

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 17 October 2016

Public Authority: Chief Constable of West Mercia Police
Address: PO Box 55
Hindlip
Worcester
WR3 8SP

Decision (including any steps ordered)

1. The complainant requested information from West Mercia Police relating to the number of misconduct / gross misconduct notices issued to its officers and the number of external police forces West Mercia Police was investigating.
2. The police relied on the section 14(1) exemption of the FOIA in refusing the request.
3. The Commissioner's decision is that West Mercia Police applied the section 14(1) exemption to this request correctly.
4. However she also found that West Mercia Police had delayed its initial response to the request for too long and therefore breached section 10 of the FOIA.
5. The Commissioner does not require West Mercia Police to take any steps to ensure compliance with the legislation.

Background

6. Prior to making the request which is the subject of this decision notice, the complainant, in conjunction with another individual, had requested information from Warwickshire Police. Warwickshire Police neither confirmed nor denied (NCND) holding the requested information.
7. At the time of the request which is the subject of this decision notice, that NCND response was the subject of a complaint to the

Commissioner. The Commissioner's decision in that case was issued on 14 June 2016¹.

8. Subsequent requests relating to the same, or similar, subject matter, including the request under consideration in this decision notice, were made by the complainant alone.
9. West Mercia Police and Warwickshire Police have a shared team responsible for processing information requests made to either force. This arrangement does not alter that these two forces are separate public authorities for the purposes of the FOIA. When making her request the complainant was specific that she was seeking information from West Mercia Police and she also specified West Mercia Police when contacting the ICO. This case has therefore been progressed on the basis that it concerns that force.

Request and response

10. On 27 January 2016, using the 'whatdotheyknow website', the complainant wrote to West Mercia Police and requested information in the following terms²:

"1. I would like to know how many of your officers have been issued with misconduct / gross misconduct notices during the past 4 months.

2. Details for what type of notice was issued, the date of each notice served.

3. Details of the allegations being investigated for each notice.

4. Details of rank of each officer issued with notice.

5. How many of the notices relate to the same case-s.

¹ https://ico.org.uk/media/action-weve-taken/decision-notices/2016/1624483/fs_50610670.pdf

² https://www.whatdotheyknow.com/request/internal_external_investigations_6#incoming-810364

6. How may [sic] external Police forces are West Mercia Police investigating. I would like names of forces.

7. I would like you to supply same information for 1 to 6 above which relates to any external force / officers.

I would like to stress that I am not requesting any personal information that would identify any of the officers, just the rank of each officer".

11. West Mercia Police wrote to the complainant on 24 February 2016 apologising for the delay.
12. Following the Commissioner's intervention, it provided its substantive response on 19 April 2016 in which it refused to provide the requested information on the basis that section 14(1) of the FOIA (vexatious request) applies. That response covered four requests for information – the one that is the subject of this decision notice, made to West Mercia Police, and three, made by the same complainant, to Warwickshire Police.
13. Following an internal review West Mercia Police wrote to the complainant on 11 May 2016 maintaining its position. The internal review correspondence also covered the four requests made by the complainant to the two forces.

Scope of the case

14. Following earlier correspondence, the complainant contacted the Commissioner again on 14 May 2016 to complain about the way her request for information had been handled. She told the Commissioner she was dissatisfied about the delay and also that she did not believe the request had been dealt with correctly.
15. The complainant explained the background to the request in this case. Acknowledging that she had made an identical request to another police force, she told the Commissioner:

"... each of the forces are dealing with the same issue, complaints which I made against them and or which are being investigated by the other force".
16. The analysis below considers West Mercia Police's application of section 14 of the FOIA to the requested information. The Commissioner has also considered the timeliness with which the request was handled.

Reasons for decision

Section 14 vexatious request

17. Section 14(1) of the FOIA provides that a public authority is not obliged to comply with a request that is vexatious.
18. Consistent with an Upper Tribunal decision which established the concepts of 'proportionality' and 'justification' as central to any consideration of whether a request is vexatious, the Commissioner's guidance on section 14(1)³ confirms that the key question to ask when weighing up whether a request is vexatious is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress.
19. Where this is not clear, the Commissioner considers that public authorities should weigh the impact on the authority and balance this against the purpose and value of the request. In addition, where relevant, public authorities should take into account wider factors such as the background and history of the request.

The complainant's view

20. The complainant maintains that there is a serious purpose for making this request and that it is not intended to cause annoyance. Nor does she accept that the burden of complying with the request would be excessive or a distraction from the force's usual business.
21. The Commissioner understands that the complainant disputes the application of section 14 in this case on the basis that:

"This particular request has only been made to West Mercia police for the first time and therefore it could not be claimed a vexatious, repeated or obsessive request."
22. The complainant acknowledges that, in addition to the request that is the subject of this decision notice, she has made other identical or related requests. For example, when requesting an internal review of its handling of this request, she told West Mercia Police:

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

"I would like an internal review for the same reason I have given you on my other requests which you have refused to answer".

West Mercia Police's view

23. Regarding the context and history of the request in this case, West Mercia Police told the Commissioner that the complainant's request of 27 January 2016 was linked to the request which the Commissioner considered in case FS50610670.
24. In correspondence with the complainant, West Mercia Police told her:

"In this instance the force regards the submission of questions surrounding and/or connected to a subject that has already received a NCND response as vexatious..."
25. It told her that it regards the request as obsessive, explaining that:

"... an obsessive request can be identified where a complainant continues with a request(s) despite being in possession of other advice, or is still in consultation over the same issue".
26. Also in support of its view that section 14 of the FOIA applies, West Mercia Police told the complainant it considered the request obsessive and designed to cause annoyance :

"... as FOI is not the only route being used to contact the force regarding this subject matter".
27. West Mercia Police told the complainant that the FOIA was not designed to provide individuals with a means by which they can continue a campaign. It said that, as well as the normal business processes in place, there are other avenues and means by which decisions/actions can be challenged through appropriate regulatory bodies.
28. It told her:

"You already have regular contact with designated individuals within force with regards to your own case and complaints surrounding this subject matter Advice has been provided as to what information will be made available to you at conclusion".
29. In correspondence with the Commissioner, West Mercia Police said that the request under consideration was one of several requests from the same complainant. It described those requests as *'frequent and overlapping'*.
30. In that respect, West Mercia Police told the Commissioner that a single point of contact email address was set up *"to try and manage"* the

amount of correspondence being received by the complainant and another individual in connection with this and other related requests.

31. For example it said that the complainant made contact with the West Mercia /Warwickshire FOI Department 11 times in March and April 2016 regarding the issue of lateness in relation to her four related requests – including the one that is the subject of this decision notice - despite having been updated by the force that the requests were known to be late and were in progress of being looked at.
32. With reference to the impact and burden of the level of contact from the complainant, West Mercia Police explained that responding to the complainant's requests was taking up a disproportionate amount of time and not in the public interest.
33. Referring to the wider context of the request in this case, West Mercia Police told the Commissioner that it was obvious that the request was attempting to reopen an issue which has already been addressed or was otherwise subject to some form of independent scrutiny.
34. Regarding the disruption and/or annoyance caused by the request, West Mercia Police told the Commissioner:

"... they [the complainant] are not content to just use the normal business processes that are in place to deal with enquiries and complaints of this nature and are trying to use FOI as an attempt to circumvent these processes".

35. In support of its application of section 14, West Mercia Police explained to the Commissioner that, despite the complainant having regular contact with designated individuals within the force with regards to relevant matters, she has approached other departments within the Force and has contacted individual employees directly.
36. In that respect, West Mercia Police told the Commissioner:

"The force has also been approached through our Legal Department, through our Professional Standards Department and also by contacting individual employees separately including e-mailing the Head of Professional Standards and the Deputy Chief Constable directly".

37. West Mercia Police told the Commissioner:

"It is evident that there has been a persistent flow of FOI requests submitted which are all connected to or with the same subject matter. It is also evident that requests regarding the same subject matter have been submitted prior to the force being able to address

earlier requests for information and/or the case still being open with the ICO's Office awaiting decision".

The Commissioner's view

38. Section 14(1) can only be applied to the request itself and not the individual who submitted it. The issue for the Commissioner to determine in this case is whether the request of 27 January 2016 was vexatious.
39. In reaching a decision in this case, the Commissioner has considered the arguments put forward both by the complainant and West Mercia Police.
40. The Commissioner has taken into account that the complainant considers that the request has a serious purpose and value. From the correspondence she has seen, it is clear to the Commissioner that the complainant is not satisfied with West Mercia Police and how it conducts itself.
41. The Commissioner notes that West Mercia Police described the request in this case as being made *"against a backdrop of a number of ongoing complaints against the force and its officers"*.
42. The Commissioner is mindful that the context and history of a request is not the only factor to consider when determining whether a request is vexatious. The Commissioner will also consider the purpose and value of the request and the detrimental impact on the public authority which receives it.
43. The Commissioner 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.
44. The burden on the police in this matter arises principally from the resources and staff time that they have been spending on addressing the complainant's information requests.
45. The Commissioner notes that, while the request in this case was made to West Mercia Police, the complainant has made similar or identical requests to another public authority - Warwickshire Police - within a relatively short time span. She also notes that the request was made while a related complaint was still under review.
46. The Commissioner considers that the background and history of the request are of particular significance in this case. In the circumstances, the Commissioner considers that the pattern of behaviour, including the number and frequency of connected information requests made

individually to West Mercia Police and Warwickshire Police, cannot be overlooked. She considers that this background is relevant to West Mercia Police's arguments in support of its application of section 14 in this case.

47. The Commissioner considers that, given the wider context in which this request was made and the complainant's clear grievance with West Mercia Police, it is reasonable to believe that the complainant will continue to submit requests and/or maintain contact about the subject matter regardless of any response provided to the request in question.
48. The FOIA provides fundamental rights to the public to request access to recorded information held by public authorities. It should not be used to vent dissatisfaction with matters which have already been, or are still in the process of being, dealt with.
49. In this case it is not difficult for the Commissioner to conclude that the complainant's request is unreasonably persistent, that it is related to a subject that was already under consideration at the time it was made, and that the effect of the request is to cause a disproportionate or unjustified level of disruption, irritation or distress to the force concerned.
50. In view of the above, the Commissioner's decision is that the complainant's request of 27 January 2016 was vexatious. She finds that West Mercia Police was entitled to rely on section 14(1) of the FOIA.

Section 10 time for compliance

51. The Commissioner acknowledges that the complainant first contacted her predecessor about this request for information on 1 March 2016 as a result of which the Commissioner wrote to West Mercia Police reminding them of their responsibilities under the FOIA.
52. Sections 10(1) and 17(1) of the FOIA require that a response to an information request is sent within 20 working days of receipt of the request. In this case West Mercia Police did not respond within 20 working days of receipt of the request and in so doing breached the requirements of sections 10(1) and 17(1) of the FOIA.

Right of appeal

53. 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

54. 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.
55. 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

Jon Manners
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