

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 18 July 2017

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

Address: Kent Police HQ
Sutton Road
Maidstone
ME15 9BZ

Decision (including any steps ordered)

1. The complainant has requested information about any meetings between the Police and Crime Commissioner for Kent and local councillors during a specified period. The Office of the Police and Crime Commissioner for Kent ("the OPCC") disclosed details of a meeting that the Police and Crime Commissioner had attended in his official capacity. It also said that he had attended three meetings on 22 December 2016 in a personal, party political capacity and that information about them did not fall within the scope the FOIA. Nevertheless, it disclosed such information as it held about those meetings to the complainant, outside of the FOIA. However, the complainant argued that the Police and Crime Commissioner was acting in an official capacity at the meetings of 22 December 2016 and therefore that any information the OPCC held about them was covered by the FOIA.
2. The Commissioner has found that any information about the meetings on 22 December 2016 was not "held" by the OPCC within the meaning of section 3(2)(a) of the FOIA, and therefore that the complainant had no formal right of access to it under the FOIA.
3. The Commissioner requires no steps to be taken.

Request and response

4. On 23 December 2016, the complainant wrote to the OPCC and requested information in the following terms:

"Can you please provide the following information about contact you have made as Kent's Police & Crime Commissioner [sic] with elected councillors in the Swale Borough Council area between your election in May and the 23 December 2016?"

- Any meetings with elected councillors within the Swale Borough Council (SBC) area including KCC councillors whose wards are within SBC area but excluding Parish Councillors within SBC area?*
- Please state if these meetings were held in an office/room based environment or in the community?*
- For office/room based meetings the location, dates, the names of all councillors invited and the names of all councillors who attend these meetings. Please also provide the reason for each visit/meeting.*
- For public/community based meetings the location/s, dates, the names of all councillors invited and the names of all councillors who attend these meetings. Please also provide the reason for each visit/meeting.*
- Copies of all correspondence sent to councillors about these meetings with the P&CC. To reduce the workload, only provide copies of correspondence for any meetings held between 1 December and 23 December.*
- I would also like any copies of post meeting correspondence with the councillors who attended these meetings.*

For the avoidance of doubt Councillor/s relate only to SBC & KCC councillors within the SBC area and correspondence relates to letters, Fax, texts, handwritten notes, memos in fact in any recordable medium e.g. social media within the SBC area and correspondence relates to letters, Fax, texts, handwritten notes, memos in fact in any recordable medium e.g. social media, tape recording, etc. The meaning of correspondence should be given a wide interpretation."

5. The OPCC responded on 25 January 2017. It provided information in response to each of the bullet points about an official meeting the Police and Crime Commissioner had attended in August 2016.
6. It also stated that the Police and Crime Commissioner had attended three meetings with local councillors on 22 December 2016, but said that he had attended them in a personal, party political capacity and not

on behalf of the OPCC. Thus, it said the complainant had no formal right of access to information about them under the FOIA.

7. Nevertheless, in the interests of transparency, it provided information outside of the FOIA to the complainant about the three meetings, including the attendees, the locations, and details of the matters discussed. It also disclosed a copy of an email sent by the Police and Crime Commissioner to the chair of the Parish Council.
8. The OPCC said that it was in possession of several emails which related to the meetings on 22 December 2016. It considered it inappropriate that the emails had been sent to the Police and Crime Commissioner's OPCC email account, because the meetings were attended by the Police and Crime Commissioner in a personal, party political capacity, and were not about OPCC business. However, in the interests of transparency, it provided copies of the emails to the complainant outside of the FOIA (with some names and personal email addresses redacted). It said it did not hold any other information about the meetings because they were neither organised by, nor attended on behalf of, the OPCC. It referred the complainant to the personal social media accounts of the various attendees, and provided him with print outs of some of their posts about the meetings.
9. The complainant requested an internal review, questioning the OPCC's determination that the meetings of 22 December 2016 fell outside of the scope of the FOIA:

"I do not feel all the information requested has been made available. I do not accept that this was a private meeting but was in fact a meeting between Matthew Scott in his capacity as PCC and elected Councillors, who discussed concerns about policing matters. Even if this meeting was arranged with elected officials via a private email account, this fact does not remove your responsibility under FoI to provide such information, even if this information is held on private email or in another format etc."

10. The OPCC upheld its response, detailing the extensive searches it had conducted to identify relevant information which did fall within the scope of the FOIA, and confirming its view that any information it held about the meetings of 22 December 2016 were not "held" by it for the purposes of the FOIA, because the meetings were privately attended by the Police and Crime Commissioner and were not official OPCC business. It confirmed that it was not in possession of any information about how or why the meetings were arranged or any meeting notes in respect of them. It concluded:

"Mr Scott is entitled to meet other elected officials to discuss any matters of his choosing. It does not follow that in doing so he is acting in his capacity as PCC, and on this occasion he was not."

Scope of the case

11. The complainant contacted the Commissioner on 20 February 2017 to complain about the way his request for information had been handled. He expressed the view that the Police and Crime Commissioner attended the meetings of 22 December 2016 in an official capacity and that any information that the OPCC held about them was therefore potentially accessible under the FOIA.
12. The analysis below considers whether the OPCC held information – namely information about the meetings of 22 December 2016 - for the purposes of the FOIA, and therefore whether it complied with its duty under section 1 of the FOIA.

Reasons for decision

Section 1 general right of access

Section 3(2) – information held by a public authority

13. Section 1 of the FOIA states that any person making a request for information is entitled to be told whether the public authority holds the information requested and, if held, to be provided with it.
14. Section 3(2) sets out the two legal principles that establish whether information is held for the purposes of the FOIA:

"For the purposes of this Act, information is held by a public authority if—

(a) it is held by the authority, otherwise than on behalf of another person, or

(b) it is held by another person on behalf of the authority."

15. In this case, there is clearly some dispute between the OPCC and the complainant about whether the information it has already disclosed to him was "held" for the purposes of FOIA, and whether any other information about the meetings of 22 December 2016 is held, including in personal email accounts.

Is the information held by the OPCC for the purposes of the FOIA?

16. The Commissioner's guidance "*Information held by a public authority for the purposes of the FOIA*"¹ explains the circumstances in which information is considered to be held by a public authority for the purposes of the FOIA.

The complainant's view

17. The complainant considered that the Police and Crime Commissioner attended the meetings on 22 December 2016 in an official capacity. He said that the meetings took place with elected councillors and discussed issues raised by the constituents of those councillors, including policing matters. It was, therefore, his belief that any information held about the meetings was "held" by the OPCC for the purposes of the FOIA, including any information which might have been sent to and from the Police and Crime Commissioner's personal email accounts.

The OPCC's view

18. The OPCC explained to the complainant that the meetings were organised by the Police and Crime Commissioner himself. No member of OPCC staff assisted with the setting up of the meetings or attended them. When publicising the meetings on social media, the Police and Crime Commissioner did so using his personal Twitter account, and not the official OPCC account.
19. The OPCC told the complainant that it fully understood that information held in personal email accounts which related to the OPCC's official business was potentially accessible under the FOIA. Had the Police and Crime Commissioner used his personal email account for official business, it agreed that any such information held in his personal email account would be subject to scrutiny under the FOIA regime. However, where he used his personal email account to set up meetings where he was acting as a Conservative politician (as was the case here), meeting with other local Conservative politicians, this information fell outside the scope of the FOIA, as such actions were nothing to do with the OPCC. With regard to emails about non-OPCC matters sent to the Police and Crime Commissioner via his official OPCC email address, it said it could not control what email accounts external individuals used to contact

¹ https://ico.org.uk/media/for-organisations/documents/1148/information_held_by_a_public_authority_for_purposes_of_foia.pdf

him, and that it should not be assumed that every email received at his official email address constituted official OPCC business.

20. In light of the complainant's concerns, during the Commissioner's investigation she asked the OPCC a number of questions aimed at identifying whether it "held" the disputed information for the purposes of the FOIA and whether it was in possession of other recorded information about the meetings of 22 December 2016.
21. In response, the OPCC described the way in which the Police and Crime Commissioner's meetings were administered. Firstly, it said that there was no statutory requirement for the OPCC to retain information about all meetings attended by the Police and Crime Commissioner or for him to notify it of every meeting he attends.
22. The only reason the OPCC holds any information about the Police and Crime Commissioner's non-OPCC appointments is for diary management purposes. It explained that both the Police and Crime Commissioner and his PA will log non-OPCC appointments in his electronic calendar, to avoid scheduling conflicts. If the PA has logged a non-official appointment, it will normally be recorded on the calendar as "Private" or "Out of office". If the Police and Crime Commissioner logs it himself, he sometimes adds brief details of the appointment as an *aide memoire*. In addition, the appointment will be shaded in grey on the calendar, which anyone viewing it will recognise as indicating a non-OPCC appointment. The OPCC provided the Commissioner with a screenshot of the Police and Crime Commissioner's diary for the day of the meetings and the Commissioner can confirm that it matches this description of its process.
23. The OPCC reiterated to the Commissioner that the Police and Crime Commissioner attended the meetings of the 22 December 2016 alone and that he received no administrative support from the OPCC or its staff. It said that the councillors he met with were similarly acting in their personal, political capacity, and not as representatives of the council. It said that these were clearly party political meetings, and nothing to do with the OPCC.
24. The Police and Crime Commissioner subsequently publicised the meetings on his own personal social media accounts. The OPCC also maintains social media accounts, which publicise the work of the Police and Crime Commissioner and his staff. These accounts are updated by OPCC staff, and the Police and Crime Commissioner has no access to them. The OPCC-run social media accounts did not share information about the meetings, further indicating that they were nothing to do with the OPCC.
25. The OPCC said that it would not hold paperwork or travel/accommodation information in respect of non-OPCC meetings as

it would have no business need for this information. It would not wish to receive reports of meetings attended in a private, party political capacity, as these would contravene its procedures. It noted that under the Local Government and Housing Act 1989 (as amended by the Police Reform and Social Responsibility Act 2011) OPCC staff are politically restricted, and that this forms part of their terms and conditions.

26. The OPCC confirmed that it had in any case disclosed all the information that it held about the meetings to the complainant (with minor redactions for personal data), outside of the FOIA. It held no other information about the meetings. It said that it was possible that the Police and Crime Commissioner might hold information about them in his personal email account, but it had not asked him to search there, as, for the reasons set out above, it considered it was not obliged by the FOIA to do so.

The Commissioner's view

27. The Commissioner's job in this case is to establish whether the requested information (information about the meetings of 22 December 2016) was held by the OPCC for the purposes of the FOIA. If she concludes that it was held for the purposes of the FOIA, she will go on to consider whether the OPCC holds other information about the meetings (including any information held in personal email accounts) which has not already been disclosed to the complainant.
28. Her guidance explains that there are various factors that will assist in determining whether a public authority holds information for the purposes of the FOIA. Crucially, it will be necessary to determine the purpose for which any disputed information is held.
29. The guidance referred to in paragraph 16 examines the position of local councillors: specifically, the various capacities in which they hold information and when that information is and isn't "held" for the purposes of the FOIA. She considers the position of Police and Crime Commissioners (who are elected officials, often affiliated to a political party and who will sometimes be acting in their official capacity, and sometimes in a personal, party political capacity) to be analogous to that of local councillors.
30. The guidance states that information created or received by a councillor and held on a local authority's premises or computer system will be covered by the FOIA if it is held by the authority to any extent for its own purposes. It will not be covered by the FOIA if it was produced by the councillor for private or party political purposes and the authority is just providing storage, office space or computing facilities (ie the authority is not holding the information to any extent for its own purposes). Similar provisions apply in respect of information held in

personal email accounts (ie where the information held in a councillor's private email account is held in connection with the functions of the local authority, it will fall within scope of the FOIA. Information that does not relate to the functions of the local authority, such as party political work, will not be covered by the FOIA).

31. With that in mind, the Commissioner notes that the OPCC says the Police and Crime Commissioner attended the meetings in question in his own time, and not as an official representative of the OPCC. He met with councillors who were similarly acting in a private, party political capacity at the time and were not meeting him on behalf of the local council. The OPCC's claim in this regard is made credible by the evidence it has supplied, including the Police and Crime Commissioner's calendar for the day, and the fact that no OPCC staff were involved in setting up or assisting the Police and Crime Commissioner with the meetings, something which may be expected if the meetings were regarded as official OPCC business. Finally, she notes that the provisions of the Local Government and Housing Act 1989 (as amended by the Police Reform and Social Responsibility Act 2011) restrict the OPCC from engaging in partisan political activities, which would prohibit its involvement in such meetings.
32. The Commissioner's position is that unless the meetings related to the official functions of the OPCC, and the information was held by it for its own purposes, it was not "held" by OPCC within the meaning of section 3(2)(a) of the FOIA, and therefore that there is no right of access to it under that legislation. Taking all the above into account, the Commissioner is satisfied that the OPCC has demonstrated that in this case the Police and Crime Commissioner was acting in a personal, party political capacity when he attended the meetings and that he did not attend them on behalf of the OPCC. She is therefore satisfied that such information as it held about the meetings of 22 December 2016 was not held by the OPCC for the purposes of the FOIA and that the OPCC discharged its obligations under section 1 of the FOIA correctly.
33. Because she is satisfied in this case that such information falls outside of the scope of the FOIA, it has not been necessary for the Commissioner to consider whether other information exists about the meetings which has not already been disclosed to the complainant.

Right of Appeal

34. 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

35. 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.
36. 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

Samantha Bracegirdle
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