

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 15 February 2022

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

Decision (including any steps ordered)

1. The complainant requested statistical information on disciplinary recommendations made against police officers, from the Independent Office for Police Conduct (IOPC). The IOPC disclosed some information. It also said that it did not hold some information. It refused to provide the remaining information that it did hold, citing section 12 (Cost of compliance exceeds appropriate limit) of FOIA.
2. The Commissioner's decision is that the IOPC was entitled to rely on section 12 of FOIA to refuse to comply with the request.
3. No steps are required as a result of this decision.

Request and response

4. On 2 February 2021, the complainant wrote to the IOPC and requested information in the following terms:

"I would like to request the following information:

- Can you provide the age profiles (as was done on page 14 of your most recent annual report¹) of the deaths in custody investigations under your remit. There is public data available on the number of deaths in custody every financial year. I would like to see how each of one the cases you investigated fits into your age profiles. For example, of the 18 reported deaths in 2019/20, how many investigations were completed within 0-3, 3-6, 6-9, 9-12, over-12 months or are ongoing. I would like this data to be provided for every financial year starting from 2010/11. Can data for 2020/21 be provided up to date. I would like the data provided in a tabular format.
- Can you provide the number of police officers involved in deaths in custody investigations that you have recommended for disciplinary action e.g misconduct or gross misconduct. Can these numbers be broken down by financial year from 2010/11 to 2020/21(most recent available)
- Can you also provide the number of those police officers (in above question) whose disciplinary recommendations have been upheld for each financial year from 2010/11 to 2020/21(most recent available)

Note: If providing data back to 2010/11 takes the request over the cost limit please reduce the number of years for which data is provided, starting with 2010/11”.

5. The IOPC responded on 2 March 2021. It disclosed information in response to the first bullet point of the request, although it said that it did not yet hold data on deaths in custody for the period 2020/2021.
6. For the second and third bullet points, it again said that it did not yet hold data on deaths in custody for the period 2020/2021. As regards earlier years, it said the work involved in providing the requested dataset would exceed the cost limit at section 12 of FOIA. It commented that it was intending to publish information regarding investigation outcomes, which would satisfy the request, shortly.

¹ https://policeconduct.gov.uk/sites/default/files/Documents/Who-we-are/accountability-performance/IOPC_annual_report_and_accounts_2019-20_web_accessible_version.pdf#page=14

Scope of the case

7. The complainant did not request an internal review. Rather, he submitted a refined request to the IOPC with a reduced time span (excluding the years 2018/19 and 2019/20 from the scope of the refined request). When that request was also refused, on different grounds², on 30 April 2021, the complainant contacted the Commissioner to complain about the IOPC's decision to apply section 12 to refuse the original request, as shown above.
8. He asked the Commissioner to review the IOPC's decision to refuse the information requested in the second and third bullet points, but only insofar as they asked for information for the years 2018/19 and 2019/20, which he felt could have been provided without engaging section 12 of FOIA. The Commissioner notes that this differs from the actual request, where he asked for information prioritising the earliest dates of 2010/11 rather than 2018/19.
9. Section 12 of FOIA allows a public authority to refuse to deal with a request where it estimates that it would exceed the appropriate limit to comply with the request **in its entirety**. The Commissioner must therefore consider the IOPC's handling of the request in its entirety, and not on the basis of the reduced timescale the complainant specified in his complaint. In such cases, if a complainant would be happy to accept a response to a refined or reduced request then this should be done by liaising directly with the public authority itself.
10. In any event, in responding to the Commissioner's enquiries, the IOPC confined its response to the cost implications of complying with just the years 2018/19 and 2019/20, which it argued exceeded the appropriate limit. In view of its conclusion, the Commissioner has not found it necessary to go back and ask the IOPC to widen its explanation to cover the request as a whole; the analysis below effectively provides an explanation of the costs involved in complying with just the portion of the request which the complainant specified in his complaint to the Commissioner.
11. The complainant has not disputed the IOPC's claim that, at the time of the request, it did not hold data on deaths in custody for the period

² The complainant's complaint about that request has been considered by the Commissioner under reference IC-105072-C4D7 and a separate decision notice will be issued at the same time as this notice.

2020/2021, and so the Commissioner has not considered that in this decision notice.

12. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of FOIA. FOIA is concerned with transparency and provides for the disclosure of information held by public authorities. It gives an individual the right to access recorded information (other than their own personal data) held by public authorities. FOIA does not require public authorities to generate information or to answer questions, provide explanations or give opinions, unless this is recorded information that they already hold. Furthermore, it is not the Commissioner's role to make a ruling on how a public authority deploys its resources, on how it chooses to hold its information, or the strength of its business reasons for holding information in the way that it does as opposed to any other way.

Reasons for decision

Section 12 – cost of compliance exceeds appropriate limit

13. The IOPC refused to comply with the second and third bullet points of the request (having first excluded the data for 2020/2021, which it said it did not hold) on the grounds that section 12 of FOIA applied.
14. Section 12(1) of FOIA states:

"Section 1(1) does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit."
15. This limit is set in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004³ (the Fees Regulations) at £450 for public authorities such as the IOPC. The Fees Regulations also specify that the cost of complying with a request must be calculated at a flat rate of £25 per hour. This means that the IOPC may refuse to comply with a request for information if it estimates that it will take longer than 18 hours to comply.

³ <https://www.legislation.gov.uk/ukxi/2004/3244/contents/made>

16. In estimating whether complying with a request would exceed the appropriate limit, regulation 4(3) states that a public authority can only take into account the costs it reasonably expects to incur in:
 - determining whether it holds the information;
 - locating the information, or a document containing it;
 - retrieving the information, or a document containing it; and
 - extracting the information, or a document containing it.
17. Section 12 states that public authorities are only required to estimate the cost of compliance with a request, and are not required to give a precise calculation. However, the Commissioner considers that the estimate must be reasonable. The Commissioner follows the approach set out by the Information Tribunal in the case of *Randall v Information Commissioner and Medicines and Healthcare Products Regulatory Agency* (EA/2007/0004, 30 October 2007) which stated that a reasonable estimate is one that is "...sensible, realistic and supported by cogent evidence".
18. Multiple requests within a single item of correspondence are separate requests for the purpose of section 12. However, when a public authority is estimating whether the appropriate limit is likely to be exceeded, it can include the costs of complying with two or more requests if the conditions laid out in regulation 5 of the Fees Regulations can be satisfied. Those conditions require the requests to be:
 - made by one person, or by different persons who appear to the public authority to be acting in concert or in pursuance of a campaign;
 - made for the same or similar information; and
 - received by the public authority within any period of 60 consecutive working days.
19. The Commissioner is satisfied that in this case the two requests contained in the second and third bullet points meet the conditions laid out in regulation 5 of the Fees Regulations. It follows that the IOPC was entitled to aggregate them when estimating the costs of compliance.

The complainant's position

20. The complainant considered that it would not be an onerous job for the IOPC to have provided the information he asked for in respect of the years 2018/19 and 2019/20:

"Please could you also check whether the IOPC's initial exemption under section 12 is justifiable for information for more recent information about disciplinary action against officers in relation to deaths in custody? The number of officers involved is likely to be very low, and in hindsight, before my offer to reduce the scope of this request in the name of a more straightforward disclosure, it seems unlikely that they would be entitled to use section 12 for this reason."

The IOPC's position

21. The IOPC maintained that the activities involved in locating, extracting and retrieving the requested information for the years 2018/19 and 2019/20 would exceed the cost limit under section 12 of FOIA. It commented that the complainant appeared to underestimate the amount of work that responding to his request would involve.

"From the wording of his previous requests it appears that [the complainant] assumes that this data can be easily extracted from a database.

However it is significant that this data is not straightforward to collate or report on because of a number of factors. For example: the often-complex nature of the investigations; the variable timespan of associated proceedings, including misconduct hearings and inquests; the fact that investigations can involve a number of subjects and linked misconduct investigations; a change in regulations which has affected the process for reporting on the final CTA [case to answer] decision; as well as the complexities involved in cases where a police force does not agree with an initial CTA finding.

The statistical data that we use to compile the outcomes data does not exist in such a way that it can be extracted solely through automated queries or manipulation of databases. As well as some automated processes that act as a starting point to identify relevant cases, it involves the consideration of information from a number of sources and requires a combination of a manual trawl and analysis of correspondence, and consultation with key stakeholders to obtain a true and representative dataset to include in our report. We anticipate that, as this is likely to become one of our regular scheduled publications, we will develop a database to facilitate the collation of

the required data in the future. However this response reflects the requirements at the time of [the complainant]'s request.

We have a dedicated team of research and analysis experts to perform these tasks and produce the required statistics and reports. Our experience of the work involved in creating such datasets and reports means that such work is planned carefully to ensure that we have sufficient resource and capacity to produce a high quality and accurate report reflective of its importance and high profile."

22. The Commissioner asked the IOPC to provide a detailed estimate of the time/cost it would take to comply with the request in its entirety.
23. As stated above, the IOPC confined its response to the costs of providing information for just the years 2018/19 and 2019/20.
24. In a detailed response, the IOPC explained that due to the work that was already proactively underway with regard to publishing information on investigation outcomes, its research team was in a position to provide detailed and realistic estimates of the time required to produce the requested information:

"The following tasks area required just to locate potential cases that will fall in scope of the report:

- A potential list of cases is identified from the deaths in or following police custody data and our Performance Team will then use this to perform the required tasks to identify closed and completed cases. This will give a base level identification of cases which then require a preliminary manual check to ensure they meet the scope.
- Preliminary scoping work based on deaths occurring within 2018/19 or 2019/2020 has identified 35 cases that fall in scope. However it is significant to note that the data needs to be extracted and analysed at an individual subject officer level. Cases can involve anywhere from zero to five or more subject officers. Each subject would have a line of data to analyse to establish whether they were served with a notice, whether they had a CTA finding and the outcome of any misconduct proceedings. Therefore the number of individuals, and consequently the numbers requiring detailed analysis is likely to be significantly higher than 35.
- Our Performance Team must then interrogate a separate system, known as the Outcomes Tracker, to try to extract any relevant data that exists for each case.

- Once the available data is extracted from the Outcomes Tracker and has undergone an initial cleanse, it must then be further validated before it can be retrieved for inclusion into the dataset and report.
- The Research Team will then consult with the Investigation Team to validate the data and this often involves manually check [sic] and consulting case documentation to follow the course of events and confirm the final outcomes of each subject involved in a case.

The following activities are required to extract and retrieve the data at this stage, which involve a combination of fixed fields and manual scrutiny and extraction:

- Establishment of the relevant regulatory framework and how this impacts on the final CTA decision process.
- Under the old regulatory framework, we must establish if the police force agreed or disagreed with our initial finding. This can involve consideration of email trails to locate the data.
- If the force disagreed with our initial finding, then we must establish if we recommended or directed proceedings, or if we accepted their representations resulting in a different CTA decision. Once again the variables involved mean this information is not easily extracted from fixed fields but requires consideration of correspondence, consultation with investigators and sometimes our lawyers to extract the relevant data.

These activities are required to ensure all outcomes data is accurate and up to date, because months or years may pass between the completion of our investigation and the result of misconduct or criminal proceedings and inquests ... the provision of this data for 2018/19 and 2019/20 is not likely to be as extensive as for older cases. However as explained above, outcomes data is not straightforward due to the number of variable circumstances and a validation exercise would still be required to ensure the accuracy of the data.

It is only at this stage that the retrieved and validated data can be compiled into datasets and analysed for the report.

Whilst 35 cases may seem a relatively small number and it may be straightforward to extract and retrieve the validated data for some, others will involve a number of subject officers or have linked misconduct investigations, which adds a further layer of complexity.

The experiences of the Research Team in collating this data for the impending publication of outcomes for 2009/10 to 2017/18 is that the time taken to extract and retrieve data from multiple systems and via manual document trawls and consultation can range from 30 minutes to several hours per case.

This is based on the quickest way of extracting the data considering the number of variables involved and the requirement to validate the information to represent an accurate picture."

The Commissioner's decision

25. When dealing with a complaint to him under FOIA, it is not the Commissioner's role to make a ruling on what information a public authority should hold, or how it should hold it. He is not concerned with how a public authority deploys its resources, on how it chooses to hold its information, or the strength of its business reasons for holding information in the way that it does as opposed to any other way. Rather, in a case such as this, the Commissioner's role is simply to decide whether or not the requested information can, or cannot, be provided to a requestor within the appropriate cost limit.
26. The Commissioner's job here is to determine whether the IOPC has demonstrated that the work involved in providing the information for the period specified by the complainant would be likely to exceed 18 hours, and thus the £450 cost limit established under section 12 of FOIA. It is not necessary for the IOPC to have complied with as much of the request as it could until that limit was reached. It is sufficient for it to show that it has estimated that the work set out in the bullet points in paragraph 16 would exceed 18 hours, and that its estimate is a reasonable one.
27. Firstly, as regards whether the IOPC was entitled to aggregate costs when calculating its estimate, the Commissioner is satisfied that the two requests contained in the second and third bullet points meet the conditions laid out in regulation 5 of the Fees Regulations. It follows that the IOPC was entitled to aggregate them when estimating the costs of compliance.
28. The IOPC has explained that 35 cases fall to be considered for the period 2018/19 and 2019/20 (the time frame to which the complainant limited his complaint to the Commissioner). Drawing on their recent experience of carrying out such work, the IOPC's officers have assessed that whilst it may be possible to complete the necessary work on some cases in 30 minutes, for others it may take "several hours". They would have no way of accurately gauging what level of work is required on each case

without actually doing the work, which the Commissioner's guidance on section 12 states public authorities are not obliged to do⁴.

29. Assuming, for the sake of argument, that 34 of the cases could each be dealt with in 30 minutes, if the remaining one case took "several hours" this would push the overall handling time for the request beyond the maximum 18 hours work provided for under section 12. As the Commissioner must consider the request as it was put to the IOPC (ie in its entirety), he notes that the additional work required to collate the same information for the period 2011 – 2017 would increase the costs significantly.
30. The Commissioner notes that the complainant has suggested that provision of the requested data for 'recent' years should not be onerous. However, it is apparent from the IOPC's response that this is not a straightforward task. It would involve considerable 'drilling down' and cross-referencing in order to ensure the accuracy of the information. The work involved in validating the accuracy of the information is vital to its integrity. It is clearly not in the public interest for the IOPC to disclose statistics which do not accurately reflect the true picture with regard to 'case to answer' findings.
31. The Commissioner therefore accepts that the work involved in validating the data is necessary and could not be omitted so as to bring compliance with the request within 18 hours work.
32. It follows that the Commissioner is satisfied that the IOPC was entitled to rely on section 12 to refuse the request. In reaching this decision, he notes that compliance with even the reduced period the complainant specified in his complaint to the ICO would exceed the appropriate limit.

Section 16 – advice and assistance

33. Section 16(1) of FOIA provides that a public authority is required to provide advice and assistance to any individual making an information request where it would be reasonable to do so. In general, where section 12(1) is cited, in order to comply with this duty a public authority should advise the requester as to how their request could be refined to bring it within the cost limit, albeit that the Commissioner

⁴ https://ico.org.uk/media/for-organisations/documents/1199/costs_of_compliance_exceeds_appropriate_limit.pdf

does recognise that where a request is far in excess of the limit, it may not be practical to provide any useful advice.

34. On the question of whether adequate advice and assistance had been given to the complainant regarding how he could refine the request so that it might be complied with within the cost limit, the IOPC said:

“We do not consider that it was possible to narrow the request in any such way as would not exceed the cost limit and would also still be meaningful to his enquiries. We explained about our recognition of the public interest in this area of work and our intention to continue to update outcomes publications for more recent years. In any case, and as noted earlier, [the complainant] did not appear to dispute or object to our refusal to provide data for the years 2018 to 2020 and in fact reframed his request to just cover the earlier years.

Following our initial publication of outcomes relating to completed investigations of deaths occurring between 2009/10 and 2017/18, we intend to continue to publish regular statistics on outcomes and this will be scheduled and planned in our upcoming business planning activities. Therefore outcome statistics for the more recent years will also be published in the future. We referred to such future publications in our response letter to [the complainant].”

35. The complainant has suggested to the Commissioner that, when responding to his request, the IOPC should have provided information for just the years 2018/19 and 2019/20. However, the Commissioner notes that his request specified that if costs became an issue, the IOPC should prioritise providing him with **older** data, starting with 2010/11, and the IOPC dealt with the request on that basis. The IOPC rightly pointed out that in submitting his refined request to it, he excluded from scope the very years which went on to be the subject of this complaint to the Commissioner.
36. The complainant told the Commissioner that he was making the complaint about the initial request with the benefit of hindsight, in light of his dissatisfaction with the reasons the IOPC had given for refusing the refined request. Nevertheless, in view of the complainant's instruction to it, and of the complexities that would, in any case, also be involved in providing newer data, the Commissioner is satisfied that the IOPC responded to what the complainant was actually asking for at the time of the request. Had the IOPC instead focussed on whether information could be provided for the years 2018/19 and 2019/20, this would have gone against how the complainant had asked it to prioritise the information he was interested in receiving.

37. The IOPC has explained to the complainant how the information is held and why compliance with the request would exceed the appropriate limit. It also explained that it intends to publish the information he has requested, and that he will be able to have access to it shortly. Taking all the above into account, the Commissioner is satisfied that the IOPC did provide appropriate advice and assistance to the complainant regarding his request.

Right of appeal

38. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

39. 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.
40. 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

Samantha Bracegirdle
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