

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 20 April 2023

Public Authority: West Yorkshire Combined Authority
Address: Wellington House,
40-50 Wellington Steet,
Leeds
LS1 2DE

Decision (including any steps ordered)

1. The complainant requested information from West Yorkshire Combined Authority relating to procedures for dealing suspected crimes by staff, action taken in relation to intercepted emails and the person responsible for responding to FOIA requests. West Yorkshire Combined Authority refused the request under section 14(1) of FOIA (vexatious requests).
2. The Commissioner's decision is that the request was vexatious and therefore West Yorkshire Combined Authority was entitled to rely upon section 14(1) of FOIA to refuse it.
3. The Commissioner does not require any steps to be taken.

Request and response

4. On 27 February 2022, the complainant made the following request for information to West Yorkshire Combined Authority (WYCA).

"Given that you are responsible for the oversight of the police service, it is clearly important to maintain the integrity of your own office, so what is your procedure when one of your officers is suspected of crime within the office?"

Given also that your interim head of department has confirmed in an earlier FOI request that no authority has been given for the interception of emails and also that a non-zero number of emails have been intercepted, which appears to be an offence contrary to the

regulation of powers acts, what action have you taken in regards to this.

Finally, who is it that is responding to these FOI requests?"

5. WYCA responded on 28 March 2022 and refused the complainant's request under Section 14 of FOIA.
6. Furthermore, it said that moving forward it was 'not obliged to respond to requests under Section 17(6) of the FOIA where we believe them to be vexatious under Section 14(1) and we have previously replied to similar requests with an explanation of the reasons for our refusal, or provided more suitable advice to request the information you are after e.g. via Casework. Should the organisation receive requests from you in these themes, tone or context to previous requests, we will no longer issue refusal notices as per Section 17(6) of the FOIA.'
7. As the complainant was unhappy with the response from WYCA he requested an internal review on 6 April 2023.
8. Following an internal review on 10 June 2022 WYCA wrote to the complainant on 10 June 2022 upholding its original decision.

Scope of the case

9. The complainant contacted the Commissioner on 28 April 2022 to complain about the way his request for information had been handled.
10. This Decision Notice covers whether WYCA correctly determined that the request was vexatious.

Reasons for decision

Section 14(1) – vexatious requests

11. 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.
12. The word "vexatious" is not defined in FOIA. However, as the Commissioner's updated guidance on Section 14(1)¹ 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

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

cause a disproportionate or unjustified level of disruption, irritation or distress.

13. FOIA gives individuals a greater right of access to official information in order to make bodies more transparent and accountable. As such, it is an important constitutional right. Therefore, engaging section 14(1) is a high hurdle.
14. 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.
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")². 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. They stated:

"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).

WYCA's view

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

19. In applying Section 14(1) WYCA said it had considered the four broad themes in the Dransfield decision and concluded that the request was vexatious.
20. WYCA considered the context of the request itself and the history of its relationship with the requestor in accordance with the ICO's guidance for dealing with vexatious requests which states:

"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"³.
21. WYCA stated in its response to the complainant dated 28 March 2022 that it 'has noted the number of requests that you have submitted under the FOIA – albeit from alternative email addresses, yet all the same or similar nature. Several attempts have been made to advise, under Section 16 of the FOIA, alternative methods to communicate with the Combined Authority yet the pursuit of submitting such questions under the FOIA is both disproportionate and not in the public interest'.
22. WYCA pointed out to the Commissioner that it had explained to the complainant on a number of occasions that the FOIA was only for information held in a clearly reportable format and was not intended for general correspondence, complaints or used as a means to change the policy or legislation, which a lot of his requests were seeking to achieve.
23. WYCA advised the Commissioner that on 9 November 2021 it implemented its unreasonable behaviour policy to restrict and limit the complainant's contact with it for the following reasons:
 - "Refusing to accept that issues are not within the remit of the Mayor, the Deputy Mayor for Policing and Crime or the staff in the Policing and Crime Team despite having been provided with information about what we can and cannot assist with;
 - Sending multiple forms of communications to the wider Combined Authority A in an attempt to change the outcome of his communications with the Policing and Crime Team;
 - Sending numerous emails/letters, often within short periods of time, frequently repeating questions that had already been answered. In particular, continuing to involve the Information Governance team in his complaints about Members of Parliament and the BBC despite being told on a number of occasions how

³ <https://ico.org.uk/for-organisations/guidance-index/freedom-of-information-and-environmental-information-regulations/dealing-with-vexatious-requests-section-14/>

these crime reports are submitted in these circumstances and who is responsible for considering them.

- Make comments about staff members ability to perform their role with the intention to be inflammatory.”
24. WYCA confirmed that, the implementation of the policy did not revoke the complainant’s rights under FOIA or the UK General Data Protection Regulations. However, it considers that the complainant then turned to FOIA and the GDPR to make requests as a means to continue to correspond with it and to circumvent the unreasonable behaviour policy decision. It stated ‘It was simply due to the fact that restrictions had been placed on the Requestor, with the imposition of the unreasonable behaviour policy, that he looked to access the Combined Authority through requests under the FOIA.’
25. WYCA added in its response to the complainant ‘in line with the ICO’s advice, the Combined Authority sees the following indicators in your requests and the reason for such:
- The effort and burden on the Combined Authority to respond to these requests and to meet these requests moving forwards is so grossly oppressive in terms of the strain on time and resources, that the Combined Authority cannot reasonably be expected to comply, no matter how legitimate the subject matter or valid the intentions.
 - You are attempting to reopen an issue which, has already been comprehensively addressed by the Combined Authority and has been provided to you in full already or otherwise subjected to some form of independent scrutiny
 - You are taking an unreasonably entrenched position, rejecting attempts to assist and advise out of hand and shows no willingness to follow the advice given under alternative FOI’s.
 - You are abusing their rights of access to information by using the legislation as a means to vent your anger at a particular decision, or to harass and annoy the Combined Authority, for example, by requesting information which the Combined Authority knows you to possess already.’
26. For the above reasons, WYCA stated to the complainant; ‘please take this response as a refusal notice’.
27. WYCA has also provided the Commissioner with a timeline of the complainant’s engagement with it. This includes complaints, FOI requests, subject access requests and general correspondence. It is clear that all communications from the requester are on the broad topics outlined at paragraph 23 above. The timeline also evidences that the

application of the unreasonable behaviour restrictions has not diminished the requester's contact with WYCA, but rather has resulted in an increase in using FOIA to continue to revisit matters which have either been resolved or to raise complaints and concerns about the way WYCA is handling his correspondence.

The complainant's view

28. In his internal review request, the complainant expressed concern that his correspondence was being dealt with by WYCA's policing and crime office. His belief was that the policing and crime office had no authority to do this and the interception of his correspondence was an offence under the Investigatory Powers Act 2016. He suggested that this might be an honest mistake which he believed they would be keen to explain rather than describing his request as 'vexatious'. He was uncertain why his request was vexatious as it was just asking for the procedure in relation to an eventuality that appeared to be occurring. His view was that it was not appropriate for the policing and crime office to answer his request as it was a matter for WYCA to which it should be passed for the attention of its information officer.

The Commissioner's decision

29. 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.
30. The Commissioner is keen to stress that in every case, it is the request itself that is vexatious and not the person making it.
31. 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.
32. Whilst the Commissioner does not necessarily consider that complying with the request itself would place a significant burden on WYCA he recognises that the aggregated burden of dealing with the complainant's overall correspondence, including a number of FOI requests would place an additional burden on WYCA and its limited resources regarding matters which have already been responded to previously.
33. The Commissioner is also satisfied that this request can be seen as evidence of attempting to re-open issues that has already been comprehensively dealt with, and there is no evidence that the complainant has modified his behaviour on the advice and direction of WYCA. He considers such behaviour, ie unreasonable persistence, to be an indicator of a vexatious request.

34. The Commissioner believes that the request was vexatious and therefore WYCA was entitled to rely on Section 14(1) of FOIA to refuse the request.

Right of appeal

35. 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
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

36. 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.
37. 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

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