

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 25 August 2022

Public Authority: Office of the Police and Crime Commissioner for Hampshire

Address: St George's Chambers
St George's Street
Winchester
Hampshire
SO23 8AJ

Decision (including any steps ordered)

1. The complainant has requested information relating to its Police and Crime Commissioner ('PCC') from the Office of the Police and Crime Commissioner for Hampshire ('OPCC'). The OPCC provided some information, said some was exempt under section 22 of FOIA as it was intended for future publication (which it later removed reliance on) and said the remainder was not held as it related to the PCC in person rather than the OPCC. The complainant disputed that the OPCC was the rightful public authority for the purpose of FOIA and required that the PCC responded in person.
2. The Commissioner's decision is that the OPCC dealt with the request appropriately. No steps are required.

Request and response

3. On 6 August 2021, the complainant wrote to the PCC and requested information in the following terms:

"You have been democratically elected as Hampshire Police and Crime Commissioner. Please provide the following:

 - 1) a copy of your letter of appointment
 - 2) the name and address of your employer / salary payer

- 3) a copy of your job description
- 4) a copy of your scope of work
- 5) a copy of the terms and conditions of your employment
- 6) who you report to, and reporting scope / schedule
- 7) a copy of your planned public surgery schedule
- 8) a list of your political affiliations
- 9) a list of your charitable affiliations
- 10) a copy of your CV

You are required acknowledge [sic] receipt of this letter. You have 20 working days to provide the information requested. I look forward to your early response”.

4. On 1 September 2021, the OPCC responded, advising that his posted request had been received on 10 August 2021. Regarding parts (1) - (5) and (10), it said that the information was not held and explained on what basis. It provided a response to part (6). It said that the information requested at part (7) would be published in the future so was exempt under section 22 of FOIA. In respect of parts (9) and (10) it disclosed the PCC’s register of disclosable interests.

5. The complainant requested an internal review on 10 September 2021, addressed to the PCC in person. When doing so he stated:

“... You have not provided me with the information I requested - I request an internal review. I remind you that you are the sole member of a public authority – “The Office of the Police and Crime Commissioner” (PCC) is not a public authority and has no legitimacy. As such, I demand that, when responding to my FIR [request for information], it is your signature at the end of your letter. Your letter heading is “Police and Crime Commissioner” not [name redacted]. You have been a magistrate - I would expect you to be aware of legal etiquette”.

6. The complainant also listed why he disagreed with the response to each part of his request.

7. The OPCC provided an internal review on 19 October 2021 in which it revised its position, stating that it no longer wished to rely on section 22 in respect of part (7) of the request. It explained that:

“... although it would be published if public surgeries would take place, no such schedule existed at the time of your original request or when you requested an internal review. Our formal response under the FOIA therefore is ‘Information not held’ on the exemption previously quoted is not applicable.

... the introduction of public surgeries is something under consideration but no document exists that evidences this. While

there is a statutory responsibility to consult with the public, the format is at the discretion of the PCC”.

Scope of the case

8. The Commissioner received the complainant’s complaint on 1 November 2021. His grounds of complaint were as follows:

“I state at the outset that I do not recognise the self styled office of the Police and Crime Commissioner as a legitimate Public Authority. I object to the fact that I send my correspondence to the ‘Hampshire Police and Crime Commissioner’ - the legitimate Public Authority - and the responses come from the ‘Office of the Police and Crime Commissioner’.

The scope of my original RFI [request for information] is for Mrs Donna Jones [PCC] / HPCC [Hampshire Police and Crime Commissioner] to answer. She holds the information I request. She is the democratically elected Public Authority in this matter.

Please direct Donna Jones to provide the information I have requested and please direct her to put her signature to any response to any RFI from me. As a magistrate, she must be fully aware of her legal obligation to follow legal documentary etiquette”.

9. As the complainant has only referred to the point as to whether it was for the PCC or the OPCC to deal with this request, this is all that the Commissioner will initially consider in this notice, ie if the PCC is not required to personally respond then there is nothing else to be considered. In making his decision on the matter he has not found it necessary to conduct any further investigation.

Reasons for decision

Section 1 – General right of access

Is the PCC required to personally respond?

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 that information and, if so, to have that information communicated to them.
11. In this case, the complainant is of the view that it is the PCC alone that is the public authority and that she must personally respond to his request.

12. The question as to whether or not the PCC or the OPCC is the public authority for the purposes of FOIA has previously been considered at First-tier Tribunal ('FTT') under case reference EA/2019/0100.
13. Within that case, the following points were considered at paragraphs 11 and 12:

"Appeal

11. The Appellant appealed on 27th March 2019. His grounds can be summarised as:
 - i. The Commissioner was wrong to consider information held by OPCC when the request was addressed to PCCH [Police and Crime Commissioner for Hampshire] who is the appropriate legal authority and personally responsible...
12. The Commissioner opposed the Appeal in her response dated 13.05.19. She relies upon the contents of her Decision Notice and adds that:
 - i. The Commissioner maintains that the OPCC are the correct public authority and does not accept that the PCCH and OPCC are separate legal entities..."
14. The Appellant's case was, as is the case here, that the request was addressed to the PCC in person, not their office, and that he considered it was the PCC who had a legal obligation to the public and that they should have dealt with the request.
15. The Commissioner's view was that, for the purposes of FOIA, the PCC and OPCC were one and the same.
16. At paragraph 18 of its decision the FTT found that:

"... I agree with the ICO that the PCCH and OPCC are not separate legal entities. The OPCC is set up in order to enable the PCCH to exercise his functions which he is entitled to delegate pursuant to s18 of the PRSRA 2011. In my judgement it is immaterial whether the request goes to the Office or the office-holder because FOIA relates to information that is held in association with the public office not private information also known to the office holder. In light of the PCCH's powers of delegation it is appropriate for the office to respond to FOIA requests as that will encompass all information held on the PCCH's behalf by his staff as well as all information held by him in his official capacity."
17. Whilst the complainant is of the view the OPCC is 'self styled' and not a public authority the Commissioner does not agree. As already

determined by the FTT, the PCC and OPCC are one and the same. Therefore, the complainant cannot insist that his request is only dealt with by the PCC herself. The Commissioner is not able to direct her to personally respond to his information requests.

18. The Commissioner's decision is that the OPCC complied with the requirements of section 1 FOIA in that it provided a timely response, disclosed some information and advised what was or was not held. The complainant has not disputed the contents of the response *per se* so the Commissioner has not further considered whether or not the OPCC does or doesn't hold any further information.

Right of appeal

19. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

20. 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.
21. 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

Carolyn Howes
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