

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 30 April 2019

Public Authority: Chief Constable of Staffordshire Police

Address: Staffordshire Police Headquarters

Weston Road

Stafford

ST18 0YY

Decision (including any steps ordered)

1. The complainant requested information relating to a document known as the 'Scheme of Delegation'. Staffordshire Police provided the requested Uniform Resource Locator or 'URL' and explained where the document could be located on its website; it denied holding a copy of the Scheme of Delegation document dating from January 2012. At internal review, the complainant raised concerns about the lack of any signature on the Scheme of Delegation; Staffordshire Police denied holding a signed copy of this document.
2. The Commissioner's decision is that, on the balance of probabilities, Staffordshire Police did not hold a Scheme of Delegation document dating from January 2012, nor did it hold a signed version of the document which is available. It therefore complied with the duty set out at section 1(1) (general right of access) of FOIA.
3. The Commissioner requires no steps to be taken as a result of this decision.

Background

4. From a previous complaint submitted by the same complainant resulting in a decision notice *FS50765434*¹, the Commissioner is aware that
-

¹ <https://ico.org.uk/media/action-weve-taken/decision-notices/2018/2553824/fs50765434.pdf>

paragraph 13.25 of the Independent Office for Police Conduct ('IOPC') Statutory Guidance states that:

"Chief Officers should also develop and disseminate a scheme of delegation to ensure that the right people at the right levels and with the right training are allocated as decision makers. In the interests of accountability and transparency, it is good practice to make the scheme of delegation available on the force website".

Request and response

5. On 28 October 2018 the complainant wrote to Staffordshire Police via the *WhatDoTheyKnow.com* website² and requested information in the following terms:

"Please provide me with a link to the url on your website to the document known as the Scheme of Delegation pursuant to paragraph 13.25 of the IOPC Statutory Guidance.

Also please provide me a copy of this document dating from from [sic] January 2012"

6. Staffordshire Police responded on 8 November 2018. For part one of the request, it provided the requested url³ and details of where the Scheme of Delegation document could be located (namely via the Joint Corporate Governance link). It said that it *"no longer held"* the information requested in part two.
7. There was a further exchange of correspondence (see footnote 1 below for *WhatDoTheyKnow.com*) in which the complainant questioned the adequacy of the document.
8. The complainant then requested an internal review on 16 November 2018 stating:

"The response is inadequate. Without a signature, it is not a valid instrument and therefore is worthless. Hearsay does not suffice for the purposes of a valid legal document. There is no reason to withhold the authorization, if it exists that is."

² https://www.whatdotheyknow.com/request/scheme_of_delegation_document_28

³ <https://www.staffordshire.police.uk/article/1968/Your-Right-to-Information>

9. Following its internal review, Staffordshire Police wrote to the complainant on 19 November 2018 stating:

"The Freedom of Information Act 2000 was created to make provision for the disclosure of information held by a public authority, and as such this information has been provided in full.

The Act places no obligation upon the aforesaid authority to manufacture, generate or produce information to answer any such request for information, where this does not already exist.

Therefore in providing access to the information requested, the authority has discharged its obligation in full and there is no requirement placed upon it to make further comment in regard to the information it has provided."

Scope of the case

10. The complainant contacted the Commissioner on 11 December 2018 to complain about the way his request for information had been handled. Following clarification, the complainant confirmed the following three grounds of complaint:
- i. "The first is they have failed to identify what exemption clause they are using to withhold the Chiff's [sic] signature.*
 - ii. The second is there is no valid exemption clause available to use. As a Cheif [sic] Officer he is not allowed to rely on the Data Protection Act, if that is what they are using that is. All the other police forces who have this document have supplied their Chief's signature so Staffordshire should not be the only force withholding [sic] the information."*
 - iii. That Staffordshire Police hold the information requested at part two because it had said the approval was granted on 4 April 2017. He submitted:

"SP [Staffordshire Police] have claimed it was approved. It can only be approved by way of signature, therefore they do indeed [sic] the information."
11. The Commissioner would not typically investigate any matters not raised by a complainant at internal review. However, as she found it necessary to contact the complainant to clarify his grounds of complaint, she has exercised her discretion in this case to include point (iii) above.
12. Following her investigation, the Commissioner formed her preliminary view that, on the balance of probabilities, the document dating from

January 2012 was not held by Staffordshire Police. Furthermore, as no signature had been added or deleted from the currently available document, and therefore it had not been withheld, no FOIA exemption was required as it had been disclosed in full. (Further comment about the requirement for a signature is made in the 'Other matters' section of this notice).

13. The Commissioner wrote to the complainant on 9 April 2019 setting out this preliminary view and asked him to consider resolving his complaint informally (ie without the need for a formal decision notice). The complainant declined to do so.
14. Therefore, the Commissioner has considered whether, on the balance of probabilities, Staffordshire Police holds any further information relevant to the request, ie a version of the Scheme of Delegation dating from January 2012 and/or a formally signed copy of the published document which is currently available.

Reasons for decision

Section 1 - general right of access

15. Section 1 of FOIA states that:

"Any person making a request for information to a public authority is entitled –

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him."

16. In scenarios such as this one, where there is some dispute between the public authority and the complainant about the amount of information that may be held, the Commissioner, following the lead of a number of First Tier Tribunal decisions, applies the civil standard of the balance of probabilities.
17. In this case, the Commissioner has sought to determine whether, on the balance of probabilities, Staffordshire Police held the information requested in part two at the time of the request. As the complainant also raised concerns at internal review about whether a signed version of the Scheme of Delegation document is held, the Commissioner has additionally considered whether Staffordshire Police holds a signed version of the currently published document.

January 2012 document

18. In deciding where the balance of probabilities lies, the Commissioner will consider the searches carried out by the public authority, in terms of the extent of the searches, the quality of the searches, their thoroughness and results the searches yielded. She will also consider any other information or explanation offered by the public authority which is relevant to her determination.
19. In progressing her investigation, the Commissioner asked Staffordshire Police to describe the searches it carried out for information falling within the scope of the request. She also asked other questions, as is her usual practice, relating to how Staffordshire Police established whether or not it held the requested information.
20. In its substantive response to the Commissioner, Staffordshire Police confirmed that the requested information, if held, would be held in electronic form.
21. Staffordshire Police advised the Commissioner that it had:

" ... asked the current Head of PSD and the current Appropriate Authority, neither of whom were aware of a document. There were no other systems that I could check as we do not appear to have a deed of delegation, historically the responsibility has always been held by the Head of PSD but I am not aware of any of any official documentation that goes along with this".

22. In relation to the January 2012 document, Staffordshire Police has advised that all its data is held on the network. It asked relevant departments/staff to search for the document and received the following replies:

Financial Accounting

"This is the one I remember using but it's really old (not attached as this is from 2004). I've found this after searching the R drive filed under IT and governance."

Finance Business Partnering

"I've searched for scheme of delegation on the r: finance drive and the only early versions titled scheme of delegation are spreadsheet format and are the finance system delegations; that is the approvals hierarchy for the system e.g. by cost centre and account code etc. I can't determine which are final versions or when they were approved."

I think the best chance we have is if xxx [name redacted] can find the published version on the old website."

Website administrator

"I have searched the documents on the website and could not find the 2012 document, this is probably as the current website was built in 2016.

The only information I have is that the document titled 'Scheme of Delegation' on the above page was published on the website on 28 April 2017 at 11:41 and has not been edited, deleted or modified in any way since."

23. Staffordshire Police also confirmed that there is no particular reference in the retention schedule to this document and therefore it would sit under Policy and Procedure, with a retention period of one year after subsequent revision.
24. It said there is no business purpose for which the information should be held and it had no record of the document's destruction.
25. The Commissioner is satisfied that Staffordshire Police has provided the complainant with the relevant weblink to enable him to access its current published Scheme of Delegation document. Staffordshire Police has advised that this document was published on the website on 28 April 2017 and has not been edited, deleted or modified in any way since. She is also satisfied that it made appropriate enquiries with appropriate staff to try and locate any further information held.

Conclusion

26. Having considered Staffordshire Police's response, and on the basis of the evidence provided to her, the Commissioner is satisfied that, on the balance of probabilities, Staffordshire Police did not hold the information requested from January 2012 in part two at the time of the request.

Signed Scheme of Delegation

27. In addition to the search related information above, Staffordshire Police provided the details set out below relating to whether the Scheme of Delegation document was signed, and whether there was a requirement for it to be signed.
28. Whilst the Commissioner cannot make a determination as to whether this document *should* be signed as this is not within her remit, she is able to reach a view as to whether Staffordshire Police, again on the balance of probabilities, holds a signed version of the Scheme of Delegation.

29. The Commissioner initially notes that the published Scheme of Delegation is not signed.
30. Staffordshire Police has advised that no signatures were added or removed from the Joint Scheme of Delegation and Consent.
31. Staffordshire Police has confirmed that the document approved on 4 April 2017 is the one that is available on its website via the provided url, ie the Scheme of Delegation. It explained that the approval for this document was given at a Staffordshire Executive Group ('SEG') meeting held on 4 April 2017 and at the Joint Governance Working Group (which reports into the SEG) held on 18 April 2017. Staffordshire Police provided the Commissioner with both sets of relevant minutes which demonstrate this approval.
32. In responding to the Commissioner's enquiries, Staffordshire Police provided some Chartered Institute of Public Finance and Accountancy ('CIPFA') guidance, highlighting the relevant parts. This guidance indicates the "local framework of corporate governance", of which the scheme of delegation is a part; point 83 states that a signature is required for the Annual Governance Statement ('AGS') only, which Staffordshire Police says it is compliant with. The Commissioner has reviewed the CIPFA guidance and concurs with Staffordshire Police's interpretation. She has also previously viewed the AGS statement on its website which contained the requisite signatures at the end of the statement. (Please note that at the time of issuing this notice, the AGS statement appears to no longer be available on the website).
33. Staffordshire Police stated the current published Scheme of Delegation document was the result of a review and refresh of the previously published scheme of delegation and consent from 2014.

Conclusion

34. Based on the available evidence, the Commissioner's view is that Staffordshire Police have not withheld any signature(s) as there is not, and never has been, any signature on its current Scheme of Delegation document. As no information has been withheld Staffordshire Police did not need to cite an FOIA exemption.

Other matters

35. In relation to the complainant's remaining ground of complaint, namely the lack of a signature, the Commissioner has commented on this below. However, this explanation is provided by way of assistance for the complainant as the validity (or otherwise) of any such documentation is

outside of her jurisdiction and she is unable to formally comment on this point.

36. As referred to above, based on the evidence available to her, the Commissioner formed a preliminary view that it seemed reasonable that a signature is not required for the Scheme of Delegation to be effective. She advised the complainant accordingly in her preliminary view letter of 9 April 2019 (see 'Scope' section of this notice)
37. The complainant subsequently submitted the following counter arguments:

"The local framework of corporate governance you rely on in your decision has no relevance to the Police Reform Act 2002. It is correlated to the Delegation of Powers of the Police & Crime Commissioner [sic] pursuant to the Police Reform and Scoail Responsisbilty [sic] Act 2011.

The Chief Constalbe [sic] is required to delegate his powers "formally" by way of consent. A formal document is not defined, per case law, as legal instrument and is not binding if it has no authorisation on it. Furthermore, the signature is required pursuant to s.4 of Statute of Frauds Act 1677.

All the pother [sic] police forces (who hold a Scheme) have the Chief's authorisation on the actual Scheme. Staffordshire should be no exception to the rule."

38. The Commissioner is unable to make any final determination as to whether a signature *should* be included as part of the Scheme of Delegation document as this is not within her remit.

Right of appeal

39. 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

40. 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.
41. 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
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF