

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 22 October 2018

**Public Authority:** West Yorkshire Police

**Address:** PO Box  
Laburnum Road  
Wakefield  
WF1 3QP

#### Decision (including any steps ordered)

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1. The complainant has requested information relating to a charity. West Yorkshire Police did not comply with the request, citing section 12 (cost limits) of the FOIA.
2. The Commissioner's decision is that West Yorkshire Police has applied section 12 of the FOIA appropriately and therefore does not have to comply with the request. The Commissioner also considers that West Yorkshire Police has complied with section 16 (duty to provide advice and assistance) of the FOIA. However, the Commissioner considers that West Yorkshire Police has breached section 10(1) (time for compliance) of the FOIA.
3. The Commissioner does not require West Yorkshire Police to take any steps as a result of this decision notice.

#### Request and response

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4. On 12 March 2018, the complainant wrote to West Yorkshire Police (WYP) and requested information in the following terms:  
  
"Please send me details of all correspondence, by email or letter, to or from the transgender support charity 'Mermaids' (<http://www.mermaidsuk.org.uk>, charity number 1160575) that you hold (for the avoidance of doubt, this would include any correspondence to or from the charity, or its representatives including the CEO Susie Green regardless of whether 'official' Mermaids email addresses or personal email addresses were used at either end of the

correspondence);

Any training materials that have been provided by that charity to you;

And details of any payments made by you to that charity;

Please also provide me with the minutes of any meetings at which that charity was either represented or discussed;

Finally, please provide me with any voice recordings held of any telephone conversations received from, or made to, that charity.”

5. WYP responded on 12 April 2018. It explained that it would not be able to respond to the request within the 20 working day limit and apologised for this.
6. WYP provided its response on 24 April 2018. It explained that it was unable to provide the requested information as to do so would exceed the cost limit and cited section 12 (cost of compliance would exceed the appropriate limit). WYP also explained that under section 16 (duty to provide advice and assist), it could confirm that it did not hold any information in relation to training materials or payments in relation to the charity, Mermaids. It also stated that it may be able to provide recorded crimes relating to the charity.
7. Following an internal review WYP wrote to the complainant on 29 June 2018. It explained that it was not relying on section 12 any longer. It also reiterated that in relation to training materials, payments and meeting minutes it did not hold any information. In relation to emails, it explained that it was applying section 14(1) (vexatious request). In addition, WYP explained that it had contacted its IT department which had confirmed that searching the email server would last a number of days; it could only run one server at a time and would require a manual restart of every server because of the potential for such a volume request to bring the email system down.
8. WYP also confirmed that it had been able to locate some relevant email correspondence from one of its Hate Crime Co-ordinators and some voice recordings and incident logs from the contact centre. It explained that it was possible that further information may be held however, due the above reasons, it could not be easily located. WYP explained that it was withholding the retrieved information under the following exemptions:
  - Section 30(1) (investigations and proceedings conducted by a public authority) of the FOIA.
  - Section 40(2) (personal information) of the FOIA.

## Scope of the case

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9. The complainant contacted the Commissioner on 3 July 2018 to complain about the way his request for information had been handled.
10. During the Commissioner's investigation, the complainant confirmed that he was only pursuing the information WYP had cited under section 14(1) ie he was only complaining about WYP's application of section 14(1) in relation to searching for relevant emails.
11. The Commissioner will therefore not consider the information withheld under sections 30(1) and 40(2).
12. Subsequently during the Commissioner's investigation, WYP explained that it was no longer relying on section 14(1) in relation to searching for the relevant emails, but was relying on section 12 again. WYP also confirmed that it would inform the complainant of this.
13. The Commissioner will consider the Commissioner WYP's application of section 12(1) and the length of time taken to deal with the request.

## Reasons for decision

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14. Section 12 of the FOIA states that a public authority does not have to comply with a request for information if it estimates that the cost of compliance would exceed the appropriate cost limit.
15. The Commissioner's role is to decide whether or not the requested information can be provided to a requestor within the appropriate costs limit. The appropriate limit is set in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ('the Fees Regulations') at £600 for central government departments and £450 for all other public authorities. The Fees Regulations also specify that the cost of complying with a request must be calculated at the rate of £25 per hour, meaning that section 12(1) effectively imposes a time limit of 18 hours in this case.
16. In estimating whether complying with a request would exceed the appropriate limit, regulation 4(3) states that an authority can only take into account the costs it reasonably expects to incur in:
  - determining whether it holds the information;
  - locating the information, or a document containing it;
  - retrieving the information, or a document containing it; and
  - extracting the information from a document containing it.

17. WYP explained to the complainant that it holds the requested information but it was not held in an easily retrievable format. It also explained that there were 8,179 staff and officers as of September 2017; in order to determine any correspondence by email or letter, would require a manual assessment of each mailbox and this assessment would be in excess of the 18 hours cost limit. WYP also explained that it had estimated that the cost of providing him with the information was above the amount which it is legally required to respond i.e. the cost of locating and retrieving the information exceeds the appropriate level as stated in the Fees Regulations, which currently stands at £450 worth of work.
18. Furthermore, WYP explained that under section 16 of the FOIA, there is a duty to provide advice and assistance to anyone who has made a request for information. It explained that it holds no information in relation to training materials or payments in relation to the charity Mermaids, but it may be able to provide recorded crimes relating to the charity.
19. During the Commissioner's investigation, WYP provided further arguments in relation to its application of section 12(1). It explained that its original section 12 response was not sufficient therefore it had conducted a further investigation within its IT department.
20. WYP explained that its IT department had advised that there is no global search capacity within its Enterprise vault (archived emails). This means that for any correspondence prior to 2014 it would have to individually search 11,000+ mailboxes. It also explained that the best estimate would be 1 minute per search, meaning 26 days of effort.
21. In relation to information from 2014 onwards, WYP confirmed that it could search for this information with minimal effort (20 searches).
22. In her guidance on section 12<sup>1</sup> the Commissioner explains that a public authority does not have to provide a precise calculation of the costs of compliance with a request; only an estimate is required. However, she considers that the estimate must be reasonable.
23. In the present case, the Commissioner notes that the police explained that in order to search for information prior to 2014, it would have to search 11,000+ files individually and that its best estimate would be 1 minute per search meaning that it would take 26 days of effort. The

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<sup>1</sup> [https://ico.org.uk/media/for-organisations/documents/1199/costs\\_of\\_compliance\\_exceeds\\_appropriate\\_limit.pdf](https://ico.org.uk/media/for-organisations/documents/1199/costs_of_compliance_exceeds_appropriate_limit.pdf)

Commissioner considers that this is a reasonable estimate, given the number of files that would need to be searched and is satisfied that WYP has demonstrated that to search for information prior to 2014 would exceed 18 hours and therefore the cost limit of £450.

24. The Commissioner also notes that the police explained that locating information from 2014 onwards would take minimal effort, in this case, 20 searches. In her guidance, the Commissioner explains that as soon as a public authority becomes aware that it intends to rely on section 12, it makes sense for it to stop searching for the requested information and inform the complainant. She also explains that this avoids any unnecessary work for the public authority as it does not have to provide any information at all if section 12 is engaged. The Commissioner is therefore satisfied that, as searching for relevant information before 2014 would exceed the cost limit, WYP does not have to provide any information in response to the request.
25. Taking all of the above into account, the Commissioner considers that WYP has applied section 12 appropriately and therefore does not have to comply with the request.

## **Procedural issues**

### **Section 16 – duty to provide advice and assistance**

26. Section 16(1) of the FOIA provides that a public authority is required to provide advice and assistance to any individual making an information request “so far as it would be reasonable to expect the authority to do so”.
27. In her guidance on section 16<sup>2</sup> the Commissioner explains that:

“In cases where it is reasonable to provide advice and assistance in the particular circumstances of the case, the minimum a public authority should do in order to satisfy section 16 is:

  - either indicate if it is not able to provide any information at all within the appropriate limit; or
  - provide an indication of what information could be provided within the appropriate limit; and
  - provide advice and assistance to enable the requestor to make a refined request”.

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<sup>2</sup> <https://ico.org.uk/media/1624140/duty-to-provide-advice-and-assistance-foia-section-16.pdf>

28. Where section 12(1) is cited, in order to comply with section 16, a public authority should advise the requester as to how their request could be refined to bring it within the cost limit.
29. In her guidance the Commissioner explains that a public authority should consider how it can provide advice and assistance to help an applicant narrow, reform or refocus their request, although there will be occasions where there are no obvious alternative formulations of the request.
30. WYP explained to the complainant that it does not hold information in relation to training materials or payments in relation to the charity Mermaids, but that it may be able to provide recorded crimes relating to the charity.
31. In the present case, the Commissioner is satisfied that, given the explanation WYP provided regarding how complying with the request would exceed the cost limit, there does not appear to be any obvious alternative formulations of the request, apart from being able to retrieve information more easily in relation to information from 2014 onwards.
32. The Commissioner also notes that WYP has explained to the complainant what information it does not hold and what information it may be able to provide. However, as the complainant has not complained about this part of WYP's explanation to him, she will not consider these points any further.
33. Taking all of the above into account, the Commissioner is satisfied that WYP has complied with its duty under section 16.

### **Section 10 – Time for compliance**

34. The Commissioner notes that the complainant submitted his request on 12 March 2018 and WYP responded on 24 April 2018.
35. Section 10 of the FOIA states that:

“(1) 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.”
36. As WYP took longer than 20 working days to respond to the complainant, the Commissioner considers that it has breached section 10(1).

### **Other matters**

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37. The complainant requested an internal review on 26 April 2018 and WYP responded on 19 June 2018.
38. Part VI of the section 45 Code of Practice (the code) makes it good practice for a public authority to have a procedure in place for dealing with complaints about its handling of requests for information.
39. While no explicit timescale is laid down in the code, the Commissioner has decided that a reasonable time for completing an internal review is 20 working days from the date of receipt of the request for review. In exceptional circumstances it may be reasonable to take longer but in no case should the time taken exceed 40 working days.
40. The Commissioner is concerned that it took over 20 working days for SP to complete the internal review.
41. The Commissioner notes that WYP cited section 12(1) initially and then cited section 14(1) (vexatious requests) instead, before reverting to section 12(1).
42. In her guidance on section 14<sup>3</sup> the Commissioner explains that a public authority cannot claim section 12 for the cost and effort associated with considering exemptions or redacting exempt information. However, it may apply section 14(1) where it can make a case that the amount of time required to review and prepare the information for disclosure would impose a grossly oppressive burden on the organisation.
43. The Commissioner considers that there would be a high threshold for refusing a request on such grounds. She considers that a public authority is most likely to have a viable case where:
  - The requester 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 throughout the requested material.

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<sup>3</sup> <https://ico.org.uk/media/1198/dealing-with-vexatious-requests.pdf>





## Right of appeal

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44. 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](mailto:GRC@hmcts.gsi.gov.uk)  
Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

45. 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.
46. 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**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**