

Freedom of Information Act 2000 (THE FOIA)

Decision notice

Date: 31 October 2018

Public Authority: Chief Constable Northumbria Police
Address: Northumbria Police Headquarters
Middle Engine Lane
Wallsend
Tyne & Wear
NE28 9NT

Decision (including any steps ordered)

1. The complainant has requested information in relation to abuse of process. Northumbria Police explained that it did not hold the requested information.
2. The Commissioner's decision is that Northumbria Police was correct to state that it does not hold the requested information. However, the Commissioner considers that Northumbria Police has breached section 10(1) (Time for compliance) of the FOIA.
3. The Commissioner does not require Northumbria Police to take any steps as a result of this decision.

Request and response

4. On 8 June 2018, the complainant wrote to Northumbria Police (NP) and requested information in the following terms:

"Relating to Northumbria Police Report dated [redacted] the report states: the force would likely be met with a significant abuse of process defense [sic] giving [sic] the lapse of time.

1. On this point of law please provide the Act and Section of that Act or Policy and Procedure which makes reference to: the force would likely be met with a significant abuse of process defense [sic] giving [sic] the lapse of time.

2. On this point of law relating to the Act and Section of that Act or Policy and Procedure relating to point (1). Your legal Department will hold the following information: How many years would have to pass before: the force would likely be met with a significant abuse of process defense [sic] giving [sic] the lapse of time.

The two points above relate to offences which is [sic] not subject to a statutory limitation period.”

5. NP responded on 27 June 2018 and explained that it had passed his correspondence on to its professional standards department as it did not consider it was a valid request. The complainant complained to the Commissioner about NP’s response and she contacted NP, explaining that she considered that the complainant had made a valid request for information for the purposes of the FOIA.
6. On 27 July 2018 NP provided its response under the FOIA. It explained that it did not hold the requested information.
7. Following an internal review NP wrote to the complainant on 9 August 2018. It explained that as the information he was looking for was not held, it could not respond to his specific queries.

Scope of the case

8. The complainant contacted the Commissioner on 14 August 2018 to complain about the way in which NP handled his request. The complainant explained that he considered that NP must hold the requested information as it has made a very specific statement in a report to him and the Independent Office for Police Conduct.
9. The Commissioner will consider whether NP is correct to state that it does not hold any information relating to the request. The Commissioner will also consider whether NP dealt with the request in accordance with the statutory time limit.

Reasons for decision

Section 1 – information held/not held

10. 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 the information communicated to him.
11. In cases where a dispute arises over the extent of the recorded information 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 public authority to check whether the information is held and any reasons offered by it to explain why the information is not held.
12. The Commissioner is required to make a judgement on whether, on the balance of probabilities, the requested information is held or not.
13. The Commissioner asked NP what searches it had carried out. NP explained that it had carried out an extensive search of policies and procedures held on its internal systems and confirmed that there were no results on this subject matter. NP also explained that its legal department was consulted and had confirmed that it held no policy or procedure relating to the request.
14. In addition, the Commissioner also asked NP whether the searches had included electronic data and if so, whether the search included information held locally on personal computers used by key officials (including laptop computers) and on networked resources and emails. NP explained that electronic searches for policies and procedures were carried out on its Forcewide (intranet) systems.
15. The Commissioner also asked which search terms had been used. NP confirmed that it had used the search term "abuse of process". It also explained that its policies and procedures were all held electronically on its intranet and confirmed that no approved policy was held solely in hard copy format.
16. The Commissioner asked whether any recorded information ever held relevant to the scope of the complainant's request had been deleted or destroyed. NP explained that it was unknown if information had ever been held relevant to the scope of this request. It also confirmed that no information was deleted as a result of receiving the request.
17. Additionally, the Commissioner asked NP what its formal records management policy said about the retention and deletion of records of this type. NP confirmed that it does not hold policies which cover every type of scenario that may arise as this would not be possible. It also confirmed that there was no policy to cover the deletion of records of this type.

18. The Commissioner also asked NP whether there was a business purpose for which the requested information should be held. NP explained that it was not aware of any business need to hold the requested information. It also explained that its legal department had confirmed that where such a scenario (as referred to in the request) was being considered, it would refer to external information for guidance.
19. Furthermore, the Commissioner asked NP whether there were any statutory requirements upon it to retain the requested information. NP confirmed that there were no statutory requirements for it to hold the requested information.
20. Taking everything into account, the Commissioner does not consider that there is any evidence to show that NP holds any recorded information in relation to the request.
21. The Commissioner is therefore satisfied that, on the balance of probabilities, NP does not hold any recorded information in relation to this request. Accordingly, she does not consider that there is a breach of section 1 of the FOIA.

Procedural issues

22. The complainant submitted his request on 8 June 2018. NP provided a full response on 27 July 2018.

Section 10 – Time for compliance

23. Section 10(1) of the FOIA provides that a public authority must respond to a request promptly and in any event no later than 20 working days after the date of receipt.
24. The Commissioner considers that the council has breached section 10(1) as it took longer than 20 working days to provide the requester with its full response.

Right of appeal

25. 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

26. 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.
27. 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

Deborah Clark
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Wycliffe House
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Wilmslow
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SK9 5AF