

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 21 July 2020

Public Authority: Chief Constable of Durham Constabulary
Address: Aykley Heads
Durham
DH1 5TT
(email: foi@durham.pnn.police.uk)

Decision (including any steps ordered)

1. The complainant requested information about road traffic speed limit enforcement. Durham Constabulary disclosed to the complainant all the information it said it held which fell within the scope of the request.
2. The Commissioner decided that on the civil standard of the balance of probabilities, no further information was held and that Durham Constabulary had complied with FOIA. She does not require Durham Constabulary to take any steps.

Request and response

3. On 25 November 2019 the complainant wrote to Durham Constabulary (DC) and requested information in the following terms:

"I would therefore make the following request to Durham Constabulary under the Freedom of Information Act:-

(i) Would the Chief Constable please comment/ clarify/ justify the aforementioned matters raised in (a) and (b) [where (a) was the complainant's suggestion of a marked and lengthy reluctance by DC to release data on the numbers of speeding tickets issued; and (b) was his suggestion that the level of speeding law enforcement by the force was probably one of the worst nationally].

(ii) Would the Chief Constable please state whether or not there were any discussions or recommendations with HM Inspectorate of Police as to the force road policy performances regarding speeding vehicle problems and enforcement, in the annual reviews for the years ended March 2017, 2018 and 2019. Is so what please?"

4. DC provided information within the scope of the request and said that was all the information they held. Following an internal review, DC upheld that position which the complainant did not accept.

Scope of the case

5. The complainant contacted the Commissioner on 6 March 2020 to complain about the way his request for information had been handled. He considered his request had been fair and reasonable but the results of it were likely to show that DC's enforcement results were some of the worst in the country. He said DC was not being sufficiently transparent about this.
6. The Commissioner considered the representations she received from both the complainant and DC. She has also examined the relevant documentation and correspondence held by DC.
7. The Commissioner considered whether, on the balance of probabilities, DC held the requested information.
8. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of FOIA, which is concerned with transparency of information held by public authorities. FOIA gives an individual the right to access recorded information (other than their own personal data) held by public authorities. FOIA does not require public authorities to generate information or to answer questions, provide explanations or give opinions, unless this is recorded information that they already hold.

Reasons for decision

Section 1 – general right of access

9. Section 1 FOIA states that any person making a request for information is entitled to be informed by the public authority whether it holds that information and, if so, to have that information communicated to him.
10. In this case, the complainant considered that DC held further undisclosed information which DC denied. In cases where there is some dispute about the amount of information located by a public authority and the amount of information that a complainant believes might be held, the Commissioner – following the lead of a number of First-tier Tribunal decisions – applies the civil standard of the balance of probabilities. In essence, the Commissioner determines whether it is likely, or unlikely, that the public authority holds information within the scope of the complainant's request.
11. The Commissioner considered the complainant's evidence and arguments. She also considered the actions taken by DC to check what information it held and the reasons DC offered to explain that no further information was held. She also considered if there was any reason why it was inherently likely, or unlikely, that further undeclared information was held.
12. For clarity, the Commissioner makes clear that she is not expected to prove categorically whether or not further information is held, she is only required to make a judgement on whether the information is held on the civil standard of proof of the balance of probabilities.

The complainant's position

13. The complainant told the Commissioner that while DC had conducted an internal review of the matter, it had been evasive. It had not addressed his request for speed ticket data or his concern that DC's performance appeared, according to an independent study, to be worse than that for most other police forces. DC had also said that it did not hold any information about recent inspections of the force with respect to speeding data as that had not been an area of inspection which he found unsatisfactory.

Durham Constabulary's position

14. During the course of her investigation, the Commissioner asked DC questions, as is her usual practice, relating to how it established whether or not it held information within the scope of the request. She evaluated carefully the evidence from DC in answering these.

15. DC said in its representations to the Commissioner that there were statutory requirements laid upon it to maintain records of much of the relevant information contained in the Police Acts 1996 and 1997.
16. In its evidence DC told the Commissioner that it had sought to deal sympathetically with the complainant's concerns which he had raised with DC persistently. As regards speeding issues in the vicinity of the complainant's home community, which had been a continuing concern for him, these had not been evidenced. A local community 'speedwatch' event had been organised but the outcome had not shown evidence of particular speeding concerns.
17. DC provided the Commissioner with evidence of the extent of its enquiries and research undertaken during the course of its internal review. This had included searches of its systems in six business areas with relevant search terms. As a result of these searches, DC was confident that its internal review had been soundly based. DC added that it was also as confident as it could be that there was no further body of relevant information within its records which had been overlooked.

The Commissioner's conclusion

18. When, as in this case, the Commissioner receives a complaint that a public authority has not disclosed some or all of the information that a complainant believes it holds, it is seldom possible to prove with absolute certainty that it holds no relevant information. However, as set out above, the Commissioner required to make a finding on the balance of probabilities.
19. The Commissioner had regard for the evidence from DC of its having made a substantial search for further relevant information in appropriate parts of the organisation, six business units in all, using appropriate search terms. This search had not revealed any further undisclosed information. She has also not seen firm evidence from the complainant of any apparent gaps in the searches undertaken.
20. Having considered DC's detailed and comprehensive response to her, and on the basis of the evidence provided to her by both parties, the Commissioner decided that, at the time of the request and on the civil standard of the balance of probabilities, DC did not hold further relevant information.
21. The Commissioner therefore decided that DC had complied with its obligations under section 1(1) FOIA.

Right of appeal

22. 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@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

23. 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.
24. 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

**Dr R Wernham
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**