

Freedom of Information Act 2000 (Section 51)

Decision Notice

Date: 2 May 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 mayoral awareness of any law breaking by her policy and crime office. West Yorkshire Combined Authority relied on section 17(6) of FOIA to decline to issue a refusal notice as it considered the request to be vexatious.
2. The Commissioner's decision is that West Yorkshire Combined Authority was entitled to rely on Section 17(6) of FOIA to decline to issue a refusal notice.
3. The Commissioner does not require any steps to be taken.

Request and response

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

"We have established that the policing and crime office has removed the right of appeal from their "Unreasonable behaviour" policy contrary to Article Six of the European Convention of Human Rights, and have done so without seeking appropriate legal advice, and we have established that they are intercepting these emails with no legal authority and that they know they have no legal authority.

They appear to do this on the basis that they think it unreasonable to expect that where the police have agreed to a course of conduct in response to a complaint and do not follow that course, that the policing and crime office should at least record that fact and seek an explanation.

The question here is: is they mayor aware of the lawbreaking by her policing and crime office, and if so, then what reason was she told to justify it?

I make this request under Section 16: the duty to be reasonably helpful."

5. WYCA did not respond to the request.
6. The complainant then submitted a subsequent similar request to WYCA on 17 May 2022 when he stated;

"I am writing to ask what are your policing objectives with regards to the criminal misconduct in the high offices of state, as I believe that this crime represents by far the biggest threat to the people of West Yorkshire.

Despite a number of letters on the subject during your consultation period, I can find no mention of misconduct anywhere in your Crime Plan.

I trust that you are aware of the offence, but for the benefit of the readers, the CPS guidelines are available here: <https://www.cps.gov.uk/legal-guidance/mi...>

From the wilful seeding of care homes with a deadly virus, to the treaty formally known as "Oven Ready", and now called the Northern Ireland Protocol, this government is established and defined by the abuse of the public's trust. The lies about partygate, the open market in peerages and the torrent of public money into the pockets of donors: the list goes on and on.

Much of the United Kingdom's constitution is founded on "The Good Chap" principle and the Good Chap principle relies on the public's trust. If that trust is abused then it threatens the very fabric of our society: this is why such abuse is a criminal offence.

We are governed by criminals and crime is a matter for the police. What are this areas objectives in relation to this crime?

7. WYCA did not respond to this request either, so on 24 September 2022, the complainant requested an internal review.

8. WYCA did not respond to the review request.

Scope of the case

9. The complainant contacted the Commissioner in June and July 2022 to complain about the way his requests for information had been handled.
10. The Commissioner contacted WYCA on 23 June 2022 in relation to its apparent failure to respond to the complainant's request dated 4 May 2022.
11. WYCA responded to the Commissioner on 5 and 17 July 2022 and explained that in response to previous requests from the complainant dated 27 February and 9 March 2022 it had applied Section 14 of FOIA as they were vexatious. In its responses, WYCA also made it clear that it would not be obliged to reply to any subsequent similar requests under Section 17(6) of FOIA.
12. The Commissioner upheld the WYCA's application of Section 14 of FOIA in relation to the complainant's requests dated 17 February and 9 March 2022, in his Decision Notices IC-168381-Q2J4 and IC-213303-S5B4 dated 20 and 24 April 2023 respectively.
13. The complainant has also referred the Commissioner to a request he made to WYCA on 4 March 2023 for information in relation to the "reasonable and proportionate enquiries" made by West Yorkshire Police into the allegations of misconduct during the "Partygate" period by the prime minister and others?
14. This Decision Notice covers whether WYCA was correct to rely on Section 17(6) of FOIA in not responding to the request dated 4 May 2022.

Reasons for decision

Section 1(1) of FOIA

15. Section 1(1) of FOIA states that:

"Any person making a request for information to a public authority is entitled—

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him.”

Section 14(1) of FOIA – vexatious requests

16. 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 cause a disproportionate or unjustified level of disruption, irritation or distress.
17. 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.
18. 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.
19. 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.
20. 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.
21. 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).

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

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

22. 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).

Sections 17(5) and 17(6) of FOIA

23. Section 17(5) of FOIA usually requires a public authority that wishes to refuse a request as vexatious to issue a refusal notice, stating that fact, within 20 working days of the request having been received.
24. However, the exception to this rule is contained in Section 17(6) of FOIA which allows a public authority to not issue a refusal notice if it considers the request in question is vexatious, has refused a previous request from that person as vexatious and, in all the circumstances, it would be unreasonable to issue a further refusal notice.

WYCA position

25. In its response to the Commissioner dated 5 July 2022, WYCA explained the reason why it did not issue a response to the complainant was because:

“The Combined Authority are reliant on Section 17(6) of the Freedom of Information Act when dealing with the requestor. The requestor has had previous refusal notices under Section 14(1) of the Act.

Whilst the Combined Authority recognises the provisions of the act – notably to respond to the requestor promptly, and no later than the 20th working day of a request being submitted, the Combined Authority are reliant on Section 17 (6) in this instance.

Aside from the requestor receiving this response previously, and via various methods e.g. Casework, complaints and correspondence with the Combined Authority, we considered the broad issues prior to applying Section 14(1) in the first instance:

- the burden imposed by the requests on the West Yorkshire Combined Authority;
- the motive of requests;
- the value or serious purpose of the request and;
- the effects of the requests and behaviour deemed both harassing and distressful to staff.

These considerations are not meant to be exhaustive

When considering the application of Section 14(1), the West Yorkshire Combined Authority considered the context of the request and the history of its relationship with the requestor as the guidance explains: "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".³

The Combined Authority considered all the requests submitted, albeit from separate email addresses, and other correspondence with the West Yorkshire Combined Authority – mostly of a similar nature – prior to arriving at this conclusion that the request is part of a persistent pursuit of claims, casework and correspondence despite the fact that these have already been answered via various methods including FOI.

Moreover, the fact that the requests have been answered previously under the FOI Act and, rather than follow the advice which has been provided or seeking clearly recorded information, the intent of the requests appear to be the seeking of further engagement with the West Yorkshire Combined Authority in respect to the responses previously provided – the request has, himself stated, that he "might accept a refusal on the grounds that the question has already been answered".

Where the Combined Authority receive requests in similar themes, tone, or context to previous requests, we advised the requestor that we will no longer issue refusal notices as per Section 17(6) of the FOI Act. With this said, where requests have been received of different context from the requestor, the West Yorkshire Combined Authority have handled these within the guidance and legislation and will continue to do so.

26. In its subsequent email to the Commissioner dated 17 July 2022, WYCA stated that it had made it clear to the complainant in its response to his previous requests dated 27 February and 9 March 2022 that any subsequent requests similar in theme, tone or context would not be responded to as per Section 17(6) of FOIA. It stated this clearly in its responses to him dated 6 April and 16 May 2022.

³ <https://ico.org.uk/for-organisations/guidance-index/freedom-of-information-and-environmental-information-regulations/dealing-with-vexatious-requests-section-14/does-the-value-and-purpose-of-the-request-justify-its-impact/#context>

The Commissioner's view

27. The Commissioner has already investigated and issued Decision Notices in relation to the complainant's earlier requests dated 27 February and 9 March 2022 and has upheld WYCA's application of Section 14 of FOIA in both of them. The Commissioner's detailed reasons for doing so are set out in his Decision Notices IC-168381-Q2J4 and IC-213303-S5B4 dated 20 and 24 April 2023 respectively.
28. The Commissioner has considered the context and history in which the present request has been made, along with the subject matter of the respective requests, and determines that it is vexatious for the same reasons as those set out in his Decision Notices IC-168381-Q2J4 and IC-213303-S5B4 dated 20 and 24 April 2023 respectively. He also notes that in its response to the complainant's requests referenced in those decision notices, WYCA put him on notice that similar future requests would not be responded to by virtue of Section 17(6) of FOIA. Therefore, in all the circumstances, the Commissioner finds it would be unreasonable for WYCA to issue a further refusal notice under Section 17(5) of FOIA.
29. The Commissioner is satisfied WYCA authority has successfully applied Section 17(6) to the complainant's request dated 4 May 2022.

Other matters

30. Although not subject to this Decision Notice, the Commissioner has noted similar subsequent requests made by the complainant to WYCA dated 17 May 2022 and 4 March 2023 where WYCA has relied on Section 17(6) of FOIA.
31. It is likely the Commissioner would also find these requests vexatious for the reasons mentioned above and the Commissioner will consider his powers under section 50(2)(c) of FOIA to refuse to deal with subsequent complaints relating to similar requests on the basis that they are vexatious or frivolous.

Right of appeal

32. 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

33. 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.
34. 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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