

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 24 March 2022

Public Authority: Chief Constable of South Yorkshire Police
Address: Police Headquarters
Carbrook House
Carbrook Hall Road
Sheffield
South Yorkshire
S9 2EH

Decision (including any steps ordered)

1. The complainant requested information relating to charging referrals made by the police. South Yorkshire Police refused to comply with the request on the grounds that it was vexatious within the meaning of section 14(1) (vexatious request) of FOIA.
2. The Commissioner's decision is that South Yorkshire Police was entitled to rely on section 14(1) to refuse the request.
3. The Commissioner requires no steps to be taken as a result of this decision.

Request and response

4. On 31 March 2021, the complainant wrote to South Yorkshire Police and requested information in the following terms:

"I would like to place a Freedom of Information Request for all information you hold on the Police and Crime Act 2017 in relation to charging referrals made by the police after a suspect's relevant bail period has expired and where the suspect then accordingly defaults to Release Under Investigation by way of police decision.

Please do not process any of my personal data in relation to this request

Please also do not designate my request as being Vexatious as this information holds huge value to the general public".

5. He subsequently corrected the reference:

"I of course mean the "Policing and Crime Act 2017" ...".

6. Following the Commissioner's intervention, South Yorkshire Police responded on 2 July 2021. It explained that the reason it had not provided a response was because the subject was made vexatious. In that respect, it referred the complainant to previous correspondence it had provided to him.
7. The complainant requested an internal review on 3 July 2021.
8. In correspondence with the complainant, dated 30 July 2021 and 27 September 2021, South Yorkshire Police confirmed its view that section 14 of FOIA applies.

Scope of the case

9. Following earlier correspondence, the complainant contacted the Commissioner on 27 September 2021 to complain about the way his request for information had been handled.
10. He disputed that section 14 applies in this case.
11. The analysis below considers South Yorkshire Police's application of section 14(1) of FOIA to the requested information.

Reasons for decision

Section 14 vexatious request

12. Section 14(1) of FOIA states that section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious. The term 'vexatious' is not defined in FOIA.
13. Section 14(1) of FOIA 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.

14. The emphasis on protecting public authorities' resources from unreasonable requests was acknowledged by the Upper Tribunal in the leading case on section 14(1), [Information Commissioner vs Devon County Council & Dransfield \[2012\]](#) UKUT 440 (ACC), (28 January 2013). It defined the purpose of section 14 as follows:

"The purpose of Section 14...must be to protect the resources (in the broadest sense of that word) of the public authority from being squandered on disproportionate use of FOIA..." (paragraph 10).

15. In further exploring the role played by circumstances, the Upper Tribunal placed particular emphasis on the issue of whether the request had adequate or proper justification. In doing so it approved a First-tier Tribunal's conclusion from an earlier case that "vexatious" could be defined as the:

"....manifestly unjustified, inappropriate or improper use of a formal procedure." (paragraph 27 of the Upper Tribunal's decision in Dransfield).

16. This clearly establishes that the concepts of "proportionality" and "justification" are central to any consideration of whether a request is vexatious.
17. In his published guidance on dealing with vexatious requests¹, the Commissioner considers the key question the public authority must ask itself is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress.

18. In that respect, his guidance states:

"A useful starting point is to assess the value or purpose of the request before you look at the impact handling the request would have on you".

19. 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,

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

(3) the value or serious purpose of the request and (4) harassment or distress of and to staff.

20. The Upper Tribunal did, however, also caution that these considerations were not meant to be exhaustive. The Upper Tribunal emphasised that:

“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).

South Yorkshire Police's view

21. South Yorkshire Police did not comment on what it considered to be the value or purpose of the request under consideration in this case.
22. South Yorkshire Police did, however, explain that it was one of a number it had received from the complainant. It told the Commissioner:

“The requests all refer to police investigation information and training, from the start of the investigations, offences and arrests and the onwards process to the CPS [Crown Prosecution] service. The overarching theme refers to the subject of how a force investigates offences particularly in relation to investigatory powers, the process from policy and training of officers, through to the final part and bail/cautions and the final part and route in a referral to the CPS”.

23. It considered that four earlier requests made by the complainant were particularly relevant to the request under consideration in this case. It provided the Commissioner with details of those specific requests which it argued relate to the investigatory process.
24. South Yorkshire Police did not argue that it would be burdensome to comply with this particular request on the basis of the amount of work involved. Rather, it emphasised that, in light of the complainant's past pattern of behaviour:
- “The impact of complying with the request [in this case] is the onslaught of additional requests this would bring”.
25. It argued that the impact of those additional requests would be a burden to “not only the FOI team but also many Departments throughout SYP [South Yorkshire Police]”.
26. With reference to the various requests it has received from the complainant over a period of time, South Yorkshire Police told the Commissioner:

"Many of these requests overlap and along with the hundreds of emails we have received from [the complainant] this has been putting a massive amount of burden and stress on myself and the team..."

27. South Yorkshire Police argued that the complainant's emails will often contain multiple requests covering FOI, SAR [subject access request] and complaints. It described him using a scattergun approach by directing the email to a number of individuals and departments. It also stated that, following the first email he will then send additional ones with other pieces of information included/attached, followed by multiple chasers.

28. With respect to the complainant making overlapping requests, South Yorkshire Police told the Commissioner:

"We have received frequent requests, with new requests coming in, at times for the same or similar subjects before we have had an opportunity to respond to the last request".

29. In support of that view, South Yorkshire Police told the Commissioner that it had found it necessary to compile a table in order to keep track of the complainant's requests. It told the Commissioner:

"Our team is working extremely hard to provide responses to requests and in this case of overwhelming requests a table has been kept to record requests of the same nature".

30. In addition to providing the Commissioner with a table showing all the FOI requests it had received from the complainant over the previous two years, South Yorkshire Police also provided a second table showing "the 6 other FOI requests of the same/similar nature to this one being questioned". The Commissioner notes that those requests were received within the space of two months of each other.

31. In its submission, South Yorkshire Police told the Commissioner that the complainant has made unfounded accusations about South Yorkshire Police including about internal departments and individual employees. In support of that argument, while not providing the actual emails themselves, South Yorkshire Police quoted from a couple of emails it had received from the complainant.

32. The Commissioner notes the following sentence, directed at an individual employee, by way of example:

"I believe this proves that you yourself as DPO are acting in a criminal, fraudulent and corrupt manner".

33. South Yorkshire Police told the Commissioner that such remarks and accusations were "unfounded and very upsetting".
34. South Yorkshire Police told the Commissioner it believes that the complainant "has been bombarding us with requests and emails in an attempt to cause disruption, irritation and place stress and upset on many SYP staff members".
35. Asked to explain its references to the volume of correspondence it receives from the complainant, South Yorkshire Police clarified that the 'hundreds of emails' it receives from the complainant do not relate specifically to this FOI request, it relates to emails coming into the department from him about other requests as well.
36. With reference to the various requests it has received, South Yorkshire Police argued that requests are dealt with on a case by case basis, confirming that:

"... SYP are looking at each request received and dealing with it accordingly and not automatically applying s14".
37. It also considered that it had provided advice and assistance to the complainant, telling the Commissioner:

"We have tried our best to assist [the complainant] but many of his requests relate to information that is not recorded as he is asking generalised questions".
38. While acknowledging that it is difficult to evidence that a complainant has a deliberate intention to cause annoyance, South Yorkshire Police described other South Yorkshire Police departments experiencing what it described as 'the same overwhelming barrage of emails and requests' that its Information Compliance Unit had experienced.
39. South Yorkshire Police confirmed that it has explained to the complainant that a FOI request will only provide him with information held and will not provide answers to his general questions.
40. Summarising the overall impact of the complainant's correspondence, South Yorkshire Police told the Commissioner:

"Unreasonable persistence and the frequent and overlapping of requests of such a confusing nature and layout make it a huge task to unravel what is actually being asked of FOI. Firstly we have to pull out the Subject Access element and send this part to the SAR Team. Secondly research all the earlier requests to try and see if this has been asked for before in a different way or actually forms part of an earlier response. The number of requests and time spent to unravel them are a definite burden on the authority. When a

response has been sent out, we will receive an internal review request almost immediately and the requester will have added in more questions, causing more confusion and work”.

The complainant's view

41. The complainant stated from the outset that the information holds what he described as 'huge value to the general public'.
42. He disputes that his request for information is vexatious. When requesting an IR of its refusal to comply with the request, he said:

“I do not believe this request is vexatious and I do not also believe that I have asked you for this same information prior to now. Or for information you hold on your bail practices”.
43. Similarly, in the course of his correspondence with the Commissioner, he argued that the request under consideration in this case:

“...has nothing at all in common with any of the former requests or even broad subject areas from my 2020 requests ...”.
44. The complainant acknowledges that South Yorkshire Police does not refuse to comply with all his requests, telling the Commissioner during the course of his investigation that he had recently had a satisfactory response from South Yorkshire Police.

The Commissioner's view

45. In his guidance on dealing with vexatious requests, the Commissioner recognises that 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. Therefore, engaging section 14(1) is a high hurdle.
46. Most people exercise their right of access responsibly. However, a few may misuse or abuse FOIA by submitting requests which are intended to be annoying, disruptive or have a disproportionate impact on a public authority.
47. The Commissioner 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.
48. As his guidance explains:

“Although satisfying section 14(1) is a high hurdle this does not mean that you can only apply it in the most extreme circumstances,

or as a last resort. You should consider using it if, after taking account of all the circumstances, you believe the request is disproportionate or unjustified”.

Was the request vexatious?

49. As discussed in the Commissioner’s guidance, the relevant consideration is whether the request itself is vexatious, rather than the individual submitting it.

Is the request likely to cause a disproportionate or unjustified level of disruption, irritation or distress?

50. The requested information in this case relates to charging referrals and suspects released under investigation.
51. The Commissioner recognises that South Yorkshire Police considers that the subject matter falls within a topic the complainant has previously requested information about, namely the overarching theme of how South Yorkshire Police investigates offences.
52. The Commissioner acknowledges that the complainant believes that he has not requested the information in scope of this request previously. The Commissioner also accepts that, while the requested information is clearly of interest to the complainant, the subject matter may also be of a wider public interest.
53. 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. Clearly in this case, South Yorkshire Police considered that the particular context and history was one argument that strengthened its position that, at the time of the request, the request was vexatious.
54. The Commissioner understands from its submission, that South Yorkshire Police is not arguing that complying with the request itself would impose an unreasonable burden. He considers its arguments relate to the collective burden of dealing with previous requests on the same or similar subject matter, combined with the burden imposed by the latest request.
55. In other words, the burden in this matter arises principally from the resources and staff time that it has already spent on the complainant’s requests and the likelihood that his pattern of behaviour, namely submitting numerous and regular correspondence, will continue.
56. The Commissioner is satisfied that the request in this case, although not obviously vexatious in itself, does form part of a wider pattern of

requests and interaction the complainant has had with South Yorkshire Police.

57. The Commissioner considers this past pattern of behaviour strengthens South Yorkshire Police's argument that responding to the current request will impose a disproportionate burden on the authority.
58. The Commissioner accepts that the tone and wording of the request itself is not aggressive or objectionable. However, a request which would not normally be regarded as vexatious in isolation may assume that quality once considered in context.
59. The Commissioner considers that the complainant's frustration in dealing with South Yorkshire Police is clear from the evidence he has seen of the tone and language he has used in related correspondence.
60. The Commissioner is concerned to note the evidence provided by South Yorkshire Police about the accusations made by the complainant. Although the Commissioner has not been provided with copies of the individual items of correspondence referred to by South Yorkshire Police, he expects a public authority to have provided him with a representative sample of the correspondence it is relying on.
61. While the Commissioner accepts that public officials can be subject to criticism, he considers from those examples that the requester's correspondence goes beyond the level of criticism that a public authority or its employees should reasonably expect to receive.
62. He considers that this, together with the history of requests on similar subjects, supports the argument that the request is vexatious.

Does the value and purpose of the request justify its impact?

63. The key question to consider is whether the value and purpose of the request justifies the distress, disruption or irritation that would be incurred by complying with it. In other words, would a reasonable person think that the value and purpose of the request are enough to justify the impact on the authority?
64. In his guidance, the Commissioner recognises that 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. He also accepts that, equally, the context and history may weaken an argument that a request is vexatious.
65. The Commissioner is mindful that the evidence provided to him by both parties confirms that, prior to the request in this case, there had been ongoing contact between the parties for a considerable period of time.

66. In this case, he recognises that South Yorkshire Police had warned the complainant that they will not receive any response to further requests on the same or similar topics. It was only as a result of the complainant contacting the Commissioner, to say that he had not received a response to his request, that South Yorkshire Police wrote to the complainant explaining that section 14 of FOIA applied.
67. From the evidence he has seen, the Commissioner gives weight to the argument that responding to the request would be likely to result in further requests and contact on the subject matter, and runs the risk of diverting South Yorkshire Police from dealing with other matters.

Conclusion

68. In reaching a decision in this case, the Commissioner has taken into account that section 14(1) of FOIA 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.
69. He 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.
70. The Commissioner has balanced the purpose and value of the request against the detrimental effect on the public authority.
71. The Commissioner is not aware that complying with the request, in isolation, would cause a disproportionate or unjustified level of disruption. In this case, the ongoing burden placed on South Yorkshire Police, and issues of harassment and distress to members of staff, are the significant factors which make the request vexatious.
72. On the basis of the evidence provided, and taking into account the findings of the Upper Tribunal in Dransfield that a holistic and broad approach should be taken in respect of section 14(1), the Commissioner is satisfied that the request was a manifestly unjustified and improper use of FOIA such as to be vexatious.
73. Accordingly, he is satisfied that South Yorkshire Police was entitled to apply section 14(1) of FOIA.

Right of appeal

74. 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

75. 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.
76. 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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