

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 11 August 2014

Public Authority: Chief Constable of Surrey Police
Address: Surrey Police
PO Box 101
Guildford
Surrey
GU1 9PE

Decision (including any steps ordered)

1. The complainant requested the tapes of a police interview with Jimmy Savile.
2. The Commissioner's decision is that Surrey Police is entitled to rely on section 14 of the FOIA (vexatious request) to refuse to comply with the request.
3. The Commissioner requires no steps to be taken as a result of this decision.

Background

4. Surrey Police has already published redacted copies of the transcripts of the interview held with Jimmy Savile at Stoke Mandeville Hospital in 2009. In total around 100 redactions were made.

Request and response

5. On 18 October 2013 the complainant wrote to Surrey Police and requested information of the following description:

"Following the release of the Jimmy Savile transcripts, would it be possible for you to send me the tapes of the two parts of interview please".

6. Surrey Police responded on 15 November 2013. It confirmed it held the requested information but refused to provide it citing section 14(1) of the FOIA (vexatious request).
7. The complainant requested an internal review on 15 November 2013. Following the Commissioner's intervention, Surrey Police sent him the outcome of its internal review on 31 March 2014. It upheld its original position.

Scope of the case

8. The complainant contacted the Commissioner on 24 April 2014 to complain about the way his request for information had been handled.
9. He challenged Surrey Police's view that his request is vexatious. In his view:

"The purpose and value [of my request] can be no greater".

10. With reference to the wording of the request and the complainant's comments to Surrey Police about redactions (*"Surrey Police therefore know which parts it needs to redact - or bleep out"*) the Commissioner considers that the scope of the request is for the audio record of the interviews in a specific medium, namely tape, with the same content that was redacted from the written transcripts also removed from the audio recording.
11. The Commissioner considers the scope of his investigation to be Surrey Police's application of section 14 of FOIA to that information.

Reasons for decision

Section 14 vexatious requests

12. Section 14(1) provides that a public authority is not obliged to comply with a request for information if the request is vexatious. There is no public interest test.
13. The meaning of vexatious is not defined in the FOIA. However it has recently been considered by the Upper Tribunal in the case of the *Information Commissioner v Devon CC & Dransfield UKUT 440 (AAC)*. In

that case the Tribunal commented that vexatious could be defined as the '*manifestly unjustified, inappropriate or improper use of a formal procedure*'. The Tribunal's definition clearly establishes that the concepts of proportionality and justification are relevant to any consideration of whether a request is vexatious.

14. Further to that case, the Commissioner has issued guidance on his approach to deciding when a request can be considered vexatious¹.
15. That guidance suggests that the key question a 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 the Commissioner's view, this will usually be a matter of objectively judging the evidence of the impact on the authority and weighing this against any evidence about the purpose and value of the request.
17. In cases involving a request which it considers to be vexatious, the authority should therefore be able to outline the detrimental impact of compliance and also explain why this would be unjustified or disproportionate in relation to the request itself and its inherent purpose or value.

Impact on the authority

18. In correspondence with the complainant Surrey Police maintained that preparation of the audio tapes for disclosure would be burdensome:

"due to the technical issues that would be involved".
19. The Commissioner understands that those technical issues relate to people talking over one another and to the disguising of the voices of the interviewing officers.
20. Surrey Police also considered that the editing required to reflect the redactions made in the published transcripts added to the burdensome nature of the request. In that respect, the Commissioner acknowledges that the transcripts contain multiple redactions. He accepts however – a point raised by the complainant - that the process of identifying the

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

information to be redacted has already been carried out as a result of the transcripts having previously been disclosed.

21. Identifying a further impact of the request Surrey Police said that, in disclosing the written transcripts, it had spent a significant amount of time and resources speaking with those who would be affected by that disclosure. In the event of the tapes being disclosed it said that it would be necessary to spend time doing so again.
22. In summary, Surrey Police considers there is no way in which to provide the requested information without imposing "a significant burden" on the force.

Purpose and value of the request

23. In bringing his complaint to the Commissioner's attention, the complainant said:

"The purpose of the request is to provide - for the first time - an audio record of the way Jimmy Savile went about trying to evade justice during an investigation into sex abuse allegations".

24. He went on to say that an audio recording of Savile's answers and claims during the interview would provide the public "with the opportunity to hear from the offender himself".

25. Justifying his request the complainant told Surrey Police:

"The purpose is not designed to cause any unnecessary burden to Surrey Police but is a responsible request for information held which will assist the public in learning how Savile went about evading justice and the recognised lack of police probity".

26. Surrey Police, however, told the complainant that the audio recording, once edited, would not provide any added value to the public.

27. Furthermore, Surrey Police told him:

"FOI gives a right of access to information rather than the actual document or other media type. By disclosing the transcripts, Surrey Police has complied with its obligations in relation to that information. Disclosure of the tapes would add little to the information already disclosed".

28. In correspondence with the Commissioner, Surrey Police said that it considers the request is vexatious on the grounds of unreasonable persistence. In its view, the complainant is attempting to reopen an issue:

"which has already been comprehensively addressed with the publication of the interview transcripts with limited redaction".

29. Surrey Police went on to explain that the public have already been provided with the transcript of the interview and that information about the interview has also been in a number of publically available reports.

30. In its view:

"there is no added value in his [Jimmy Savile's] voice being released".

Conclusion

31. The Freedom of Information Act gives individuals a right of access to official information with the intention of making public bodies more transparent and accountable.

32. 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.

33. The Commissioner recognises that dealing with unreasonable requests can place a strain on resources and get in the way of delivering mainstream services or answering legitimate requests. Furthermore, these requests can also damage the reputation of the legislation itself.

34. However, the Commissioner also recognises that public authorities must keep in mind that meeting their underlying commitment to transparency and openness may involve absorbing a certain level of disruption and annoyance.

35. The Commissioner is not aware of any evidence to suggest that the complainant's motive, in making the request in this case, was to cause disruption or harassment to Surrey Police.

36. In the Commissioner's view, the key question to consider in this case is whether the purpose and value of the request provides sufficient grounds to justify the distress, disruption or irritation that would be incurred by complying with that request. In other words, would a reasonable person think that the purpose and value are enough to justify the impact on the authority?

37. The Commissioner has considered the submissions put forward both by the complainant and by Surrey Police. He has also had the opportunity to listen to a representative sample of the interview tapes that are the subject of this request.

38. Although unable to provide an expert opinion on the complexity of the process necessary to prepare the recordings for disclosure, the Commissioner is satisfied that disclosure of the requested information would require the tapes to be edited and the relevant redactions to be applied.
39. He has also taken into account Surrey Police's views about the need to manage the impact on the victims in the event of the tapes being disclosed.
40. The Commissioner recognises that the tapes are of Jimmy Savile uttering his own words and, as such are qualitatively different to the written transcript of the words spoken. The speed, volume, expressiveness and intonation of the actual speech may be considered to shed more light on how Savile responded to what was put to him in the interview.
41. However, the request in this case is primarily for information that is already in the public domain, albeit in a different form to that requested. The content of the information at issue in terms of what was said is already available to the public as a result of the transcripts having been published. In that respect the Commissioner is satisfied that the police interview has already been made available for public analysis and scrutiny. Indeed, it has been reported on over time and at some length.
42. Having weighed the serious purpose and value of the request against the detrimental effect on the authority and also potentially on victims, the Commissioner is satisfied that the complainant's request of 18 October 2013 is vexatious and that Surrey Police is entitled to rely on section 14(1) of the FOIA.

Other matters

43. The complainant requested an internal review on 15 November 2013 but it was not until 31 March 2014 that Surrey Police sent him the outcome of its deliberations.
44. While no explicit timescale is laid down by the FOIA the Commissioner has decided that a reasonable time for completing an internal review is 20 working days from the date of the request for review. In exceptional circumstances it may be reasonable to take longer but in no case should the time taken exceed 40 working days. The Commissioner is concerned that in this case it took over 4 months for an internal review to be completed. This delay has been recorded for monitoring purposes.

Right of appeal

45. 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: 0116 249 4253

Email: GRC@hmcts.gsi.gov.uk

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

46. 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.
47. 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

Graham Smith
Deputy Commissioner
Information Commissioner's Office
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