

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 17 April 2018

Public Authority: Chief Constable of West Midlands Police
Address: Lloyd House
Colmore Circus
Birmingham
B4 6NQ

Decision (including any steps ordered)

1. The complainant requested information relating to an historic police investigation and trial. West Midlands Police (WMP) refused the request on the grounds that it imposed a grossly oppressive burden and therefore was vexatious under section 14(1) of the FOIA.
2. The Commissioner's decision is that the request was not vexatious and so section 14(1) was relied on incorrectly. WMP is now required to issue a fresh response to the request.
3. The Commissioner requires WMP to take the following steps to ensure compliance with the legislation:
 - Issue a fresh response to the request that does not cite section 14(1).
4. WMP must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the FOIA and may be dealt with as a contempt of court.

Request and response

5. On 4 September 2017 the complainant wrote to WMP and requested information in the following terms:

"I request copies of all information and artefacts held by WMP relating to what became known as the '1892 Walsall Anarchist Bomb Case'.

I would like you to supply documentary evidence in pdf format and illustrations in jpeg form.

Included in your reply I would specifically request details, illustrations and locations of such items as the 'Walsall Bomb 1892' included in Andrew Cook's book on 'M' (published by TEMPUS, 2004)."

6. After a delay, WMP responded to this request on 9 October 2017. It refused the request under section 14(1) (vexatious requests) of the FOIA.
7. The complainant responded on 9 October 2017 and requested an internal review. WMP responded with the outcome of the review on 13 November 2017. The conclusion of the review was that the refusal of the request under section 14(1) of the FOIA was upheld.

Scope of the case

8. The complainant contacted the Commissioner on 25 November 2017 to complain about the refusal of his information request. The complainant indicated that he did not agree that section 14(1) of the FOIA applied.
9. WMP invited the complainant to view the information he had requested at its force museum. In light of this offer, the Commissioner asked WMP to state why it had not relied upon the exemption provided by section 21 (information reasonably accessible by other means) of the FOIA.
10. The response of WMP on this point was that its offer for the complainant to view the information was conditional in that it would ask the complainant to commit to restrictions on further use of the information. As covered in the Commissioner's guidance on section 21¹, this

¹ <https://ico.org.uk/media/for-organisations/documents/1203/information-reasonably-accessible-to-the-applicant-by-other-means-sec21.pdf>

exemption only applies where there are no further restrictions on the use of the information than would have applied had the information been disclosed under the FOIA. The Commissioner agrees with the approach taken by WMP in relation to section 21. The following analysis covers whether WMP cited section 14(1) correctly.

Reasons for decision

Section 14

11. Section 14(1) of the FOIA states that a public authority is not obliged to comply with a request for information if it is vexatious. The term "vexatious" is not defined in the FOIA. The Upper Tribunal considered the issue of vexatious requests in the case of *Information Commissioner v Devon CC & Dransfield* (UKUT 440 (AAC), 28 January 2013). In that case the Upper Tribunal defined a vexatious request as one that is a "*manifestly unjustified, inappropriate or improper use of a formal procedure*". The Tribunal's definition establishes that the concepts of proportionality and justification are relevant to any consideration of whether a request is vexatious.
12. In the Commissioner's view, the key question for public authorities to consider when determining if a request is vexatious is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress.
13. The reasoning from WMP in this case concerned the burden that it believe the request would impose in terms of preparing the information for disclosure. In particular it believed that it would be necessary to spend significant time on redacting exempt information before the remainder could be disclosed.
14. The Commissioner's guidance on section 14(1) states at paragraph 68 that a public authority "*may apply section 14(1) where it can make a case that the amount of time required to review and prepare the information for disclosure would impose a grossly oppressive burden on the organisation*". The guidance goes on to state about situations of this kind "... *we consider there to be a high threshold for refusing a request on such grounds*" and that "*we would expect the authority to provide us with clear evidence to substantiate its claim that the request is grossly oppressive*". It also states that "*the bar for refusing a request as 'grossly oppressive' under section 14(1) is likely to be much higher than for a section 12 refusal*".
15. The guidance is specific that time spent on redacting exempt material can be taken into account when considering the burden of a request.

Whilst section 12(1) (costs) of the FOIA is the main provision for situations where a public authority is concerned about the burden of complying with a request, time spent on considering any of the exemptions listed in Part II of the FOIA cannot be taken into account when considering citing section 12(1).

16. WMP set out the process that it believed would be necessary in order to comply with the complainant's information request. It stated that the main part of the in-scope information that it held was a handwritten record of a trial that consisted of "55 oversized pages". It was the preparation of this material for disclosure that was the focus of the explanation given by WMP. It described a process whereby it would photograph each page of this information, after which the text in each photograph would be typed into another document, from which exempt content could be redacted.
17. It also gave reasoning for the exemptions that it believed would apply to some of the content. It stated that the content included addresses that it would be necessary to redact under section 40(2) (personal information) of the FOIA and that the content included material that it would be necessary to withhold under sections 30 (investigations) and 31 (law enforcement). It estimated that the total time to prepare the requested information for disclosure would be 34 hours.
18. It also referred to the limitations of the resources of WMP and to the volume of information requests that it receives. It suggested that in this context a request that would require 34 hours' work was grossly oppressive.
19. Turning to the Commissioner's view, as noted above her guidance makes clear that the threshold for refusing a request on the ground of the burden it would impose is high. In particular, she does not view the time limit provided by section 12(1), which would be 18 hours for WMP, as providing a guide for the point at which activities that are not relevant to section 12 begin to impose a disproportionate burden. Instead, the guidance is specific that the threshold for a request to be considered as imposing a grossly oppressive burden is *much* higher than for a section 12 refusal.
20. Following this approach, the Commissioner's view is that in relation to any information request 34 hours' work is likely to be at the lower end of the scale of what may be considered grossly oppressive. In this case the Commissioner accepts that the format in which the requested information is held means that the complainant's request would not be entirely straightforward to comply with. She also notes that WMP did engage with the complainant by offering the opportunity to view the

information in situ, although the conditions on that offer meant that it was not equivalent to a disclosure made under the FOIA.

21. The value of the request is relevant when considering what level of resources it would be reasonable to expect WMP to expend on it. Brief research on the issue reveals that the case of the Walsall Anarchists is of historical note. That WMP has retained materials dating from 1892 also suggests that it has recognised that this record remains of interest. The complainant also stated that his request had a serious purpose as part of research he was conducting. Given the interest in the materials and the serious purpose of the complainant in making his information request, the Commissioner views the request as being of some value. This distinguishes it from a request for information that is only of interest to the requester and not of any wider value, or where the requester had no serious purpose in making their request. This means that, even in light of the points above about the request not being straightforward to process and the offer to the complainant to view the requested information, the Commissioner's view is that the work required on this request would not be so disproportionate to its value as to render its burden grossly oppressive.
22. The Commissioner also has doubts about some of the reasoning given by WMP as to why it would be necessary to redact parts of the content of the requested information. In relation to section 40(2), WMP stated that the information contains addresses of properties that continue to be occupied. Whilst the Commissioner will generally accept that addresses constitute the personal data of the occupants of that address, for section 40(2) to apply the impact from disclosure of the personal data must also be considered.
23. WMP cited a previous decision² by the Commissioner which had upheld the citing of section 40(2) in relation to addresses. In that case, however, the information in question was recorded much more recently than the historical information this case concerns. In addition, sensitivities applied in that case for which there is no equivalent in this case. The Commissioner is not, therefore, convinced that it would be necessary for time to be spent on redacting material under section 40(2). This also calls into question whether it would be necessary to transcribe the content of all of the photographs into a separate document if some of those photographs did not contain information that it was necessary to redact. In that case the photographs could

² https://ico.org.uk/media/action-weve-taken/decision-notices/2015/1432001/fs_50558963.pdf

presumably be disclosed without the transcribing step being required. The redaction of content under section 40(2) was a large part of the concern of WMP about the burden of this request. That it appears section 40(2) may not apply suggests that the time it would be necessary to spend on preparing the information for disclosure would be less than the 34 hours estimated by WMP.

24. In conclusion, the Commissioner's view is that the likely to be less than 34 hours' work that the complainant's request would necessitate would not be so disproportionately demanding as to render the request grossly oppressive. As a result, her finding is that the request was not vexatious and so section 14(1) did not apply. At paragraph 3 above WMP is now required to comply with the request.

Right of appeal

25. 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: <http://www.justice.gov.uk/tribunals/general-regulatory-chamber>

26. 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.
27. 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

Ben Tomes
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