

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 8 June 2016

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 information about a reinvestigation into a complaint ordered by the Independent Police Complaints Commissioner ('IPCC'), and the name and contact details of the person dealing with his information request. South Wales Police provided some information and confirmed that it did not hold any additional information. The Commissioner's decision is that South Wales Police does not hold the information requested. However in relation to one of the requests, in failing to deny that it held any recorded information within 20 working days South Wales Police breached section 1 and 10 of the FOIA. The Commissioner does not require any steps to be taken.

Request and response

2. On 31 July 2015 the complainant wrote to South Wales Police and requested information in the following terms:

"When a reinvestigation is ordered to be carried out by the IPCC, can the new IO accept what was written in the original investigation by that officer even tho [sic] that officer was not even meant to investigate it in the first place and not add any of his or her own thoughts and or findings as a result of his/her new investigation".
3. South Wales Police responded on 19 August 2015 and confirmed that it had consulted with its Professional Standards department who confirmed that an Investigating Officer in any case will review the available

information impartially and put forward their findings/rationale at the conclusion.

4. On 19 August 2015 the complainant submitted a follow up request for:
"I would like to have a contact name and number of the person I can speak to within the FOI team to discuss this particular FOI request as the number you provide is purely an answer phone message when you ring it".
5. On 20 August 2015 the complainant confirmed that he was not yet asking for an internal review of his request of 13 July 2015 and clarified that he wanted "the telephone number of the person I can speak to regarding this request".
6. On 25 August 2015 South Wales Police provided the contact number for its data management and disclosure unit. The complainant responded on the same day stating that the telephone number provided was an answerphone. He also raised concerns that South Wales Police had still not provided the name of the individual dealing with his request, and repeated his request for "the name and number of the person who is dealing with this request".
7. South Wales Police responded on 25 August 2015 and confirmed that no specific individual was dealing with the request as it was being handled by the FOI team. It also confirmed that the only contact telephone number was the one that had been provided.
8. On 25 August 2015 the complainant requested an internal review of the handling of his request.
9. South Wales Police provided the outcome of its internal review in relation to the request of 31 July 2015 on 26 August 2015 and confirmed that "our original response is upheld".
10. On 27 August 2015 the complainant wrote back to South Wales Police regarding his request for the name and contact number of the individual dealing with the request.
11. South Wales Police responded on 28 August 2015 and reconfirmed that no specific individual was dealing with the request and the only contact number was that which had been provided. South Wales Police also stated that it would not be corresponding further with the complainant about the matter and suggested if he remained dissatisfied he should make a complaint to the ICO.

Scope of the case

12. The complainant contacted the Commissioner on 27 August 2015 expressing dissatisfaction with South Wales Police's response to his requests. The Commissioner has considered whether South Wales Police's responses are compliant with section 1(1) of the FOIA.

Reasons for decision

Section 1 – general right of access

13. Section 1 of the FOIA states that any person making a request for information is entitled to be informed in writing by the public authority whether it holds information of the description specified in the request and, if that is the case, to have that information communicated to him.
14. In cases where a dispute arises over the extent of the recorded information that was held by a public authority at the time of a request, the Commissioner will consider the complainant's evidence and arguments. He will also consider the actions taken by the authority to check that the information is not held and he will consider any other reasons offered by the public authority to explain why the information is not held. He will also consider any reason why it is inherently likely or unlikely that information is not held. For clarity, the Commissioner is not expected to prove categorically whether the information was held; he is only required to make a judgement on whether the information was held on the civil standard of the balance of probabilities.

Request 31 July 2015

15. During the course of the Commissioner's investigation, South Wales Police advised that the information that had been provided in its response to the request of 19 August 2015 did not represent recorded information held. The explanation provided in the response had been created in order to answer the complainant's question. As such, South Wales Police confirmed that its position is that it does not hold any recorded information relevant to the request.
16. South Wales Police confirmed that, on receipt of the request, it was transferred to the relevant person within its Professional Standards Department ('PSD'). It was confirmed that the Police (Conduct and Misconduct) Regulations 2012 was searched via the legislation section of the Home Office website. No information relating to the request was located within this piece of legislation.

17. As the PSD was aware of complaints made by the complainant, and in light of the fact that it was an unusual and specific question, searches were conducted of the electronic case record in relation to complaints made by the complainant. In addition, decision letters issued by the IPCC to the complainant in respect of his complaints were reviewed in order to establish whether the IPCC had referred to any information which would answer the information request.
18. South Wales Police referred to a letter sent by the IPCC to the complainant where it acknowledged that the original officer appointed to investigate the matter "was not suitable under the relevant legislation". However, South Wales Police advise that the IPCC appeared to have had no concerns about the new Investigating Officer appointed reviewing the background and findings of the previous investigation and agreeing with them. South Wales Police pointed out that the IPCC response did not refer to any guidance or documentation indicating whether this process was or was not permitted.
19. South Wales Police confirmed that, in terms of investigating misconduct complaints, it also adheres to the following guidance, both of which are in the public domain:
 - Home Office Guidance – Police Officer Misconduct, Unsatisfactory Performance and Attendance Management Procedures.
 - IPCC Statutory Guidance

South Wales Police have reviewed both of the documents listed above and confirm that neither contains information relevant to the request in question. The closest information to the request is contained within paragraph 13.5 of the IPCC Statutory Guidance which states:

"13.5 Consideration of an appeal must involve a fresh consideration of the case. Although it is not a re-investigation it should not merely be a 'quality check' of what has happened before.

South Wales Police pointed out this relates to appeals not reinvestigations and therefore is not relevant to the information request of 31 July 2015.

20. South Wales Police confirm that the searches it conducted would have identified any information held relevant to the request as these are the guidance documents to which investigators within the PSD adhere. It confirmed that there is no locally held guidance or policy for such investigations as there is no requirement to create such a document as there is sufficient statutory guidance in place. Searches were conducted using search terms included "re-investigation" and "reinvestigation".

South Wales Police also confirmed that searches conducted included internet searches and networked resources to locate the electronic case file for the complainant.

21. South Wales Police advised that the complainant's case is the first case the PSD is aware of where a new Investigating Officer had to reinvestigate a case where it was found that the original officer allocated to investigate the complaint was not appropriate. The situation is, therefore, unique or very close to it. There has been no cause to include any guidance in relation to this particular situation in any training materials as the situation has not previously been considered.
22. South Wales Police also confirmed that it is not aware of any relevant information that has ever been held, but subsequently destroyed.
23. Having considered South Wales Police's explanations and the details of the searches it conducted for the requested information, the Commissioner is satisfied that, on the balance of probabilities, it is likely that South Wales Police does not hold the requested information.
24. However, in failing to inform the complainant that it did not hold any recorded information falling within the scope of his request at the time that it was made South Wales Police breached section 1(1)(a) of the FOIA. South Wales Police also breached section 10(1) by not complying with section 1(1) within 20 working days of receipt of the request.

Request 19 August 2015

25. This request was for the name and contact number of the officer dealing with the complainant's request of 31 July 2015. South Wales Police has provided the contact telephone number for its Data Management and Disclosure Unit, but confirmed that it did not hold the name or any direct telephone number of the officer dealing with the request in question.
26. South Wales Police advised the Commissioner that its FOI team consists of a Team Leader and three Research and Data Quality Officers. It utilises a paperless system whereby an electronic folder is created for each request and saved to a shared drive that each member of staff can access. All correspondence (internal and external) is sent and received from a shared mailbox. The Research and Data Quality Officers work on a rota system. The tasks associated with request handling are split into three areas; monitoring the group mailbox and logging and acknowledging FOI requests, gathering the information requested for each request and drafting responses to requests, passing to the Team Leader and Departmental Head for authorisation, where appropriate and

finally sending the response to the requester. The Team Leader authorises each response before it is issued.

27. In light of the way that work is dealt with within the FOIA team, South Wales Police advise that it is very likely that each of the four members of staff within the team will deal with a request at some point during the process. This does not include the contacts and Departmental Heads from other Departments (for example Human Resources or Professional Standards) who provide the information requested and second level authorisation. South Wales Police confirmed that it has a case management system for dealing with FOIA requests in the form of an Excel spreadsheet. It provided the Commissioner with a copy of the spreadsheet to show that it does not have a field which shows which individual is dealing with the request.
28. South Wales Police confirmed that individuals working within its FOIA Team do not have direct dial telephone numbers. Each individual has an extension number. South Wales Police explained that it is sometimes possible to get through to an individual by calling the main switchboard at the Public Service Centre and asking for the relevant name or extension number. In the last 6 months a new telephone number for South Wales Police has been created which allows callers to type in the extension number they wish to call without speaking to an operator. However it is common for the voicemail facility to be on, and therefore the caller would be likely to receive the same message as they would have if they had called the telephone number provided by South Wales Police on 25 August 2015 as the contact number for its FOIA department.
29. South Wales Police explained that a management decision was taken to allow staff within the FOIA and Data Protection ('DP') office to utilise a voicemail facility as an alternative to answering calls. This was due to the lengthy and frequent phone calls received which impacted on their ability to process the workload. This decision was made approximately two years ago. South Wales Police confirmed that it does not have a policy in relation to the publishing of direct dial numbers. Many staff members within South Wales Police do have a direct dial telephone numbers, however members of staff within the Data Management and Disclosure Unit have not had direct dial numbers since September 2009 when the FOIA and DP units merged with a number of other work streams to form the Data Management and Disclosure Unit.
30. In light of the explanations provided by South Wales Police about the way work is handled by its FOIA team, the Commissioner accepts that it does not hold the name or contact telephone number of a specific individual who is/was dealing with the complainant's request of 31 July 2015. The Commissioner is therefore satisfied that on the balance of

probabilities, the information is not held by South Wales Police. Accordingly, considers that South Wales Police has complied with section 1 of the FOIA.

Right of appeal

31. 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

32. 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.
33. 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

Anne Jones
Assistant Commissioner
Information Commissioner's Office
Wycliffe House
Water Lane
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SK9 5AF