

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 17 August 2017

Public Authority: Chief Constable of South Wales Police
Address: Police Headquarters
Cowbridge Road
Bridgend
CF31 3SU

Decision (including any steps ordered)

1. The complainant requested confirmation that an individual referred to in a piece of correspondence was named on a list he provided with his request. South Wales Police initially applied section 40(2) to the request. During the Commissioner's investigation, South Wales Police stated that it considered the request to be vexatious and as such it considered section 14(1) to apply to the request. The Commissioner's decision is that South Wales Police has correctly applied section 14(1) of the FOIA to the request. She does not require any steps to be taken.

Request and response

2. On 22 February 2016 the complainant wrote to South Wales Police and provided a copy of a document with names of staff and posts held in the Orthoptic Department of Abertawe Bro Morgannwg University Health Board ('ABMUHB'). He also referred to a letter which ABMUHB had previously sent to South Wales Police and requested information in the following terms:

"Please confirm the person named in this letter is or is not one of the 22 members of the Orthoptic department team, that I printed out on 20 January 2011 before they were removed from the public domain".

3. South Wales Police responded on 9 March 2016 and stated that the requested information was exempt under section 40(2) of the FOIA.

4. On 23 March 2016 the complainant wrote to South Wales Police requesting an internal review of its handling of his request. He pointed out that he had asked for a "yes" or "no" answer to his request rather than the name or details of an individual. As such, he disputed that a response to his request would lead to the identification of any individual and as such section 40(2) of the FOIA could not apply.
5. South Wales Police provided the outcome of its internal review on 14 April 2016 and upheld its decision that the information requested was exempt under section 40(2) of the FOIA.

Scope of the case

6. The complainant contacted the Commissioner on 26 September 2016 to complain about the way his request for information had been handled.
 7. During the course of the Commissioner's investigation South Wales Police withdrew reliance on section 40(2) and stated that it was now relying on section 14(1) of the FOIA as it considered the request to be vexatious. South Wales Police indicated that if the Commissioner did not agree that section 14(1) applied to the request, it would seek to rely on section 40(5) of the FOIA.
 8. The request in this case is framed in the form of a question and the complainant has indicated that he requires a yes/no answer to the request. A question can be a valid FOIA request if a public authority holds recorded information that answers the question. However under the FOIA a public authority is under no obligation to provide a 'yes' or 'no' answer on a specific point unless they have already recorded and hold this specific information. In this case it is clear that South Wales Police hold a copy of the letter from ABMUHB referred to in the request. Therefore, in order to comply with the request under the provisions of the FOIA, South Wales Police would need to disclose a copy of the letter in question.
 9. The scope of the Commissioner's investigation is to determine whether South Wales Police correctly refused the request under section 14(1) of the FOIA.
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Reasons for decision

Section 14 – Vexatious requests

10. 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.
11. 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.
12. 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) any 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).
13. The Commissioner has identified a number of "indicators" which may be useful in identifying vexatious requests. These are set out in her published guidance on vexatious requests². The fact that a request

¹ UKUT 440 (AAC) (28 January 2013)

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

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.

14. 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.

South Wales Police's position

15. As background information, South Wales Police advised that there has been a significant history of contact with the complainant regarding the subject matter behind the request which is the subject of this notice. South Wales Police advised that the complainant is of the opinion that ABMUHB lied at an employment tribunal [redacted]. He believes that ABMUHB fabricated evidence in stating that an external candidate (referred to as Ms X) was successful in obtaining a job [redacted] when in fact there was no other applicant.
16. The complainant has previously reported the matter to South Wales Police who conducted an investigation into the allegations against ABMUHB. As part of the investigation, South Wales Police asked ABMUHB to provide the name and the Health Care Professional Council ('HCPC') registration number of Ms X to prove that she did in fact exist. Following provision of the information, the investigating officers were satisfied that no offence had been committed and the complainant was advised of the outcome of the investigation.
17. The complainant has refused to accept the outcome of South Wales Police's investigation and submitted that one of the following scenarios had occurred:
 - ABMUHB had provided South Wales Police with the name of an existing member of staff in an attempt to cover up the fact that there was no successful candidate.
 - South Wales Police were aware that there was no successful candidate appointed and has also attempted to cover up the wrongdoing.
18. The complainant first reported the allegation against ABMUHB to the 101 service in January 2011, at which time he was advised it was a civil matter. He reported it again in January 2012 at which time his allegations were investigated and he was advised that South Wales Police were satisfied that no offence had taken place. The complainant attended a local police station in September 2014 and again reported his allegations against ABMUHB. The complainant was referred to the

outcome of the investigation into his earlier complaint and again advised that the matter was a civil one.

19. The complainant contacted South Wales Police on a fourth occasion in April 2016 stating that he wished to report the First Minister for fraud by false representation and misconduct in office. These allegations referred to letters the complainant had received from the First Minister in January 2012 and October/December 2015 advising that the Welsh Government had no role in investigating the matter in question.
20. South Wales Police confirmed that the complainant has made three separate information requests relating to the subject matter, and made four separate complaints to its Professional Standards Department, two of which pre date the request of 22 February 2016. In addition, the complainant has reported various members of staff and officers of South Wales Police for criminal offences, including the Chief Constable. He has also written numerous pieces of correspondence to South Wales Police, all relating to the same issue and for the purpose of trying to establish the identity of Ms X.

Detrimental impact of complying with the request/burden

21. South Wales Police is of the view that if it complied with the request the complainant would continue in his campaign in an attempt to uncover evidence which proves that ABMUHB has committed offences under the Fraud Act. The barrage of correspondence and requests from the complainant would continue and unless South Wales Police applied section 14(1) to the requests it would have a duty to continue to respond. The threats, complaints and personal insults contained within correspondence from the complainant would continue to cause frequent harassment, annoyance and disruption to staff. South Wales Police considers the complainant would also be likely to report any person who provided the information requested for various offences.
22. South Wales Police has already advised the complainant that there is no evidence of any criminal offence on the part of ABMUHB. It believes that the complainant will not be satisfied until he is provided with the identity of Ms X. During investigations into his allegations, the decision was taken not to tell the complainant whether Ms X's name appeared on a list of ABMUHB staff. This decision was taken based on the complainant's fixation with uncovering the identity of Ms X, and concerns that the individual would be subject to harassment, if identified. The complainant has indicated that he is in possession of the name, professional details as well as some photographs of almost 4000 members of staff of ABMUHB. As such South Wales Police could not be sure that the complainant was not attempting to identify Ms X through elimination by

creating or manipulating staff lists and requesting confirmation as to whether the list included Ms X's name.

23. The complainant has been corresponding with South Wales Police regarding the matter for six years and shows no sign of abating. Responding to requests and other communications from the complainant prevents South Wales Police from carrying out other necessary policing functions, for example investigations into breaches of the Data Protection Act 1998 and providing information to other organisations to assist with fraud investigations. South Wales Police advised that, on average, it handles over 1000 FOIA requests annually. In addition, South Wales Police stated that the complainant has sought to bring criminal charges against a number of individuals who have been involved in dealing with his requests and correspondence, citing offences attracting a prison offence, namely misconduct in public office.

Unreasonable persistence

24. South Wales Police provided the Commissioner with a timeline summarising actions and exchanges with the complainant about the subject matter since 2011. In 2011 the complainant made an FOIA request to ABMUHB for the name and HCPC number of Ms X. ABMUHB refused to provide the information advised the complainant that he should refer the matter to the ICO if he remained dissatisfied. The complainant did not pursue this course of action but instead referred the matter to the Welsh Government asking that they investigate. The Welsh Government advised it could not investigate and again suggested that he refer the matter to the ICO or the Public Services Ombudsman for Wales ('PSOW'). The complainant did not pursue these avenues of redress and instead reported allegations against ABMUHB to South Wales Police.
25. South Wales Police have repeatedly advised the complainant that there is no evidence that an offence has taken place and the matter will not be investigated further. If the complainant was not satisfied with the investigation, the correct course of action if he believes that officers have been dishonest would be to refer the matter to the PSD and subsequently to the Independent Police Complaints Commissioner ('IPCC') if he is unhappy with the result of the PSD investigation. The complainant has made a number of complaints to the PSD, and the matter is currently the subject of independent scrutiny by the PSD. South Wales Police is unaware of any referrals to the IPCC to date.
26. In 2016, after the request which is the subject of this notice, the complainant contacted the Police and Crime Commissioner for South Wales to complain about the Chief Constable for his role in the matter. The substance of this complaint was that the Chief Constable had failed

to properly discharge his duties and acted dishonestly and committed fraud by abuse of position. The Police and Crime Commissioner did not uphold the complaint and referred the complainant to the ICO in respect of concerns about the way his information requests had been handled and the IPCC in relation to the complaint about the Chief Constable. The complainant subsequently indicated that he intended to report the Police and Crime Commissioner for misconduct in office.

27. South Wales Police believes that the complainant refuses to consider the possibility that Ms X does exist and that ABMUHB have been truthful in the matter. It is of the view that he accuses anyone who advises that there is no evidence that an offence has been committed of lying and threatens further action, including criminal prosecution.
28. South Wales Police referred to a number of statements which the complainant made in correspondence. It acknowledges that the statements post-date the request which is the subject of this notice but considers the comments to be representative of the complainant's continued persistence.
 - In an email to a Chief Inspector at South Wales Police in May 2016 the complainant stated that he "has no intention of letting the matter drop" until he arrives at the truth.
 - In an email to the Chief Constable in June 2016 – "However you can rest assured that I will relentlessly pursue matters until either, someone tells me the truth or all the officers including yourself end up in the Crown Court".
29. South Wales Police considers that even if it were to comply with the request in this case, based on the pattern of behaviour to date the complainant will continue to submit requests and correspondence relating to the subject matter.

Unfounded accusations

30. South Wales Police stated that the complainant has made unfounded allegations against various officers and staff he has dealt with in connection with the subject matter. Although the allegation in question (ie that ABMUHB fabricated evidence at an employment tribunal) was more of a civil matter rather than a police matter, South Wales Police has attempted to assist him. South Wales Police assert that the complainant has accused almost every person who responds to his correspondence of acting dishonestly and/or of committing criminal offences, and provided the Commissioner with specific examples which are detailed below. South Wales Police have no doubt that such

accusations will continue regardless of any response it might provide to the request.

31. In 2012 the complainant made a complaint against an officer regarding a response they had provided to him, which was later withdrawn.
32. In 2012 the complainant alleged that a Detective Chief Inspector had forged the signature of the Chief Superintendent and sent a fraudulent letter to ABMUHB requesting the name of Ms X. This allegation was subsequently proved to be unfounded but the complainant refused to accept this finding.
33. In 2015 the complainant accused an officer from the PSD who was dealing with his request of forging a letter from the Chief Superintendent, an accusation which was also proved to be unsubstantiated. Despite the Chief Superintendent (who was retired at the time of the allegation) verbally confirming that the letter was genuine, the complainant insisted that the retired Chief Superintendent sign and verify the document in question. In correspondence about his issue the complainant made reference to employing a forensic handwriting analyst to compare four separate signatures of the Chief Superintendent as he believed that were written by four separate persons. The complainant also suggested that the retired Chief Superintendent had been subject to peer pressure from his former colleague, a Chief Inspector, two ranks before Chief Superintendent.
34. South Wales Police acknowledges that some of the complaints the complainant has made against the First Minister, an officer working in the data management and disclosure unit and a Chief Inspector were made after the request in this case. However, it considers consider they are representative of the complainant's pattern of behaviour in making continued unfounded accusations.

Intransigence

35. South Wales Police referred to the timeline provided to the Commissioner which it considers to be supporting evidence that the complainant is firmly entrenched and his allegations have no substance. The complainant rejects attempts to advise and assist and shows no willingness to engage with South Wales Police. South Wales Police state that the complainant does not follow advice provided in terms of the most appropriate routes to pursue the matter and instead chooses a different course of action. As an example, the complainant did not refer ABMUHB's refusal of his initial request in 2011 to the ICO, but instead chose to make criminal complainants and submit potentially threatening, bullying and insulting communications to South Wales Police.

36. In relation to FOIA requests, the complainant continually expresses dissatisfaction with South Wales Police's initial response to a request and when an internal review is triggered he then maintains that he did not request an internal review.

Frequent or overlapping requests

37. South Wales Police acknowledge that the complainant has only submitted three FOIA requests. However the complainant submits frequent correspondence to various departments about the same issue, repeating the same questions. He also submits complaints and new requests in the same items of correspondence.

Futile requests

38. South Wales Police stated that the subject matter of the request is one that individually affects the requestor and it has already been conclusively addressed over the last six years.

Purpose and value of the request

39. South Wales Police considers that the detrimental impact of complying with the request is unjustified as the request relates to a personal matter which the complainant is pursuing in an attempt to identify Ms X and it is not of interest to the wider public. The correspondence received from the complainant regarding the matter has been frequent and repetitive.
40. South Wales Police considers that a response to the request in question will have no value or meaning to the general public and will serve to further the complainant's theories in relation to a personal matter. It would also likely result in further requests and correspondence which is not in the spirit of the FOIA. However, South Wales Police confirmed that it is not the complainant as an individual that it considers to be vexatious, but any requests from him concerning the issues he has with ABMUHB.
41. South Wales Police confirmed that in assessing the purpose or value of the request it took into account the Commissioner's guidance on vexatious requests. South Wales Police considers the request in this case bears similarity to a request which the Commissioner has previously considered in FS50324650³. In that case, the Commissioner

³ https://ico.org.uk/media/action-weve-taken/decision-notices/2011/590772/fs_50324650.pdf

upheld the decision that the request was vexatious, finding that the requester's reluctance to accept that no evidence of wrongdoing existed had limited the purpose and value of the request (paragraphs 39 and 40).

42. In this particular case, South Wales Police advised that the correct course of action for the complainant to take is to await the results of the PSD investigations and then contact the IPCC if he remains dissatisfied. He could also refer his allegations against ABMUHB to the PSOW or instigate legal proceedings against ABMUHB.

The complainant's position

43. Following South Wales Police's application of section 14(1) to the request, the Commissioner gave the complainant the opportunity to submit representatives in support of his view that the request is not vexatious.
44. The complainant asserts that his request of 22 February 2016 is fully justified and not vexatious. He considers that South Wales Police are "acting improperly in refusing my request, thereby abusing the FOIA". In terms of any burden on South Wales Police, the complainant contends that there would be no burden as compliance would involve a simple confirmation ie a yes/no answer.
45. The complainant considers that any harassment or distress suffered by South Wales Police staff and officers is self-inflicted due to its refusal to supply the information requested.
46. The complainant does not believe he has demonstrated unreasonable persistence in pursuing this matter. He referred to evidence he had provided to South Wales Police previously which he believes suggests that Ms X does not exist. He therefore considers his pursuit of the matter to be justified in the interests of truth and justice.
47. The complainant does not consider that he has taken an unreasonably entrenched position and does not accept that South Wales Police has made any attempts to provide advice and assistance. In relation to South Wales Police's statement that he has written "frequent correspondence of a threatening nature to various officers" at South Wales Police, he pointed out that if he had made such threats, South Wales Police "would most probably have had me arrested, or at least cautioned as to my behaviour". The complainant maintains that he is able to substantiate all accusations he has made against ABMUHB and South Wales Police.

48. The complainant explained that the motive behind the request is “purely to arrive at the truth as to whether [name redacted] lied to the police or not. If he has then members of staff including [name redacted] and some members of top management of ABM will almost certainly face criminal charges”. The complainant stated that the serious purpose of the request is to expose the way that South Wales Police and ABMUHB have acted, and assist the Crown Prosecution Services in any future prosecutions it is able to instigate.
49. The complainant does not accept that the issue at hand is one that individually affects him and been conclusively resolved by South Wales Police. He alleges that the South Wales Police has been “obstructive to the point of dishonesty”. The complainant confirmed that he had reported the Chief Constable to the “South Wales Commissioner of the Independent Police Complaints Commission for the offence of Misconduct in Public Office (he has lied to me and I have submitted documentary evidence to prove it)”. He does not accept that the request does not have any wider interest to the public as the public “expect the police to act honestly. Not engage in a cover-up for one of their officers inappropriate conduct”.
50. In various items of correspondence the complainant has pointed out that if South Wales Police provided the confirmation/denial requested, ie whether Ms X is named on a specific list of ABMUHB staff, it would not involve the disclosure of personal data as he would be unable to identify the individual concerned.
51. Finally, in correspondence with the Commissioner, the complainant stated that:

“I strongly suggest that it is the Commissioners public duty to obtain the information I have requested. Any other course of action may be viewed by media as a further attempt at an establishment cover-up”.

The Commissioner's view

52. Firstly, the Commissioner would like to highlight that there are many different reasons why a request may be vexatious, as reflected in her guidance. There are no prescriptive ‘rules’, although there are generally typical characteristics and circumstances that assist in making a judgement about whether a request is vexatious. A request does not necessarily have to be about the same issue as previous correspondence to be classed as vexatious, but equally, the request may be connected to others by a broad or narrow theme that relates them. A commonly identified feature of vexatious requests is that they can emanate from some sense of grievance or alleged wrong-doing on the part of the authority.

53. The Commissioner's guidance has emphasised that proportionality is the key consideration for a public authority when deciding whether to refuse a request as vexatious. The public authority must essentially consider whether the value of a request outweighs the impact that the request would have on the public authority's resources in providing it. Aspects that can be considered in relation to this include the purpose and value of the information requested, and the burden upon said resources.
54. The Commissioner notes South Wales Police's representations in relation to its previous dealings with the complainant. In this case, South Wales Police has been able to demonstrate that it has engaged to a significant extent with correspondence from the complainant relating to the subject matter associated with the request. The Commissioner is prepared to accept that cumulatively, South Wales Police has spent a significant amount of time and resource in dealing with the complainant's correspondence and information requests. The Commissioner has seen a sample of correspondence exchanges between South Wales Police and the complainant. She notes that since 2011, various officers and staff at South Wales Police have been involved in responding to the complainant regarding the subject matter.
55. The Commissioner notes that the request in this case relates to allegations that ABMUHB fabricated evidence at an employment tribunal [redacted], ie the issue at hand is one that individually affects the requestor. She also notes that the matter has been investigated by South Wales Police who found no evidence to support the allegations made. It is clear from the complainant's submissions that he does not agree with the outcome of South Wales Police's investigation and is certain that offences have been committed by South Wales Police (and originally by ABMUHB). The complainant insists that the evidence he has provided to South Wales Police suggest that Ms X does not exist. The Commissioner is unable to make any comment on the veracity of the claims made by the complainant. However, she is prepared to accept that the request in this case is a further attempt to challenge the decisions and actions of South Wales Police.
56. The Commissioner agrees with South Wales Police that responding to the request would not resolve this matter, but would instead prolong the argument when South Wales Police has already made its position clear. Pursuing numerous avenues of complaint and not being satisfied with any view that differs from one's own is a common characteristic in cases involving vexatious requests. The Commissioner notes the evidence provided by South Wales Police in respect of the allegations of dishonesty and/or criminal offences that the complainant makes against individuals who have responded to him about the subject matter. The complainant has not disputed these allegations but insists he has documentary evidence to support them. Again, it is not for the

Commissioner to comment on the claims made by the complainant. However, based on the evidence available to her the Commissioner has seen no evidence of any dishonesty or 'cover-up' on the part of South Wales Police.

57. The Commissioner considers that, based on the evidence provided in terms of the length of time that the complainant has been corresponding with South Wales Police about the subject matter, it is reasonable to conclude that he will continue to submit requests, and/or maintain contact about the subject matter regardless of any response provided to the request in question. The disruption to South Wales Police resulting from any continuing correspondence would be disproportionate. The Commissioner is therefore satisfied that, in the context of South Wales Police's previous and ongoing dealings with the complainant, compliance with the request would result in a disproportionate burden on its resources.
58. The Commissioner notes that some of the evidence provided by South Wales Police is dated after the request was submitted. For example, he has continued to correspond with South Wales Police about the subject matter and he has submitted a number of complaints to its PSD, some of which are currently under consideration. However, she considers the evidence supports the pattern of behaviour the complainant has demonstrated in dealings with South Wales Police prior to the request being submitted.
59. Taking into account all the circumstances of the case, the Commissioner considers that a strong case has been presented to demonstrate that the request is vexatious. It was not the intention of the legislation that individuals should be allowed to pursue grievances to an unreasonable extent through the use of the FOIA. Limited public resources should not be spent on continuous unproductive exchanges. The FOIA gives significant rights to individuals and it is important that those rights are exercised in reasonable way. There comes a point when the action being taken and the associated burden being imposed on the authority is disproportionate to the objective that the complainant is attempting to achieve. That point has been reached in this case. There is nothing to suggest that there is sufficient purpose or value behind the request to warrant the Commissioner overturning the Council's decision to rely on section 14(1).
60. 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

61. 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

62. 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.
63. 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

David Teague
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