

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 26 April 2017

Public Authority: Office of the Police and Crime Commissioner for North Yorkshire

Address: 12 Granby Road
Harrogate
North Yorkshire
HG1 4ST

Decision (including any steps ordered)

1. The complainant requested information relating to a civil court claim. The Office of the Police and Crime Commissioner for North Yorkshire (OPCC) relied on section 14(1) of the FOIA (vexatious requests) to refuse to provide the requested information.
2. The Commissioner's decision is that the OPCC correctly applied section 14(1) of the FOIA to the request. The Commissioner requires no steps to be taken as a result of this decision.

Background

3. The request in this case relates to a decision made by the Office of the Police and Crime Commissioner for North Yorkshire, details of which were published on its website¹.

¹ <https://www.northyorkshire-pcc.gov.uk/decision-notice/0112015-formal-support-explanation-police-crime-commissioner-regarding-funding-ongoing-civil-litigation-action-protect-officers-members-public-alleged-p/>

Request and response

4. On 5 September 2016, using the 'WhatDoTheyKnow' website, the complainant wrote to the OPCC and requested information² in the following terms:

"In pursuit of detail to incorporate into an article challenging the validity of the Decision Notice 011/2015 dated 29th September, 2015 please provide the following information:

1. How many victims of crime in North Yorkshire have been provided with police funds to pursue civil claims in the financial years 2013-14, 2014-15, 2015-16, 2016 to date. Please also provide the sums involved and the nature of the civil claim.

2. Minutes of meetings, briefing notes and emails (internal and external) concerning Hyson. Emails where the sender or recipient holds the rank of superintendent or above should have their name visible".

5. The OPCC responded on 30 September 2016 and refused to provide the requested information citing section 14(1) of the FOIA (vexatious requests).
6. Following an internal review, the OPCC wrote to the complainant on 28 October 2016 maintaining its original position. The OPCC stated that a section 14 warning was issued on 6 September 2016, followed by the full section 14 exemption on 30 September 2016.

Scope of the case

7. The complainant contacted the Commissioner on 28 October 2016 to complain about the way his request for information had been handled, setting out a number of grounds of complaint. With respect to the OPCC's application of section 14 he told the Commissioner:

"...The outcome states that it upholds the decision to classify the information request as vexatious but does not provide a reasoned argument for doing so..."

² https://www.whatdotheyknow.com/request/operation_hyson

8. He also complained about the manner in which the internal review was carried out. In that respect, he told the Commissioner:

"In summary, it is the overarching submission of the requester that the response to this internal review was carried out inappropriately, by an officer lacking the necessary independence; with ill-intent and with an outcome that is almost wholly misconceived under the requirements of the Act, ICO Guidance and Approved Professional Practice".

9. In further correspondence, he said:

"As set out in my complaint, I am of the view that the deployment of [name redacted] as the officer finalising the request and the deployment of a subordinate, [name redacted], to carry out the internal review, are also matters that should specifically exercise the investigator's mind".

10. The Commissioner will address the complainant's concerns about the internal review in 'Other matters' below.
11. 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 the FOIA.
12. The complainant raised other issues that are not addressed in this Notice because they are not requirements of Part 1 of the FOIA.
13. During the course of the Commissioner's investigation, the OPCC confirmed its view that the request falls under section 14(1) of the FOIA.
14. The analysis below considers the OPCC's application of section 14(1) of the FOIA to the requested information.

Reasons for decision

Section 14 vexatious request

15. Section 14(1) of the FOIA states that section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious. There is no public interest test.
16. The term 'vexatious' is not defined in the FOIA. The Upper Tribunal considered the issue of vexatious requests in the case of the *Information*

*Commissioner v Devon CC & Dransfield*³. 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.

17. 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.
18. The Upper Tribunal did, however, also caution that these considerations were not meant to be exhaustive. Rather, it stressed the:

“...importance of adopting a holistic and broad approach to the determination of whether a request is vexatious or not, emphasising the attributes of manifest unreasonableness, irresponsibility and, especially where there is a previous course of dealings, the lack of proportionality that typically characterise vexatious requests” (paragraph 45).

19. The Commissioner has published guidance on dealing with vexatious requests⁴. That guidance includes a number of indicators that may apply in the case of a vexatious request. The fact that a request contains one or more of these indicators will not necessarily mean that it must be vexatious. All the circumstances of the case will need to be considered in reaching a judgement as to whether a request is vexatious.
20. As discussed in the Commissioner’s guidance, the relevant consideration is whether the request itself is vexatious, rather than the individual submitting it. A public authority can also consider the context of the request and the history of its relationship with the requester when this is relevant. The Commissioner’s guidance states:

“The context and history in which a request is made will often be a major factor in determining whether the request is vexatious, and the public authority will need to consider the wider circumstances

³ <http://administrativeappeals.decisions.tribunals.gov.uk//Aspx/view.aspx?id=3680>

⁴ <https://ico.org.uk/media/for-organisations/documents/1198/dealing-with-vexatious-requests.pdf>

surrounding the request before making a decision as to whether section 14(1) applies”.

21. Sometimes it will be obvious when a request is vexatious, but sometimes it may not. In that respect, the Commissioner’s guidance states:

“In cases where the issue is not clear-cut, the key question to ask is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress”.

The complainant’s view

22. The complainant disputed that the request was vexatious. In his correspondence with the OPCC about its handling of his request for information he identified multiple grounds for complaint. For example, he told the OPCC:

“The request has been refused as ‘vexatious’. The test for a request to be deemed as such is “a manifestly unjustified, inappropriate or improper use of FOIA” (Information Commissioner v Devon County Council & Dransfield [2012] UKUT 440 (AAC)). The instant request does not go anywhere near reaching that threshold”.

23. In that respect he argued:

“The request has a serious and proper purpose. No evidence has been provided by the PCC, or sought, to the contrary...”

It places no significant burden on either NYPCC, or it's CDU staff. The requested information should be readily to hand.

The request is short, plainly expressed and cannot, conceivably, have been construed to cause distress, alarm or harassment...”.

24. The complainant acknowledged that the request was:

“...part of a series of other requests made to NYP made by both myself and a large number of other requesters....”.

25. However, in his view:

“.. The granting of police funds in excess of £100,000 to a political crony, to pursue what amounts to a personal vendetta against another journalist exposing wrongdoing, is deeply troublly [sic] and of significant public interest”.

The OPCC's view

26. Refusing to provide the requested information on the basis that section 14 of the FOIA applied, the OPCC told the complainant that it had not provided detail in relation to the reasons for that decision "*as to do so would release personal information onto a public forum*". It invited the complainant to provide a personal correspondence address if he required that detail.
27. From the evidence the Commissioner has seen, the complainant chose to continue to correspond via the '*WhatDoTheyKnow*' website rather than provide a private address.
28. In correspondence with the complainant, the OPCC confirmed that it had "*reviewed in detail the rationale behind issuing a Section 14 response*". Upholding its decision that section 14 applied in this case, the OPCC reminded the complainant that a section 14 warning was issued on 6 September 2016 prior to its citing of the section 14 exemption on 30 September 2016.
29. That warning was made in the context of a request for information including information relating to Hyson.
30. In its submission to the Commissioner, the OPCC set out the wider context in which the complainant's request was received. It told her:

"..the individual making the request has demonstrated a long running grievance against North Yorkshire Police and North Yorkshire Police and Crime Commissioner and has a history writing articles and posting derogatory remarks about individual members of staff".
31. Also in its submission to the Commissioner, and with reference to her guidance, the OPCC explained that it considers that a number of the indicators apply in this case, namely:
 - Frequent or overlapping requests
 - Burden on the authority
 - Deliberate intention to cause annoyance
 - Personal grudge
 - Unreasonable persistence
 - Unfounded accusations
32. In support of its position, the OPCC presented reasoned arguments explaining why it considered that each of those indicators applied. For

example, with respect to the burden on the authority, the OPCC told the Commissioner that the number of requests from the complainant had resulted in staff spending a disproportionate amount of their time facilitating his requests. It told her that this:

".. inevitably put a strain on the Civil Disclosure Unit (CDU) in answering requests from other members of the public".

33. Referencing the requester's activity on social media, the OPCC told the Commissioner that his behaviour and article writing *"suggests a deliberate intention to cause annoyance"*.

34. Regarding the 'personal grudge' indicator, the OPCC told the Commissioner that the complainant has openly criticised specific post holders within North Yorkshire Police and North Yorkshire Police and Crime Commissioner:

"... he is also extremely critical of the force and PCC within his own blog and twitter feed. It is believed that this request was made as part of his wider campaign".

35. In support of its arguments, the OPCC provided the Commissioner with links to numerous articles published by the complainant. It told her:

"Within these articles [the complainant] is highly critical of anyone involved and makes highly personalised comments about those involved".

36. With respect to its view that the 'unreasonable persistence' criteria is met, the OPCC described how the complainant had made several requests on the same topic despite the fact that the matter was with the Court and it was for the Court to determine the outcome of the application.

37. The OPCC also made reference to requests on the same topic made by those *"believed to be connected"* to the complainant.

38. In conclusion, the OPCC told the Commissioner:

"It is clear that the Applicant is using the Freedom of Information Act to further his campaign against the Data Controller and as such it is a disproportionate, manifestly unjustified and improper use of the Act."

The Commissioner's view

39. The Commissioner acknowledges that there are many different reasons why a request may be vexatious, as reflected in her guidance. There are no prescriptive 'rules', although there are generally typical

characteristics and circumstances that assist in making a judgement about whether a request is vexatious. A request does not necessarily have to be about the same issue as previous correspondence to be classed as vexatious, but equally, the request may be connected to others by a broad or narrow theme that relates them. A commonly identified feature of vexatious requests is that they can emanate from some sense of grievance or alleged wrong-doing on the part of the authority.

40. As the Upper Tribunal in *Information Commissioner vs Devon County Council & Dransfield* [2012] *UKUT 440 (AAC)*, (28 January 2013) observed:

"There is...no magic formula – 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".

41. In her guidance on dealing with vexatious requests, the Commissioner recognises that the FOIA was designed to give individuals a greater right of access to official information with the intention of making public bodies more transparent and accountable.
42. While most people exercise this right responsibly, she acknowledges that a few may misuse or abuse the FOIA by submitting requests which are intended to be annoying or disruptive or which have a disproportionate impact on a public authority.
43. The Commissioner 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.
44. The Commissioner also recognises that dealing with unreasonable requests can place a strain on public authorities' 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.

Was the request vexatious?

45. The Commissioner considered both the OPCC's arguments and the complainant's position regarding the information request.
46. As in many cases which give rise to the question of whether a request is vexatious, the evidence in the present case showed a history of previous information requests and encounters between the parties.

47. Clearly in this case, the OPCC considers that the context and history strengthens their argument that the request is vexatious.
48. The Commissioner considered that, viewed in isolation, the request in this case may not seem to impose an unreasonable burden and is arguably not without a serious purpose.
49. The Commissioner recognised that the complainant had his reasons for pursuing information from the OPCC: the complainant is clearly not satisfied with the operation of the OPCC and how it conducts itself.
50. She noted that the complainant submitted this request against a background of other requests, correspondence and commentary via social media. She recognised that the complainant had made therein what could be considered personal and critical comments about NYP and OPCC staff.
51. On the basis of the evidence provided, and taking into account the findings of the Upper Tribunal in Dransfield that an holistic and broad approach should be taken in respect of section 14(1), the Commissioner was satisfied that the request was a manifestly unjustified and improper use of the FOIA such as to be vexatious for the purpose of section 14(1).
52. Accordingly, she was satisfied that the OPCC was entitled to apply section 14(1) of the FOIA.

Other matters

53. The complainant was dissatisfied with the officer who conducted the internal review and that the internal review *"was provided on the 20th working day"*.
54. Under the FOIA, there is no obligation for an authority to provide a complaints process. However, it is good practice (under the section 45 code of practice) and most public authorities choose to do so.
55. With respect to the complaints process, the code of practice⁵ states:

5

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/235286/0033.pdf

“Where the complaint concerns a request for information under the general rights of access, the review should be undertaken by someone senior to the person who took the original decision, where this is reasonably practicable. The public authority should in any event undertake a full re-evaluation of the case, taking into account the matters raised by the investigation of the complaint”.

56. The code does not specify a timeframe in which a complaint should be considered. However, the Commissioner considers that, where a public authority has a complaints procedure, the public authority should ensure that the review takes no longer than 20 working days in most cases, or 40 in exceptional circumstances⁶.
57. In this case, the Commissioner was satisfied that the internal review took no longer than 20 working days.

⁶ <https://ico.org.uk/for-organisations/guide-to-freedom-of-information/refusing-a-request/>

Right of appeal

58. 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

59. 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.

60. 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
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