

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 19 September 2016

Public Authority: The Chief Constable
Address: Suffolk Constabulary HQ
Portal Avenue
Martlesham Heath
Ipswich
IP5 3QS

Decision (including any steps ordered)

1. The complainant has requested information about the recovery of costs from Suffolk Constabulary (the "Constabulary"). The Constabulary provided the requested information, however, the complainant was not satisfied with this as she believed it was an inadequate response. Having considered the wording of the request the Commissioner is satisfied that the Constabulary responded appropriately; she also finds no procedural breaches. No steps are required.

Request and response

2. On 24 March 2016 the complainant wrote to the Police and Crime Commissioner ("PCC") for Suffolk and requested information in the following terms:

"Please could you tell me if Suffolk Constabulary were ever repaid the £160,000 bill incurred during Gordon Brown's holiday in the summer of 2008?"

3. On 5 April 2016 the PCC responded. It advised that it had not been established until 2012 so did not hold any information but that it had asked the Constabulary to consider the request instead.
4. On 12 April 2016 the PCC confirmed that the Constabulary would be dealing with the request; the Constabulary also wrote to the complainant on 12 April 2016 confirming its receipt of the request.

5. On 11 May 2016 the Constabulary wrote to the complainant advising that it needed more time to consider the public interest in responding to the request. It cited sections 24 (national security), 31 (law enforcement) and 38 (health and safety) as its basis for doing so.
6. On 24 May 2016 the Constabulary again wrote to the complainant. It refused to confirm or deny holding any information and cited the three exemptions mentioned above.
7. The complainant requested an internal review on 25 May 2016. She pointed out that Gordon Brown's holiday had been announced both before and during the holiday, and that the amount of £160,000 in overtime had been published in the media afterwards. Disagreeing with the exemptions applied she added: *"I merely asked if the money had been reimbursed"*.
8. Following an internal review the Constabulary wrote to the complainant on 29 June 2016. It revised its position. It advised her:

"Suffolk Constabulary can confirm that it did reclaim costs associated with Gordon Browns stay in Suffolk during 2008 when he was Prime Minister."

Please note that this figure did not amount to the £160,000 quoted in the media at the time".

Scope of the case

9. The complainant contacted the Commissioner on 5 July 2016 to complain about the way her request for information had been handled.
10. The Commissioner required further information which was provided on 4 August 2016. This included the following grounds of complaint:

"I don't see I ever had a proper internal review. The same person dealt with it which I don't feel was correct procedure. If you look at the email ... she redrafts my original request with a new date and then sent me some of the information I asked for."

I did not agree with the original reasons for refusal and this seems to prove they weren't valid as she then does admit they hold the information but only gives me part of it without any reason as to why I can't have all of it".

11. The Commissioner explained that internal reviews are not legal requirements under the FOIA and that she cannot make a decision on

such matters. She also advised the complainant that a public authority is entitled to amend its position at internal review stage. (Further comments on this can be found in "*Other matters*" at the end of this notice).

12. In an effort to informally resolve the case the Commissioner contacted the Constabulary and asked it to clarify its position as the wording of the request stated "*repaid*" whereas its response only said "*reclaim*" which, if taken literally, meant it could have been asked for but remain outstanding.

13. By way of response the Constabulary advised:

"Further to our conversation of today, I can confirm that costs associated with Gordon Browns visit to Suffolk in 2008 were repaid to the Constabulary.

I apologise that this was not made clear in the original disclosure and hope that this detail clarifies our position.

This was coded under the Operation name of Operation Wayfarer. Although this detail was not publically acknowledged at the time, I am happy that this is now suitable for disclosure."

14. The Constabulary advised the Commissioner that she could pass this information onto the complainant. The Commissioner therefore advised the complainant that the costs had been repaid rather than just claimed and also gave her the operational name in an effort to informally resolve the complaint.

15. The Commissioner then invited the complainant to withdraw her complaint but the complainant advised that she remained dissatisfied. As well as matters relating to the internal review process, and the amount of time taken, she added:

"The document that accompanied the last letter dated 29th June actually does not say that all the £160,000 was repaid. And this recent correspondence does not say that either. If the the [sic] whole £160,000 was not repaid and they are allowed to tell me now why could they not say how much of it was repaid. I attach a copy of a letter that appeared in my local paper by who is now the Waveney MP, Peter Aldous. I'm sure he would have the right figure.

I do not feel my request has been handled at all well and I have been fobbed off with excuses and still don't have all the information which I feel I should be entitled to".

16. In further correspondence the Constabulary advised the Commissioner:

"If we were to take the request literally, we could have stated 'no information held' as there was not such an amount recorded however, to be helpful, we confirmed that monies had been repaid but that this did not amount to the figure quoted in the request".

17. The Commissioner understands that there is only a very small amount of information that has been located by the Constabulary. She has been apprised of its content and it does not amount to £160k.
18. The Commissioner will consider the handling of the request below.

Reasons for decision

Section 1 – general right of access

19. 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 to do 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.
20. In her request the complainant asks only whether or not the Constabulary had received a repayment of specific costs, a position which is reinforced when asking for an internal review as cited at paragraph 7 above.
21. In responding to the request the Constabulary advised her that it had reclaimed costs but that this did not amount to the figure cited by the complainant. As clarified above, this was intended to mean that it had received costs claimed, albeit that the figure cited by the complainant did not correspond to the information it held.
22. It is the complainant's contention that the Constabulary should have provided more information. However, a public authority is only obliged to provide information held in line with what is requested. As mentioned in its correspondence with the Commissioner, if it had taken the request literally it could have advised the complainant that no information regarding a claim / repayment of £160k was held but it advised that some monies had been received, which would fall in line with its duties under section 16 of the FOIA. Whilst it may have been helpful if it had given a fuller explanation regarding any information held, or the actual amount concerned in this case if it was not otherwise exempt, such detail falls outside the scope of the request.

23. Accordingly the Commissioner finds that the Constabulary complied with its responsibilities under the terms of section 1 of the FOIA.

Section 10 – time for compliance

Transferring of requests to another authority

24. The Commissioner has published guidance on this matter¹. According to this guidance, if the receiving authority does not hold the information it can elect to transfer it to another authority, as has happened in this case. When doing so:
- The original authority must promptly, and within the 20 working day time for compliance, provide the requester with written notification that it does not hold the requested information.
 - The 20 working day clock is reset for the receiving authority and will start the day after it receives the request from the original authority.
25. The PCC received the request on 24 March 2016 and, on 12 April 2016, it was confirmed as being received by the Constabulary. This falls well within the recommended 20 working day limit so the Commissioner does not consider there has been any undue delay in this regard.

Extensions

26. Section 10(3) enables an authority to extend the 20 working day limit up to a 'reasonable' time in any case where;
- it requires more time to determine whether or not the balance of the public interest lies in maintaining an exemption; or
 - it needs further time to consider whether it would be in the public interest to confirm or deny whether the information is held.
27. This extension will therefore only apply to requests where the authority considers a 'qualified exemption' to be engaged; each of the three exemptions cited by the Constabulary are qualified.
28. As section 10(3) only permits extensions for further consideration of the public interest, the additional time cannot be used to determine whether the exemptions themselves are engaged. This means that the

¹ <https://ico.org.uk/media/1165/time-for-compliance-foia-guidance.pdf>

Constabulary should have identified the relevant exemptions, and satisfied itself that they are applicable, within the initial 20 working day time limit. Therefore, any authority claiming an extension will still be obliged to issue a refusal notice explaining which exemption applies and why within 20 working days. This notice must explain that it requires more time to consider the public interest test, and provide an estimate of the date on which a final decision is likely to be made.

29. The request was received by the Constabulary on 12 April 2016 and it issued an appropriate notice on 11 May 2016. This was on the twentieth working day limit so the Commissioner therefore finds no breach of section 10.

Section 17 – refusal of request

30. Having issued a notice under section 17(3) of the FOIA, a public authority is allowed to provide its public interest determination in a separate notice *"within such time as is reasonable in the circumstances"*.
31. The Commissioner has issued guidance on this point which includes the following:

"...our view is that an authority should take no more than an additional 20 working days to consider the public interest, meaning that the total time spent dealing with the request should not exceed 40 working days."

32. In this case the Commissioner notes that the Constabulary provided its refusal notice on 24 May 2016, which falls within the recommended time limit. She therefore finds no breach.

Other matters

Internal review

33. The complainant has raised complaints in respect of the following areas of the internal review process which are considered below.

Whether or not an internal review is a legal requirement

34. In her grounds of complaint the complainant cited from the Commissioner's website regarding the complaints process:

"You should first complain to the authority and ask it to conduct an internal review. For freedom of information complaints we

recommend that you do this as soon as possible and within two months of receiving the authority's final response".

35. Before accepting complaints, the Commissioner usually requires public authorities to be allowed the opportunity to respond to any complaints the requester may have about the way in which their request was dealt with. It may occasionally be the case that the public authority concerned does not offer a review process, for example in a very small authority, in which case one will not be required. Or it may be that there has been an undue delay and the Commissioner uses her discretion in order to forego a review. However, in the vast majority of cases the Commissioner requires an internal review to be conducted prior to commencing an investigation. This ensures that a public authority revisits a request and reconsiders whether it has been dealt with appropriately.
36. This is in line with part VI of the section 45 Code of Practice² which states that it is desirable practice that a public authority should have a procedure in place for dealing with complaints about its handling of requests for information, ie an internal review process, and that the procedure should encourage a prompt determination of the complaint.

Whether or not the internal review was done by an appropriate person

37. The complainant expressed dissatisfaction that the internal review was not conducted by the person she was expecting. This is because when the Constabulary advised her that it would undertake its review it said this would be done by its Senior Information Compliance Manager whereas it was signed off by a Decision Maker who happened to be the same person who had sent out the refusal notice. The complainant therefore did not believe that a proper review was undertaken.
38. The Commissioner asked the Constabulary about this and was advised by the Decision Maker that she had discussed the response with her line manager and it was agreed that she could re-do the response. She added that her line manager was happy for her to respond "informally" as the position had changed and the information was now being disclosed.
39. The Commissioner accepts that it is best practice for an internal review to be undertaken by a party who is "fresh" to the case wherever

²https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/235286/0033.pdf

possible. However, there has been consultation between parties and the request here has clearly been fully reconsidered as the outcome has changed and disclosure was made. She therefore finds it was appropriate for the same person to have written to the complainant on this occasion as independent consultation has taken place.

The length of time taken

40. The Commissioner considers that internal reviews should be completed as promptly as possible. While no explicit timescale is laid down by the FOIA, the Commissioner considers that a reasonable time for completing an internal review is 20 working days from the date of the request for review. In exceptional circumstances it may take longer but in no case should the time taken exceed 40 working days; it is expected that this will only be required in complex and voluminous cases.
41. The review was requested on 25 May 2016 and provided on 29 June 2016. The Commissioner does not consider this case to be 'exceptional', so is concerned that it took over 20 working days for an internal review to be completed.
42. The Commissioner would like to remind the Constabulary that she routinely monitors the performance of public authorities and that this delay will be logged.

Information held by the Constabulary

43. The Constabulary has advised the Commissioner that, were the complainant to submit a suitably worded request, it would provide her with the very limited information that it holds. The complainant may find it useful to liaise with the Constabulary to agree a suitable form of wording.

Right of appeal

44. 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

45. 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.
46. 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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