

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 27 May 2021

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

Address: 12 Granby Road
Harrogate
North Yorkshire
HG1 4ST

Decision (including any steps ordered)

1. The complainant requested information from the Office of the Police, Fire and Crime Commissioner for North Yorkshire (OPFCC) relating to the role of a named individual within the Civil Disclosure Unit.
2. The OPFCC refused to comply with the request, citing section 14(1) (vexatious request) of the FOIA.
3. The Commissioner's decision is that the request was vexatious and the OPFCC was entitled to apply section 14(1) to refuse the request.
4. However, the Commissioner found a procedural breach of section 10 (time for compliance) of the FOIA.
5. The Commissioner requires no steps to be taken as a result of this decision.

Background

6. During the course of her investigation, North Yorkshire Police explained that the request was submitted to the North Yorkshire Police Fire and Crime Commissioner but, by arrangement, was dealt with by North Yorkshire Police Civil Disclosure Unit (CDU).

7. For the purposes of this decision notice, the Commissioner will refer to the public authority as the OPFCC.

Request and response

8. On 20 September 2019, following earlier correspondence, the complainant wrote to the OPFCC and requested information in the following terms:

"Dear Civil Disclosure,

The email dated 20th September, 2019 is signed off by [name redacted].

In Tribunal proceedings, [name redacted], previously known as [name redacted], has given evidence above a statement of truth that [name redacted] doesn't deal with FOIA requests. Can you please confirm when that position changed?

It would also be helpful to know when the information request was first received from NYPCC [North Yorkshire Police Fire and Crime Commissioner] by the CDU [Civil Disclosure Unit]."

9. Although addressed to the CDU, the request was made via the 'whatdotheyknow' website in a chain of correspondence with the North Yorkshire Police, Fire and Crime Commissioner, that began on 19 August 2019.
10. On 6 October 2019 the complainant requested a response from the CDU to his request for information dated 20 September 2019.
11. On 14 October 2019 the complainant requested a response from the OPFCC to his request for information dated 20 September 2019.
12. In the absence of a response from either, on 21 November 2019, he requested a review of the request for information dated 20 September 2019.
13. The OPFCC responded on 21 January 2020. It refused to comply with the request, citing section 14(1) (vexatious request) of the FOIA.
14. The complainant requested an internal review on 2 March 2020.

Scope of the case

15. Following earlier correspondence, the complainant contacted the Commissioner on 30 October 2020 to complain about the way his request for information had been handled. Specifically, he complained that, despite the Commissioner's intervention, the OPFCC had not responded to a request for an internal review.
16. In the circumstances, the Commissioner exercised her discretion to accept the complaint without an internal review having been completed.
17. As is her practice, the Commissioner wrote to both parties setting out the scope of her investigation. She told the complainant that her investigation would look at:
 - whether the OPFCC is entitled to rely on section 14(1) as a basis for refusing to comply with the request; and
 - the timeliness of its response.
18. The Commissioner asked the complainant to contact her, within a specified timeframe, if there were other matters that he considered should also be addressed.
19. In the absence of a response from the complainant, the Commissioner progressed her investigation on the basis set out in her correspondence.
20. The analysis below considers the OPFCC's application of section 14(1) to the requested information.
21. The Commissioner has also considered the timeliness with which it handled the request.

Reasons for decision

Section 14 vexatious request

22. 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.
23. 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*. 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.

24. 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.
25. 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).

26. The Commissioner has published guidance¹ on dealing with vexatious requests. 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 or not a request is vexatious.
27. As discussed in the Commissioner's guidance, the relevant consideration is whether the request itself is vexatious, rather than the individual submitting it. 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.
28. 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 surrounding the request before making a decision as to whether section 14(1) applies".

¹ <https://ico.org.uk/media/for-organisations/documents/1198/dealing-with-vexatious-requests.pdf>

29. Sometimes it will be obvious when a request is vexatious, but sometimes it may not be. 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 OPFCC's view

30. In correspondence with the complainant the OPFCC told him that it considered that his request under the FOIA is an inappropriate use of a formal procedure. Specifically, it told him that the 'futile request' indicator applied to his request.

31. The Commissioner recognises 'futile requests' as one of the indicators from her guidance.

32. The OPFCC also told him:

"This request is linked to a matter of personal interest and not a matter of substantial/ wider public interest. It is deemed that the Freedom of Information Act is now being used as a means to vent dissatisfaction at the information provided within the Tribunal proceedings, which is a matter that individually affects the requestor".

33. During the course of her investigation, the OPFCC provided the Commissioner with context to the request. The Commissioner has been assisted by the chronology provided by the OPFCC summarising the various correspondence within the single 'whatdotheyknow' thread that gave rise to the request under consideration in this case.

34. The OPFCC told the Commissioner:

"This complaint relates to [reference (1) redacted]. The Commissioner may be aware from the Complainant that it was directly linked to an earlier request of [reference (2) redacted], ... The request [reference (2) redacted] made direct reference to Tribunal proceedings which both North Yorkshire Police and the Complainant were involved".

35. In its submission, the OPFCC referenced the indicators identified in the Commissioner's guidance on section 14. It told her:

"We understand that such indicators do not automatically cause a finding of s.14 to be made, but they assist us as an organisation to identify such requests".

36. It went on to confirm what it had told the complainant, namely that the indicator identified in this particular request was 'futile request'.

37. It also explained:

"We determined that this specific request lacked a serious purpose and did not raise a matter of substantial public interest. When considered in the knowledge of the prior legal proceedings that the Requestor was personally involved in, it identified itself to be a matter of personal interest to himself rather than the public".

38. Further referencing what it had told the complainant, the OPFCC told the Commissioner:

"As stated within our Response Letter, the request was determined to be an inappropriate use of a formal procedure, specifically that it was a futile request. This request is linked to a matter of personal interest to the Requestor and not a matter of substantial/wider public interest. It is deemed that the Freedom of Information Act is now being used as a means to vent dissatisfaction at the information provided within the Tribunal proceedings, which is a matter that individually affects the Requestor, which we believe is an inappropriate or improper use of the FOIA procedure".

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.

40. 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.

41. 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.

42. 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.

43. The Commissioner does, however, recognise 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.

Was the request vexatious?

44. The Commissioner recognises that the complainant had his reasons for pursuing information from the OPFCC. He is clearly dissatisfied with the handling of procedures and/or decisions he has encountered in his dealings with the public authority.

45. The Commissioner acknowledges that the requested information (information about a named individual and the date a request was received by the CDU) is only really likely to be of interest to the complainant, but this does not automatically make it a futile request.

46. In reaching a decision in this case, the Commissioner has balanced the purpose and value of the request against the detrimental effect on the public authority.

47. She has also consulted her guidance with respect to the indicators that can be useful in identifying potentially vexatious requests. In her guidance, the indicator for futile requests is as follows:

"The issue at hand individually affects the requester and has already been conclusively resolved by the authority or subjected to some form of independent investigation".

48. As in many cases which give rise to the question of whether a request is vexatious, the evidence in the present case showed a previous engagement between the parties.

49. The Commissioner acknowledges that the complainant told her:

"This same authority routinely and deliberately breaches the Act, a fact about which I have complained many times previously".

50. The Commissioner is mindful that the request under consideration in this case is linked to correspondence between the parties in relation to an earlier request for information. The Commissioner understands that earlier request for information concerned Tribunal proceedings in which the complainant and North Yorkshire Police were involved.

51. Clearly in this case, the OPFCC considered that the particular context and history strengthened its argument that, at the time of the request, the request was vexatious.

52. The Commissioner acknowledges that, in most cases, authorities should consider FOI requests without reference to the identity or motives of the requester. Their focus should be on whether the information is suitable for disclosure into the public domain, rather than the effects of providing the information to the individual requester.
53. However, she also accepts that a public authority may take the requester's identity and motivation for making a request into account when determining whether a request is vexatious.
54. The purpose of section 14 of the FOIA is to protect public authorities and their employees in their everyday business. In her guidance, the Commissioner 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. Balancing the impact of a request against its purpose and value can help to determine whether the effect on the public authority would be disproportionate.
55. In her guidance, the Commissioner acknowledges that:

"A request which would not normally be regarded as vexatious in isolation may assume that quality once considered in context".
56. Although section 14(1) is not subject to a traditional public interest test, it was confirmed by the Upper Tribunal in the Dransfield case that it may be appropriate to ask the question:

"Does the request have a value or serious purpose in terms of the objective public interest in the information sought?"
57. The Commissioner accepts that complying with the request, in isolation, would not cause a disproportionate or unjustified level of disruption.
58. However, although there was nothing vexatious in the nature of the request itself, the Commissioner considered that it was vexatious when viewed in context.
59. The Commissioner has taken into account that the request under consideration in this case was made in the context of matters involving the complainant that had been considered, and dismissed, by the First-tier Tribunal (Information Rights).
60. In those proceedings, the Tribunal considered the OPFCC's application of section 14 to the request that was the subject of the appeal. In its conclusion, the Tribunal commented on *"the extent of [the complainant's] hostility towards and harassment of its officers"*, and of one officer in particular. That officer is one of the named individuals in the request in this case.

61. Having considered the arguments put forward by the complainant and by the OPFCC, the Commissioner considers the request in this case to be a continuation of the complainant's pursuit of matters that affect him individually: matters that have been subjected to independent investigation.
62. 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).
63. Accordingly, she was satisfied that, at the time of the request, the OPFCC was entitled to apply section 14(1) of the FOIA.

Section 10

64. Section 1(1) of the FOIA states that an individual who asks for information is entitled to be informed whether the information is held and, if the information is held, to have that information communicated to them.
65. Section 10(1) of the FOIA provides that a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.
66. The request in this case was submitted on 20 September 2019. However, it was not until 21 January 2020 that the OPFCC provided its substantive response.
67. The Commissioner recognises that the request under consideration overlapped with another request in the 'whatdotheyknow' thread of correspondence. She also accepts that the complainant chased for a response to request in this case on more than one occasion.
68. In its submission to the Commissioner, the OPFCC explained the reason for the delay in responding to the request. It told her:

"The request made on the 20 September 2019 was in reply to an acknowledgement email for the first Internal Review of FOI [reference (2) redacted], which the Requestor had submitted before the full response had been finalised.... It appears that it was mistakenly thought that the email of the 20 September 2019 related to the Internal Review for [reference (2) redacted], so it was not separately processed as a new FOI on the 20 September 2019".

69. The Commissioner finds that the OPFCC breached section 10(1) of the FOIA by failing to comply with section 1(1) of the FOIA within the statutory time period.

Other matters

70. The Commissioner recognises that the request under consideration was made in the midst of correspondence relating to a separate request for information.
71. The Commissioner's website includes a section entitled '*Information request dos and don'ts*'. She recommends that quick reference tool² to requesters who are considering making a request for information.

Internal review

72. The Commissioner cannot consider the amount of time it took a public authority to complete an internal review in a decision notice because such matters are not a formal requirement of the FOIA. Rather, they are matters of good practice which are addressed in the code of practice issued under section 45 of the FOIA.
73. However, the Commissioner has issued guidance in which she has stated that, in her view, internal reviews should take no longer than 20 working days to complete, and even in exceptional circumstances the total time taken should not exceed 40 working days.
74. In this case, the internal review that the complainant requested on 2 March 2020 was not completed in accordance with that guidance.
75. The Commissioner expects the OPFCC to ensure that the internal reviews it handles in the future adhere to the timescales she has set out in her guidance.

² <https://ico.org.uk/your-data-matters/official-information/>

Right of appeal

76. 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

77. 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.

78. 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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