its very nature, is likely to be subject to exemption. Given the nature of the requested material, it considered that a number of exemptions could apply including sections 31(1)(a) (Law Enforcement), 38(1) (Health and Safety), 40(2) (Personal Data) and 43(2) (Commercial Interests).
31. The College told the Commissioner that its role is not limited to supporting policing within the UK. It argued that counter-corruption is a unique area of training and may be relevant to other organisations, security services and governments.
32. It told the Commissioner that releasing information relating to training in counter-corruption, and police tactics in that area, may undermine its ability to train officers, provide granular detail to those who might misuse it and ultimately would have an impact on public trust and safety. It argued:

“... For these reasons, it is highly likely that we would have to exempt and redact a large proportion of material in order to uphold that end objective. Such a risk to public trust and safety cannot be said to be in the public interest. This is where the burden and disproportionate effort considerations come into play; there is a considerable amount of work to be done for what is likely to be a very small amount of material released at the end of the process”.

33. Similarly, it told him:

“It is questionable how much value there would be in the material deemed suitable for disclosure at the end of an extensive review process given the large number of exemptions that would likely apply and the redactions that would be needed”.

34. The College also told the Commissioner that the requested material is kept secure at all times, and that, to access the courses in order to consider them under FOIA, special permission has to be granted by the relevant team.
35. In support of its view regarding the burdensome nature of the request, the College provided the Commissioner with the following calculation based on one of the courses specified in the request, the one with the smaller number of files:

“700 pages (approx.) x 3-minute legal review per page (modest assessment) = 2100 minutes

This would need to be mirrored by the relevant SME [subject matter expert] at the same pace = 2100 minutes

This provides a total timeframe of = 4200 minutes or 70 hours work”.

36. It argued that additional time would also be required to consider the exemptions in detail, properly balance the public interest test, if required, and complete the necessary redactions.
37. In support of its arguments that complying with the request would be burdensome, the College told the Commissioner:

“... 35 hours of time is an intense full week’s work for one team member and would only cover the initial review of the material”.

38. It told the Commissioner that conducting the initial review alone:

“would cause substantial disruption to our team and our ability to properly support policing and the functions of the College”.

39. Similarly, it argued that the involvement of a subject matter expert to ensure that all information that should be considered for exemption has been properly redacted. “would take them away from their area of the business and impact on our ability to train police officers and keep the public safe”.
40. Although it did not provide an estimate of the time required to consider disclosure of the second course within the scope of the request, the College described this a ‘considerably bigger tranche of work’.

The Commissioner’s view

41. The subject matter of the request in this case is counter-corruption training. The Commissioner accepts that the request has a value or serious purpose in terms of there being an objective public interest in the information sought.
42. The issue for the Commissioner to determine is whether complying with the request would impose a grossly oppressive burden on the College which outweighs any value of serious purpose the request may have.

Is the request vexatious on the grounds of burden?

43. The Commissioner accepts that a single request taken in isolation may be vexatious solely on the grounds of burden. In his guidance to public authorities, he describes this as:

“... where complying with the request would place a grossly oppressive burden on your resources which outweighs any value or serious purpose the request may have”.

44. In this case, the College confirmed that the requested information was easy to locate. The Commissioner understands that its arguments relate to the effort involved in redacting the exempt information prior to disclosure.

45. Of relevance in this case, in light of the arguments put forward by the College, his guidance states:

"You cannot claim section 12 for the cost and effort associated with considering exemptions or redacting exempt information.

Nonetheless, you may apply section 14(1) where you can make a case that the amount of time required to review and prepare the information for disclosure would impose a grossly oppressive burden on your organisation".

46. His guidance goes on to say:

"However, we consider there is a high threshold for refusing a request on such grounds. This means that you are most likely to have a viable case where:

- the requester has asked for a substantial volume of information;
and
- you have real concerns about potentially exempt information, which you are able to substantiate, if asked to do so by the ICO;
and
- you cannot easily isolate any potentially exempt information because it is scattered throughout the requested material".

47. The Commissioner has considered those criteria in turn.

48. Criteria 1 – The Commissioner is mindful that the request in this case is for a copy of all training materials used as part of two specified courses. He recognises that the breadth of the request – all training materials – means it has the potential to be a voluminous request.

49. From the evidence he has seen, the Commissioner is satisfied that there is a substantial volume of information within the scope of the request. He is satisfied that the College has demonstrated that the first criteria above has been met.

50. With respect to the second criteria - concerns about potentially exempt information - the Commissioner is mindful of the subject matter of the request. He also notes that the complainant himself accepts that at least some of the information within the scope of the request will be exempt.

51. The Commissioner acknowledges that the College considers that a number of exemptions may possibly apply. Given the subject matter of the training courses, he recognises the likely necessity to consider a range of exemptions.
52. In the Commissioner's view the subject matter of the request understandably necessitates a detailed and considered review of the training materials. He also recognises that the College argued that it would be necessary for a subject matter expert to review the redactions that the FOI team considered relevant.
53. The Commissioner would stress that it is not within the scope of his investigation to consider to what extent, if any, the exemptions in Part II of FOIA apply in this case. His consideration is whether the College has provided him with clear evidence to substantiate real concerns about potentially exempt information.
54. The Commissioner accepts that, having formed a preliminary view, the College has argued that it needs to ascertain whether or not there would be any wider concerns were it to disclose details about the training courses.
55. The Commissioner recognises that, even without a second tier of review, the College estimates that it would take 35 hours to assess the content of the smaller of the two courses within the scope of the request.
56. He has also taken into account the practical complexities in terms of accessing and analysing the information with a view to disclosure.
57. From the evidence he has seen, the Commissioner is satisfied that the College has demonstrated that the second criteria above has been met.
58. Turning next to the third criteria, the Commissioner has considered the extent to which any potentially exempt information can be easily isolated.
59. He acknowledges that the College provided sample documents from each of the two courses specified in the request. The Commissioner expects the College to have provided representative examples on the basis of its in-depth knowledge and understanding of the content of the courses.
60. Having had the opportunity to view those examples, the Commissioner acknowledges that the information does not appear to be exempt in its entirety. However, he also takes the view that there is no obvious way to differentiate between the information that comprises what appear to be generic statements and phrases and the material that needs to be examined in detail.

61. He therefore accepts that the College has demonstrated that it cannot easily isolate any potentially exempt information because it is scattered throughout the requested material.

Conclusion

62. All information requests impose some burden and public authorities have to recognise and accept that in order to comply with their FOIA obligations. However, in some cases the burden imposed by a request will be grossly oppressive on an organisation.
63. Having considered the particular circumstances of this case, the Commissioner is satisfied that, given the bulk and complexity of the requested information, the time required to review and prepare the information for disclosure would impose a grossly oppressive burden which outweighs the value or serious purpose of the request.
64. Therefore, the Commissioner's decision is that the request was vexatious under section 14(1) of FOIA and the College was not obliged to comply with it.

Other matters

65. The Commissioner's updated guidance on section 14 includes a section entitled "Advice and assistance".
66. The Commissioner acknowledges that this version of his guidance on section 14 was not published on his website at the time the College responded to the request.
67. He accepts that, on the subject of advice and assistance, his updated guidance advises the public authority to consider contacting the requester before claiming section 14(1), to see if they are willing to submit a less burdensome request. Furthermore, where burden is the sole ground for considering an otherwise reasonable request to be vexatious, he expects the public authority to do so, as a matter of good practice.
68. In that respect, he notes that, having received the College's refusal citing section 14 of FOIA, the complaint requested an internal review, saying:

"Thank you for your response. However, it would appear you are in breach of section 16 FOIA as you have failed to provide any advice or assistance on how I might be able to refine the scope of my request so as to reduce the "burden" you would face in responding to it. Such assistance might include a list or breakdown of the "over

approximately 300" items within the scope of my request, to enable me to specify which I would like to see.

As such, please arrange for an internal review".

69. The College responded, advising that to provide assistance in the manner suggested:

"... would, in itself, require significant time spent on considering potential exemptions and redactions due to the sensitive nature of the information in question".

70. It argued that this would be going further than merely providing advice and assistance.

71. It did, however, advise him:

"You may wish to consider submitting a new, refined request. If you can be more specific about the area you are interested in, or are able provide some context to the request this may enable us to provide the refined information, within the parameters of the Act".

72. While there is no formal obligation to have provided advice and assistance in the context of this request, the Commissioner is satisfied that the College acted in best practice by providing reasonable advice and assistance.

Right of appeal

73. 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

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

74. 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.
75. 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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