

Our Ref: IR 517.2016-17

Your Ref:

Date: 20 October 2016

Neil Wilby:

[request-355934-76bbe86e@whatdotheyknow.com](mailto:request-355934-76bbe86e@whatdotheyknow.com)



Police and Crime  
Commissioner  
North Yorkshire



Dear Mr Wilby,

**FREEDOM OF INFORMATION REQUEST REF NO: Internal Review Request 517.2016-17**

I write in connection with your request for an internal review which was received by North Yorkshire Police on 29 September 2016. I note you seek access to the following information:

*I am writing to request an internal review of North Yorkshire Police's handling of my FOI request 'Non-compliant FOIA requests & internal reviews'.*

*These are the grounds for complaint:*

*1. a. The policy regarding publication of personal information on this website is, presently, the subject of separate email discussions with CDU staff.*

*b. One is with Liz Fryar concerning the publication of personal data on this website in redacted form. I last emailed Ms Fryar on 28th September, 2016 in which I made my position clear. That email remains unacknowledged.*

*c. Another with Robert Bates (now taken over by Liz Fryar) concerning remedy for not only personal information published about me on this website by NYP CDU as part of finalisations (427.2016.17 and 330.2016.17), but false information. The remedy proposed thus far falls far short of what would be regarded, on an independent view, as satisfactory.*

*d. It is a ground for complaint that those matters at a. b. and c. should have been resolved prior to finalisation of this request. Even if it was necessary to delay the finalisation of the instant request. For the avoidance of doubt, and in the present circumstances, this complaint is made on the face of the finalisation provided on this website.*

*e. It is also a ground for complaint that the finalisation was not provided in full, and personal information redacted where deemed necessary.*

*2. The request has been refused as 'vexatious'. The test for a request to be deemed as such is "a manifestly unjustified, inappropriate or improper use of FOIA" (Information Commissioner v Devon County Council & Dransfield [2012] UKUT 440 (AAC)). The instant request does not go anywhere near reaching that threshold.*

*3. Judge Wikeley in Dransfield further held that "(classifying a request as vexatious) must not be used to avoid being held to account, or simply because the public authority faces a request the objective reason for which is not immediately self-evident".*

4. The request has a serious and proper purpose. No evidence has been provided, or sought, to the contrary.

5. It places no significant burden on either NYP, or it's CDU staff. The requested information should be readily to hand.

6. The request is short, plainly expressed and cannot, conceivably, have been construed to cause distress, alarm or harassment.

7. It is not part of a series of other requests made to NYP. It is connected to only one other made to NYP which concerned non-compliant data access requests. The finalisation of that request revealed lawbreaking by both NYP on a surprising scale. It has, undoubtedly, caused embarrassment to the chief constable.

8. It's value to the wider world is:

(a) to place into context the holder of an elected policing oversight role where the highest standards of conduct and observance of statute is paramount. She has sworn an Oath of Office to that effect. On all known evidence, disclosure of the requested data would reveal further lawbreaking

(b) Test the claim made by the PCC at a meeting with me on 18th April, 2016 that 'things would improve' from the lawless base from which NYP/NYPCC (previously NYPA) have operated over the past five years (at least).

(c) Test the claim made in court pleadings dated 15th July, 2016 that ALL information requests made to NYP have been complaint and ALL future requests will be compliant.

(The matters raised at paras 4 to 8 also reflect the appropriate tests in Judge Wikeley's findings).

9. This is the type of information (or performance data), concerning the public-facing functions of police forces that should be publicly available in any event. It is precisely the type of information that the Home Affairs Select Committee referred to in 2011, 2013 and 2014 when criticising public authorities over their opaque approach to disclosure.

10. a. There is an ulterior motive behind NYP classifying this request as 'vexatious', more concerned with the county court claim (C1QZ56W6) in which I am claimant and the chief constable is defendant. The case pleaded does, of course, concern the lawless conduct of the PCC over FOIA and DPA requests:

<https://neilwilby.com/2016/06/10/chief-c...>

b. It is unethical, an abuse of data principles and of the court's process to finalise an information request with that purpose in mind. Particularly, as the officer finalising the request is a witness for the PCC in that claim.

c. The finalisation in the instant request, together with this complaint, may be used in submissions in that county court claim (the evidence has already been filed and served).

11. This latest classification of an information request as 'vexatious' (the third in three days) is part of a lengthy and sustained campaign to vex, annoy and harass me by NYP CDU staff, particularly it's Head of Department. An observation I have made previously on a number of

*occasions - and reserved my complaint rights accordingly. This latest episode goes to the evidence of that complaint.*

*12. The campaign referred to at 11 is also designed to add the burden of time and expense to every request I make. Presumably, in the hope I will cease to make further requests.*

## **Decision**

In response to your points 1a – 1e, please see below:

*1. a. The policy regarding publication of personal information on this website is, presently, the subject of separate email discussions with CDU staff.*

*b. One is with Liz Fryar concerning the publication of personal data on this website in redacted form. I last emailed Ms Fryar on 28th September, 2016 in which I made my position clear. That email remains unacknowledged.*

*c. Another with Robert Bates (now taken over by Liz Fryar) concerning remedy for not only personal information published about me on this website by NYP CDU as part of finalisations (427.2016.17 and 330.2016.17), but false information. The remedy proposed thus far falls far short of what would be regarded, on an independent view, as satisfactory.*

As you are aware, on behalf of myself and my colleague Mr Bates, I have been communicating with the WhatDoTheyKnow (WDTK) team about remedying this situation. I have maintained communication with you about the progress and indeed have provided you with correspondence between WDTK and I, at your request. I have fully admitted to you that information in relation to the number of requests you have made to the Force was inadvertently disclosed on a public forum, and I apologised to you for this oversight. As already outlined to you, WDTK have advised that they will not consider removing the original response without a direct request from you. The CDU's proposal, as stated to you in an email sent on 28 September 2016, is that once the original responses are removed, the redacted responses can be added. However, as confirmed in an email sent to you on 5 October 2016, the CDU are able to upload redacted versions at any point if you so wish. In addition, as you are aware through other email correspondence between you and the CDU, your belief that the information is false has been answered, and supporting evidence has been provided to substantiate its validity.

*d. It is a ground for complaint that those matters at a. b. and c. should have been resolved prior to finalisation of this request. Even if it was necessary to delay. For the avoidance of doubt, and in the present circumstances, this complaint is made on the face of the finalisation provided on this website.*

As above, the Civil Disclosure Unit have been working with you and WDTK to rectify this situation. I am unclear as to why you believe that the issues raised at a), b) and c) should have been resolved before responding to this request, as the correspondence mentioned did not form any part of the original request. The disclosure of personal information was not realised before the original response was sent to you, therefore it was not possible to resolve the matters stated before the request was finalised.

*e. It is also a ground for complaint that the finalisation was not provided in full and personal information redacted where deemed necessary.*

Regarding not providing the finalisation in full, as stated in the original response: *'I have not provided detail in relation to the reasons for this decision, as to do so would release personal information on to a public forum. If you do require this detail, please provide a personal email or correspondence address and I will be happy to send you a fuller response.'* In line with ICO guidance on responding to requests received through online forums, *'if an authority has any*

*particular reason to believe that it would be inappropriate to publish the information online, then it may wish to respond via a private message to the requester's account instead'. In an email to the CDU received on 26 September 2016, the preference of responding to WDTK email addresses only was given. Therefore I believe that the CDU took appropriate steps in this matter and conclude that the original decision in not providing a more detailed response was correct. The option to receive a fuller explanation remains.*

In response to your points 2 – 12, I have reviewed in detail the rationale behind issuing a Section 14 response. I find it to be fully in accordance with the Freedom of Information Act 2000, and consistent with ICO guidance. I have therefore decided to uphold this decision.

If you are still dissatisfied with the decision you may make application to the Information Commissioner for a decision on whether the request for information has been dealt with in accordance with the requirements of the Act.

### **Complaint Rights**

Your attention is drawn to the attached sheet which details your right of complaint.

If you have any queries concerning this request, please contact me quoting the reference number above.

Yours sincerely

Liz Fryar  
Legal Officer (Civil Disclosure)  
Joint Corporate Legal Services

## **COMPLAINT RIGHTS**

Are you unhappy with how your request has been handled or do you think the decision is incorrect?

You have the right to require the North Yorkshire Police to review their decision.

Prior to lodging a formal complaint you are welcome and encouraged to discuss the decision with the case officer that dealt with your request.

### **Ask to have the decision looked at again –**

The quickest and easiest way to have the decision looked at again is to telephone the case officer that is nominated at the end of your decision letter.

That person will be able to discuss the decision, explain any issues and assist with any problems.

### **Complaint**

If you are dissatisfied with the handling procedures or the decision of the North Yorkshire Police made under the Freedom of Information Act 2000 (the Act) regarding access to information you can lodge a complaint with the North Yorkshire Police to have the decision reviewed. North Yorkshire Police must be notified of your intention to complain within 2 months of the date of its response to your Freedom of Information request. Complaints should be made in writing and addressed to:

Force Solicitor and Head of Legal Services  
North Yorkshire Police  
Newby Wiske Hall  
Northallerton  
North Yorkshire  
DL7 9HA

In all possible circumstances the North Yorkshire Police will aim to respond to your complaint as soon as practicable but within 20 working days.

### **The Information Commissioner**

After lodging a complaint with the North Yorkshire Police if you are still dissatisfied with the decision you may make application to the Information Commissioner for a decision on whether the request for information has been dealt with in accordance with the requirements of the Act.

For information on how to make application to the Information Commissioner please visit their website at [www.informationcommissioner.gov.uk](http://www.informationcommissioner.gov.uk). Alternatively, phone or write to:

Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire SK9 5AF  
Phone: 01625 545 700