

Freedom of Information Act 2000 (FOIA) Decision notice

Date: 10 October 2022

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

Decision (including any steps ordered)

1. The complainant has requested information about an alleged decision not to investigate reports of child sex exploitation (CSE).
2. South Yorkshire Police (SYP) refused the request citing section 14(1) FOIA (vexatious request).
3. The Commissioner's decision is that SYP is entitled to rely on section 14(1) to refuse the request.
4. The Commissioner does not require the public authority to take any steps as a result of this decision notice.

Background

5. The complainant in this case made a similar request to SYP on 10 March 2020 which was considered by the Commissioner in decision notice IC-40123-X8P0.

Request and response

6. On 10 January 2022, the complainant wrote to SYP and requested information in the following terms:

"The ICO asked me to review this case before resubmitting it to ensure that it could not possibly be refused under a claim that to respond with the information would exceed the Section 12 costs limit.

The request for information was first raised on 10 March 2010 [sic] and the information remains withheld.

This review has taken place.

Your Section 12 claim was predicated upon your claim that to extract the information would require searching through 20 years of records.

The statement by South Yorkshire Police is not true.

The date of the first referenced article was 14 March 2015.

The date of the second referenced article was 12 March 2015.

There were several further references to material provided to assist you.

The applicable time period was therefore defined.

By no stretch of imagination could the exercise require searching through records over a period of 20 years and therefore it is impossible that the section 12 costs limit could be exceeded.

Therefore, upon advice, here is a new request for information:

Here is the first reference:

A <https://web.archive.org/web/201503150213...>

1) WHO (the 'senior officer') gave the order to the detective to tell his team to "wind their necks in"

2) WHO in central government told the 'senior officer' to prioritise other crimes?

3) Please provide the report requested by Dr Alan Billings.

Here is the second reference:

B <https://www.bbc.co.uk/news/uk-31859931>

South Yorkshire Police 'ignored Sheffield abuse claims'

4) "Despite the substantial problems identified, the team was disbanded."

WHO gave the order to disband the team?

5) WHO said this to the investigating detective ?

" . . . tell them there's not enough evidence to go on."

6) An experienced analyst said: "I got a call telling me the operation's been shelved."

WHO told this to the experienced analyst?

7. SYP responded on 8 February 2022 and refused to provide the requested information citing section 14(1) FOIA as its basis for doing so.

8. The complainant requested an internal review the same day stating:

"SYP have now claimed that disclosure is refused on the grounds of S14 Vexatiousness.

In turn, the vexatiousness claim to justify an allegation of a breach of section 14 is predicated upon a claim that Section 1, costs, was engaged in the original refusal.

It was determined that section 12 was not, and can never be, engaged in this case.

Therefore, the SYP allegation that section 14, vexatiousness is engaged must also fall.

The ICO advised that I make a fresh request, which was duly done. Rather than treat the request as a new request, SYP has chosen to concatenate the issues with previous correspondence, and used that in the instant case.

The bottom line here is that SYP has this information.

It was the subject of much publicity at the time.

Given the precise details of the request, and the references given to SYP to assist the retrieval and disclosure of the required information that is deemed to be currently unlawfully withheld, there is no valid reason why SYP should not simply provide that information by return.

There must now be consideration of whether SYP are committing an offence contrary to section 77 of the FoIA with respect to the consistent refusal to provide any information relating to SYP and child sex exploitation.

When replying to this request for a review, would you also please provide the metadata related to this case.”

9. SYP treated the request for metadata as a new request and is not part of this decision notice.
10. Following an internal review SYP wrote to the complainant on 18 February 2022 and maintained its position.

Scope of the case

11. The complainant contacted the Commissioner on 12 March 2022 to complain about the way their request for information had been handled.
12. The Commissioner considers the scope of this case to be to determine if SYP has correctly applied section 14(1) to the request.
13. Under a separate process the Commissioner also considered the allegations of an offence under section 77 FOIA. On 7 June 2022 the Commissioner wrote to the complainant and advised them that he did not consider that there was any evidence of a section 77 offence being committed in this case.

Reasons for decision

14. Section 14(1) of FOIA states that a public authority is not obliged to comply with a request for information if the request is vexatious. There is no public interest test.
15. 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.
16. The term 'vexatious' is not defined in FOIA. The Upper Tribunal (Information Rights) considered in some detail the issue of vexatious requests in the case of the Information Commissioner v Devon CC & Dransfield (GIA/3037/2011). 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.
17. 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).

18. 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.
19. In his published guidance on dealing with vexatious requests, 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.
20. 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".
21. 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).
22. 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 a case will need to be considered in reaching a judgement as to whether a request is vexatious.
23. The Commissioner's guidance suggests that if a request is not patently vexatious 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. In doing this the Commissioner considers that a public authority should weigh the impact of the request on it and balance this against the purpose and value of the request.
24. Where relevant, public authorities need to take into account wider factors such as the background and history of the request.

25. In this particular case SYP made its position clear in its responses to the request. Therefore the Commissioner did not consider it was necessary to seek any further submissions from SYP and has proceeded directly to a decision notice.

SYP's position

26. SYP explained that due to the obvious high interest in policing activity, the Police Service attracts large volumes of requests which places huge pressures on the two decision maker's responding to FOI requests at South Yorkshire Police and ensuring lawful compliance with FOI.
27. Common-sense dictates that it has to use those resources wisely, and principles have been established within the judicial framework of the legislation to protect authorities when requests are a burden on its staff, have no serious purpose or value or harass and/or distress staff.
28. SYP considered it is vital that the motives of the requestor are taken into account when considering these issues. The crux of any request where Section 14(1) is being considered is before going on to assess whether a request is vexatious, public authorities should first consider whether there are any viable alternatives to dealing with the request under Section 14(1).
29. It is also important to remember that Section 14(1) can only be applied to the request itself, and not the individual who submits it.
30. An authority cannot refuse a request on the grounds that the requestor themselves is vexatious. Similarly, an authority cannot simply refuse a new request solely on the basis that it has classified previous requests from the same individual as vexatious. When identifying potentially vexatious requests the indicators contained within the Information Commissioner's guidance on Section 14(1) should be considered.
31. In this case SYP considered the following indicators applied

- Frequent Requests

This request for information is the same subject and same overarching theme as previously FOI request submitted on 11/03/2020 – this was refused under Section 12. This was subsequently upheld by the ICO Decision Notice IC-40123-X8P0, dated 9 December 2020. Despite this ICO Decision Notice, a similar request was submitted on 1 February 2021 which was again refused under Section 12 and further upheld at Internal Review.

At a similar time requests have been made for metadata in relation to the requests which were also taken to Internal Review. At the time of this internal review there is still an outstanding decision to be made

by the ICO (IC-110816-J1N4) yet another similar request has been submitted.

SYP further explained that the problems with searching its records for references provided has previously been explained to the complainant on a number of occasions which was upheld by the ICO Decision notice IC-40123- X8P0. Despite this, there appears to be intent on re-submitting a campaign of similar requests, and then for the meta data around those requests which could be construed as a deliberate attempt to cause disruption to the FOI processes of SYP.

- Burden on the Authority

SYP acknowledged that there may well be a valid intention on seeking the information, however the fact that very similar requests have been submitted, which result in the same response, followed by internal reviews, places a burden on the department and the two decision makers responding to these requests.

It further stated that it had considered the Commissioner's latest published guidance, "Dealing with vexatious requests (Section 14)" when reaching its decision and was of the view that this request meets the indicator for being oppressive in terms of the strain on time and resources and that SYP cannot reasonably be expected to continually comply, no matter how legitimate the subject matter or valid the intentions of the requestor.

32. In its internal review SYP echoed the points above and reiterated that principals have been established within the judicial framework of the legislation to protect authorities. This will usually be a matter of objectively judging the evidence of the impact on the authority and weighing this against any evidence about the purpose and value of the request. The public authority may also take into account the context and history of the request, where this is relevant.
33. SYP again acknowledged that the complainant believes there to be serious purpose and value behind the request, but must consider whether the impact on SYP is justified. It also considered the time that the internal reviews have taken to complete, which, in its view, shows unreasonable persistence, as is demonstrated in the contents of the request for an internal review in this case.
34. SYP then advised the complainant that it would not acknowledge further correspondence of the same nature and no other requests from on the same subject would be acknowledged.

The Commissioner's decision

35. The Commissioner has considered all the circumstances in this complaint, including his knowledge of other complaints made to him about this issue, from the same complainant.
36. The Commissioner notes the serious subject matter the request relates to, however the complainant's persistence in requesting this information, and making subsequent metadata requests to SYP create a burden on SYP. Combining the burden of the request with the request for internal review which inevitably follows, it becomes detrimental to the core functions of SYP.
37. Furthermore, such requests for internal review appear to lack purpose other than for the complainant to reiterate their belief that SYP are deliberately withholding information, particularly with regard to metadata responses.
38. It also appears to the Commissioner that whatever response SYP provide, the complainant will request an internal review and metadata which he considers to be an abuse of process.
39. 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 SYP was correct to consider the request vexatious and rely on section 14(1) of FOIA.

Other matters

40. It is clear from the correspondence on this case, and other related cases, that the complainant is insistent that this information is held.
41. It is the Commissioner's view that although the alleged statements may have been made to the analyst and the detective, it is unlikely to have been recorded anywhere.
42. The Commissioner is mindful of his own responsibilities under FOIA to uphold access to information rights and to improve the information rights practices of organisations.
43. However, he also has the discretion to dismiss complaints under section 50(2)(c) FOIA if he considers them to be frivolous or vexatious, likely to bring his office and the legislation into disrepute, or an abuse of process.
44. The Commissioner therefore considers it is appropriate to document in this decision notice an emerging pattern he has noted. He would ask the complainant to be mindful of making similar or the same overlapping

requests for information, requests that could be deemed frivolous or allegations of criminal activity against public authorities with no reasoned basis.

45. This should not deter the complainant from making future requests for information, however, the Commissioner would invite the complainant to take note of the above when making information requests to public authorities.

Right of appeal

46. 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

47. 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.
48. 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:

Susan Duffy
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