

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 30 August 2017

**Public Authority:** Office of North Yorkshire Police and Crime Commissioner

**Address:** 12 Granby Road  
Harrogate  
North Yorkshire  
HG1 4ST

### Decision (including any steps ordered)

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1. The complainant has requested information regarding Deeds of Delegation. In response, the Office of North Yorkshire Police and Crime Commissioner provided the complainant with links to the requested information.
2. The Commissioner's decision is that the Office of North Yorkshire Police and Crime Commissioner should have applied section 21 (information accessible by other means) of FOIA to the requested information. She considers therefore that it has breached section 21 of FOIA by not doing it. She also considers that it has breached sections 10 (time for compliance) and 17 (refusing a request) of FOIA.
3. The Commissioner does not require the Office of North Yorkshire Police and Crime Commissioner to take any steps as a result of this decision notice.

### Background

4. The North Yorkshire Police Civil Disclosure Unit (CDU) deals with requests for information and internal reviews received by the Office of North Yorkshire Police and Crime Commissioner (the OPCC).
5. The complainant brought a case against the OPCC regarding its compliance with requests under the FOIA and the Data Protection Act 1998 (the DPA).

## Request and response

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6. On 1 July 2016 the complainant wrote to the OPCC and requested information in the following terms:

*"1. Copies of all Deeds of Delegation concerning the transfer of Appropriate Authority responsibilities of the Commissioner to any other member of her staff in respect of complaints against the Chief Constable, together with Decision Notices recording such Deeds broken down by financial year:*

*2012/13*

*2013/14*

*2014/15*

*2015/16."*

7. On 2 August 2016 the complainant requested an internal review on the following grounds:

1. The OPCC had not responded to him within the 20 working day timescale under the FOIA.

2. The manner in which his request was handled was outside College of Policing's Authorised Professional Practice (APP) in respect of FOIA request.

3. In an open letter to him by the OPCC solicitors it was claimed that the previous six FOIA requests to it were all 'vexatious'. The complainant also submitted a further request asking for "ALL the documentary evidence that supports these assertions. Emails, meeting notes, briefing notes, logs, pocket books and the like." The complainant also stated that no one had raised the issue of any of his requests being 'vexatious'.

4. The complainant asked whether his present request was classified as 'vexatious' and if it was, the OPCC should: "... please state the reasons and reference your answer to Dransfield (Upper Tribunal before Judge Wilkely [sic]) which is now the leading legal authority on the topic."

5. The complainant stated that it had been claimed by the OPCC's solicitors that in each and every case, all information requests finalised on behalf of the OPCC have been and were, compliant with FOIA. He then made a further request for information as follows: "Please provide ALL documentary evidence that supports that assertion. Date request received, URN, date finalised, date review requested (if any), date review finalised, for the past three complete financial years."

6. The two claims made by Weightmans were embellished by another solicitor [name redacted] who also claimed that the OPCC is FOIA (and DPA) compliant in every respect. The complainant submitted the following request: "Please disclose all communications, meeting notes, briefing notes involving [name redacted] and any member of OPCC staff, or the Commissioner, on the subject of FOIA/DPA compliance."
7. Failure to comply within statute and authorised professional practice constitutes, in the case of this and all other non-compliant FOIA's, a breach of the College of Policing's code of Ethics. All complaint rights against the Head of Joint Corporate Services are reserved pending receipt of the above review.
8. The complainant also reminded OPCC that the review was required to be delivered within 20 working days and explained that he accepted that the OPCC *"may wish to treat the requested information at paras 3, 4, 5 and 6 as new requests. The period for finalisation is the same: 20 working days."*
8. On the same day the complainant added the following to his request for an internal review:
- "I write further to my request for an internal review sent earlier today. It has been brought to my attention that at least two other FOIA requests to NYP (via WhatDoTheyKnow), which were received well beyond the date mine was submitted, have either been finalised or part-finalised.*
- <https://www.whatdotheyknow.com/request/l...>
- <https://www.whatdotheyknow.com/request/a...>
- On the face of these (and other) occurrences, [sic] an unethical prejudicial, discriminatory approach to requests that I make is (again) disclosed. Accordingly, I would be grateful [sic] please insert the following as point 1(a) in the internal review and provide the following information and explanation:*
- (i) How many other FOIA requests were dealt with out of turn and ahead of mine?*
- (ii) Please identify by URN*
- (iii) Why are my FOIA requests systematically delayed, sometimes weeks, other times months and in one case for over a year."*
9. On 5 August 2016 PPC responded to the initial request confirming that it held the requested information. It provided the complainant with links to it.

10. Additionally on 5 August 2016 the complainant added the following to his request for an internal review:

*"Thank you for providing a response to this FOI request, albeit outside of your statutory obligation. You already have my request for an internal review, which is due for finalisation on 30th August. Please add the following paragraphs to that internal review:*

*2(b) The information provided by the Civil Disclosure Unit does not, on the face of what is disclosed behind the hyperlinks, satisfy the request, or even go close to it. It is implicit in the request that I have made that the information sought is documentary evidence of transfer of statutory powers of the Commissioner within the legislative framework applicable to police complaints. If no such information or documents exist then you are invited to state that plainly when finalising this review.*

*2(c) The manner of the finalisation of this request and the unexplained delay in providing it, is, taken together with the history of other non compliant requests, in my submission, calculated to vex, harass and annoy, obstruct my work as an investigative journalist and put me to needless expense in dealing with reviews such as this."*

11. Following an internal review the OPCC wrote to the complainant on 16 September 2016. It apologised for the length of time taken to provide the outcome of the internal review.
12. In relation to point 1: the OPCC apologised for the delay in responding to the request initially. It explained that the CDU strives to meet the 20 working day deadline, however with a pressured workload of differing disclosure activities and the steep rise particularly in FOIA requests, as well as the increase in complexity of the requests received, a backlog has been created and therefore it is not always possible to respond within the time limit given under FOIA.
13. In relation to points 1(i), (ii) and (iii), the OPCC explained that it did not consider that it needed to respond to these points. It also explained that it considered they were "futile" and that any response would not benefit the public interest.
14. In relation to point 2: the OPCC explained that it had already accepted that it had not responded to the complainant within 20 working days. In relation to point 2(b) it explained that it had already provided the complainant with links to the requested information, therefore it considered that it had answered the point. In relation to point 2(c) the OPCC stated that as explained to the complainant previously, there was no intention to vex, annoy or harass him. In addition the OPCC explained that the CDU processes high volumes of disclosure requests,

with variable priorities and complexities, and it is therefore not always practical to respond to every email.

15. In relation to point 3: the OPCC referred the complainant to a letter from its lawyers to him dated 4 August 2016.
16. In relation to point 4: the OPCC confirmed that it did not consider the complainant's present request to be vexatious for the purposes of section 14 of FOIA (vexatious and repeated requests) but that it would apply section 14 to any other request received from him on the same or similar topics.
17. In relation to point 5: the OPCC explained that it had not made any assertion that it was always a 100% compliant with the statutory time period allowed under the FOIA.
18. In relation to point 6: the OPCC reiterated that it had not claimed to be 100% compliant with regards to the statutory processing times stipulated within the FOIA and the DPA. The OPCC also explained that it was not disclosing any documents or correspondence involving [name redacted] and any member of the OPCC on the subject of FOI and DPA compliance and applied section 42 (legal professional privilege) of FOIA to this information.
19. In relation to point 7: During the Commissioner's investigation the complainant explained that he was not complaining about point 7. Therefore, the Commissioner will not consider this point any further.
20. In relation to point 8: the OPCC explained that it had provided responses to points 4, 5 and 6 but would not be responding to point 3, as it considered this would be a request for the complainant's personal data.

## **Scope of the case**

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21. The complainant contacted the Commissioner on 19 September 2016 to complain about the way his request for information had been handled. He complained that the OPCC's response in relation to point 1 was largely false and misleading. The complainant also explained that he considered that there was a significant public interest in the outcome of a case he took against the OPCC regarding its compliance with both the FOIA and the DPA. Additionally, the complainant explained that he had argued that the OPCC regularly discriminated against him.
22. The Commissioner has considered the complainant's complaint. She notes that he has raised various points in both his request for an internal review and his complaint to her which she considers to be

outside the scope of his original request. The complainant explained to the Commissioner that he would use the same numbering used by the OPCC in its internal review, in his complaint to her.

23. In relation to point 1: the complainant explained that he considers that the OPCC's response to him was largely false and intended not only to deceive him, but the wider public. The Commissioner notes that this point relates to the late response of the OPCC to the complainant's original request. She will deal with this separately. In relation to additional points 1(i), (ii) and (iii) the Commissioner considers that these points fall outside the scope of the request, therefore she will not consider them any further.
24. In relation to point 2: this relates to the lateness of the OPCC's response to the complainant and will be dealt with in relation to point 1. Therefore the Commissioner will not consider this point any further. In relation to additional point 2(b) the Commissioner notes that the complainant has stated that he considers that the information in the links provided does not answer his request and that the Deeds of Delegation he sought had either not been properly executed, or did not exist at all. The Commissioner does not have the legal remit to decide whether information disclosed by a public authority is correct. However, she does consider that the OPCC should have cited section 21 (information reasonably accessible by other means) of FOIA in relation to providing the complainant with links to information. She will deal with this separately.
25. In relation to additional point 2(c) the Commissioner notes that the OPCC stated that, as explained to the complainant previously, there was no intention to vex, annoy or harass him. The Commissioner considers that this point falls outside the scope of the present request and therefore she will not consider it any further.
26. In relation to point 3: the Commissioner notes that the complainant refers to a letter from the OPCC's solicitors in relation to a separate issue. The Commissioner considers that this falls outside the scope of the present request and therefore she will not consider it any further.
27. In relation to point 4: the Commissioner notes that in his request for an internal review the complainant asked the OPCC to *"state, in open correspondence, on this website, whether this particular FOIA request is classified as 'vexatious'. If so, please state that reasons and reference your answer to Dransfield (Upper Tribunal before Judge Wikley [sic]) which is now the leading legal authority on the topic."* The Commissioner will not therefore consider this point any further.
28. However, the Commissioner notes that in his complaint to her in relation to point 4, the complainant states that the OPCC had claimed that he



had asked for personal information. He also invited the Commissioner to make a finding on this. However, the Commissioner considers that this point falls outside the scope of the present request and therefore she will not consider it any further.

29. In relation to point 5: the complainant claimed that the OPCC's response was a deliberate and calculated falsehood. He explained that it was a verbatim extract from paragraph 3 of the Defence filed in the county court, which is a public document available to anyone on paying a copying fee at the court. He invited the Commissioner to make findings in light of the OPCC's response and the pleadings at court. However, the Commissioner considers that this falls outside of the scope of the present request and therefore she will not consider it any further.
30. In relation to point 6: the complainant explained that the data controller had misdirected herself under the FOIA by relying on the section 42 exemption. However, the Commissioner considers that this point falls outside the scope of the present request therefore she will not consider it any further.
31. In relation to point 7: the complainant confirmed that this does not form part of his request therefore the Commissioner will not consider it any further.
32. In relation to point 8: the complainant has not complained about this, therefore the Commissioner will not consider it any further.
33. The complainant also explained to the Commissioner that the present complaint was the second (the first concerned an NYP data access outcome) in what was likely to be a lengthy series. He alleged that there was an established pattern of not only non-compliance with the FOIA and the APP revealed in his extended dealings with NYPCC and NYP's CDU, but a level of deceit and subterfuge that was entirely unacceptable in any public authority, let alone a policing body. He also explained that the Commissioner, for her part, had been approached a number of times via social media in recent months to highlight deep concerns over persistent and long standing non-compliance by both data controllers. Her response had been weak to non-existent.
34. Furthermore, the complainant explained that his complaint assumed greater significance than would ordinarily be the case in that it took on the status of "bellweather" as to the Commissioner's effectiveness as a watchdog. The complainant also submitted a new request for information.
35. The Commissioner will consider the following parts of the request: points 1 and 2(b) and the complainant's new request for information in his complaint to her.

## Reasons for decision

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36. The complainant submitted a request on 1 July 2016 and the OPCC responded to it on 5 August 2016.

### Section 10 – time for compliance

37. Section 10(1) of FOIA provides that a public authority has to respond to a request promptly and no later than the twentieth working day following the date of receipt.

### Section 17 – refusal of a request

38. Section 17(1) of FOIA provides that if a public authority is going to withhold information, it must inform the applicant of this within the time for compliance provided for in section 10(1).
39. As the OPCC failed to provide a refusal notice within the 20 working day limit the Commissioner considers that it has breached both sections 10(1) and 17(1).
40. In relation to the additional point 2(b) the complainant argued that providing links to information in its response to him, was not satisfactory as it did not answer his request. The Commissioner cannot investigate whether the information is correct. However, during her investigation, the OPCC explained that although it had provided the complainant with links to information which answered his request for information, it had not cited section 21 of FOIA.

### Section 21 – information accessible by other means

41. Section 21(1) states that:

*“Information which is reasonably accessible to the applicant otherwise than under section 1 is exempt information.*

*(2) For the purposes of subsection (1) -*

*(a) information may be reasonably accessible to the applicant even though it is accessible only on payment, and*

*(b) information is to be taken to be reasonably accessible to the applicant if it is information which the public authority or any other person is obliged by or under any enactment to communicate (otherwise than by making the information available for inspection) to members of the public on request, whether free of charge or on payment.”*



42. As section 21 is an absolute exemption it is not subject to public interest considerations.
43. The purpose of the exemption is to ensure that there is no right of access to information via FOIA if it is available to the applicant by another route. The Commissioner's guidance on section 21<sup>1</sup> explains that, unlike consideration of most other exemptions in FOIA, a public authority can take the individual circumstances of the applicant into account. In order for section 21 to apply there should be another existing, clear mechanism by which the particular applicant can reasonably access the information outside of FOIA.
44. The Commissioner considers that it is reasonable for a public authority to assume that information is reasonably accessible to the applicant as a member of the general public, until it becomes aware of any particular circumstances or evidence to the contrary.
45. Even if the requested information is fully in the public domain, this does not mean that it is automatically exempt under section 21. Public authorities should consider an applicant's particular circumstances (if and when they become aware of them) when deciding whether publicly available information is in fact reasonably accessible to that individual. For example, the applicant may not have reasonable access to the internet.
46. Furthermore, the Commissioner considers that information, although generally available elsewhere, is only reasonably accessible to the applicant if the public authority:
  - knows that the applicant has already found the information; or
  - is able to provide the applicant with precise directions to the information so that it can be found without difficulty. When applying section 21 in this context, the key point is that the authority must be able to provide directions to the information.
47. In this case, the Commissioner notes that the complainant uses email and posts his requests on the 'Whatdotheyknow' website. She also notes that he has explained that he is journalist. The Commissioner has not been made aware of any reason why the complainant could not have accessed the information. The Commissioner's view is that the section 21 exemption would have applied to the requested information.

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

48. The Commissioner therefore considers that the OPCC has breached section 21 by not citing it.

### **New request**

49. The Commissioner notes that the complainant has included the following request to her:

*"It is requested that CDU disclose all their working papers, including internal/external emails, letter correspondence, briefing notes, meeting notes, PNB entries, day book entries and the like related to both the instant request and the subsequent internal review to both the ICO (unredacted) and myself (redacted only where necessary)."*

50. The Commissioner considers that this is a new request which the complainant will need to submit this to the OPCC. The Commissioner will not therefore consider this any further.

### **Other matters**

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51. The complainant requested an internal review on 2 August 2016 and added further points both on 2 and 5 August 2016. The OPCC responded on 16 September 2016. As part of his complaint to the Commissioner, the complainant stated that a public authority must deal with a request for an internal review within 20 working days from the date of receipt.
52. Part VI of the section 45 Code of Practice (the code) makes it good practice for a public authority to have a procedure in place for dealing with complaints about its handling of requests for information.
53. While no explicit timescale is laid down in the code, the Commissioner has decided that a reasonable time for completing an internal review is 20 working days from the date of receipt of the request for review. In exceptional circumstances it may be reasonable to take longer but in no case should the time taken exceed 40 working days.
54. The Commissioner is concerned that it took over 20 working days for the internal review to be completed.
55. The complainant has stated that an internal review should be carried out by a senior member of staff. The code states the following:

*"Where the complaint concerns a request for information under the general rights of access, the review should be undertaken by someone senior to the person who took the original decision, where this is reasonably practicable. The public authority should in any event*

*undertake a full re-evaluation of the case, taking into account the matters raised by the investigation of the complaint”.*

56. The Commissioner notes that the code states that an internal review should be carried out by someone senior to the person who took the original review, where it is “reasonably practicable”. However, she accepts that this might not always be possible. She is therefore satisfied that in circumstances where it is not practicable for someone senior to the original decision-maker to carry out an internal review, it can still be carried out, provided it is not done by the original decision-maker.

## Right of appeal

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57. 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](mailto:GRC@hmcts.gsi.gov.uk)  
Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

58. 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.

59. 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  
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