



First-tier Tribunal
(General Regulatory Chamber)
Information Rights
Decision notice IC-42939-F1J7

Appeal Reference: EA/2020/0361

Heard on CVP Platform
On 6 May 2021

Before

JUDGE CHRIS HUGHES

TRIBUNAL MEMBERS

SUZANNE COSGRAVE & MIKE JONES

Between

ANDREW PRESTON

Appellant

and

INFORMATION COMMISSIONER

Respondent

Appearances:-

Appellant: In person

First Respondent: did not attend

DECISION

The appeal is dismissed.

REASONS

1. Dr Preston has made a number of subject access requests (SAR) to West Yorkshire Police (WYP) and has been dissatisfied with the way they have been handled. On 10 January 2020 he made a request for information:-

The number of (full-time equivalent) staff working in the SAR and FOI teams processing the relevant requests. I would like the data broken down on a monthly basis please from January 2016 to the present day.

I understand you hold data relating to the number of SARs received and processed (a) within 1 month (b) within 3 months and (c) completion time beyond 3 months (to the nearest week).

I would like to receive data on a monthly basis with information divided into (a), (b) and (c) as above. I appreciate the convenience to separate out the data prior GDPR and post GDPR (25 May 2018).

I would hope you could please provide % data of cases which had not been disclosed within (d) 4 months (e) 5 months, (f) 6 months and (g) 7 months. This is despite the GDPR Law stating the SAR disclosure deadline is normally 1 month, but 3 months in exceptional circumstances.

Furthermore, please can you provide data on the number of cases you have received as a result of ICO assessment on a monthly basis (from SAR concerns), and the outcomes of those assessments."

2. On 4 February 2020 WYP replied. It provided staffing numbers in response to the first part of the request.
3. With respect to the second substantive part of the request (percentage of SAR cases completed in various times after they request was made) it replied:-

"Please see attached document showing opened and closed dates of SAR requests. Percentages are not held"

4. The attached document was a listing extending over many pages.
5. In response to the question relating to the ICO (Information Commissioner) WYP sent details of cases for months between January 2019 and November 2019 headed by:-

"Please see the table below showing the number of Right of Access ICO cases by outcome"

6. There was correspondence between the parties in which Dr Preston sought clarification of various issues including with respect to staffing issues. Part of this correspondence was treated as a further FOIA request:-

"(a) in relation to the data you have provided in 2 columns, it appears there is no data for any SAR items as "data received" subsequent to 21/11/2019.

9b) in respect of the data you have provided in 2 columns, it appears there is no data for any SAR items as "data received" prior to 22/9/2015.

In respect of (a) I can appreciate there will be some SARs that are currently "work in progress". I would therefore expect the corresponding data entry for "Date closed" for these items to be blank.

Please can you send me the data not accounted for (where blanks will appear in "Date closed" and confirm the date on which this data has been acquired).

In respect of (b), I appreciate that I have not given a specific start point in time. Please can you go back a little further, to May 25th June 2014"

7. There was correspondence, Dr Preston queried why the SAR information he had received in response to 10 January request was inconsistent with information supplied in response to a previous request. On 6 March WYP sent a further table of SAR data expressed to be accurate at 27 February. Dr Preston queried this information and WYP carried out an internal review on 2 April 2020 explaining the inconsistencies which had concerned Mr Preston. It was explained that a data analyst had been consulted and the issue had arisen because -

"The way data is extracted has changed. We now report only on full/valid requests received (as opposed to incomplete requests) as this is a more accurate representation of demand on the force. We have been able to backdate this change, hence the discrepancy over previous years.

....

I have therefore not upheld your complaint as the information held and subsequently provided is accurate at the point in time of it being requested. "

8. Dr Preston complained to the Information Commissioner (ICO). On 29 July 2020 WYP provided a further Excel spreadsheet to Dr Preston relating to part two of the request. It explained that there was an inaccuracy in the first report provided on 6 March 2020:-

"due to an error in the extraction of the information".

9. ICO began the investigation in August and as part of that investigation (unusually) acted as a conduit relaying Dr Preston's queries to WYP, WYP's responses and Dr Preston's further questions. Although initially the ICO investigated all elements of the request and responses in her decision notice she focused on part 2 of the request, relating to data concerning SARs. The ICO concluded that the information within this request was not held. She helpfully set out an extensive series of questions together with the response of WYP at paragraph 33 of her DN. The conclusion of the ICO's case officer in an email to Dr Preston was also set out:-

In my view, this response addresses the points you raised. You have already accepted that some of the requested information is not held following our discussion. As previously advised, a decision notice cannot be issued for 'accuracy' reasons as this is

not within the Commissioner's remit. If you wish to make any further comments, let me know but please note that I consider my investigation is now complete. Thank you.

10. In his appeal Dr Preston confirmed that the appeal was restricted to part 2 of the request – the SAR dataset. He was concerned that he had been sent three datasets and felt that WYP had not disclosed the information it holds. He had asked for SAR “received and processed”, he focussed on inconsistencies between the three disclosures and between those disclosures and his earlier FOI request on the subject. He wanted WYP to provide full

“valid, reliable, accurate and complete information that was accurate at the time of the latest disclosure and was consistent with my request”

11. The appeal document is 530 pages long and the key part was a lengthy statement of appeal discussing “factual errors and key omissions identified in Decision Notice”, “ICO correspondence subsequent to the decision notice” “definition of terms”, “case simplification” (3 pages long) “on closer inspection” (5 pages) and “ICO errors of judgement” (4 pages and 6 pages of tables).

12. In resisting the appeal the ICO detailed the steps of the ICO’s investigation and in particular a part of the ICO’s investigation letter in August 2020 which caused some confusion:-

“I will consider the accuracy issue. I have already confirmed that I will investigate whether WYP holds any further information relevant to your request which it has not provided to you”

13. The ICO relied on the Decision Notice and the reasons for the discrepancy between the various disclosures set out at paragraphs 22-36 as being sufficient to conclude that no further information was held. The alleged errors were insufficient to disturb the conclusion and the terminology used was not material. There was no reason for the ICO to detail every piece of evidence considered, or to forward every response from WYP to Dr Preston. The ICO could only function within the statutory framework which did not extend to ensuring the accuracy of the information held.

14. In his oral presentation Dr Preston focussed on what he perceived as inaccuracies in what had been provided backed up by his extensive analysis and comparison of the various disclosures of the information.

Consideration

15. Mr Preston has devoted many hours to analysing and re-analysing the material which he has been sent. As a result of this the main bundle in this case is 1047 pages long. In addition to further PDF bundles and Excel files.

16. This is unfortunate as it has been generated by a misapprehension as to the role of FOIA and the responsibilities of ICO within it and, the scope for appeal from the ICO's decision notice.

17. FOIA gives a right to information held by public authorities. Dr Preston asked for specific data relating to the handling by WYP of SAR:-

....data relating to the number of SARs received and processed (a) within 1 month (b) within 3 months and (c) completion time beyond 3 months (to the nearest week).

I would like to receive data on a monthly basis with information divided into (a), (b) and (c) as above.

I would hope you could please provide % data of cases which had not been disclosed within (d) 4 months (e) 5 months, (f) 6 months and (g) 7 months.

18. WYP replied promptly "*percentages are not held*". That was a full and complete response to the request – information in the form requested of SARs "received and processed" by percentages was not held.

19. WYP did not hold the information in the form requested in the first question of Part 2 of Dr Preston's request (set out in para 17 above) which the authority had advised Dr Preston. What WYP did was interrogate its database (in order to provide the relevant raw data to enable Dr Preston to analyse and hence answer that first question), and extracted and provided a long series of paired dates. This task was repeatedly performed under (entirely possibly) different interpretations resulting in different reports from the database which in any event had evolved over time. WYP has provided a series of explanations as to how attempts to extract the relevant data on different occasions may have resulted in different results. The ICO case officer (again attempting to be helpful) unwisely acknowledged Dr Preston's subsequent questions concerning the accuracy of the data provided to him, and to others, and pursued the issue with WYP who provided explanations which are coherent and probable. What was described as a second request (set out in paragraph 6 above) has contributed to the confusion which has arisen, Section 1 of FOIA makes clear the duty is to provide information which is held by a public authority and there is no duty to perform analyses of the information held or to generate new information. The comparison and analyses of the various extractions of the raw data from the WYP database is a fruitless exercise given that the "accuracy" of information issue is not within the ICO's powers and is not a matter for this tribunal.

20. Our unanimous decision is that the ICO's Decision Notice is correct in law.

Signed Hughes
Judge of the First-tier Tribunal
Date: 17 May 2021
Promulgated: 17 May 2021