

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 26 September 2016

Public Authority: The Chief Constable of Sussex Police

Address: Church Lane
Lewes
East Sussex
BN7 2DZ

Decision (including any steps ordered)

1. Following a decision in an earlier matter by the First-Tier Tribunal (Information Rights) the complainant requested from Sussex Police information about calls made to a named mobile telephone in connection with an inquest into the death of a person whose body was found at Beachy Head. The Commissioner found that Sussex Police had held the information requested but, by the time of the information request, had passed their file to the Coroner. The Commissioner decided that the information requested was not held by Sussex Police at the date of the request and was not being held by the Coroner on their behalf.
2. The Commissioner does not require Sussex Police to take any steps to ensure compliance with the legislation.

Request and response

3. On 23 April 2014 the then Information Commissioner issued a Decision Notice reference FS50518328 (the Decision Notice), deciding that Sussex Police (the police) had been entitled to reject four requests for information on the grounds that they had been vexatious under section 14(1) FOIA. All of the requests had arisen out of the complainant's dissatisfaction with the outcome of enquiries made by the police and subsequently HM Coroner for East Sussex (the Coroner) which had led to the Coroner concluding that the death of the complainant's son, H, at Beachy Head had been due to suicide. The complainant had been concerned about the decisions by both the

Commissioner and the Coroner and appealed the Commissioner's decision to the First-Tier Tribunal (Information Rights) (the Tribunal). The Tribunal substituted the then Commissioner's Decision Notice with the following:

The Public Authority should, within 35 days of the date of this substituted Decision Notice, either disclose to the Complainant the information requested in Request Three and Request Four (both as defined in Reasons for Decision below) or provide the Complainant with a detailed statement of any exemption on which it intends to rely in order to refuse disclosure.

4. The relevant requests had been made on 15 July 2013 and were:

Request three. Full details of the calls made from H's telephone [mobile telephone number and date redacted]. Where was the call made from and where was it received by [name redacted]"

Request four. Full details of the ANPR [Automatic Number Plate Recognition] Serial [details redacted] at 10.08pm noted by Sussex Police at 10:12 pm as quoted in the Sussex Police Investigation Report into the death of H page 7 of 11, headed vi."

Scope of the case

5. The complainant contacted the Commissioner on 3 March 2016 to complain about the way his request for information had been handled. He said that in his view the police had not complied with the Tribunal's 23 August 2014 decision.
6. The Commissioner considered the application by the police of the section 30 FOIA exemption (investigations and proceedings conducted by public authorities). During the course of her investigation, the Commissioner considered the police application of section 1 FOIA. She has also considered the status of information passed by the police to the Coroner before the request was made.

Reasons for decision

Section 1 – general right of access

7. Section 1 of the FOIA states that anyone making a request for information to a public authority is entitled to be informed whether the

public authority holds the information, and if so, to have that information communicated to them.

8. The Commissioner is mindful that when she receives a complaint alleging that a public authority has stated that it does not hold requested information, it is seldom possible to prove with absolute certainty whether or not the requested information is held. In such cases, the Commissioner will apply the normal civil standard of proof in determining the case and will decide on the 'balance of probabilities' whether information is held.
9. Therefore, the Commissioner has sought to determine whether, on the balance of probabilities, the police held any recorded information within the scope of the request which had been made on 15 July 2013.
10. Section 3(2) FOIA states that for the purposes of the Act, information is held by a public authority if it is held by the authority, otherwise that on behalf of another person or it is held by another person on behalf of the authority.

Request three

11. Following the Tribunal's decision of 27 August 2014, the police issued a refusal notice on 14 October 2014 withholding the information specified in request three, relying on the section 30(1) FOIA exemption. On 1 December 2014 the complainant asked the police to review their refusal but, due to a communications failure, the police did not action this request at that time. At internal review, the police confirmed their reliance on the section 30(1) FOIA exemption.
12. On 2 December 2015, the police told the complainant that their relevant investigation had now been concluded. On 8 January 2016, in the light of this new situation, the complainant asked the police to consider his information requests three and four again.
13. On 3 March 2016 the police responded and said that their investigation had been conducted on behalf of the Coroner. The police said that the Coroner held the relevant documentation relating to request three.
14. On 3 March 2016 the complainant appealed to the Commissioner who investigated. On 26 July 2016 the police told the Commissioner that the relevant information had been passed to the Coroner in June 2012 for the purpose of his inquest into the death of H. The police said that at the time of the request in July 2013, they did not hold the information as it had already left their organisation and was held by the Coroner.

15. The police said that in an effort to resolve the matter fresh representations had been made to the Coroner on 27 June 2016 but he had declined to provide the relevant documentation. The police said that the telephone records that were asked for in request three had consisted of a hard copy record which had originally been provided to the police by the telecommunications service provider. This document had not been digitally copied and the original had been passed to the Coroner with their investigative file. The police said that the Coroner was not holding the information on their behalf; they had passed the information on and had relinquished responsibility for ownership of it. The police confirmed to the Commissioner that they do not hold this information now and had not held it in 2013. The police said that, with the benefit of hindsight, they should have decided that the information was 'not held'. The police also confirmed to the Commissioner that they no longer relied on the section 30 FOIA exemption.
16. On 1 August 2016 the police told the Commissioner that they had revisited the matter with all of their interested police units including the Senior Investigating Officer, the Crime Management Unit and the Professional Standards Department.
17. On 2 August 2016 the complainant told the Commissioner that a police report dated 6 January 2012 had said:

'Telecommunications data (in and out calls and cell site locations) has been obtained evidentially in respect of [names redacted] mobile telephones (6) for the period 27th-29th August 2011 ...

*(6) Evidential Statement provided by Communications Service provider and held by Sussex Police, **copy** to be submitted to Coroner' [ICO emphasis]*
18. In the light of this reference to a 'copy' of the telephone information, the Commissioner asked the police to make further enquiries. The police confirmed that they did not possess the telephone records and had not done so at 15 July 2013, as the case file had been passed to HM Coroner for the inquest in June 2012. The police confirmed to the Commissioner that the telephone records had been received from the telecommunications service provider by post in hard copy form; those records had not been received or retained by them in any other format, physical or electronic.
19. The police said that further physical searches have been carried out within the relevant departments, during the Commissioner's investigation, along with searches of the relevant police recording systems. They had located a total of 32 records of relevant entries covering the period 30 May 2011 to 26 May 2014 and, having examined

all 32, had found no reference to, or details or copies of, the relevant telephone calls. A further file, which concerned a related matter, had also been identified. This contained a copy of a summary of the investigation into the death of H prepared for the Coroner by the Senior Investigation Officer but that file too did not contain the requested information.

20. Having considered the further evidence she has received from the complainant and the police, the Commissioner decided, on a balance of probabilities that, on 15 July 2013 the date of the request, the police no longer held the information specified in request three.

Information held by the Coroner

21. Coroners are not designated as public authorities under FOIA. Therefore their records are not subject to the FOIA information access regime. There is a separate information access regime for such records over which the Information Commissioner has no jurisdiction.
22. The Commissioner has had regard for the Tribunal decision in the Digby-Cameron case (*Digby-Cameron v Information Commissioner (EA/2008/0010, 16 October 2008)*) in which the Coroner had sole control of the information, having statutory authority (via the Coroner's Rules 1984) to determine who had access to it. In that case, the Tribunal concluded that "the decision whether or not to disclose information was for the Coroner", and that "'ownership' of and control over this information lay both in fact and law with the Coroner." In that particular case it was the sole control of the Coroner over the information which, having a statutory basis, was the only factor that needed to be considered.
23. In this matter the police told the Commissioner that their investigation file, including the information from the telecommunication service provider, had been passed to the Coroner in June 2012. The matter had not been "crimed", ie treated as a criminal matter, by the police. A crime number had not been applied to it and the file had not been retained by the police as they had no further need of it. Once passed to the Coroner, the file came within the Coroner's sole remit and was not held by him on behalf of the police
24. The Commissioner is satisfied that, when the police passed the information to the Coroner in June 2012, they did not retain a copy of it for their own purposes and, once it had been passed over, that the Coroner was not holding it on their behalf. The police did not retain any right of access or control over the information and had no business need to access it.

25. The Commissioner therefore decided that the information requested in request three was not held by the police at the date of the request and was not held by the Coroner on their behalf.

Request four

26. On 16 October 2014 the police told the Commissioner that on 15 October 2014 they had disclosed to the complainant further information in response to request four albeit with redactions relying on the exemption at section 40(2) FOIA (personal information). On 8 March 2015 the complainant told the Commissioner that he had not received the request four information. The police resent this information to the complainant on 10 March 2016; he has not asked for any further action to be taken by the police or the Commissioner regarding request four.

Other matters

27. The Commissioner noted with concern the communications difficulties that arose in this matter, and have led to considerable delay, due to the difficulty experienced by the complainant in communicating with the police and they with him. The police blocked incoming emails from the complainant with effect from 16 October 2014; they also blocked outgoing emails to him yet continued to attempt to communicate with him by email. This resulted in emails failing to reach the complainant – a situation that led to much unnecessary delay in communication until the police eventually resolved the issue during the Commissioner's investigation in June 2016.

Right of appeal

28. 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

29. 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.
30. 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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