

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 19 June 2023

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

#### **Decision (including any steps ordered)**

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1. The complainant has requested information from West Yorkshire Police (the Police) relating to an alleged criminal offence.
2. The Police refused the request under section 14(1) of FOIA (vexatious requests).
3. The Commissioner's decision is that the request was vexatious and therefore the Police are entitled to rely upon section 14(1) of FOIA to refuse them.
4. The Commissioner does not require any steps to be taken.

#### **Request and response**

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5. On 10 March 2023, the complainant made the following request:

"In the light of the revelations by the parliamentary committee into the extent of the misconduct by the prime minister during the "partygate" period, we are moved to recall that we reported the offence at the time, but were not given a crime reference number.

We were told by the mayor's office that you were going to pass the case to the Metropolitan police, in which case, they will have given you a new crime reference number.

In either case, what is the crime reference number, or if there is no such number, then what is the reason that no crime was recorded?

P.S. I have similar questions relating to the other two crime reports passed to you by the mayors office, given the confusion that occurred last time I asked you two things at once, how would you like me to approach this?"

6. The Police responded on 31 March 2023, refusing the request as vexatious (section 14(1) of FOIA) and aggregating the request with a further request received from the complainant dated 13 March 2023 as follows:

"Thank you for your prompt attention. Please provide the crime reference number relating to these crimes"

7. On 24 April 2023, the Police provided an internal review response in which it upheld its position as regards section 14 of FOIA and stated that future similar requests would not be responded to by the Police.

### **Scope of the case**

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8. The complainant contacted the Commissioner on 28 April 2022 to complain about the way their request for information had been handled.
9. This notice covers whether the Police correctly determined that the request was vexatious.

### **Reasons for decision**

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#### **Section 14(1) – vexatious requests**

10. Section 14(1) of FOIA states that a public authority is not obliged to comply with a request for information if the request is vexatious.
11. The word "vexatious" is not defined in FOIA. However, as the Commissioner's guidance on section 14(1)<sup>1</sup> states, it is established that section 14(1) 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.
12. FOIA gives individuals a greater right of access to official information in order to make bodies more transparent and accountable. As such, it is

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<sup>1</sup> <https://ico.org.uk/for-organisations/dealing-with-vexatious-requests-section-14/>

an important constitutional right. Therefore, engaging section 14(1) is a high hurdle.

13. However, the ICO recognises that dealing with unreasonable requests can strain resources and get in the way of delivering mainstream services or answering legitimate requests. These requests can also damage the reputation of the legislation itself.
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 which have a disproportionate impact on a public authority. The Commissioner's guidance on what may typify a vexatious request stresses, however, that it is always the request itself, and not the requestor, which is vexatious. However, a public authority may also consider the context of the request and the history of its relationship with the requester when this is relevant.
15. The emphasis on protecting public authorities' resources from unreasonable requests was acknowledged by the Upper Tribunal (UT) in the leading case on section 14(1), *Information Commissioner vs Devon County Council & Dransfield* [2012] UKUT 440 (AAC), (28 January 2013) ("*Dransfield*")<sup>2</sup>. Although the case was subsequently appealed to the Court of Appeal, the UT's general guidance was supported, and established the Commissioner's approach.
16. *Dransfield* established that the key question for a public authority to ask itself is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation, or distress.
17. The four broad themes considered by the Upper Tribunal in *Dransfield* were:
  - the burden (on the public authority and its staff);
  - the motive (of the requester);
  - the value or serious purpose (of the request); and
  - any harassment or distress (of and to staff).
18. However, the UT emphasised that these four broad themes are not a checklist and are not exhaustive. Rather, it stressed the:

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<sup>2</sup> <https://administrativeappeals.decisions.tribunals.gov.uk/Aspx/view.aspx?id=3680>

"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. Sometimes it will be obvious that a request is vexatious and other times it will not. In considering such borderline cases, the key is to weigh up any purpose and value that the request represents against any disruption, irritation, or distress that compliance with the request may cause the public authority. In doing this the Commissioner considers that a public authority should weigh the impact of the request on it and balance this against the purpose and value of the request. The UT stated in Dransfield 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 Police's arguments**

20. In its responses to the complainant, the Police explained that since 2021 the complainant has raised, and continues to raise, matters which have been discussed at length and a full explanation given to the complainant as to why the Police may or may not have taken action in respect of alleged crimes. The Police noted that between 1 January 2023 and 31 March 2023, the complainant has made eight FOI requests and requested four internal reviews around the same subject-matter. The Police also explained to the complainant that they had persistently asked for explanations and information regarding alleged crimes that they themselves had reported and that FOI was not the appropriate route for obtaining personal information of that nature.
21. In its response to the Commissioner received on 13 June 2023, the Police explained in detail to the Commissioner the context and history of the complainant's requests.
22. The Police explained to the Commissioner that the complainant's FOI requests stem from the complainant trying to report crimes committed by prominent people during the Covid pandemic, for example, Government Ministers. The reports were made in May 2021 via an online form and via a chat facility to the Police. The crimes that the complainant was trying to report would be classed as "state based crimes" which, according to the Home Office Counting Rules for crime, such crimes are only recorded when a suspect is prosecuted for an

offence. Moreover, the alleged crimes did not happen in the West Yorkshire area but in the Metropolitan police area in London.

23. The Police explained that following a complaint by the complainant about the call handler on the chat facility at the Police when the complainant initially reported the alleged crimes, and subsequent correspondence, an investigation took place and, at some stage prior to 20 November 2021, the complainant was sent a copy of an email dated 7 July 2021 which explained why a crime would not be recorded. The Commissioner has seen the email which sets out that the complainant had given their date of birth as 24 March 1603 and address as Buckingham Palace. The complainant was invited to give their personal details in order to progress the report or advised to report via Crimestoppers if they preferred to remain anonymous. It is understood that the complainant has refused to do either.
24. The Police set out for the Commissioner a table showing that, since May 2021, the complainant has submitted 10 FOI requests connected to state based crimes and misconduct in public office, and has requested six internal reviews. The Police noted also that three of the cases have been reported to the Commissioner to date. The Commissioner notes that a Decision Notice IC-232083-Z4F0 was issued on 15 June 2023 in respect of a very similar request to this one.
25. The Police's view is that, although the complainant's initial requests were focused on a particular subject, subsequent requests (including the request considered here) have become repeated, overlapping, and broader in the subject of the requests. The requests often ask for an explanation or an update on the alleged crimes that the complainant has reported. This pattern of requests occurred following confirmation by the Police that no information was held in relation to the subject of the initial requests because no crimes had been reported for the reasons explained to the complainant in 2021. It is the Police's view that the complainant is reluctant to accept the reasons why their allegations have not been reported to the Metropolitan Police and also reluctant to provide the personal details necessary for the crimes to be reported.
26. Accordingly, the Police consider that the complainant is unreasonably and persistently pursuing information that the Police do not hold and that the complainant will continue to do so.
27. The Police explained that the complainant's requests were causing unjustified disruption and harassment to the Police and placing a significant burden on public resources for which the Police could not see any justification. The Police explained that the time spent by staff considering the complainant's requests and internal reviews was a distraction from other vital work.

28. Furthermore, the Police explained that the complainant had a pattern of behaviour where, very shortly after the issuing of a response, follow up requests for explanations or personal information would be made, despite advice from the Police that FOI was not the appropriate route to obtain the information.
29. In respect of a previous similar request, the Police had warned the complainant on 22 March 2023 that section 14 was likely to be invoked if the complainant persisted.
30. The Police anticipated that following any issuing of responses to the complainant on the subject of state based crimes committed during the Covid pandemic, follow up requests would be received from the complainant as well as requests for internal reviews.

### **The complainant's view**

31. In their complaint to the Commissioner, the complainant is of the view that the Police are "conspiring with the mayor's office to pervert the course of justice" and are deliberately withholding information.
32. The complainant also does not accept that a crime reference number is personal data and is of the view that the Police are using FOI exemptions incorrectly in order to withhold information.
33. The complainant does not accept that their requests cause harassment or distress to staff or undue burden on the Police's resources, stating:

"Persistently refusing to give a straight answer does not amount to "Discussing at length", and it is not unreasonable to persist in asking when the reasons given for refusing are spurious.

While I realise that you do not have any lawful reason for ignoring the crimes that were reported to you, and it may therefore cause you distress to have to provide the actual reasons, that does not make the requests for the information vexatious as the purpose of the requests is not to cause distress, but to get to the bottom of what has happened.

As for any burden on the authority, that is almost entirely due to you digging yourselves into a hole trying to avoid answering a simple question that ought not need to be asked."

### **The Commissioner's decision**

34. In cases where a public authority is relying on section 14(1), it is for the public authority to demonstrate why it considers that a request is a disproportionate, manifestly unjustified, inappropriate, or improper use of FOIA. As previously discussed, there is a high bar for engaging section 14(1).

### **Value or serious purpose**

35. In cases where the issue of whether a request is vexatious is not clear cut, the key test is to determine whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation, or distress.

36. When considering this issue, the Upper Tribunal in Dransfield asked itself, "Does the request have a value or serious purpose in terms of there being an objective public interest in the information sought?" (paragraph 38). The public interest can encompass a wide range of values and principles relating to what is in the best interests of society, including, but not limited to:

- holding public authorities to account for their performance;
- understanding their decisions;
- transparency; and
- ensuring justice.

37. In this instance the request appears to focus on an issue of concern about the behaviour of prominent people during the COVID pandemic and whether crimes were committed. The complainant has a clear belief that wrongdoing may have been committed and believes the request to be a legitimate pursuit to uncover this and that it is in the public interest to do so.

38. However, even if the request does have a value or serious purpose, there may be factors that reduce that value. One such factor is the burden the request places on the public authority.

### **Burden**

39. The Police argue that the amount of work that would be involved in dealing with the request would impose an unreasonable burden on the Police. The Police have also explained that it has answered previous requests from the complainant on the same subject as this request and have also explained to the complainant why the alleged crimes have not been passed to the Metropolitan Police.

40. As this request is very similar to requests that the Police have already dealt with previously, the Commissioner is satisfied that the Police will have a clear understanding of the amount of work which would be required and also, given the complainant's pattern of behaviour, that it would be highly likely that the complainant would request an internal review of any response given, thereby creating more work for the Police's FOI team.
41. However, the Commissioner considers that there is a high threshold for refusing a request on such grounds and a public authority is most likely to have a viable argument when:
  - The requestor has asked for a substantial volume of information and
  - The authority has real concerns about potentially exempt information, which it will be able to substantiate if asked to do so by the ICO and
  - Any potentially exempt information cannot easily be isolated because it is scattered through the exempt material.
42. As regards this request, the response would be straightforward as it would be similar to previous responses given by the Police.
43. In terms of size and work involved, therefore, the Police have not convinced the Commissioner that responding to this request would impose a grossly oppressive burden.

### **Context & history**

44. The context and history of the request is often a major factor in determining whether the request is vexatious and may support the view that section 14(1) applies.
45. The Commissioner acknowledges that, in this case, the Police have dealt with many previous and similar requests from the complainant over the past two years and have explained to the complainant FOIA is often not the appropriate avenue via which to request the information sought. The Commissioner accepts that the majority of the previous requests relate to the subject matter of the request in this case.
46. The Commissioner does accept there was a serious value to the request in this case, i.e., the transparency around the activities of prominent people during the COVID pandemic. But when considered in the context of the Polices previous dealings with the complainant, the Commissioner accepts that the request can be considered vexatious.



47. The Commissioner also notes that this approach is supported by case law in *Betts vs ICO*.<sup>3</sup> This case suggests that even if a request were not vexatious in isolation, it could be considered vexatious when viewed in context.
48. In this case, it seems that a personal issue between the complainant and the Police has resulted in ongoing and repeated FOIA requests over two years. This has continued despite the Police's explanations and advice as regards the nature of the complainant's requests and the limitations of FOIA. In the Commissioner's view, this demonstrates a continuation of a pattern of behaviour and part of an ongoing campaign to uncover evidence to support the complainant's belief that wrongdoing has taken place.
49. The Commissioner notes that he has received several complaints from the complainant in respect of similar requests to the Police and other organisations which have resulted in Decision Notices being issued, for example, IC-168381-Q2J4 and IC-213303-S5B4 where section 14 was upheld in both cases.
50. The Commissioner considers that the request in this case can be considered to be a burden when seen in context of the history of the complainant's previous requests.

### **Motive & harassment**

51. The motive of the requester is relevant when considering whether the request is vexatious under section 14(1).
52. Whilst the complainant's initial motive was to ensure transparency in the activities of prominent people during the COVID pandemic, there now appears to be an underlying motivation of the complainant to seek evidence of wrongdoing on the part of the Police.
53. The complainant's requests are not abusive or aggressive. Nevertheless, the tenacity with which they have pursued their arguments will be felt as harassing by Police data and information officers. The Commissioner also notes that Police data and information officers may feel irritated and harassed by dealing with the same complainant and the same issues when it has responded to the complainant's requests previously.

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<sup>3</sup> <https://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i61/betts.pdf>

54. Further, this demonstrates that the complainant is taking an unreasonably entrenched position, rejecting advice by the Police as regards the role of FOIA, and refusing to accept when the Police state that information is not held or is covered by an FOIA exemption.
55. The Commissioner's guidance states that such behaviour also undermines a requester's arguments that their request is a serious attempt to access information which will be of use to them (page 16).
56. In summary, the Commissioner has taken into account all of the above, and considered whether, on a holistic basis, he considers that the request is one that typically characterise a vexatious request - and he finds that it does. While the request does have a value or serious purpose, there are several factors that reduce that value, namely, the complainant's unreasonable persistence by making repeat and overlapping requests and the context and history of the requests showing an underlying motive to uncover alleged but unsubstantiated wrongdoing.
57. In the Commissioner's opinion, this indicates that the complainant's intention was to cause a disproportionate or unjustified level of disruption to the Police and therefore the Police were entitled to rely on section 14(1) of FOIA to refuse the request.

## Right of appeal

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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: 0203 936 8963

Fax: 0870 739 5836

Email: [grc@justice.gov.uk](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://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 .....**

**Michael Lea**  
**Team Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
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**Wilmslow**  
**Cheshire**  
**SK9 5AF**