

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 03 February 2014

Public Authority: West Yorkshire Fire & Rescue Service
Address: Oakroyd Hall
Bradford Road
Birkenshaw
West Yorkshire
BD11 2DY

Decision (including any steps ordered)

1. The complainant has requested information regarding his ill health pension review. The Commissioner's decision is that West Yorkshire Fire & Rescue Service ('the authority') has correctly applied the vexatious provision at section 14 of the FOIA. He does not require any steps to be taken.

Request and response

2. On 4 September 2013, the complainant made the following request via the WhatDoTheyKnow website:

"I refer to the letter addressed to myself dated 31st July 2013 from [named individual], HR Team leader, Your ref PRF2535/peb

In it she makes the comment,

"I write with regard to your pension review to inform you of the Authority's decision now the process has been concluded. Due to the fact that you have refused to give consent to release your most recent GP records to the IQMP, the Authority has made its decision under rule H1(3). This rule allows the Authority to make its decision using medical evidence other than that of the IQMP, or indeed, without any medical evidence. The Authority is of the view that your mental health condition has improved since your ill health retirement."

I conclude that the decision mentioned above was taken at a properly convened meeting of the Fire Authority, or one of its subgroups.

I therefore request,

1/Details of all the meetings where this matter has been discussed, including copies of the agenda and minutes, including dates and time of the meetings.

2/Details of medical qualifications held by the persons who made the decision.”

3. The authority responded on 6 September 2013 stating that the request is considered to be closely related to previous requests dated 3 April 2013, 29 March 2013 and 28 March 2013 and it is therefore considered to be vexatious. It concluded that no further correspondence on the matter will be responded to.

Scope of the case

4. The complainant contacted the Commissioner on 9 September 2013 to complain about the way his request for information had been handled. He refuted that the request was related to the requests made in March and April 2013 stating that those requests were made over 5 months previously and were related to a subject access request he made in October 2012.
5. The Commissioner considered that some of the information requested at part 1 of the request may be the personal data of the complainant because the request referred to the discussion of the complainant's pension review. As such, that part of the request should be considered as a subject access request under the Data Protection Act 1998 ('DPA'). Any of the complainant's personal data has therefore been dealt with in a separate DPA complaint (reference number RFA0524638) and is not considered in this decision notice.
6. The Commissioner has considered whether the authority was correct to apply the vexatious provision at section 14(1) of the FOIA.

Reasons for decision

7. 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. There is no public interest test.

8. The term 'vexatious' is not defined in the legislation. In *Information Commissioner vs Devon County Council & Dransfield*¹, the Upper Tribunal took the view that the ordinary dictionary definition of the word vexatious is only of limited use, because the question of whether a request is vexatious ultimately depends upon the circumstances surrounding that request. The Tribunal concluded that 'vexatious' could be defined as the "...manifestly unjustified, inappropriate or improper use of a formal procedure" (paragraph 27). The decision clearly establishes that the concepts of 'proportionality' and 'justification' are central to any consideration of whether a request is vexatious.
9. 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 and its staff); (2) the motive of the requester; (3) the value or serious purpose of the request; and (4) and harassment or distress of and to staff. 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).
10. The Commissioner has therefore considered whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress in relation to the serious purpose and value of the request.
11. The Commissioner has identified a number of "indicators" which may be useful in identifying vexatious requests. These are set out in his published guidance on vexatious requests². 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.

¹ UKUT 440 (AAC) (28 January 2013)

² http://www.ico.org.uk/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/dealing-with-vexatious-requests.ashx

12. The authority has explained that it has fully complied with the complainant's numerous previous information requests and further correspondence totalling in excess of 150 individual communications all related to the same subject of the ill health pension review conducted by the authority in accordance with the Firefighters Pension Scheme. It said that on 10 April 2013, following receipt of three further information requests from the complainant in the space of five days, all again related to the same ill health pension review, it took the decision to issue a refusal notice to the complainant under section 17 pursuant to section 14(1).
13. The authority said that the full reasons for reaching the vexatious decision are contained in the refusal notice and that, as can be seen from the authorities detailed response to the Commissioner on a related data protection complaint (case reference RFA0491045), it has spent a considerable amount of time and expense whilst involving numerous officers and resources dealing with the complainants obsessive behaviour and is not in a position to extend any further time or resources to continue responding to the complainant's manifestly unreasonable demands.
14. The Commissioner examined the aforementioned refusal notice and response to the data protection complaint and noted that the authority has stated the following:
 - The series of eight linked requests made from Oct 2012 to April 2013 has imposed a significant burden upon the authority.
 - The 140 emails sent between Oct 2012 to April 2013 to several different departments and individuals across the brigade all connected to the ill health pension review shows evidence of patterns of obsession or being manifestly unreasonable, the effect of which is to harass the authority.
 - Responding to the requests and emails has taken up 100s of hours of staff time imposing a significant burden in terms of expense and distraction.
 - The requests do not have any continuing serious purpose or value.
 - The main effect of the continuing linked requests is disproportionate inconvenience and expense.
 - The requests of 28 and 29 April 2013 ask questions that repeat earlier requests to which responses have already been provided.
 - The communications are designed to cause disruption or annoyance.

- Any attempt to answer or assist in relation to the latter requests will lead on to further requests and dissatisfaction with the responses provided.
 - Any requests submitted in future by the complainant will be considered on a case by case basis and will not necessarily be treated as vexatious.
 - Following receipt of the vexatious refusal notice, the complainant has made attempts to request related information from a number of departments.
15. The authority also pointed out that part 1 of the request in this case is based on the complainants incorrect assumption that a properly convened meeting of the of the constitutional Full Authority Committee of West Yorkshire Fire & Rescue Authority, or one of its sub committees, had taken place, when there was nothing in the letter referred to by the complainant to suggest that this was the case.
16. The Commissioner notes that part 2 of the request (medical qualification of the persons who made the decision) was also based on an assumption by the complainant when there was nothing in the letter referred to suggesting that the decision was made by a medically qualified person.
17. The Commissioner's aforementioned guidance on vexatious requests, states that;
- "131. When building a case to support its decision, an authority must bear in mind that we will be primarily looking for evidence that the request would have an unjustified or disproportionate effect on the authority.
132. The authority should therefore be able to outline the detrimental impact of compliance and also explain why this would be unjustified or disproportionate in relation to the request itself and its inherent purpose or value."
18. Whilst the authority has not specifically provided evidence that responding to this particular request would have an unjustified or disproportionate effect, it has stated that dealing with the previous related requests would impose a significant burden in terms of expense and distraction and the Commissioner considers that, when combined with the previous requests on the same issue, the current would have a detrimental impact on the authority.
19. Turning to the purpose and value of the request, the Commissioner notes that it relates to a highly personalised matter, that being his ill

health pension review, and considers, as stated in his published guidance on vexatious requests, that a request in pursuance of a highly personalised matter which is of little if any benefit to the wider public can restrict the value of the request, even where there is clearly a serious purpose behind it.

20. In this case, there could be a wider public interest in the request if there were concerns regarding the administration of ill health pensions. However, there has been no such suggestion in this case.
21. When considered in isolation, the request could appear to have serious purpose, that being to establish if the pension review has been undertaken appropriately. However, when considered in the context and history of the case, and given that the request is based on incorrect assumptions, the Commissioner does not consider that the purpose justifies the disproportionate effect on the authority.

Furthermore, and again taking into account the background of the case, the Commissioner considers that further requests related to the issue could cause harassment and distress to staff. The Commissioner also considers that the request in this case appears to be a means of furthering his ill health pension issue with the council which can be considered as inappropriate use of information rights under the FOIA. Taking into consideration 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 has decided that the council was correct to find the request vexatious. Accordingly, the Commissioner finds that section 14(1) has been applied appropriately in this instance.

Right of appeal

22. 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: 0116 249 4253

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

23. 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.
24. 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

Andrew White
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