

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 11 February 2015

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 relating to an investigation. West Yorkshire Fire & Rescue Service refused to comply with the request because it considered it vexatious under section 14 of the FOIA.
2. The Commissioner's decision is that West Yorkshire Fire & Rescue Service has applied section 14(1) appropriately.
3. The Commissioner does not require any steps to be taken.

Request and response

4. On 5 June 2014 the complainant wrote to West Yorkshire Fire & Rescue Service (WYFRS) and requested information in the following terms:

"I would like to have sight of ALL the E-mails and correspondence sent to and from the following persons [named person], [named person], [named person] and [named person] during the period 1st Jan 2014 to the present date. Please state whether or not thus (sic) should be a new request as I am now focusing on the actions/inactions regarding falsification of documents and the conduct of the senior officers involved in the investigation of the same."
5. The WYFRS responded on 3 July 2014. It explained that it considered the request to be vexatious and applied section 14.

6. Following an internal review WYFRS wrote to the complainant on 30 July 2014, upholding its application of section 14.

Background

7. The complainant alleged that WYFRS had left Wetherby in West Yorkshire vulnerable regarding any case of fire or road traffic collision for over 4 hours, on 17 November 2010. It was also alleged that the appliance and crew had been stood down from operational duties.
8. The complainant had previously been employed by WYFRS but retired in 2012. This followed two disciplinary cases brought against him in 2010, the first of which resulted in his demotion due to his unauthorised use of a fire appliance.

Scope of the case

9. The complainant contacted the Commissioner on 8 August 2014 to complain about the way his request for information had been handled. He stated, amongst other things, that there had been a cover up by WYFRS.
10. During the Commissioner's investigation WYFRS explained that the complainant's request related to the use of resources at a charity boxing event on 17 November 2010 held at the Batley Frontier Club in support of the Firefighters Charity.
11. The Commissioner will consider whether WYFRS has applied section 14(1) appropriately.

Reasons for decision

12. 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.
13. The term "vexatious" is not defined in the FOIA. The Upper Tribunal (UT) considered the issue of vexatious requests in *Information Commissioner*

v Devon CC & Dransfield (UKUT 440 (AAC), 28 January 2013).¹ The UT commented that “vexatious” could be defined as the “*manifestly unjustified, inappropriate or improper use of a formal procedure*”. The UT’s definition clearly establishes that the concepts of proportionality and justification are relevant to any consideration of whether a request is vexatious.

14. The Commissioner considers 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.
15. 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 requests.² 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, or is not, vexatious.

Evidence from the parties

16. The complainant alleged that there had been a cover up and that officers involved in the investigation into the events of November 2010, had tried to avoid the issue in question or were not addressing the issue in accordance with WYFRS’s own discipline regulations. He also claimed that his request for the communications between those involved in the alleged “cover up” was refused because it would prove that there was or is a conspiracy to conceal facts, not least because some of the information (some of which was private) was made available to certain officers.
17. The complainant also explained that he considered it was in the public interest to expose the nepotism and institutionalised cover up at senior management level as had already occurred in the NHS and Police.

¹ <http://www.osspsc.gov.uk/Aspx/view.aspx?id=3680>

²

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

18. WYFRS explained that it considered that the present request of 5 June 2014 was vexatious. It went on to explain that on 15 June 2013 the complainant submitted a request for information: *"Please supply me with all information (times, dates and locations) regarding charity or fund raising events where on duty Fire Fighters were allowed to participate in the last 3 years. Eg. car washing events, transporting equipment for such events as boxing tournaments. I would like to be informed also of the name/s of supervisory officers and rank who gave permission for this to take place and how this time was recorded on the SAP system. I would also like to see any policy where this is allowed to happen."*
19. This was responded to on 4 July 2013. On the same day the complainant requested an internal review. However, this appeared to be a new request for information. WYFRS also explained that the complainant had gone on to post an item on FireCutsCostLives.blogspot.co.uk using inaccurate quotes about WYFRS.
20. WYFRS provided an internal review response on 1 August 2013, which the complainant immediately responded to, asking for further clarification. WYFRS responded to this on 2 August 2013. The complainant telephoned WYFRS on the same day and spoke to a member of staff in a very irate and intimidating manner. The staff member felt intimidated by the applicant and considered that he was trying to bully her into finding information for him. WYFRS also explained that the complainant had stated that he was *"like a bulldog and will not let this go"*.
21. WYFRS contacted the complainant, explaining that it would not accept such behaviour and suggested that if the complainant wanted to raise issues he had not raised in his request for information, he should use the WYFRS Complaints Procedure, which consists of three levels. The complainant did this on 13 August 2013 and this was progressed from level 1 to level 3, as he was not satisfied with the outcomes of the level 1 or level 2 hearings. The level 3 hearing was carried out on 4 February 2014.
22. There were several exchanges between the complainant and WYFRS, from August 2013 to February 2014. During this time, the complainant made three requests for information and also raised complaints through the WYFRS Complaints Procedure. On 31 October 2013, the complainant met with a member of WYFRS and made several allegations. He also stated that he wanted a member of staff punished in the same way he had been punished for the unauthorised act of taking an appliance and crew from a high risk area to a low risk area, to watch his son play football on two separate occasions.

23. In February 2014 the complainant also complained to the Local Government Ombudsman. The Local Government Ombudsman sent WYFRS her final decision in which she explained that the complainant was out of time so she would not be considering his complaint but that, additionally, there was insufficient personal injustice as the complainant did not live in Wetherby and she could not have reached the result he wanted.
24. The complainant also threatened to start an internet campaign against a councillor unless he conducted an investigation into the alleged misuse of WYFRS resources. The councillor responded, explaining that the complainant's case had been considered on four separate occasions at different levels and by different groups and that each time, his case had been dismissed.
25. The WYFRS also explained that the complainant had posted an annotation on the WhatDoTheyKnow (WDTK) website confirming that he would be posting the Level 3 Complaint Appeal Hearing response on the website.
26. Between March 2014 to September 2014, the complainant asked WYFRS to post online the result of the Stage 3 Appeal, which had already been sent to him. Subsequently he posted an annotation on the WDTK website making allegations against a councillor. In addition, the complainant also made a complaint to the Chief Legal and Governance Officer.
27. On 5 June 2014 the complainant submitted the request which is the subject of this decision notice.
28. On 3 July 2014 WYFRS contacted the complainant, informing him that his June request was considered to be vexatious and therefore it was applying section 14(1) and would not be responding to any linked requests. The complainant responded by posting an annotation on the WDTK website, claiming that the issuing of the refusal notice was a "*concerted effort to conceal the truth*". The complainant went on to request an internal review of his June request, which the WYFRS responded to on 30 July 2014, upholding its original decision to apply section 14(1).
29. WYFRS also explained that the complainant had started an online petition, making allegations against WYFRS and named individuals. It argued that this, together with online postings on sites including WDTK and FireCutsCostLives, demonstrated that the complainant had become fixated and/or obsessed with this issue.

30. On 1 August 2014, the complainant tried to resubmit his request of 5 June 2014, even though it had already been dealt with.
31. WYFRS also explained that on 2 September 2014, it was notified by West Yorkshire Police (WYP) that the complainant had alleged that there was criminal wrongdoing regarding misconduct in public office by various individuals within it. WYP confirmed that no action would be taken as the complaint was baseless.
32. WYFRS argued that it considered that the complainant was trying to use FOIA to pursue a personal issue which had already been dealt with. It pointed to the First-tier Tribunal (the tribunal) decision in *Information Commissioner v Andrew Killingbeck EA/2014/0046*³ which found that FOIA was an inappropriate vehicle to pursue a highly personalised matter which was of little benefit to the wider public, even where there may be a serious purpose behind it.
33. WYFRS also explained that it had already dealt with the complainant's numerous previous requests and correspondence, totalling approximately 120 individual communications to and from it, all related to the alleged misuse of WYFRS resources.
34. WYFRS acknowledged that the number of individual formal requests from the complaint could be seen as relatively small and would not appear to be burdensome when viewed in isolation. However, it explained that it was unlikely to be able to draw the complainant's correspondence to a close by responding further, as based on experience, any response provided would very likely lead to further enquiries and requests on a subject that had already been investigated and concluded.
35. Furthermore, WYFRS explained that dealing with the complainant's correspondence had involved 36 individual officers, including 13 senior managers and the use of extensive resources. It also explained that it was not in a position to commit any further time or resources in relation to responding to the complainant's manifestly unreasonable demands.

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[http://www.informationtribunal.gov.uk/DBFiles/Decision/i1294/Killingbeck,%20Andy%20\(EA-2014-0046\).pdf](http://www.informationtribunal.gov.uk/DBFiles/Decision/i1294/Killingbeck,%20Andy%20(EA-2014-0046).pdf)

Decision

36. The Commissioner has considered the representations made by both parties, together with the decision in *Dransfield* and his own guidance on vexatious requests.
37. The Commissioner notes the WYFRS's comment that the number of individual formal requests from the complainant was relatively small and would not appear to be burdensome when viewed in isolation. The Commissioner's 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."*
38. Whilst WYFRS 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 has placed a tremendous burden on it already.
39. The Commissioner considers that, when combined with the history of the complainant not being satisfied with any response that WYFRS has made to his correspondence, responding to the present request would have a detrimental impact on the authority.
40. Turning to the purpose and value of the request, this was the complainant's stated aim of focusing on the actions of senior officers of WYFRS involved in the investigation. The Commissioner 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.
41. In this case, there could be a wider public interest in the request if there was any evidence regarding the misuse of WYFRS resources. However, that does not appear to be the case here.
42. When considered in isolation, the request could appear to have a serious purpose, that being to establish if there had been a misuse of WYFRS' resources. However, given the context and history of the case, and given that the complainant has previously complained to the Local

Government Ombudsman, the WYFRS and the police - and there have been no findings to support his allegations - the Commissioner does not consider that the purpose justifies the disproportionate effect on the authority.

43. Taking into account the background of the case, the Commissioner also 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 own disagreement with the WYFRS, which can be considered an 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 considers that WYFRS was correct to find the request vexatious.
44. Accordingly, the Commissioner finds that section 14(1) has been applied appropriately in this instance.

Right of appeal

45. 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

46. 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.
47. 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
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF