

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 26 October 2018

Public Authority: Chief Constable of South Wales Police

Address: Freedomof.Information@south-wales.pnn.police.uk

Decision (including any steps ordered)

1. The complainant requested information about reviews and assessments carried out on systems within South Wales Police's Data Protection Department. Following clarification of the request South Wales Police stated that it did not hold any information. The Commissioner's decision is that, on the balance of probabilities, South Wales Police does not hold any recorded information relevant to the request. However, the Commissioner finds that South Wales Police breached section 10 of the FOIA. The Commissioner does not require any steps to be taken.

Request and response

2. On 17 October 2017 the complainant wrote to South Wales Police and requested information in the following terms:
 - "1. *The number of reviews and/or assessments carried on [sic] the systems employed by South Wales Police in their Data Protection Department in the last three years*
 2. *The purpose of such Reviews and/or Assessments*
 3. *The person/persons or body/bodies who carried out any such reviews and/or assessments.*
 4. *The results of such reviews and/or assessments".*

3. On 18 October 2017 South Wales Police wrote to the complainant asking him to *"clearly describe what you mean by review and/or assessment"*. It also asked him to clarify whether his request referred to *"systems used solely in the Data Protection department or systems used throughout South Wales Police"*.
4. The complainant responded on the same day and confirmed that he was seeking information on *"systems used in your Data Protection department and in particular whether the systems have been assessed by third parties and if so who those third parties were and what was the outcome of the assessment"*.
5. On 14 November 2017 South Wales Police wrote to the complainant seeking further clarification in respect of the term 'systems' in his request. It asked whether he was referring to *"work processes or systems containing data that we use on a day-to-day basis?"*. South Wales Police also again asked whether the request included force wide systems such as Niche and PNC.
6. The complainant responded on 14 November 2017 and expressed concern that further clarification was not sought sooner. He also asked what work South Wales Police had undertaken in relation to the request but did not provide any further clarification about the request.
7. On 14 November 2017 South Wales Police responded to the request and advised that its enquiries had revealed that no audits had been undertaken on systems used solely in the Data Protection Unit in the last three years. South Wales Police advised that the Data Protection Office often used force wide systems such as Niche and PNC when searching for information in order to respond to requests for information and asked whether the complainant wanted to expand the request to encompass such systems.
8. On 14 November 2017 the complainant wrote back to South Wales Police and asked if its searches could be widened to encompass the systems referred to.
9. On 15 November 2017 South Wales Police wrote to the complainant and confirmed that no audits had been conducted on the PNC system within the last three years and advised that it was still retrieving information relating to the Niche system.
10. On 20 December 2017 South Wales Police provided a further response to the request and confirmed that no audits had been carried out on the Niche system within the last 3 years.
11. On 21 December 2017 the complainant wrote back to South Wales Police expressing dissatisfaction with its response that no information

was held. He advised that he had been informed that internal audits had been carried out by TIAA (business assurance specialists). The complainant also advised that he had been informed that data quality audits were carried out on PNC and Niche on a regular basis. The complainant indicated that he considered his request to cover this type of information.

12. South Wales Police provided the outcome of its internal review on 23 January 2018 and provided information about the TIAA audits. It also explained that the delay in dealing with the request was due to enquiries which had to be made with other departments, combined with a number of annual leave commitments.
13. The complainant wrote back to South Wales Police on 26 January 2018 and expressed further dissatisfaction with its handling of his request. He raised a number of points.
14. South Wales Police issued a further response on 1 February 2018 and responded to the further points raised by the complainant.

Scope of the case

15. The complainant wrote to the Commissioner initially on 4 January 2018 to complain about South Wales Police's handling of the request. The Commissioner explained that before accepting complaints, she required requestors to have exhausted an authority's internal review procedure. The Commissioner recommended that if he had not done so, he would need to request an internal review in the first instance and contact her again if he remained dissatisfied on receipt of the review response.
16. The complainant contacted the Commissioner again on 19 March 2018 following receipt of South Wales Police's internal review response to express his continued dissatisfaction with the way that his request had been handled
17. The scope of the Commissioner's investigation into this complaint is to determine whether South Wales Police has complied with its obligations under the FOIA in its handling of the request.

Reasons for decision

Information subject to the request

18. A decision of the Commissioner on whether the legislation has been applied correctly must initially establish what information should be considered as falling within scope based on the specific terms of a request.
19. In the overview to her guidance 'Interpreting and clarifying requests'¹, the Commissioner says that public authorities should interpret information requests objectively. They must, she explains, avoid reading into the request any meanings that are not clear from the wording. The Commissioner continues by stating that the authority must answer based on what the requester has actually asked for, and not on what it thinks they would like, should have asked for or would be of most use to them.
20. As indicated in paragraphs 3 to 6 of this notice, South Wales Police sought clarification from the complainant as to the scope of his request on 18 October and 14 November 2017. The complainant confirmed his request related to systems used in the Data Protection Department but did not provide any further clarification as to the term 'systems'. South Wales Police confirmed that no audits had been undertaken on systems used solely in the Data Protection department and later confirmed that no audits had been undertaken on the PNC system and Niche.
21. South Wales Police confirmed to the Commissioner that, based on the clarification provided by the complainant on 18 October 2017, it interpreted the request as being for information on monitoring and quality audits of computer systems used solely within the Data Protection Department. South Wales Police explained that the TIAA audits referred to by the complainant are audits of processes and procedures as opposed to audits of IT systems. Despite seeking further clarification on 14 November 2017 as to whether the request included force wide systems and whether the word 'systems' referred to work processes or systems containing data that are used, no such clarification was provided.
22. In its internal review response, South Wales Police provided information about the TIAA audits, referred to by the complainant. It confirmed that

¹ <https://ico.org.uk/media/1162/interpreting-and-clarifying-a-request-foia-eir-guidance.pdf>

it did not provide details of these reviews at the outset as the complainant had confirmed that the request was for audits/reviews carried out "*on systems used in the Data Protection Department to include Niche and PNC*". As the internal audit programme does not look specifically at systems used in the Data Protection Department, the TIAA audits were not considered relevant to the request (as clarified) and were therefore not referred to in the initial response to the request.

23. Based on the fact that the complainant clarified that his request related to systems used within the Data Protection Department and that he did not provide any further clarification as to the term 'systems', or whether he wanted the request to encompass force wide systems used within the Data Protection Department, the Commissioner considers that South Wales Police's original interpretation of the request to relate to IT systems used within the Data Protection Department to be an objective one.
24. In light of this finding, the Commissioner is content that her decision should only focus on whether South Wales Police has handled the request for this information in accordance with the requirements of the FOIA. The Commissioner notes that South Wales Police later provided information about TIAA audits. However as these audits relates to processes and procedures as opposed to IT systems, the Commissioner does not consider that the information falls within the scope of the original request, based on the clarification provided by the complainant.

Section 1 – general right of access

25. 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.
26. 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. She will also consider the actions taken by the authority to check that the information is not held and she will consider any other reasons offered by the public authority to explain why the information is not held. She 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; she is only required to make a judgement on whether the information was held on the civil standard of the balance of probabilities.

27. In its internal review response, South Wales Police confirmed that, based on the initial clarification that the request related to systems used within the Data Protection department, enquiries were made with staff who had worked in the department for over three years who confirmed that no audits had been undertaken on IT systems. In addition, searches were undertaken of the Data Protection Department shared drive using the search term 'audit' which yielded no results.
28. As background information, South Wales Police explained that its Data Protection Department deals with subject access requests, personal data breaches and general data protection queries. The only IT system solely used by the Data Protection Department is the recording and monitoring spreadsheet. This is used to record requests received, breaches and complaints and to generate response deadlines. In addition to the spreadsheet, other force wide systems used within the Data Protection Department include Control Works, Microsoft Office, Niche RMS and PNC.
29. When the complainant later asked South Wales Police to widen its searches to include force-wide systems such as Niche and PNC, enquiries were made with six departments who were considered to be the most likely to hold information about reviews and audits on systems pertinent to the Data Protection Department. In its internal review response, South Wales Police provided the results of the searches undertaken within these six departments. It also explained that enquiries with these departments highlighted the existence of the TIAA audits, however the details were not originally provided as the TIAA audits relate to processes and procedures, as opposed to audits of IT systems in use. Details of the TIAA audits were provided within the internal review response.
30. Based on the representations and evidence provided by South Wales Police the Commissioner is satisfied that it has carried out adequate searches of where relevant information would be held. The Commissioner has not seen any evidence of any inadequate searches or grounds for believing there is any motive to withhold information relevant to the request. Based on the searches undertaken and the other explanations provided the Commissioner is satisfied that on the balance of probabilities, South Wales Police does not hold any recorded information relating to reviews or assessments carried out on IT systems used within the Data Protection Department.

Section 10 – Time for compliance

31. Section 10(1) of the FOIA states that an authority must comply with section 1(1) of the Act '...promptly and in any event not later than the twentieth working day following the date of receipt.'
32. The obligation to respond promptly means that an authority should comply with a request as soon as is reasonably practicable. Whilst this is linked to the obligation to respond within 20 working days, it should be treated as a separate requirement. A public authority will therefore need to both respond promptly *and* within 20 working days in order to comply with section 10(1).
33. Public authorities should regard the 20 working day limit as a 'long stop', in other words the latest possible date on which they may issue a response. It also follows that an authority which provides its response close to, or on, the final day of the 20 working day limit ought to be able to both account for, and justify, the length of time taken to comply with the request.
34. Section 1(3) of the FOIA stipulates that, where an authority has informed the requester that it requires clarification, it will not be under any further obligation to comply until the requester supplies the information it requires. The authority should ensure that there is no undue delay in requesting clarification. This is emphasised in Part II paragraph 9 of the Section 45 Code of Practice which states, '*...it is important that the applicant is contacted as soon as possible, preferably by telephone, fax or e-mail, where more information is needed to clarify what is sought.*'
35. If the requester subsequently provides enough detail to enable the authority to identify and locate the information, then the authority must respond to the clarified request within a new 20 working day time limit with the 'clock' starting the day after it receives the required clarification.
36. The complainant has expressed concern at the delay in South Wales Police seeking clarification on the second occasion (one day before the deadline for a response to his request was due). In addition, he has expressed dissatisfaction that it took almost the full 20 working days to respond to his request, particularly as he requested similar information from another source at South Wales Police informally (outside of FOIA) and information about TIAA and other audits was provided to him within 24 hours. He considers that the second request for clarification was "*a device to extend the twenty day deadline*".

37. In this case, the request was submitted on 17 October 2017. Clarification was sought and provided on 18 October 2017. As such the 20 working day timescale started on the following day, 19 October 2017 and the deadline for response was 15 November 2017. However, South Wales Police sought further clarification from the complainant on 14 November 2017. No further clarification was provided by the complainant, however, South Wales Police responded on 14 November 2017 and confirmed that no information was held relevant to the request.
38. In its initial response to the request dated 14 November 2017, South Wales Police asked the complainant if he wanted searches to be expanded to include force wide systems used within the Data Protection Department. On 15 November 2017 the complainant confirmed that he would like the searches to be expanded. South Wales Police issued a partial response to this request on 15 November 2017 (in relation to audits/reviews on the PNC system) and a full response was subsequently issued on 20 December 2017.
39. South Wales Police provided the Commissioner with a detailed timeline outlining the processes undertaken to deal with the request. In terms of the second request for clarification South Wales Police explained that based on the initial clarification received on 18 October 2017, enquiries were made within the Data Protection Department which established that no reviewed or assessments had taken place in the last 3 years. A response was prepared and sent to a manager for sign off. It was only at this stage that the manager asked the officer dealing with the request to seek clarification on the term 'systems'. As such, a second request for clarification was sent to the complainant on 14 November 2017.
40. Following confirmation from the complainant that he wished searches to be expanded to include force wide systems, a partial response was issued on 15 November 2017, and a full response on 20 December 2017. South Wales Police explained that the reason for the delay in providing a full response was due to an administrative error which meant that their records showed the request as awaiting clarification when it was actually ready to be actioned. This resulted in a delay of 18 working days. As soon as the error was identified a response was prepared and issued within six working days.
41. South Wales Police advised the Commissioner that there has been a steady increase in the number of FOIA requests received since 2015. As at 30 November 2017 there were 235 'open' requests requiring action. South Wales Police also explained that the FOIA team was a small team, with three Researchers, one of whom started on 1 November 2017, one Team Leader and one Disclosure Officer. During the period of the

request, a number of staff days were lost due to annual leave and sickness.

42. The Commissioner has considered South Wales Police's representations in relation to the time taken to respond to the request. The Commissioner notes the explanation provided for seeking clarification on a second occasion and understands that this was done with the intention of providing the complainant with the information being sought. However, the Commissioner considers that South Wales Police should have sought all the clarification it needed to comply with the request at an earlier stage. Although the second clarification was sought within twenty working days of receipt of the request, the Commissioner does not consider that South Wales Police responded 'promptly' in relation to the second request for clarification.
43. In relation to the expanded request dated 15 November 2017 to include searches on force wide systems in use within the Data Protection Department, due to an administrative error South Wales Police did not issue a full response until 20 December 2017.
44. In light of the above, the Commissioner finds that South Wales Police breached section 10 in failing to seek clarification of the request dated 17 October 2017, in accordance with section 1(3), promptly, and in failing to comply with section 1(1) in relation to the expanded request dated 15 November 2017 within 20 working days.

Right of appeal

45. 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

46. 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.
47. 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

Andrew White
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