

Our Reference: FOI-PC-29-22

16 May 2022

Dear Mr Kennaugh,

INTERNAL REVIEW INTO FREEDOM OF INFORMATION REQUEST PC-21-22

Thank you for your request for a review of the way that your Freedom of Information (FOI) Request (PC-21-22) was dealt with by the West Yorkshire Combined Authority's Policing & Crime Team.

Your request for an internal review has been considered independently by the head of service, in this instance the Head of Policing & Crime, in line with the FOI Appeals Policy of the West Yorkshire Combined Authority. Your review request was considered on 25 April 2022

The Head of Policing & Crime noted that the FOI Act requires public authorities to:

- tell the applicant whether any information falling within the scope of their request is held; and
- provide that information (normally within 20 working days) subject to any exemptions outlined within the Act.

On 9 March 2022, you requested the following:

You tell me today that the law prohibits you from investigating a complaint to the police which the police have themselves ignored.

The fundamental problem with this situation ought not need spelling out, but it means that the police can avoid scrutiny simply by ignoring any inconvenient complaints. This cannot be right, but before we can campaign for a change in the law, we must first find out what the law actually is.

Accordingly, what is the regulation upon which you rely in regards to your refusal to investigate this complaint?

On 6 April 2022, the Combined Authority responded:

The West Yorkshire Combined Authority (henceforth the Combined Authority) considers this request to be vexatious under section 14(2) of the Freedom of Information Act (FOIA).

The Combined Authority has noted the number of requests that you have submitted under the FOIA – albeit from alternative email addresses yet all of the same or similar nature. Several attempts have been made to advise, under Section 16 of the FOIA, alternative methods to communicate with the Combined Authority yet the pursuit of submitting such questions under the FOIA is both disproportionate and not in the public interest.

In line with the ICO's advice, the Combined Authority sees the following indicators in your requests and the reason for such:

- The effort and burden on the Combined Authority to respond to these requests and to meet these requests moving forwards is so grossly oppressive in terms of the strain on time and resources, that the Combined Authority cannot reasonably be expected to comply, no matter how legitimate the subject matter or valid the intentions.*
- You are attempting to reopen an issue which, has already been comprehensively addressed by the Combined Authority and has been provided to you in full already or otherwise subjected to some form of independent scrutiny*
- You are taking an unreasonably entrenched position, rejecting attempts to assist and advise out of hand and shows no willingness to follow the advice given under alternative FOI's.*
- You are abusing their rights of access to information by using the legislation as a means to vent your anger at a particular decision, or to harass and annoy the Combined Authority, for example, by requesting information which the Combined Authority knows you to possess already*

Please take this response as a refusal notice and should you consider that this has not been handled properly, you can ask for an internal review of our decision. I have attached a copy of our appeals policy which explains how to submit an appeal and who will consider it. You can also complain to the Information Commissioner's Office via their website, ico.org.uk, although please note they would usually expect you to have gone through our internal review procedure before contacting them.

Moving forwards, we are not obliged to respond to requests under section 17(6) of the FOIA where we believe them to be vexatious under section 14(1) FOIA and we have previously replied to similar requests with an explanation of the reasons for our refusal, or provided more suitable advice to request the information which you are after e.g. via Casework. Should the organisation receive requests from you in these themes, tone or context to previous requests, we will no longer issue refusal notices as per Section 17(6) of the FOIA.

The West Yorkshire Combined Authority reiterates the information that has been provided under previous requests: The Combined Authority is obliged to confirm whether it holds the information that you have asked for and, if so, and subject to any lawful exemptions, to provide it to you. The Freedom of Information Act only applies to information that is held in a reportable format and we are not obliged to create information to answer your request. If you wish to make an enquiry or an expression of dissatisfaction that can cover a whole range of things from policies to behaviour you can contact our Casework Team by email: policingandcrime@westyorks-ca.gov.uk.

I hope this clarifies matters. In future, if you make a request to us and do not receive a response, please assume that we are relying on section 17(6) and that we do not intend to respond.

If you consider that your request for information has not been handled properly, you can ask for an internal review of our decision. I have attached a copy of our appeals policy which explains how to submit an appeal and who will consider it. You can also complain to the Information Commissioner's Office via their website <https://ico.org.uk/make-a-complaint/official-information-concerns-report/official-information-concern/> or by telephone on 0303 123 1113, although please note they would usually expect you to have gone through our internal review procedure before contacting them.

Your points of appeal are as follows:

I appreciate that your policing and crime department's deep devotion to their prime minister means that they dare not risk any investigation into any criminal misconduct by any of his cabinet, because he is quite clearly as guilty as sin, but that does not entitle them to ignore the rules and neglect their duties.

*They claim that this request is vexatious on the grounds that I am "Attempting to reopen an issue which, has already been comprehensively addressed."
This refers to a complaint about the misconduct of ministers closely related to the current "Partygate" scandal, but with a more direct contribution to the deaths of over 170,000 people and the pending break up and sale of the NHS.*

West Yorkshire Police have deemed this a victimless crime and on that basis refuse to record it because "The elements to prove have not been met."

They do not explain why they think it a victimless crime and refuse to clarify what "Elements" remain unproven.

This they say is "Comprehensively addressed".

The reason that they describe it as "Vexatious" appears to be because they seek to avoid scrutiny, and it is the effort of avoiding scrutiny that they find oppressive. Any reasonable office that thought they had done an adequate job would welcome the scrutiny rather than suffer the oppression, so we might reasonably presume that the office knows they have done a shoddy job.

Moving on, I might accept a refusal on the grounds that the question has already been answered, given that their head of department last year told me that their only knowledge of police policies and procedures comes from the police, but that would give rise to a question of how can you effectively scrutinise a body when your only knowledge of what you are scrutinising comes from the scrutinee.

Will you answer that one now, or should I put it in as a separate request?

The Head of Policing & Crime has reviewed the response provided in respect of your Freedom of Information request and considers the request to be vexatious under Section 14(1) of the Freedom of Information Act.

Section 14(1) of the Freedom of Information Act states:

"Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious."

Section 1(1) of the Freedom of Information Act states:

“Any person making a request for information to a public authority is entitled—

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him.”

The Head of Policing & Crime considered the indicators provided in the response for the application of Section 14 and considered the broad issues:

the burden imposed by the requests on the West Yorkshire Combined Authority;

the motive of your requests;

the value or serious purpose of the request and;

the effects of the requests and behaviour deemed both harassing and distressful to staff.

These considerations are not meant to be exhaustive.

When considering the application of Section 14(1), the West Yorkshire Combined Authority can consider the context of the request and the history of its relationship with the requestor 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”.¹

The Head of Policing & Crime has considered all the requests submitted, albeit from separate email addresses, and other correspondence with the West Yorkshire Combined Authority – mostly of a similar nature – prior to arriving at this conclusion.

The Head of Policing & Crime concluded that the request is part of your persistent pursuit of claims, casework and correspondence despite the fact that these have already been answered via various methods including FOI.

Moreover, the Head of Policing & Crime brought attention to the fact that the requests have been answered previously under the FOI Act and, rather than follow the advice which has been provided or seeking clearly recorded information, the intent of the requests appear to be the seeking of further engagement with the West Yorkshire Combined Authority in respect to the responses previously provided – you have, yourself stated that you *“might accept a refusal on the grounds that the question has already been answered”*.

Finally, the Head of Policing & Crime has reviewed the response provided in respect of your Freedom of Information request and believes that the application of Section 14 (1) is appropriate in accordance with the Freedom of Information Act adding that the request is beyond the scope of the the FOI Act which only provides a right of access to already recorded information.

This concludes the Internal Review into the handling of FOI-PC-21-22. Moving forwards, the West Yorkshire Combined Authority are not obliged to respond to requests, under section 17(6) of the FOI Act, where we believe them to be vexatious

under section 14(1) of the FOI Act and where we have previously replied to similar requests with an explanation of the reasons for our refusal, or provided more suitable advice to request the information which you require e.g. via the Policing & Crime Casework team. Should the Combined Authority receive requests from you in similar themes, tone, or context to previous requests, we will no longer issue refusal notices as per Section 17(6) of the FOI Act. If you remain dissatisfied you have the right to appeal to the Information Commissioner's Office, further details can be found here: ico.org.uk

Yours sincerely,

Pp Head of Policing & Crime, West Yorkshire Combined Authority

policingandcrime@westyorks-ca.gov.uk
West Yorkshire Combined Authority

¹ <https://ico.org.uk/for-organisations/guidance-index/freedom-of-information-and-environmental-information-regulations/dealing-with-vexatious-requests-section-14/does-the-value-and-purpose-of-the-request-justify-its-impact/#context>