

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 18 November 2020

Public Authority: Chief Constable of West Yorkshire Police
Address: West Yorkshire Police
PO Box 9
Laburnum Road
Wakefield
WF1 3QP

Decision (including any steps ordered)

1. The complainant requested information relating to FOIA requests and SARs (Subject Access Requests) from West Yorkshire Police ('WYP'). Ultimately, the complainant disputed the accuracy of the information provided in response to part two of his request. The Commissioner has addressed this through consideration of whether WYP has provided the information it holds in accordance with section 1 of FOIA in relation to part two of the request.
2. The Commissioner's decision is, on the balance of probabilities, that WYP has provided the information it holds in relation to this request.
3. The Commissioner does not require WYP to take any steps to ensure compliance with the legislation.

Request and response

4. On 10 January 2020, the complainant wrote to WYP and requested information in the following terms (the Commissioner has added the numbering 1 to 3 for ease of reference):
 - "1. The number of (full-time equivalent) staff working in the SAR and FOI teams processing the relevant requests. I would like the data broken down on a monthly basis please from January 2016 to the present day. I understand you hold data relating to the number

of SARs received and processed (a) within 1 month (b) within 3 months and (c) completion time beyond 3 months (to the nearest week).

I would like to receive data on a monthly basis with information divided into (a), (b) and (c) as above. I appreciate the convenience to separate out the data prior GDPR and post GDPR (25 May 2018).

2. *I would hope you could please provide % data of cases which had not been disclosed within (d) 4 months (e) 5 months, (f) 6 months and (g) 7 months.*

This is despite the GDPR Law stating the SAR disclosure deadline is normally 1 month, but 3 months in exceptional circumstances.

3. *Furthermore, please can you provide data on the number of cases you have received as a result of ICO assessment on a monthly basis (from SAR concerns), and the outcomes of those assessments."*
5. WYP responded on 4 February 2020. For the first part of the request, it provided the numbers of FTE (full time equivalent) staff for each area (ie for FOIA and SARs) and explained that the information is not held by month as *"it is fluid and changes on a regular basis"*.
6. WYP also provided a document showing the 'received' and 'closed' dates of SAR requests and said that percentage information is not held (part two of the request).
7. For part three of the request WYP provided a table showing the number and outcome of SARs broken down by month.
8. On 7 February 2020 the complainant contacted WYP raising concerns about two issues. He queried the SAR data WYP had disclosed; he also amended his question about staffing to ask how many FTE staff were working on the same four dates each year from 2014 to date, split by FOIA and SARs. WYP advised him that this would be treated as a new request.
9. WYP responded on 6 March 2020 and provided a further table of SAR data (by date received and date closed) which it said was accurate as at 27 February 2020. WYP also said that due to the fluidity of staff it was not able to answer the question on staffing numbers.
10. The complainant raised some further concerns on 6 March 2020, questioning WYP's response to his staffing question. On 8 March 2020, he contacted WYP further and queried the accuracy of the data provided.

He wrote to WYP again on 9 March 2020, highlighting its response to an earlier SAR related FOIA request, and asking why there was a discrepancy between the data provided in response to that request in comparison to WYP's response to his request of 10 January 2020.

11. On 9 March 2020 WYP confirmed it would carry out an internal review of the points raised. It provided that internal review on 2 April 2020 and explained it had:

"...reviewed the response provided and consulted with an analyst who has advised that the way data is extracted has changed. We now report only on full/valid requests received (as opposed to incomplete requests) as this is a more accurate representation of demand on the force. We have been able to backdate this change, hence the discrepancy over previous years.

In relation to your how [sic] the number of staff has changed over the last 5 years, in order to provide you with a further explanation; FOI and ROA (Right of Access) Staff are Disclosure Officers and Disclosure Assistants with a multi-skilled role profile. It is not recorded per day which work stream individuals are working on therefore as previously advised, this information is not held.

I have therefore not upheld your complaint as the information held and subsequently provided is accurate at the point in time of it being requested. However, I acknowledge that the changes in the way data is reported should have been explained."

Scope of the case

12. The complainant contacted the Commissioner on 10 March 2020 to complain about the way his request for information had been handled. The Commissioner notes that his complaint pre-dates the completion of the internal review. However, the internal review had been completed when the Commissioner confirmed she had accepted the case for investigation on 3 April 2020. The Commissioner commenced her investigation on 18 August 2020.
13. Prior to the commencement of the Commissioner's investigation, WYP issued a revised Excel spreadsheet to the complainant, on 29 July 2020, for part two of his request. It said it had done so because of the inaccuracy of the first report provided on 6 March 2020 which was "*due to an error in the extraction of the information*".

14. The complainant wrote to the Commissioner on 2 August 2020 expressing dissatisfaction with the amended Excel spreadsheet from WYP.
15. There has been a considerable amount of correspondence on this case from the complainant to the Commissioner, and between the Commissioner and both parties during the Commissioner's investigation with the aim of establishing the scope of the case. With the consent of WYP, the Commissioner relayed its response to her investigation and to other enquiries she had made as a result of the complainant's further correspondence, to the complainant. Rather than set this down here, the Commissioner has included the salient points which are relevant to her investigation.
16. Following receipt of WYP's investigation response on 17 September 2020, the Commissioner wrote to the complainant on 28 September 2020. Having agreed with WYP that she could set out its investigation response in full, she did so. This included WYP's response to the search related questions set out in the 'Reasons' section below.
17. As part of her correspondence on 28 September 2020, the Commissioner advised the complainant of her preliminary view that the requested information was not held (beyond that provided). The complainant disputed her view and on 7 October 2020 submitted further correspondence and spreadsheets he had produced analysing the data provided by WYP.
18. With the complainant's agreement, the Commissioner spoke to him on 3 November 2020 with a view to correctly identifying his remaining concerns relating to his request.
19. As a result of the conversation, the Commissioner and complainant verbally agreed his remaining grounds of concern and way forward as follows:
 - The complainant accepted, following discussion with the Commissioner that on the balance of probabilities, the information he had requested in part one was not held by WYP. The Commissioner has therefore not considered this matter any further.
 - The complainant confirmed he was satisfied with WYP's original response to part three of his request; again the Commissioner has not considered this aspect any further.
 - The complainant confirmed that his remaining grounds of complaint all related to WYP's handling of part two of his request.

- The agreed remaining concerns are as set out under each 'Question' heading under paragraph 33 of this notice. Whilst the Commissioner accepts that her questions to WYP were formulated as a result of the conversation with the complainant, she summarised her intended 'lines of enquiry' at the end of telephone call and had made notes of the agreed areas.
20. In this case therefore, the Commissioner has considered whether, on the balance of probabilities, WYP has disclosed all the information it holds in response to part two of the complainant's request.
21. 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. The FOIA is concerned with transparency 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. The 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.

Reasons for decision

Section 1 – general access to information

22. Section 1 of the FOIA states that anyone making a request for information to a public authority is entitled to be informed whether the public authority holds the information, and, if so, to have that information communicated to them.
23. The Commissioner is mindful that when she receives a complaint alleging that a public authority has stated incorrectly that it does not hold the requested information, it is seldom possible to prove with absolute certainty whether the requested information is held. In such cases, the Commissioner will apply the normal civil standard of proof in determining the case and will decide on the 'balance of probabilities' whether information is held.
24. The Commissioner will consider the complainant's evidence and arguments. She will also consider the actions taken by the public authority to check whether the information is held and any other reasons offered by the public authority to explain why the information is not held. She will also consider any reason why it is inherently likely or unlikely that information is not held. For clarity, the Commissioner is not expected to prove categorically whether the information is held, she is

only required to make a judgement on whether the information is held on the civil standard of proof of the balance of probabilities.

25. Therefore, the Commissioner has sought to determine whether, on the balance of probabilities, WYP has disclosed all the information it holds in relation to part two of the request. Accordingly, the Commissioner asked WYP to explain what enquiries it had made in order to reach the view that it had provided all the information it held for part two of the request.
26. It should be noted that at the time of the Commissioner's initial investigation (18 August 2020), parts one and three of the request were still in scope and that the complainant was furnished with details of WYP's full investigation response. For the purpose of the analysis below, and given that part two of the request is the only part under consideration in this notice, the Commissioner has only included WYP's responses that relate to part two.
27. WYP told the Commissioner that:

"Information was extracted from the core case management system used by West Yorkshire Police to record and process SAR requests. The information was extracted using the open and closed status fields for the relevant periods for both SARs. Percentages are not held so the raw data was disclosed to the requestor."
28. WYP also said that information was extracted from the core case management system and that:

"During the relevant period (01.01.16 to 10.01.20) this core system was the only IT system used to record and process SARs and FOIs. Consequently, no other systems were searched."
29. WYP explained that information was extracted using the relevant data fields for cases opened and closed and confirmed that the information was held electronically. It said that the retention period for cases held on its core system is 7 years so no data within the scope of the request has been deleted or destroyed. It also advised that the retention period for SARs is set at 'End of Calendar Year' plus 6 years in line its Retention Schedule.
30. WYP confirmed there is a business need for the information to be held, stating:

"It allows us to assess demand, manage resources, monitor compliance with FOI 2000 and DPA 1998 and 2018 and supports GDPR accountability."

31. In relation to any statutory requirement upon WYP to retain the requested information, WYP told the Commissioner that:

"Under GDPR West Yorkshire Police is required to retain information in order to provide accountability: Art 5 (2) – The controller shall be responsible for and be able to demonstrate compliance."

32. Having relayed the foregoing (with WYP's consent) to the complainant on 28 September 2020, he submitted further correspondence including spreadsheets he had produced analysing the data provided by WYP. This ultimately resulted in the telephone conversation of 3 November 2020 between the Commissioner and the complainant to identify his remaining grounds of complaint (as set out in the 'Scope' section above).
33. The Commissioner wrote to WYP on 3 November 2020 to raise the complainant's points of concern. WYP responded on 12 November 2020. The Commissioner has set out her questions and WYP's responses to these points below:

Question

"Please explain why the SARs data provided to [the complainant] by WYP on 6 March 2020 differs to that subsequently given to him on 29 July 2020. He wants to know definitively why WYP later said that the original information/data provided on 6 March 2020 was "inaccurate".

WYP response

This has been explained on 3 occasions:

1) The below explanation was sent on 29/07/20 within the email with revised data attached.

'In relation to your previous request referenced above, it has been identified that the information initially provided was inaccurate. This inaccuracy was due to an error in the extraction of the information, please accept our apologies and find attached a revised response in respect of this.'

2) The below line was included in IR 3525/20 [complainant's internal review outcome] on 31/07/20

'The data initially provided for request 914/20 was inaccurate due to an error in the extraction'

3) The below explanation was included in an email on 31/07/20 in response to a further query

'In relation to your question regarding "how is it possible that the data is so distant from before?", the extraction of information from the previous system is reliant on staff who used to use this old system remembering how to complete the extraction'

Question

He also contends that there should be blanks in the data you provide in a 72 page report (I think this is the report of 6 March 2020) as he is certain that not all SARs would have been completed at that time. Please can you clarify this for me.

WYP response

In the data provided on 06/03/20 there are blanks in the 'date closed' column. A blank entry would mean that either the request was incomplete or the case had not yet been updated on the case management system to record that it had been completed at the time the search was conducted.

Question

What date did WYP stop including those SARs which required ID in its stats?

WYP response

In relation to of [sic] ICO returns the change took effect in Dec-19.

The above was communicated within IR 1609/20

I have reviewed the response provided and consulted with an analyst who has advised that the way data is extracted has changed. We now report only on full/valid requests received (as opposed to incomplete requests) as this is a more accurate representation of demand on the force.

Question

[The complainant] alleges that his SARs have been excluded from both sets of data. Please can you confirm whether this is the case. If they are included, it would be helpful if you could

highlight which SARs are his in the most up to date report (which I believe to be that of 29 July 2020). If you have excluded {the complainant's] SARs from the data you have given him, please can you explain why.

WYP response

Many SARs were excluded in the first set of data due to the error in extraction.

In relation to the second set of data [the complainant's] SARs have not been excluded. We have done a dip sample and confirm that his request dated 21/03/16 is included in the data.

Question

He alleges that WYP provided differing information again in response to another FOI request on its disclosure log ref FOI 4696/19 and wants to know why the information he has been given is different to that disclosed in response to another FOIA request.

WYP response

FOI 4696/19 includes the same error in extraction and will therefore be removed from the disclosure log.

Question

He also contends that misleading information has been given to the public in terms of the numbers of SARs being sent out via WYP's automatic email responses on certain dates. He states that this is further evidence that the numbers do not correlate with those provided in the data to him. I'd be grateful for your view on this.

WYP responses

Without sight of the relevant automatic email response we cannot answer this – also it falls outside of the scope of the request. However WYP has been using automated email responses to advise requesters of our backlogs and the impact of Covid that we have experienced and continue to experience in some of our Disclosure Service areas."

34. On 16 November 2020, the Commissioner wrote to the complainant to update him of WYP's responses to his remaining concerns, replicating the above. She advised the complainant as follows:

"Further to our telephone conversation in which you confirmed your remaining concerns with WYP's response to your request of 10 January 2020, please see the attached. This shows the queries we discussed and agreed and WYP's responses.

In my view, this response addresses the points you raised. You have already accepted that some of the requested information is not held following our discussion. As previously advised, a decision notice cannot be issued for 'accuracy' reasons as this is not within the Commissioner's remit. If you wish to make any further comments, let me know but please note that I consider my investigation is now complete. Thank you."

35. On 17 November 2020, the complainant wrote to the Commissioner at length disputing this position.
36. The Commissioner has considered the points raised by the complainant, but can only confine her investigation to that within her remit, namely whether WYP has, on the balance of probabilities, provided the recorded information it holds in relation to part two of the request. She concluded that the complainant had not raised any additional FOIA matters that had not already been considered during her investigation and so proceeded to issue a decision notice in this case.

Conclusion

37. The Commissioner cannot determine whether a public authority's response is accurate. However, she is satisfied that the differences between the two disclosures provided to the complainant in response to this part of the request can be explained by the error in the extraction process, and therefore she considers that WYP has provided its response to part two of the request, albeit the complainant is not satisfied that it is correct.
38. When, as in this case, the Commissioner receives a complaint that a public authority has not disclosed some or all of the information that a complainant believes it holds, it is seldom possible to prove with absolute certainty that it holds no further relevant information. However, as set out in the paragraphs above, the Commissioner is required to make a finding on the balance of probabilities.
39. Based on the explanation provided by WYP, the Commissioner is satisfied, on the balance of probabilities, that WYP has provided all the information it holds within the scope of part two of the request and that no further recorded information is held.
40. The Commissioner must therefore conclude on the civil standard of the balance of probabilities, that WYP has complied with section 1 of the

FOIA as it has supplied the relevant information it holds in respect of part two of the complainant's information request of 10 January 2020.

Right of appeal

41. 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

42. 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.
43. 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

Laura Tomkinson
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