

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 22 April 2021

Public Authority: Chief Constable of West Yorkshire Police
Address: Admin 4,
Laburnum Road,
Wakefield
WF1 3QS

Decision (including any steps ordered)

1. The complainant requested information from West Yorkshire Police relating to master audio tapes held at Halifax Police Station.
2. The Commissioner's decision is that West Yorkshire Police failed to respond to the request within 20 working days and therefore breached Section 10(1) (time for compliance with request) of the FOIA.
3. As the response has been provided, the Commissioner does not require West Yorkshire Police to take any steps in relation to this decision notice.

Request and response

4. The complainant initially made the following request for information on 3 December 2019:

*"Over the last 10 years at Halifax Police Station, how many master audio tapes (from Police interviews) have been (a) destroyed and (b) rehoused from the stores to somewhere else, **prior** to the **expiry** of the retention period (which I understand is 6 years). I would like this data please broken down on a monthly basis and recorded as either (a), (b) or neither".*

5. This was refused on the grounds that cost of compliance would exceed the appropriate limit. The Commissioner investigated this and issued a decision finding in favour of WYP (see related case FS50902023¹).
6. Having made the request of 3 December 2019 (under reference FOI 7572/19) the complainant made an additional, related request on 12 January 2020 (under reference FOI 1182/20), as follows:

*"I would however, like to **append** the request since the document I exhibit will yield additional information in the **public interest**. Looking over this data (estimated only 5 pages), please can you provide data (to the nearest day) relating to **how long the master tapes were away from storage**.*

In the 5 cases relating to my own data, these are evidenced as 5 days, 6 days, 3 days, 3 days and 11 days respectively. Please can you break down the data down on a yearly basis in the format suggested below, for each year between 2009 and 2019. E.g. The tables below contain my data.

2015																
Delay time (days)	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	Above 15
Number of occurrences			1		1	1										

2016																
Delay time (days)	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	Above 15
Number of occurrences			1								1					

*I understand column 3 relates to "Prosecution" throughout pages 7230 and 7231. Please can you confirm this is the case on **all** the pages you examine. If this is not the case, please can you provide data as to how many in which year are not "prosecution" and **what** that reason is".*

7. WYP responded on 24 February 2020 under reference FOI 1182/20. It stated:

"The further request requires analytical work to be carried out to establish how long master tapes were away from storage and prosecution details. For the 10 year period there are over 300 records which would need to be examined. At a minimum estimate of 4 minutes per record this would take over 20 hours to complete.

¹ <https://ico.org.uk/media/action-weve-taken/decision-notices/2020/2617823/fs50902023.pdf>

It is estimated that the cost of providing / locating the information you seek within your request would exceed the time threshold. Where a reasonable estimate has been made that the appropriate limit would be exceeded, there is no requirement for a public authority to undertake the work up to the limit".

8. During the Commissioner's investigation of the earlier complaint (FOI 7572/19) FS50902023, the complainant made reference to this further request. It then became apparent that he had not asked WYP to provide an internal review of its response. The Commissioner asked him to do so before she would initiate any investigation.

9. The complainant therefore requested an internal review on 20 April 2020. In it he said, the Commissioner;

*"has indicated to me that she seeks compromise from **both** sides in terms of reaching an agreed workable solution. This seems entirely reasonable under the circumstances and I would be more than happy to work towards such a common goal under this mediated regime".....*

*"My offer, essentially, is that if WYP would kindly please provide a **photocopy** of the readily obtainable data specified below (expected to be about 5 pages perhaps), then I would be able to tabulate the data from the source document (described by the "further request") entirely **myself**. Furthermore, this would also automatically provide a complete **solution** to FOI 7572/19, killing two birds with one stone, so to speak".*

10. Following correspondence between all parties concerned, WYP wrote to the complainant on 1 June 2020 stating;

"... in relation to your FOI requests (and related Internal Reviews and Complaints) referenced FOI 7572/19 and FOI 1182/20 that you have limited the scope to:

The disclosure I request is for the log associated with all such movement of master audio tapes held at Halifax Police Station over a 10-year period - 3rd December 2009 and 3rd December 2019.

This register is the so-called 202 register, entitled Tape Recording of Interviews Master Tape Movement Record.

We will now process this request as a priority and provide a disclosure to you of any relevant information as soon as we reasonably can."

11. On 3 June 2020 the Commissioner issued Decision Notice FS509020232² in relation to the complainant's first request dated 3 December 2020 (FOI 7572/19) and upheld WYP's application of Section 12 of the FOIA.
12. On 5 June 2020 WYP disclosed the information in scope of the second request (FOI 1182/20) to the complainant.

Scope of the case

13. The complainant contacted the Commissioner 25 June 2020 to complain about the way his request for information had been handled. In particular, he said he was unhappy with WYP's failure or refusal to provide a "proper response" to the internal review he requested on 20 April 2020. He did however accept that WYP had issued a response after the Commissioner intervened for what he termed a "negotiated FOI request".
14. On the 14 September 2020 the Commissioner wrote to WYP and invited it to carry out the internal review first requested by the complainant on 20 April 2020.
15. WYP responded on 17 September 2020. It stated its position was that it had satisfied both of the complainant's requests (FOI 7572/19 and FOI 1182/20) by way of negotiation. This was facilitated by the Commissioner and by the complainant amending the scope of his requests. As a result, it provided a fresh disclosure to the complainant on 5 June 2020. Due to the negotiated disclosure, WYP said it did not believe it was appropriate to conduct an Internal Review.
16. The Commissioner informed the complainant on 26 October 2020 that so far as WYP were concerned the matter had been resolved and therefore it would not be appropriate to conduct an internal review. She therefore asked him what he was hoping to achieve by continuing with his complaint.
17. The complainant responded on 27 October 2020. He said what he hoped to achieve was for WYP to be held accountable for the various delays, the inaccuracy of some of the data disclosed, clarification regarding

² <https://ico.org.uk/media/action-weve-taken/decision-notices/2020/2617823/fs50902023.pdf>

information management and an explanation for the initial time estimate given to identify, locate and extract the requested information.

18. The Commissioner responded on 24 November 2020. She said WYP could be held to account for any delays in responding to requests under the FOIA in a decision notice rather than a financial penalty. However, it was outside her jurisdiction to deal with complaints about the accuracy of information disclosed or explanations regarding its management and storage. The Commissioner pointed out that under the FOIA she was only concerned with actual information held by a public authority and not its accuracy.
19. The complainant responded on 26 November 2020 with some further queries regarding the Commissioner's jurisdiction and powers under the FOIA.
20. The Commissioner responded on 21 January 2021. She said the only realistic action she could take under the FOIA in the complainant's case would be to issue a Decision Notice recording a breach of Section 10 which she confirmed would be done in due course. By way of clarification, she added that the accuracy of certain information was not off limits in that it related to personal data, which was a core part of the General Data Protection Regulations (GDPR). However, this was different to the disclosure of public information to the world at large under the FOIA which was subject to different rules and exemptions. The Commissioner went on to point out that the accuracy of information disclosed can only ever be really be addressed in terms of whether it is within the scope of a request and provides the information asked for, which the complainant confirmed in his case had happened.
21. 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 the FOIA. The FOIA is concerned with transparency of information held by public authorities. It gives an individual the right to access recorded information (other than their own personal data) held by public authorities. The 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. This is particularly relevant to the complainant's stated desire to be provided with an explanation for the initial time estimate given in response to his request of 3 December 2019. Where such information is not already held, the FOIA does not compel public authorities to create it.
22. The Commissioner acknowledges the complainant disputes the accuracy of some of the information disclosed by WYP. She recognises he went to

some considerable effort to highlight the discrepancies in some of this information.

23. However, a public authority will have complied with their obligations under the FOIA where they have provided the recorded information that they hold in relation to a request, irrespective of whether this information is accurate or not. The Commissioner cannot assess the accuracy of information published on a website or disclosed in response to a request.
24. The complainant also raised other matters relating to the storage and management of master tapes, which the Commissioner considers do not fall within the scope of his request.
25. With respect to the concerns raised by the complainant which are the subject matter of this decision notice, the analysis below considers whether West Yorkshire Police complied with section 10 (time for compliance with request) of the FOIA.

Reasons for decision

26. Section 1(1) of the FOIA states that an individual who asks for information is entitled to be informed whether the information is held and, if the information is held, to have that information communicated to them.
27. Section 10(1) of the FOIA provides that a public authority must comply with Section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.
28. The request in this case was submitted on 12 January 2020. However, it was not until 24 February 2020 that WYP provided its substantive response, and further information within the scope of the request was not provided until 5 June 2020.
29. The Commissioner therefore finds that WYP breached Section 10(1) of the FOIA by failing to comply with section 1(1) of the FOIA within the statutory time period.

Other matters

Correcting the data held by West Yorkshire Police

30. The Commissioner is mindful that the complainant considers that West Yorkshire Police should take steps to correct the inaccuracies he identified in the information it provided.

31. The Commissioner explained to the complainant that the rules and exemptions relating to the disclosure of public information to the world at large, under the FOIA, are different to those relating to the UK General Data Protection Regulations (UK GDPR) that govern personal data. UK GDPR places an obligation on data controllers to ensure that the personal data they hold is accurate and up to date. There is no equivalent or similar right or obligation under the FOIA.
32. She advised him that, if he is concerned about the accuracy of personal data WYP hold about him, he can ask for it to be corrected or deleted. This is known as the 'right to rectification'³.

³ <https://ico.org.uk/your-data-matters/your-right-to-get-your-data-corrected/>

Right of appeal

33. 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

34. 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.
35. 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

Laura Tomkinson
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SK9 5AF