

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 8 July 2020

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

Decision (including any steps ordered)

1. The complainant has requested information about crime reports which mention certain social media sites. West Midlands Police ('WMP') disclosed some information, but refused to provide summaries of individual reports, on the grounds that the request was vexatious within the meaning of section 14(1) of the FOIA.
2. The Commissioner's decision is that WMP was not entitled to rely on section 14(1) to refuse 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 dated 9 December 2019, which does not rely on section 14(1) of the FOIA.
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 Act and may be dealt with as a contempt of court.

Request and response

5. On 2 October 2019, the complainant wrote to WMP and requested information in the following terms:

"1) Please state the number of offence records listed in your crime database that contain the following keywords:

- a) Kik*
- b) Telegram*
- c) Wickr*
- d) Vkontakte*
- e) Snapchat*
- f) Reddit*
- g) Tik Tok*
- h) Tumblr*

Please identify these by conducting a free text search of your crime database, and provide information for each of the last five financial years, and the current financial year to 11.12.18.

2) Please provide a breakdown of the kind of offences recorded that included these keywords, for each individual keyword.

3) Please provide an anonymised copy of free text report for each incident recorded.

Please note that I understand you were able to provide a full response to a previous similar request."

6. WMP responded on 17 October 2019. It disclosed information in response to points (1) and (2). It refused to comply with point (3), on the grounds that it was vexatious within the meaning of section 14(1) of the FOIA. It said that compliance with that part of the request would require it to conduct a manual review of over 1,200 records, in order to anonymise the information. It would also neither confirm nor deny whether it held any further information, citing section 23(5) (Information supplied by, or relating to, bodies dealing with security matters) of the FOIA.
7. On 19 October 2019, the complainant confirmed to WMP that the timespan of the request could be reduced to just the current calendar year to date, and asked it to reconsider point (3) on that basis. WMP informed him on 13 November 2019 that although this reduced the number of records falling within scope to around 500, the revised request still engaged section 14(1), due to the amount of work that

would be involved in collating the response and the limited value that the heavily redacted information that could be provided, would have.

8. On 9 December 2019, the complainant reduced the timespan of the request a further time, to just the preceding three months. He provided WMP with copies of responses he had received from three other UK police forces to the request, which he said showed that redacted information still gave a valuable insight into the crimes reported.
9. WMP responded on 23 December 2019. It maintained that this revised request remained vexatious. It reiterated that the act of redacting the requested information would be burdensome to it. It said that, due to the redactions that would be needed, the information which could be disclosed would be of limited value. It observed that the complainant's persistent revisions to the timespan of his requests suggested that he had no serious interest in a particular set of information, and that it amounted to an unfocussed, 'scattergun' approach which suggested he was conducting a 'fishing exercise'. It said that other requests from him shared similar characteristics and that, going forward, further, similar requests may also be refused on the same grounds.

Scope of the case

10. The complainant contacted the Commissioner on 5 January 2020 to complain about the way his request for information had been handled. He challenged WMP's decision to apply section 14(1) of the FOIA to the revised request of 9 December 2019. In particular, he considered it unreasonable to characterise his willingness to reduce the scope of the request as evidence that the request was vexatious.
11. The analysis below considers whether WMP was entitled to rely on section 14(1) of the FOIA to refuse to comply with point (3) of the revised request dated 9 December 2019. Since WMP did not continue to cite section 23(5) of the FOIA beyond its refusal notice of 17 October 2019, and it did not refer to that exemption in its correspondence with the Commissioner, the Commissioner considers its reliance on that exemption to have been withdrawn. As such, she has not considered it in this decision notice.

Reasons for decision

Section 14 – vexatious requests

12. Section 1(1) of the FOIA states that an individual who asks for information is entitled to be informed whether the information is held and, if the information is held, to have that information communicated to them.
13. However, section 14(1) of the FOIA states that section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious.
14. The term vexatious is not defined in the FOIA. The Upper Tribunal considered the issue of vexatious requests in the case of the *Information Commissioner v Devon CC & Dransfield*¹. The Tribunal commented that 'vexatious' could be defined as being the "*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.
15. *Dransfield* also considered 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.
16. It explained that these considerations were not meant to be exhaustive and also explained 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).

¹ <https://www.judiciary.uk/judgments/info-commissioner-devon-county-council-tribunaldecision-07022013/>

17. The Commissioner has published guidance on dealing with vexatious requests², which includes a number of indicators that may apply in the case of a vexatious request. However, even if a request contains one or more of these indicators it will not necessarily mean that it must be vexatious.
18. When considering the application of section 14(1), a public authority can consider the context of the request and the history of its relationship with the requester, as the guidance explains:

"The context and history in which a request is made will often be a major factor in determining whether the request is vexatious, and the public authority will need to consider the wider circumstances surrounding the request before making a decision as to whether section 14(1) applies".

19. However, the Commissioner would stress that, in every case, it must be the request itself that is shown to be vexatious and not the person making it.

The complainant's position

20. Whilst the burden of proof always lies with the public authority in demonstrating why a particular request would engage section 14(1), the Commissioner accepts that complainants may wish to advance their own arguments as to why a request was not vexatious.
21. In this case, the complainant, a journalist, explained that the request was clearly stated, with the information sought set out in a logical fashion. He had attempted reasonable efforts to bring the request within cost, based on the cost calculations set out by WMP in its responses. He said this showed a serious attempt to obtain information, and that he had not employed a 'scattergun' approach.
22. In respect of WMP's argument that the information would have to be redacted to such an extent that it would be of limited use, he referred the Commissioner to responses three other UK police forces had provided to the same request. He said each force provided the redacted crime report information for the entire six year period specified in the initial request, and that the redactions required to provide information, while not raising data protection issues, were relatively light. He

² <https://ico.org.uk/media/for-organisations/documents/1198/dealing-with-vexatious-requests.pdf>

believed that the quality of information that could be provided by WMP would be substantively similar to that provided by the other forces.

"The recorded information clearly shows the kind of offences that mention the social media site in question in that force area, which I intend to use for accountability reporting looking at whether the protections these sites put in place are sufficient, and whether police forces are doing enough to combat these kind of crime within their force areas. This is a clear serious purpose, indeed, this kind of accountability reporting is one of the points of FOIA legislation being introduced in the first place ... That West Midlands police could only provide this information for a more limited period, while disappointing, does not mean the information is useless. Data for a three month period would still allow me to assess the kind of offences being committed using these apps in the West Midlands police area, which apps are being used, and to get a sense of the groups most affected. This limited scope would still allow me to complete the same kind of accountability reporting intended, and, as above, is a clear and serious purpose. The reduction in scope, from 6 financial years, to 1 financial year, to three months, is a clear and logical reduction in scope to attempt to avoid section 14 issues, based on the number of records the force said it would have to redact."

23. Referring to WMP's citing of his previous requests for information in its decision to rule the request vexatious, the complainant said:

"As the FOIA specialist reporter for [newspaper details redacted], it is unsurprising that I would be filing a number of records requests for statistical and crime report information from police forces, though I might say that a small number of requests in the last six months on issues of clear public interest is quite a way far from a vexatious approach to story research. It is also unsurprising that I would be trying to get as much information as possible, and be willing to reduce the scope of my requests to get at least a partial response, where section 12 or 14 exemptions are cited, for the reasons set out above, in an attempt to obtain maximum transparency.

These requests are generally attempts obtain statistical information not nationally recorded, and to obtain crime report information to give context and examples to assist with my understanding of the statistical information provided. While I would like as much crime report information as possible, a sample is often enough, and I am happy to reduce the scope considerably where burdensomeness issues are raised by the authority. As set out above, just reducing my request to a sample, in a reasonable way, does not mean that a request lacks serious purpose.

More generally, if we are setting aside the applicant blind nature of this request, it is concerning that a public authority would rule a request from a journalist that specialises in public accountability reporting lacks no serious purpose. Indeed, it raises concerns about the seriousness with which the authority takes its FOIA obligations, and its commitment to accountability, especially given the lack of section 16 advice and assistance (for example, explaining how much information could be provided in the first instance to assist me with reducing the scope, rather than just refusing the request) provided."

WMP's position

24. WMP summarised its position as follows:

"The applicant has a pattern of behaviour ... whereby they have a random approach to the timescale their requests cover which lack any clear focus, and the continuous amendments/reductions to these timescales seem to be solely designed for the purpose of 'fishing' for information without any idea of what might be revealed and to keep doing this, despite advice to the contrary, would appear to be to cause annoyance to the Authority."

25. WMP said that it had complied with parts (1) and (2) of the request, disclosing five years' worth of data, broken down by offence title. Furthermore, it argued that the offence title itself describes the crimes that have been committed. It said:

"Should the applicant's real intention to be to use this for accountability reporting (looking at whether the protections these sites put in place are sufficient), and whether police forces are doing enough to combat these kind of crime within their force areas, as they state, then the information provided would be sufficient for this purpose

i.e. the offence title describes the offence being committed e.g. DISCLOSE PRIVATE SEXUAL PHOTOGRAPHS AND FILMS WITH INTENT TO CAUSE DISTRESS, SEND COMMUNICATION/ARTICLE CONVEYING A THREATENING MESSAGE, STALKING INVOLVING FEAR OF VIOLENCE etc. And these offence titles have been provided against each keyword for each year so this identifies how many of each offence type has included each of the social media titles that the applicant is interested in. There does not appear to be any serious value that the addition of heavily redacted MOs [modi operandi] would be able to add to this."

26. WMP noted that the request in this case only asked for crime reports which mentioned certain social media sites. It felt this meant that it would not be possible to infer from the withheld information whether those social media sites were a significant factor in the crimes allegedly

committed, or whether they were incidental to them. It argued that by simply requesting information based on certain keywords, *"the applicant is not specific in their research and are just trying to retrieve numbers rather than substance"*. It also argued that the complainant's failure to specify the start and end dates of the revised three month timescale further suggested a casual approach to the information being sought.

27. With regard to the redactions that would be necessary to avoid personal data disclosures, WMP said that this would need to be done manually, as it did not have automated redaction software.

"...the usual process is that a member of staff has to manually 'black out' the exempt information, print these amended documents out and then scan them back to their e-mail account, to be saved with the applicant's request."

28. It said the work involved would be time consuming. Commenting that, contrary to the complainant's assertion, it had not received copies of the three other police forces' responses to the request, it said:

"There were 136 cases that fell within this time frame and should it take approximately a minimum of 2 – 3 minutes to review and redact each of these cases to remove exempt information this would equate to between 4 and nearly 7 hours worth of work."

This does not exceed the time/fees limit but is still considered a disproportionate use of Police resources to assist with the FOI query, the work involved would be a disruptive burden and the disclosure is not proportionate to the end product being in the public interest. Should the applicant have in their possession redacted MOs from other forces, as they claim, one could assume that they already have a large number of examples that they could use for their research, and the addition of the 1200 redacted WMP MOs that were initially requested would appear to serve little extra value (Reduced by applicant to 500 redacted MOs, and then reduced again to 136 redacted MOs)".

29. Referring to the Commissioner's guidance on section 14, WMP noted that the primary indicators that a request is vexatious are that it has no reasonable foundation, employs a random, 'scattergun approach' lacking any clear focus, or seems to have been solely designed for the purpose of 'fishing' for information without any idea of what might be revealed. It said:

"...there is a pattern shown in this request, and other requests, that have been submitted whereby the timeframe is reduced and changed in an apparent attempt to receive any information even if it does not fulfil any set time parameters or bear relation to the scope of the original request, meaning that it cannot be used for comparison"

against other force data and/or any other data held for a comparable timeframe. The requests that the applicant repeatedly amends/reduces are always for a copy of MOs or free text description of the incident/offence."

30. WMP cited the reference numbers of three FOIA requests where the complainant had reduced the timeframe in this way, but it did not elaborate further on them.
31. It said that the complainant had been told repeatedly that compliance with requests of this construction placed a significant burden on its resources. In light of this, his continued submission of similar requests called into question his stated desire to "*compromise and work with the force*".
32. It concluded:

"Each request for information submitted requires the use of police resources to retrieve, collate and review the information requested and it would not be in the public interest for Freedom of Information legislation to be used to place unnecessary administrative burden or for requests that lack any serious value, as using police resources in this way would detract from the core purpose of policing i.e. preventing or detecting crime and preservation of life."

The Commissioner's conclusion

33. In the Commissioner's view, section 14(1) of the FOIA is designed to protect public authorities by allowing them to refuse requests which have the potential to impose a disproportionate or unjustified level of burden, disruption, irritation or distress. Balancing the impact of a request against its purpose and value can help to determine whether the effect on the public authority would be disproportionate.
34. WMP's central reason for applying section 14 can be summarised as being that a disproportionately high cost would be incurred for any minimal public benefit that would flow from disclosure, in terms of the value of the information that would be disclosed and the underlying purpose of the request.
35. WMP expressed the view that the construction of the request, and the complainant's willingness to reduce the timescale covered by it, indicated that it was essentially a 'fishing expedition'.
36. In this context, that term describes a request where the requester has no idea what information, if any, will be caught by the request, and so 'casts their net' widely, in the hope that this will catch information that is noteworthy or otherwise useful to them.

37. The Commissioner's guidance on section 14 of the FOIA notes that whilst fishing for information is not, in itself, enough to make a request vexatious, some requests may:
- impose a burden by obliging the authority to sift through a substantial volume of information to isolate and extract the relevant details;
 - encompass information which is only of limited value because of the wide scope of the request;
 - create a burden by requiring the authority to spend a considerable amount of time considering any exemptions and redactions; and
 - be part of a pattern of persistent fishing expeditions by the same requester.
38. However, public authorities must take care to differentiate between broad requests which rely upon pot luck to reveal something of interest and those where the requester is following a genuine line of enquiry.
39. It is also important to remember that most requesters do not have a detailed knowledge of how an authority's records are stored and how accessible this information may be, and this may be reflected in the breadth of the requests they submit. Whilst such requests may appear unfocused, they cannot be categorised as 'fishing expeditions' if the requester is genuinely trying to obtain information about a particular issue. In this situation the requester may well be open to some assistance to help them to reframe or refocus their request.
40. In this case, the complainant has explained that he is a newspaper journalist conducting research on policing in the area covered by the request. In this context the fact that he has submitted the same request to other police forces strengthens his argument that the information is genuinely required to inform his reporting on this area, and that the request has a serious purpose.
41. WMP has pointed to the complainant's readiness to reduce the timescale of his request as being indicative of a lack of serious intent behind it. However, as set out in paragraph 39, the Commissioner encourages requesters and public authorities to engage with each other to establish how a request might usefully be revised. She therefore disagrees with WMP's interpretation of the complainant's behaviour on this occasion and does not find the serious intent behind the request to be diminished by his willingness to reduce the timescale.
42. The Commissioner takes the view that if a request does not obviously serve to further the requester's stated aims, or if the information

requested will be of little wider benefit to the public, then this will restrict its value, even where there is clearly a serious purpose behind it.

43. WMP had argued that, due to the wording of the request, it would not be possible to identify from the withheld information the extent to which social media platforms were integral to, or merely peripheral to, the alleged crimes that were reported. However, having viewed a sample of the withheld information the Commissioner considers that, even in its redacted state, it is generally clear from the reports whether the social media platform in question is central to the alleged crimes (ie whether or not the alleged crimes were committed via the social media platforms). She also considers that it is possible to get a flavour of what each report involves, even with the redactions that have been made to conceal personal data (which the complainant accepts as necessary).
44. WMP has made judgements about the value of the information that would be disclosed, why the complainant wants it and why it might not be suitable for those purposes. The Commissioner also notes the representations it has made to her that, if he has obtained information from other forces, he probably already has sufficient information for his needs. These judgements have, apparently, been made without consulting with the complainant himself. They therefore amount to a series of assumptions made by WMP, rather than being an evidence-based understanding of why the withheld information would add little to the complainant's stated reason for wanting it.
45. WMP has explained that it estimates that compliance with the request would generate between 4-7 hours' work. This is significantly below the 18 hours' work allowed for before the provisions of section 12 (cost of compliance exceeds appropriate limit) are engaged. WMP has referred to other, similar requests from the complainant, which it says have added to this burden, however, it has not provided the Commissioner with any details of those requests or the time period over which they were received. It has also not provided any information about how compliance would impact on its ability to deliver an FOI service to other requesters, or the delivery of its core policing services, beyond saying that it would.
46. As set out above, it is for public authorities to demonstrate to the Commissioner why the exemption at section 14 applies. In this case, while she accepts that WMP will be required to absorb some costs, the Commissioner is not satisfied that WMP has demonstrated that the burden of compliance would be disproportionate to the value and purpose of the request. In the absence of any other factors which would characterise the request as vexatious, she finds that WMP was not entitled to apply section 14 of the FOIA to refuse the request.

Right of appeal

47. 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

48. 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.

49. 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

Samantha Bracegirdle
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF