

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 1 March 2016

Public Authority: Chief Constable of Avon and Somerset Constabulary

Address: Force Headquarters
PO Box 37
Valley Road
Portishead
Bristol
BS20 8QJ

Decision (including any steps ordered)

1. The complainant has requested information about the procedures followed by Avon and Somerset Constabulary ("the Constabulary") when conducting injury on duty ("IOD") award reviews. The Constabulary stated that it did not hold any information which fell within the scope of the request.
2. The Information Commissioner is satisfied that, on the balance of probabilities, the Constabulary does not hold the requested information. The Commissioner requires no steps to be taken.

Request and response

3. On 11 February 2015, the complainant wrote to the Constabulary via the What Do They Know Website¹ ("WDTK"), a website for submitting and archiving FOIA requests. Referring to its response to a previous request, he requested the following information:
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¹ <https://www.whatdotheyknow.com/>

"It was stated in answer to question 3:

"No documents are held. It was requested by the Head of Retained Financial Services that the initial evaluation begin with those ex officers who are in receipt of a Band 4 award. Following an evaluation of the NEW PROCEDURES, the intention is to then progress to ex officers in other band"

A 'procedure' is a replicable series of actions of an official way of doing something. I ask you to fully disclose the NEW PROCEDURES referred to in the above paragraph apropos to the stated evaluation."

4. The Constabulary initially refused the request under section 14 of the FOIA, on the grounds that it was vexatious. The request was then the subject of a decision notice² which found that the Constabulary was not entitled to rely upon section 14 to refuse to deal with the request and which instructed it to issue a fresh response to the complainant.
5. The Constabulary issued a fresh response on 16 September 2015. It stated that the "new procedures" cited in the request were still in draft form. It said there was an intention to publish the final version shortly and applied section 22 (information intended for future publication) to withhold it until that time.
6. The complainant asked for an internal review, clarifying that he wished to see whatever version of the internal procedures was in operation between May 2014 and February 2015, and not the finalised version.
7. The Constabulary replied on 19 October 2015, referring the complainant to a published guidance document for former officers whose IOD awards were being reviewed. It cited the exemption at section 21 (information accessible to applicant by other means) and provided him with a link to that document³.

² https://ico.org.uk/media/action-weve-taken/decision-notice/2015/1432458/fs_50576384.pdf

³

<https://www.whatdotheyknow.com/request/234101/response/579953/attach/3/Injury%20Award%20Review%20Process%20050614.pdf>

Scope of the case

8. The complainant contacted the Commissioner on 19 October 2015 to complain about the way his request for information had been handled. He explained that the Constabulary had not disclosed the information he had asked for. He wanted to see the internal guidance or procedures followed by the staff responsible for conducting the IOD award reviews, but the Constabulary had only referred him to the guidance issued to former officers who were being reviewed.
9. During the course of the Commissioner's investigation the Constabulary withdrew its reliance on section 21 and stated instead that it held no relevant information.
10. Following the combined cases of the Home Office v Information Commissioner (GIA/2098/2010) and DEFRA v Information Commissioner (GIA/1694/2010) in the Upper Tribunal, a public authority is able to claim a new exemption or exception either before the Commissioner or the First-tier Tribunal and both must consider any such new claims. The Commissioner accepts that this includes new claims that no information is held.
11. The Commissioner has therefore considered in this decision notice the Constabulary's assertion that it did not hold information described in the complainant's request.

Reasons for decision

12. During his investigation, the Commissioner explained to the Constabulary that the complainant was specifically interested in any documented procedures followed by the staff responsible for conducting IOD award reviews, and that the information it had identified did not seem to meet this description.
13. It became clear that there had been some misunderstanding between the complainant and the Constabulary. The Constabulary stated that the complainant had misinterpreted its reference to "new procedures" (made in a previous request response, from which the current request derived) as referring to internal procedures being followed by staff responsible for conducting IOD award reviews. It said that it had in fact been referring to the IOD review guidance provided to former officers who were being reviewed. It admitted that it had then misinterpreted the complainant's request as being for a final version of that guidance. When the complainant clarified that he wanted a copy of the internal procedures being followed between May 2014 and February 2015, it had

referred him to a copy of the relevant version of that guidance, and had considered the request to have been satisfied.

14. Having established the nature of the information that the complainant actually wanted, the Constabulary now said that it did not hold any information that fell within the scope of the request.
15. The Commissioner has therefore examined the Constabulary's claim that it did not hold the information described in the request.

Section 1

16. Section 1 of the FOIA states that any person making a request for information is entitled to be informed by the public authority whether it holds the information and if so, to have that information communicated to him.
17. In cases where there is some dispute between the amount of information located by a public authority and the amount of information that a complainant believes might be held, the Commissioner – in accordance with a number of First-tier Tribunal decisions – applies the civil standard of the balance of probabilities. In essence, the Commissioner will determine whether it is likely or unlikely that the Council holds information relevant to the complainant's request.
18. The Commissioner will consider the complainant's evidence and arguments. He will also consider the actions taken by the public authority to check that the information is not held and 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.
19. In this case the complainant clearly believes that the Constabulary must have some documented procedures which are followed by staff when conducting reviews of former officers in receipt of IOD awards.
20. On the face of it there appears to be some justification for this belief. The proposal to start reviewing IOD awards had proved controversial among many former officers, and the Constabulary's approach was being followed closely, both by those former officers and other constabularies across England and Wales who were contemplating similar reviews.

21. With this in mind, the Commissioner noted that the guidance which the Constabulary believed had satisfied the request contains no information about evaluation criteria or the manner in which individual reviews should be conducted, or any appeal mechanism. If these are the only recorded instructions held by the Constabulary, it begs the question as to how decisions about individual awards are made in a controlled and consistent manner and according to a fixed set of measurements. The Commissioner therefore asked the Constabulary to comment on these points.
22. The Constabulary responded by confirming that the guidance for former officers, which it had referred the complainant to, was the only guidance it held which related to the IOD reviews. It confirmed that it did not hold any other procedural instructions followed by staff responsible for conducting IOD award reviews.
23. In order to explain why it held no procedural instructions of the type requested by the complainant, the Constabulary provided more information about the IOD award review process. It explained that it was necessary to understand the role of the selected medical practitioner ("SMP") who conducted each review. It said that the role is quasi-judicial (although the Constabulary also stated that there is eminent legal opinion to support a view that the role is, in fact, judicial). As such, the SMP will conduct the review on the basis of the requirements of the Police (Injury Benefit) Regulations 2006⁴ and any case law. In practice this may include, but is not limited to, reviewing the medical information provided, meeting the individual, carrying out a medical examination, contacting the individual's GP, and calling for additional reports or information, as the SMP sees fit.
24. The Constabulary holds no procedural instructions setting out evaluation criteria or how reviews should be conducted because the SMP performs a quasi-judicial role and is completely independent. The procedural instructions are in effect the 2006 Regulations, which provide the necessary controls. Matters of compliance, consistency of assessments and quality of decision making rest with the SMP, in a similar way that they would with a magistrate or judge.
25. If an officer was to appeal that he or she had been assessed unfairly, there is an established appeal procedure and any submissions from the

⁴ <http://www.legislation.gov.uk/uksi/2006/932/contents/made>

Constabulary would be informed by a report from the SMP together with any other relevant information held.

26. The Police Pension Authority may carry out an internal review of an individual decision and refer the matter back to the SMP for reconsideration to correct mistakes either of fact or law, which may have resulted in an officer being paid less than their entitlement under the Regulations. This may reduce the need for a full appeal. But if, following such reconsideration, there is still no agreement, the appeal process will continue to a Police Medical Appeal Board, which will review submissions from both parties and may interview and/or examine the appellant.

The Commissioner's decision

27. The Constabulary accepts that it misunderstood the complainant's request. The Commissioner considers that the meaning of the request, when taken with the complainant's further attempts to clarify it, and his particular circumstances (it had already disclosed the guidance to him in response to an earlier request), was reasonably clear. This misunderstanding led to delays in dealing with the request which the Commissioner considers could have been avoided if the Constabulary had adopted a more pragmatic approach to interpreting the request. Nevertheless, the Commissioner accepts that this was a genuine misunderstanding on the Constabulary's part.
28. With regard to the question of whether the Constabulary holds information which is relevant to the complainant's request, the Commissioner is satisfied that it has provided him with a detailed and cogent explanation of the way in which IOD reviews are conducted, and that this demonstrates why it would not be necessary for the Constabulary to hold procedural guidance for staff conducting reviews. This leads him to conclude that on the balance of probabilities the Constabulary does not hold the information described in the request.

Right of appeal

29. 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

30. 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.
31. 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
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SK9 5AF