

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 3 May 2018

Public Authority: Chief Constable North Yorkshire Police
Address: Police Headquarters
Alverton Count
Crosby Road
Northallerton
North Yorkshire
DL6 1BF

Decision (including any steps ordered)

1. The complainant requested information relating to non-compliant FOIA requests and internal reviews.
2. North Yorkshire Police refused to provide the requested information, relying on section 14(1) of the FOIA (vexatious request). In light of the passage of time, North Yorkshire Police revised its position during the course of the Commissioner's investigation and disclosed the requested information to the complainant.
3. While acknowledging that disclosure, at the request of the complainant the Commissioner investigated whether North Yorkshire Police was correct to rely on section 14(1) of the FOIA at the time of the request.
4. The Commissioner's decision is that North Yorkshire Police was entitled, at the time of the request, to refuse the request as vexatious under section 14(1) of the FOIA.
5. She requires no steps to be taken as a result of this decision.

Background

6. The complainant contacted the Commissioner on 21 October 2016 to complain about the way this request for information had been handled. He also submitted a separate, similar, complaint about the same public authority on the same day with a view to the two complaints being considered alongside each other.
7. In each case his complaint was about the citing of section 14(1) (vexatious or repeated requests) of the FOIA. The complainant disputed that the requests were vexatious.
8. While the other complaint was progressed under case reference FS50651788, due to an administrative oversight the complaint in this case was not allocated for investigation.
9. When it came to light, in October 2017, that the complaint had not been investigated, it was allocated for investigation.
10. In correspondence with the ICO regarding this case, the complainant said:

"... the purpose of a complaint to the ICO is to advance the case for disclosure, following a refusal notice. I have not yet received the disclosure requested ... and will, accordingly, continue pressing for it..." (email dated 24 October 2017)

and

"For the avoidance of doubt, disclosure has not been made under [reference redacted]. I still require NYP [North Yorkshire Police] to make that disclosure. That is, plainly, the purpose of the complaint". (email dated 25 October 2017).

Request and response

11. On 2 September 2016, the complainant wrote to North Yorkshire Police and requested information in the following terms:

"Between 1st July, 2016 and 1st September 2016

(i) How many FOIA requests were due for finalisation (within the statutory 20 working day period)?

(ii) How many were finalised in a compliant manner?

(iii) How many were non-compliant?

(iv) How many FOIA request internal reviews were due for finalisation (within the 20 working day period)?

(v) How many were finalised in a compliant manner?

(vi) How many were non-compliant? That is to say still not finalised at 1st September, 2016.

Please provide in all cases:

(vii) The NYP FOI file reference for the request/internal review falling due for finalisation in the period between 1st July, 2016 and 1st September 2016

(viii) The date the request, internal review was submitted to NYP

(ix) The date the request, internal review was finalised by NYP".

12. The request was made through 'whatdotheyknow'.
13. North Yorkshire Police responded on 29 September 2016. It refused to provide the requested information, citing section 14 of the FOIA (vexatious or repeated request).
14. The complainant disputed that the request was vexatious.
15. Following an internal review, North Yorkshire Police wrote to the complainant on 20 October 2016. It upheld its original position that section 14 of the FOIA applied.

Scope of the case

16. The complainant contacted the Commissioner on 21 October 2016 to complain about the way his request for information had been handled. He disputed that the request was vexatious. He told the Commissioner:

"In the case of the requester he has been subjected to months of conduct that appears largely designed to vex, annoy and harass. This has been the subject of many complaints already, to both the CDU [Civil Disclosure Unit] and Information Commissioner's Office (ICO) - and is repeated here for emphasis".
17. Following the delay acknowledged above, the Commissioner wrote to both parties at the start of her investigation.
18. She invited North Yorkshire Police to reconsider its handling of the request for information and to explain why, in the circumstances of this

case, North Yorkshire Police considered the request was vexatious and that section 14(1) of the FOIA applied.

19. The Commissioner wrote to the complainant advising that her investigation would look at whether North Yorkshire Police was entitled to rely on section 14 of the FOIA as a basis for refusing to provide the requested information. She asked him to respond if there were other matters that he considered should be addressed.
20. The complainant provided the Commissioner with a comprehensive submission in support of his complaint. In his updated grounds for complaint dated 13 November 2017 the complainant told the Commissioner:

"The ICO is respectfully invited to uphold the complaint and issue a Decision Notice to the effect that requires NYP to disclose the requested information within 35 days, thereafter".

21. Having reconsidered the request, North Yorkshire Police revised its position. It told the complainant:

"At the time of the original decision, particular factors engaged a Section 14 response, however, at this time, some of these factors are no longer present".

22. Accordingly, given the passage of time and change of circumstances, it disclosed the information it had located that fell within the scope of the request.

23. The complainant responded the same day, telling North Yorkshire Police:

"[4(a)] If the section 14 exemption is not unconditionally withdrawn, and a revised finalisation posted on this website to that effect, then the most proportionate option available to the various parties would be to ask the ICO to proceed with the present section 14 investigation, and issue a Decision Notice. In the unlikely event that the reliance on the section 14 exemption is upheld by the ICO, then it would be appealed to the FTT".

24. With reference to the wording of its response, he invited North Yorkshire Police to disclose 'the particular factors considered when the original section 14 decision was made' and 'some of those factors no longer present'.

25. Following an internal review of its revised response, North Yorkshire Police noted that the complainant was satisfied with the data that was disclosed to him. With respect to his comments on its original application of section 14(1) North Yorkshire Police stated:

"Please see the attached document which identifies NYP's considerations when issuing the original S14 decision.

I can advise that at the time of the ICO review the litigation referred to in the attachment had concluded and was therefore no longer a relevant consideration. As such, the section 14 stance was withdrawn and the information that was originally requested was supplied to you on 07 December 2017, which is available on the WhatDoTheyKnow log".

26. The Commissioner wrote to the complainant advising that these steps would appear to achieve the outcome he was seeking and that she therefore proposed to take no further action.

27. The complainant was dissatisfied with that approach. He told the Commissioner:

"With regard to [case reference] 708629 I cannot concur that the case file should be closed: The core issue is the reliance on a s14 exemption which has been extensively challenged by way of my complaint.

... You are, therefore, required to issue a Decision Notice on this point."

28. The complainant then sought to instruct the Commissioner as to the content of the decision notice (DN) he required.

29. Under section 50(2)(c) of the FOIA, the Commissioner has the power *not* to make a decision and therefore not to issue a DN if it appears to her that *"the application is frivolous or vexatious"*.

30. The Commissioner is mindful of the effect that dealing with such complaints will have, both in relation to her duty to make effective use of her finite resources, and in ensuring that her office and the FOIA are not brought into disrepute by progressing complaints which do not justify serious consideration.

31. While recognising the complainant's concerns at the way in which his request for information was handled, the Commissioner is also mindful that he has been provided with the requested information.

32. Accordingly, in a case such as this, the Commissioner would not normally consider it either necessary or an appropriate use of her regulatory resources to progress the complaint further.

33. However, given the circumstances of this case, the complainant's views on North Yorkshire Police's application of section 14 of the FOIA and the history of engagement between the complainant and North Yorkshire

Police in respect of this and other requests for information, the Commissioner has decided to accept the complainant's application for a decision and to issue a DN.

34. In proceeding to a DN in this case, the Commissioner acknowledges that section 50(1) of the FOIA states that any person can apply to the Commissioner for a decision on whether a request for information was dealt with in accordance with the requirements of Part I of the FOIA. In this case, the complainant requested such a decision despite having been provided with the requested information.
35. The analysis below considers North Yorkshire Police's application of section 14(1) of the FOIA to the requested information, North Yorkshire Police having confirmed that it considered that section 14(1) of the FOIA applied at the time of the request.

Reasons for decision

Section 14 vexatious request

36. 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.
37. 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*¹. 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.
38. 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.

¹ <https://www.judiciary.gov.uk/judgments/info-commissioner-devon-county-council-tribunal-decision-07022013/>

39. 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).

40. The Commissioner has published guidance on dealing with vexatious requests². 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.

41. 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.

42. 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".

43. 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".

² <https://ico.org.uk/media/for-organisations/documents/1198/dealing-with-vexatious-requests.pdf>

The complainant's view

44. The complainant provided the Commissioner with a comprehensive submission in support of his view that the request was not vexatious. In his submission, he provided evidence in respect of the burden on the authority, motive, value or serious purpose of the request and whether the request could be considered part of a campaign.

45. He told the Commissioner:

"The matters that were determined in both Dransfield and Parker involved persistent, repetitive requests from aggrieved parties, both of whom were members of the public. Such characteristics in the instant request are completely absent...The instant request clearly has a solid foundation; it seeks disclosure of objectively important information that should have been made publicly available, in any event. There is simply no basis to support a section 14 exemption, by claiming otherwise."

46. He also told the Commissioner:

"The 'disrupted' party here, on any reasonable, independent view is plainly me, not NYP..."

The burden falls on NYP to provide the ICO with evidence of such alleged 'disruption' caused to a police force, concerning a request relating to their performance in dealing with information requests under the Act..."

47. Similarly, he argued that:

"The vexatiousness in this particular information request is, on all the evidence, the sole preserve of NYP, not me".

North Yorkshire Police's view

48. During the course of her investigation, North Yorkshire Police told the Commissioner:

"North Yorkshire Police maintain that the original position to deem the request to fall under section 14(1) of the FOIA was appropriate at the time the request was made".

49. In its submission, North Yorkshire Police provided the Commissioner with context to the request and explained the history of engagement - and the ongoing dealings - it had with the complainant.

50. In support of its application of the exemption, and with reference to the ICO 'indicators', North Yorkshire Police explained its decision to cite section 14(1) of the FOIA at the time of the request. It told the

Commissioner that the complainant submitted 21 FOI and internal review requests between 8 August and 22 September 2016 (33 working days) to the Civil Disclosure Unit serving North Yorkshire Police (NYP) and the Office of the Police and Crime Commissioner (OPCC). It described the majority of those requests as 'complex' and requiring 'a large amount of research'.

51. Regarding the burden of those requests on the authority, North Yorkshire Police told the Commissioner:

"The amount of requests has resulted in staff spending a disproportionate amount of their time facilitating [the complainant's] requests. In concentrating efforts on such a volume and complexity of requests from one area, this inevitably put a strain on the Civil Disclosure Unit (CDU) in answering requests from other members of the public. In addition almost all requests from [the complainant] result in an Internal Review, additional correspondence and complaints".

52. In support of its position, North Yorkshire Police provided the Commissioner with details of some of those other requests for information it had received from the complainant.
53. North Yorkshire Police also provided evidence it said related to a 'deliberate intention to cause annoyance', furtherance of 'personal grudges' and 'unreasonable persistence'. It told the Commissioner that it considered that the complainant was using the FOIA "to further his campaign [against North Yorkshire Police]". In that respect it explained that, at the time of the request, the parties were involved in litigation. It told the Commissioner that those proceedings included issues concerning FOIA requests.
54. In balancing the impact on the authority and the value and purpose of the request, North Yorkshire Police told the Commissioner:

"The Applicant had clearly requested the information for his own purposes...It was clear from the complainant's conduct, particularly at the time of the request, that any response would generate additional correspondence and additional information requests and likely complaints.... The Applicant was also using the FOIA to further his civil litigation against the force".

The Commissioner's view

55. 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.

56. 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.
57. 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.

Was the request vexatious?

58. The Commissioner considered both the complainant's position and North Yorkshire Police's arguments regarding the information request in this case.
59. 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 engagement. Clearly in this case, North Yorkshire Police considered that the particular context and history strengthened its argument that, at the time of the request, the request was vexatious.
60. 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.
61. She has also considered, in light of the nature, and degree, of the dealings between the complainant and North Yorkshire Police, whether, at the time, the request crossed the threshold of what was reasonable.
62. To the extent that some of the requests referenced by North Yorkshire Police in support of its view that the request was vexatious post-date the request in this case, the Commissioner has not taken them into account. However she considers that they are still relevant to the extent that they explain the nature of the dealings between the parties.
63. The Commissioner recognises that the complainant had his reasons for pursuing information from North Yorkshire Police: the complainant is clearly not satisfied with how North Yorkshire Police conducts itself. Both parties made reference in their submissions to litigation that was ongoing at the time of the request.

64. The Commissioner recognises that an authority should be mindful to take into account the extent to which oversights on its own part might have contributed to a request being generated.
65. She also 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.
66. The request in this case was for information about North Yorkshire Police's compliance with the FOIA.
67. 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".
68. The Commissioner accepts that the subject matter of the request, relating as it does to a public authority's compliance with a statutory requirement, is a matter of public interest. In that respect, the request sought disclosure of information which ought to be made publicly available.
69. The Commissioner also accepts that complying with the request, in isolation, would not cause a disproportionate or unjustified level of disruption.
70. 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.
71. 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.
72. In that respect, the Commissioner noted that the request in this case, although not obviously vexatious in itself, was made in the context of the ongoing litigation mentioned above. The Commissioner is aware that the issues involved in those proceedings included issues concerning Freedom of Information Act requests.
73. In this case, the wider context of the dealings between the parties, including the civil proceedings ongoing at the time of the request, suggested to the Commissioner that the motive behind the request was a matter of personal interest rather than to serve the public interest.
74. Furthermore, she accepted that the context and history suggested that a response to this request was likely to lead to further communications

and more requests for other information on related matters from the complainant with a further consequential burden on North Yorkshire Police staff.

75. The Commissioner noted the tone used, and derogatory comments made, in his correspondence with North Yorkshire Police and with herself, as evidence of the way the complainant conducts himself.
76. She also considered the complainant's preparedness to appeal this matter to the Tribunal, prejudging the outcome of her investigation, as indicative of his behaviour.
77. 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.
78. Furthermore, these requests can also damage the reputation of the legislation itself.
79. 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).
80. Accordingly, she was satisfied that, at the time of the request, North Yorkshire Police was entitled to apply section 14(1) of the FOIA.

Right of appeal

81. 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

82. 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.

83. 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

**Deborah Clark
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