

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 20 October 2021

**Public Authority:** Chief Constable of South Yorkshire Police  
**Address:** Police Headquarters  
Carbrook House  
Carbrook Hall Road  
Sheffield  
South Yorkshire  
S9 2EH

#### **Decision (including any steps ordered)**

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1. The complainant has submitted a multi-part request for information. In respect of part (1) of the request, South Yorkshire Police (SYP) disclosed a copy of its data protection policy, with redactions under section 31 (Law enforcement) of the FOIA. It refused to comply with the remainder of the request on the grounds that it was vexatious within the meaning of section 14(1) (Vexatious request) of the FOIA.
2. The Commissioner's decision is that SYP was not entitled to rely on section 31 to withhold information in respect of part (1) of the request, or on section 14 to refuse to comply with the remainder of the request.
3. The Commissioner requires SYP to take the following steps to ensure compliance with the legislation.
  - Disclose the data protection policy; and
  - Issue a fresh response to the remaining parts of the request, which does not rely on section 14 of the FOIA.
4. SYP 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

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5. On 14 June 2020, the complainant submitted the following multi-part request to SYP:

*"1. Can I have a copy of your Data Protection Policy?*

*2. Can I have a copy of your Data Protection Policy in relation to the processing of data during criminal investigations?*

*3. What information do you provide to officers in relation to the laws and rules around data processing of third party individuals not under investigation, which you may either intentionally or unintentionally obtain during the course of search and seizures and/or the course of criminal investigations?*

*Please answer in terms of data intentionally acquired and data unintentionally acquired respectively.*

*4. What information do you provide to officers about the Data Protection Act 2018 and their legal and lawful responsibilities under this Act?*

*5. Do you provide information to your officers about Section 170 criminal offences under the DPA 2018 that have the potential to be committed by them during the course of their investigations?*

*6. Do you provide information to officers about the Computer Misuse Act 1990 and the potential for committing offences under this Act during the course of investigations?*

*7. What legal rights and general rights do individuals not under investigation have in respect of any personal data officers may acquire about them during the course of investigations into mutually exclusive individuals/data subjects?*

*8. What legal rights and general rights do individuals under investigation by SYP have in respect of data protection and privacy?*

*9. What information and data are your officers lawfully allowed to process during the course of criminal investigations?*

*10. Are your officers allowed to process data about data subjects under investigation that has no factual relevance to the specific alleged offences that a data subject under investigation has been arrested and/or is being investigated for?"*

6. SYP did not issue a refusal notice in respect of this request. However, on 29 June 2020, SYP issued a refusal notice in response to a separate

request the complainant had submitted on 15 June 2020. Citing the current request as an example of a selection of similar requests he had submitted, it refused the separate request as vexatious, under section 14 of the FOIA. It said that it had previously warned the complainant that similar requests would not be responded to. It repeated this warning, saying *"South Yorkshire Police advise that further requests on the same or similar topics will not receive any response or acknowledgement."*

7. SYP maintained this position in an internal review dated 13 October 2020, again referring to the current request in its justification for finding all such requests vexatious. It reiterated that further, similar requests would not be responded to.

### **Scope of the case**

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8. The complainant contacted the Commissioner on 24 November 2020 to complain about the way his request for information had been handled. He said that SYP had a pattern of refusing his requests under section 14 of the FOIA. He did not agree that his requests were vexatious, saying that he had a genuine interest in the information he was asking for.
9. He initially asked the Commissioner to investigate SYP's refusal of nine requests that he had submitted. However, following a discussion with the ICO case officer about the general purpose of section 14 and the way in which multiple requests, made in rapid succession, might place a strain on a public authority, he voluntarily withdrew seven of his complaints. He withdrew an eighth complaint when SYP revised its response to it.
10. During the Commissioner's investigation SYP reconsidered this request. It stated that, as the information requested at part (1) of the request (a copy of SYP's data protection policy) was *"...less similar to other requests received"*, it was prepared to respond to that part.
11. It told the complainant that the data protection policy engaged the exemption at section 31 (Law enforcement), but the public interest favoured disclosing most of it. On 6 September 2021, it disclosed to the complainant a copy of the data protection policy, with a small amount of information redacted. It also disclosed links to information on its website about data protection and privacy.
12. SYP told the Commissioner that section 14 applied to the remaining parts of the request.
13. The analysis below considers whether SYP was entitled to rely on section 31 of the FOIA to withhold information in response to part (1) of the

request. It also considers whether SYP was entitled to rely on section 14 of the FOIA to refuse to comply with the remainder of the request for information.

14. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the FOIA. The FOIA is concerned with transparency and provides for the disclosure of information held by public authorities. It gives an individual the right to access recorded information (other than their own personal data) held by public authorities. The FOIA does not require public authorities to generate information or to answer questions, provide explanations or give opinions, unless this is recorded information that they already hold.

## Reasons for decision

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### The Commissioner's investigation

15. The Commissioner wrote to SYP on 1 July 2021, asking it to provide detailed arguments in support of its decision to apply section 14 to refuse the request.
16. On 17 August 2021, SYP wrote to the Commissioner, apologising that her email had been overlooked and promising an imminent response. On 19 August 2021, it wrote to the Commissioner, stating:

*"I'm confident that this request fully complied with s14(1), but as a gesture of goodwill we will reopen this request and my decision maker will action and respond to [the complainant] early next week. For information, [the complainant] can find on the SYP website our Appropriate Policy Document and Privacy Notice, which will help answer questions raised in this request. I have asked the decision maker to supply the link to these documents in [the complainant]'s response."*
17. It also provided some information about its general reasons for applying section 14 to refuse the request.
18. On 6 September 2021 SYP issued a fresh response to part (1) of the request (for a copy of SYP's data protection policy). It said the data protection policy engaged the exemption at section 31 of the FOIA, and that:

*"I have decided on balance that it is not in the public interest not to provide the data in full to your request."*

*Please see the below detail and the attached policy document which in its present format will not trigger the above exemption."*

19. It disclosed a copy of its data protection policy, with redactions made under section 31. Its response did not refer to the other parts of the request.

20. The Commissioner wrote to SYP on 8 September 2021, asking it to provide detailed arguments in support of its application of section 31 and stating:

*"In your revised response to the above request dated 6 September 2021, you applied section 31 (law enforcement) to refuse the bulk of the request... Your revised response quotes only the first question, but I assume its content addresses the request in its entirety (10 parts)?"*

21. Following notification from the ICO that the complainant had withdrawn a separate complaint against it, SYP wrote to the Commissioner on 20 September 2021 and asked:

*"Could you please confirm if I am required to respond to [the complainant]'s complaint regarding the s31 exemption in response to this, or will you be sending a further email with some specific questions/points you would like clarifying?"*

22. The Commissioner sent SYP a further copy of her letter of 8 September 2021 the same day.

23. On 24 September 2021, SYP provided the Commissioner with an unredacted copy of the data protection policy but it did not supply any supporting arguments in support of the redactions it had made. It simply said:

*"In relation to [the complainant]'s request that we agreed to reopen, SYP responded and provided, a copy of our Data Protection Policy in relation to question 1, we felt that this question was less similar to other requests received. The rest of the request we were confident fell within the vexatious subject categories and as such remained under exemption Section 14(1) Vexatious Requests. I appreciate that this was not communicated satisfactorily to [the complainant] within the response, this is an oversight on our part."*

24. On 27 September 2021, the Commissioner wrote to SYP and again asked it to supply arguments in respect of the redactions it had made to the data protection policy, under section 31. She said that it also needed to provide more detailed arguments to support its application of section 14 to the remainder of the request. She asked for its response by 6 October 2021, explaining that at that point she intended making a decision on the complaint based on the information she had before her.

25. Despite sending a further chaser asking for a full and final response, by 20 October 2021 SYP had not provided any further arguments in support of its refusal of the request.

### **Section 14(1) – Vexatious request**

26. SYP conceded that part (1) of the request was sufficiently different from other requests that section 14(1) of the FOIA did not apply to it. It is therefore excluded from this section 14(1) analysis and considered under the section 31 analysis, later in this notice.
27. 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.
28. 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.
29. 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*<sup>1</sup>. 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.
30. 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.
31. 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,*

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<sup>1</sup><https://administrativeappeals.decisions.tribunals.gov.uk/Aspx/view.aspx?id=3680>

*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).*

32. The Commissioner has published guidance on dealing with vexatious requests<sup>2</sup> which includes a number of indicators that may signify that a request is vexatious. However, even if a request contains one or more of these indicators it 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.
33. 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”.*
34. 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.

#### *Complainant's position*

35. The complainant denied the request was vexatious, saying that there was a public interest in SYP disclosing the information he had requested. He believed that SYP was increasingly applying section 14 in a 'blanket' fashion to all his requests, rather than considering each request on its own merits. He explained to the Commissioner that it was not his intention for his requests to cause a burden to SYP, hence his voluntary withdrawal of most of his complaints to the ICO. He felt that the remaining complaint related to a request which it should not be overly burdensome for SYP to comply with.

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



*SYP's position*

36. As set out above, SYP did not respond to the Complainant's request for more detailed arguments on section 14. The Commissioner has therefore considered whether the other information before her supports the application of section 14, bearing in mind that section 14 sets a high bar in terms of evidencing that a request is vexatious.
37. SYP did not issue a refusal notice in response to the request. However, as set out in paragraph 6, on 29 June 2020, it issued a response to a separate request, refusing it under section 14 and referring the complainant to 18 other requests for information he had submitted since January 2020 (one of which being the one under consideration here), 14 of which it said demonstrated "*unreasonable persistence*" and had "*a common and repetitive theme*":
- ICU department, staff numbers, sickness, absence and salaries (3 requests)
  - Training and Training level of Officers by rank and Training subjects covered in training (4 requests)
  - Officer personal and sensitive details, ranks, job roles, pay scales and qualifications. Recruitment, job descriptions, training documentation, officers previous jobs and CV's (5 requests)
  - Force Policy (2 requests)
38. It commented that he appeared to be "*on a campaign*" and said it had warned him of its intention to apply section 14 to refuse future, similar requests, but he had continued to submit requests:
- "To date we have dealt with and responded to 17 [sic] requests on 4 subject areas and in times of austerity where cuts to the police budget has resulted in just two Decision Makers responding to 100s of FOI requests each month, the burden on the authority must be taken into account. In the first 5 full months of 2020 South Yorkshire Police received over 600 requests."*
39. It explained the work involved for each request:
- "From 28/1/20 to the date of this request we have received 18 requests, which have been logged within the Information Compliance Unit and sent to the Information Holders in various units and departments within the force, the requested material was retrieved and reviewed by SYP Officers/Staff in order to provide details of Harm. The findings were then sent to the Information Compliance Unit where the information has again been reviewed by a Decision Maker"*



*and responses drafted, providing legislative reasons for the withholding of any information."*

40. In its correspondence of 19 August 2021 it told the Commissioner:

*"In total we received 27 requests from [the complainant] and 19 of these have had a response provided. SYP was overwhelmed by the number of requests received from him in a short period of time and this was putting an extreme strain on resources, impacting on the work and effecting [sic] delivery of other requests. We feel we have fulfilled our obligation to dealing with [the complainant]'s requests individually and had enough evidence to engage s14(1)."*

41. It said it had reason to believe that the complainant was deliberately intent on causing disruption to SYP, and that one department has had to issue a contact strategy due to him overwhelming it with high numbers of emails and requests on a daily basis.

*The Commissioner's position*

42. 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

*Was the request vexatious*

43. It is for a public authorities to demonstrate to the Commissioner why the exemption at section 14 applies and the Commissioner considers there to be a high threshold for refusing a request under section 14(1). SYP has essentially argued that the request is vexatious because compliance with it would be burdensome; the burden would be disproportionate to the minimal public benefit that would flow from disclosure, in terms of the underlying purpose of the request.

44. Whilst the Commissioner acknowledges that SYP has provided information to her which set the request against a background of numerous other requests it had received from the complainant, it has not shown why this particular request is vexatious. It has not provided evidence that compliance with this request would have a detrimental impact on it. Nor has it explained why the inherent purpose or value of the request does not justify the detrimental impact that compliance with it would supposedly have.

45. The Commissioner is mindful that not all of the complainant's requests have been refused under section 14 and so SYP must be exercising some judgement as to when a request does, or does not, engage the

exemption. With this in mind, she asked SYP to provide more information about its reasons for believing the complainant was making FOIA requests with the intent to cause disruption, the nature and impact of that disruption and for information on why SYP was 'overwhelmed' by the requests (including information on staffing numbers and resourcing implications) and what the knock-on impact on other business areas would likely be if SYP continued to comply with such requests. She also asked it for information about the contact strategy it said it had put in place.

46. It is unfortunate that SYP did not provide answers to these questions as they may have shed light on areas which, currently, have the status of mere assertion. The Commissioner cannot accept assertions that compliance with a request would have a detrimental impact which would be unjustified or disproportionate, without detailed supporting evidence.
47. The Commissioner considers that, in most cases, public authorities should deal with FOIA requests without reference to the identity or motives of the requester. Their focus should be on whether the information is suitable for disclosure into the public domain, rather than the effects of providing the information to the individual requester. However, she also accepts that a public authority may take the requester's identity and motivation for making a request into account when determining whether a request is vexatious.
48. In that respect, the Commissioner noted that the request in this case, although not obviously vexatious in itself, does form part of a wider pattern of requests and interaction the complainant has had with SYP on various matters. SYP considers it unreasonable to have to expend further resources dealing with requests for what it considers to be similar information. It presumably considers that the public interest in disclosure is sufficiently low to outweigh the oppressive burden that compliance would cause to its resources.
49. However, SYP has provided only limited quantitative information about the effect of that burden, and it has not addressed questions on the impact on its ability to deliver an FOI service to other requesters, or the delivery of its core services. That the complainant has submitted a large number of requests over a relatively short period is accepted. However, by SYP's own admission, in the period that it received over 600 requests, the complainant's requests only accounted for around 17 of them. He therefore cannot be considered to be dominating the FOIA service provision on the evidence that SYP has provided. Furthermore, SYP has not provided evidence that this request is similar to the other requests, it has merely stated that it is.
50. Consequently, the Commissioner does not consider that SYP has clearly demonstrated that compliance with the request would constitute a

grossly oppressive and unreasonable burden in terms of the strain on its time and resources.

51. As to the motive of the requester, SYP has expressed the view that the complainant is using the right of access to deliberately disrupt its work and that he is "*on a campaign*". It has made judgements about the complainant's motives for making the request, from which it has determined the purpose and value of the request to be low. However, although asked, it has not provided further information which evidences these claims.
52. The Commissioner has not seen any evidence that the complainant has attempted to harass or cause distress to staff. For his part, the complainant has assured the Commissioner that he has a genuine interest in the information he has requested. He says that he did not fully appreciate that multiple requests might place a strain on a public authority, and that when this was explained to him by the ICO, he voluntarily withdrew most of his complaints about SYP.
53. The Commissioner welcomes the complainant's pragmatic approach, although she notes that SYP had previously provided him with a similar explanation. However, given the high evidential threshold for applying section 14, on balance the Commissioner must conclude that the complainant is pursuing a genuine line of enquiry in this request.
54. As previously stated, it is for public authorities to demonstrate to the Commissioner why the exemption at section 14 applies. In this case, while she accepts that compliance with the request would require SYP to absorb some costs, the Commissioner is not satisfied that SYP has demonstrated that the burden of compliance would be disproportionate to the value and purpose of the request, or that, in the circumstances, compliance would be unreasonable, or that the request is a "*manifestly unjustified, inappropriate or improper use of a formal procedure*".
55. The Commissioner therefore finds that the request in this case was not vexatious and that SYP was not entitled to apply section 14(1) of the FOIA to refuse to comply with it. She now requires SYP to take the action set out in paragraph 3.

### **Section 31 – Law enforcement**

56. SYP told the complainant it was relying on sections 31(a) and (b) to withhold sections of the data protection policy. These sections state:

*"Information which is not exempt information by virtue of section 30 is exempt information if its disclosure under this Act would, or would be likely to, prejudice-*

*(a) the prevention or detection of crime*

*(b) The apprehension or prosecution of offenders”.*

57. Section 31 is a prejudice-based exemption and is subject to the public interest test. This means that not only does the information have to prejudice one of the purposes listed, but that it can only be withheld if the public interest in maintaining the exemption outweighs the public interest in disclosure.

58. In order to be engaged, the following criteria must be met:

- first, the actual harm which the public authority alleges would, or would be likely to, occur if the withheld information was disclosed has to relate to the applicable interests within the relevant exemption (in this case, to the prevention or detection of crime and to the apprehension or prosecution of offenders);
- secondly, the public authority must be able to demonstrate that some causal relationship exists between the potential disclosure of the information being withheld and the prejudice which the exemption is designed to protect. Furthermore, the resultant prejudice which is alleged must be real, actual or of substance; and,
- thirdly, it is necessary to establish whether the level of likelihood of prejudice being relied upon by the public authority is met – ie disclosure ‘would be likely’ to result in prejudice or disclosure ‘would’ result in prejudice.

59. In relation to the lower threshold (would be likely), the Commissioner considers that the chance of prejudice occurring must be more than a hypothetical possibility. Rather, there must be a real and significant risk. The Commissioner considers that the higher threshold places a stronger evidential burden on a public authority to discharge. The chances of the prejudice occurring should be more probable than not.

60. Consideration of the exemption at section 31 is a two-stage process. Even if the exemption is engaged, the information should be disclosed unless the public interest in maintaining the exemption outweighs the public interest in disclosure.

*The complainant’s position*

61. The complainant does not consider that information in a standard data protection policy could be prejudicial to law enforcement matters. He argues that the policy is about the legal parameters of what SYP can and cannot do in terms of privacy laws and that it has no bearing on law enforcement matters.

*SYP's position*

62. The Commissioner wrote to SYP on 8 September 2021 and asked it to provide arguments in support of its application of section 31 of the FOIA. On 24 September 2021, SYP provided the Commissioner with an unredacted copy of the data protection policy but it did not supply any supporting arguments in respect of the redactions made.
63. The Commissioner wrote twice more, asking for SYP's arguments in support of redacting sections under section 31. She explained that in the absence of a response by 18 October 2021 she would make a decision on the information before her, but SYP failed to respond. It has therefore not supplied any arguments as to why it considers that sections of its data protection policy engage section 31.
64. While it is not for the Commissioner to provide a public authority with arguments in support of withholding information, she has viewed the unredacted data protection policy. She can see nothing in the redacted sections that is operationally sensitive or which might prejudice the prevention or detection of crime or the apprehension or prosecution of offenders.
65. She has also considered the information in the revised response SYP sent to the complainant on 6 September 2021. It said:

*"Disclosure of information that details the operational procedures and effectiveness of the South Yorkshire Police may compromise the force. Those with criminal intent could use the information to circumnavigate SYP's procedures which may lead to more crimes being committed which would impact on police resources and place individuals at risk."*
66. The Commissioner is unable to identify a causal link between disclosure of the redacted sections and prejudice to the prevention or detection of crime or the apprehension or prosecution of offenders. Nor is she able to discern what the harm envisaged might be.
67. The Commissioner's decision is therefore that SYP has failed to demonstrate that the redacted information engages section 31. It follows that it was not entitled to rely on this to withhold the information and it must now take the action specified in paragraph 3.

## **Other matters**

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68. The Commissioner has published guidance on how to make an effective request for official information from a public authority, at: <https://ico.org.uk/your-data-matters/official-information/>

69. The guidance explains how a request might come to be considered vexatious. It also includes advice on how to word requests to get the best results.

## Right of appeal

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70. 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: 0203 936 8963  
Fax: 0870 739 5836  
Email: [grc@justice.gov.uk](mailto:grc@justice.gov.uk)  
Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

71. 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.

72. 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**