

Freedom of Information Act 2000 (FOIA)

Date: 21 February 2018

Public Authority: Chief Constable of Hertfordshire Constabulary
Address: Hertfordshire Constabulary Headquarters
Stanborough Road
Welwyn Garden City
Hertfordshire
AL8 6XF

Decision (including any steps ordered)

1. The complainant has requested information regarding the duties of a police constable. Hertfordshire Police explained that it does not hold any further recorded information relevant to the request.
2. The Commissioner's decision is that Hertfordshire Police is correct to state that it does not hold any further information. The Commissioner therefore considers that it has not breached section 1 (right to information) of the FOIA and has also complied with section 16 (Duty to provide advice and assistance) of the FOIA. However, the Commissioner considers that Hertfordshire Police has breached section 10(1) (Time for compliance) of the FOIA.
3. The Commissioner does not require Hertfordshire Police to take any steps as a result of this decision.

Request and response

4. On 16 March 2018, the complainant wrote to Hertfordshire Police (the police) and requested information in the following terms:
 - "1. Are the duties of a man/woman acting in the role of Constable, only as required under Common Law?
 2. What is [sic] the duties of a man/woman acting in the role of Police Officer?
 3. Is it correct that if a Constable acts outside the duties of a Constable, he/she is no longer acting as a Constable. If the answer is yes, who takes liability for their actions, is it the man/woman, or is it the man/woman acting in the role of Chief Constable or both.
 4. If an Officer acts outside of their jurisdiction, who takes liability for

their actions, is it the man/woman acting as an officer or the man/woman acting as Chief Constable?

5. If asked, is it a requirement that an Officer or Constable states what capacity they are acting in, eg either as an Officer or Constable?"

5. The police responded on 13 April 2018, providing the complainant with links to the following information: Conducting Investigations, Maximising Information Intelligence and Preventing and Reducing Crime.
6. Following an internal review, the police wrote to the complainant on 9 May 2018 and provided additional links to the following information: National Policing Curriculum, Core Learning, Ensure Public Safety, Protecting Vulnerable People and Supporting Victims. It also answered the complainant's questions.
7. In relation to question 1: The police explained that it considered that this was a hypothetical question rather than asking for access to recorded information; it also confirmed that it did not hold information that would answer this question. However, it also explained that the duties of a police officer are covered by various types of legislation.
8. In relation to question 2: The police reiterated that the duties of a police officer are covered by legislation, as well as a code of ethics and the CVF (Competency and Values framework).
9. In relation to questions 3 and 4: The police explained that it considered that both of these were hypothetical questions, for which it did not hold any recorded information. It also explained that the answers could only be known in relation to a real life situation where the specific circumstances had been taken into account and legal opinion sought.
10. In relation to question 5: The police explained that it considered this was a hypothetical question and confirmed that it did not hold any recorded information that would answer it.

Scope of the case

11. Initially the complainant contacted the Commissioner on 21 June 2018 to complain about the way his request for information had been handled. However, he did not provide the Commissioner with the relevant correspondence. The Commissioner contacted the complainant about this and he provided the necessary correspondence on 14 August 2018.
12. The complainant confirmed to the Commissioner that the information disclosed to him by the police had partly answered question 1 of his

request. He also explained that he had made the same request to another police force who had answered it and therefore he considered that the police should also have answered the same questions in the present request.

13. During the Commissioner's investigation, the police explained that it had provided links to information it considered might be helpful to the complainant. However, it also explained that it had not been sure whether the links would contain information which would assist the complainant.
14. The Commissioner will consider whether the police hold any further recorded information in relation to the request and the way in which it dealt with the request under the FOIA.

Reason for decision

15. The Commissioner notes that in its internal review, the police explained that it did not consider that the request was a request for information for the purposes of the FOIA and that in any event, it does not hold any relevant recorded information.
16. In her guidance to public authorities "What should we do when we receive a request for information?"¹ the Commissioner explains that a request must describe the information requested. She considers that any genuine attempt to describe the information is enough to trigger the FOIA, even if the description is unclear, or a public authority thinks it is too broad or unreasonable in some way.
17. In addition, the Commissioner explains that in her view this is not a hard test to satisfy. She considers that almost anything in writing which asks for information will count as a request under the FOIA. The Commissioner also explains that even if a request is not valid under the FOIA, this does not necessarily mean a public authority can ignore it. Requests for 'environmental information', for example, can be made verbally and public authorities have an obligation to provide advice and assistance to requesters.
18. Furthermore, the Commissioner explains that where somebody seems to be requesting information but has failed to make a valid freedom of

¹ <https://ico.org.uk/for-organisations/guide-to-freedom-of-information/receiving-a-request/>

information request, public authorities should draw their attention to their rights under the FOIA and tell them how to make a valid request.

19. Given the above, the Commissioner considers that the present request is a valid request for information for the purposes of the FOIA.

Section 1 – information held/not held

20. Section 1 of FOIA provides 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.
21. 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.
22. The Commissioner is required to make a judgement on whether, on the balance of probabilities, the requested information is held or not.
23. The Commissioner asked the police what searches it had carried out. The police explained that upon receipt of the request, its Professional Standards Unit (PSD) was contacted regarding the requester's questions. The PSD advised that it could not assist with the request as it referred to hypothetical questions and did not relate to actual misconduct. It also advised that the answers to the questions would only be determined following a specific scenario happening and an investigation into the circumstances.
24. The police also explained that it had contacted its legal unit which advised that in their opinion the requester's questions were hypothetical; whether an officer had acted in accordance with their 'duties' could only be determined by taking the facts of a specific scenario into account and obtaining legal advice.
25. The police confirmed that it had also looked at the College of Policing website to provide detailed information on the National Occupational Standards and personal qualities required for each rank and also to provide the Competency and Values Framework. It also confirmed that it accessed the Skills for Justice website to provide details on the standards required for a constable and had provided a link to the complainant.
26. The Commissioner asked the police if its searches included electronic data and if they had, to explain whether the searches included information held locally on personal computers used by key officials

(including laptop computers) and on networked resources and emails.

The police explained that its searches did not include personal computers used by key officials, networked resources and emails. The police responded to some of the Commissioner's questions with 'N/A' and explained that this meant 'not applicable'. It also explained that no electronic data had been searched and this was why it had answered the Commissioner's question with 'N/A'.

27. The Commissioner asked whether, if the information was held, it would be held as manual or electronic records; the police responded explaining that if held, it could have been held in any format.
28. The police also confirmed that it had not ever held information relevant to the scope of the complainant's request which had either been deleted or destroyed. The Commissioner asked what its formal records management policy say about the retention and deletion of records of this type. The police explained that this was 'N/A' as no record of this type exists.
29. In addition, the Commissioner asked the police whether there was a business purpose for which the requested information should be held and if so what was the purpose. The police initially explained that this was 'N/A'.
30. The Commissioner also asked the police whether there were any statutory requirements upon it to retain the requested information. The police initially explained that this was 'N/A'.
31. The Commissioner was not satisfied with some of the police's 'N/A' responses and asked it to carry out the necessary searches.
32. The police responded to the Commissioner and confirmed that searches had been carried out on its departmental intranet regarding the 5 questions asked in the request. It provided the Commissioner with copies of the questions entered on its intranet as submitted by the complainant and the results for each question. The Commissioner notes that no recorded information was found in relation to any of the questions.
33. The police also confirmed that these searches would have shown if its legal department held any of the requested information.
34. In addition, the police reconsidered its initial responses of 'N/A' in relation to the following questions from the Commissioner:

"Is there a business purpose for which the requested information should be held? If so what is this purpose?"

Are there any statutory requirements upon HP to retain the requested information?"

35. The police confirmed that there was no business or statutory need for it to hold the requested information.
36. The police also explained that the PSD had confirmed that the information it had provided to the complainant was not located on a departmental database but had come from police officers' knowledge. It also confirmed that there was no information recorded on its systems that would answer the questions.
37. The Commissioner also asked the police about the links it had provided to the complainant. She explained that she had initially considered whether it had breached section 21 (Information accessible to the applicant by other means) of the FOIA, as it was clear that the information in question had not answered the request fully.
38. The police explained to the Commissioner that it had provided links to the complainant in order to try and assist him but had not provided them under section 21.
39. The Commissioner notes that the police subsequently provided her with evidence that it had carried out searches on its intranet and that there was no relevant recorded information.
40. Taking everything into account, the Commissioner does not consider that there is any evidence that shows that the police hold any further recorded information in relation to the request. The Commissioner therefore considers that, on the balance of probabilities, the police are correct to state that it does not hold any further recorded information in relation to the request.
41. The Commissioner therefore considers that the police have not breached section 1(1)(a).
42. The complainant submitted his request on 16 March 2018. The police did not respond to the questions in it until the internal review of 9 May 2018.

Section 10 – Time for compliance

43. 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.

44. The Commissioner considers that the police has breached section 10(1) as it took longer than 20 working days for the police to respond to the request substantively.

Section 16 – Duty to provide advice and assistance

45. Section 16 of the FOIA provides that it is the duty of a public authority to provide advice and assistance, 'so far as it would be reasonable to expect the public authority to do so', to anyone who has made or is thinking of making, a request for information.
46. As explained above, the police confirmed that it had provided the complainant with links to information which may or may not answer his questions. Although the Commissioner does not consider that the police breached section 16 as it provided assistance to the complainant, she does consider that it should have made it clear to the complainant that this was the case.

Other matters

47. The Commissioner notes that the complainant considers that as one police force has answered his questions, the police should have done so in the present case. However, the Commissioner considers that each request received by a public authority should to be dealt with on a case-by-case basis.
48. Furthermore, the Commissioner notes that the questions submitted by the complainant are generic in nature. Given that one police force has already answered these questions, she considers that if the complainant were to continue submitting the same questions to police forces and then complained to her about any responses, she would consider whether such complaints are frivolous or vexatious for the purposes of section 50(2)(c) of the FOIA. This states:

"On receiving an application under this section, the Commissioner shall make a decision unless it appears to him-
(c) that the application is frivolous or vexatious".

Right of appeal

49. 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

50. 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.

51. 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

Jon Manners
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