

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 8 May 2018

Public Authority: Chief Constable of Norfolk Constabulary
Address: Jubilee House
Falconers Chase
Wymondham
NR18 0WW

Decision (including any steps ordered)

1. The complainant requested information relating to the delegation of appropriate authority powers under the Police Reform Act 2002. Norfolk Constabulary provided some relevant information but denied holding a specific 'Deed of Delegation' document.
2. The Commissioner's decision is that, on the balance of probabilities, Norfolk Constabulary did not hold the requested information and it had therefore complied with the duty set out at section 1(1) (general right of access) of the FOIA.
3. The Commissioner requires no steps to be taken as a result of this decision.

Request and response

4. On 19 September 2017, the complainant wrote to Norfolk Constabulary and requested information in the following terms:

"Please provide me with copies of all Deeds of Delegation powers concerning the transfer of Appropriate Authority responsibilities of the Chief Constable to any other member of his police force in respect of recording, investigating and deciding appeals and complaints against police officers for the last 3 years".

5. The request was made via 'whatdotheyknow'.

6. Norfolk Constabulary responded on 11 October 2017. While it confirmed that responsibilities for complaint handling and determining appeals are delegated, it denied holding a 'Deed of Delegation' document.
7. Following an internal review Norfolk Constabulary wrote to the complainant on 14 November 2017, upholding its original position that there is no 'Deed of Delegation' document.

Scope of the case

8. The complainant provided the Commissioner with the relevant documentation on 17 January 2018 to complain about the way his request for information had been handled.
9. During the course of her investigation the complainant told the Commissioner:

"Norfolk are obliged to have the deeds of delegation which is a formal document called the Scheme of Delegation".
10. In support of his complaint, he provided the Commissioner with examples of the document from other constabularies.
11. The Commissioner is aware that, prior to her involvement, Norfolk Constabulary told the complainant:

"There is no 'Deed of Delegation' document, however, the delegation of Appropriate Authority powers has been agreed with Chief Officers and the IPCC".
12. It also provided him with the identified roles (ranks/positions) which have the relevant delegated authority.
13. Following the Commissioner's intervention, both parties agreed that they were willing to resolve this matter informally if possible.
14. Accordingly, Norfolk Constabulary wrote to the complainant providing further relevant information. However, it also confirmed that no Deed of Delegation document is held.
15. The complainant, while acknowledging that Norfolk Constabulary had taken steps to provide him with relevant information, remained dissatisfied.
16. He referred the Commissioner to statutory guidance '*issued pursuant to the Police Reform Act 2002*' as evidence in support of his view that the requested information must be held.

17. 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 I of the FOIA. It is not within her remit to consider, or comment on, a public authority's compliance with legislation she does not regulate.
18. The analysis below considers whether Norfolk Constabulary dealt with the request for information in accordance with the requirements of Part I of the FOIA. Specifically, the Commissioner has considered Norfolk Constabulary's assertion that the requested information was not held.

Reasons for decision

Section 1 general right of access

19. Section 1 of the 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."

20. 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.
21. In this case, the Commissioner has sought to determine whether, on the balance of probabilities, Norfolk Constabulary held the requested information at the time of the request.
22. 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.
23. In correspondence with the complainant, Norfolk Constabulary acknowledged that, from the wording of the request:

"... one would expect the information to be held in a document".

24. In progressing her investigation, the Commissioner asked Norfolk Constabulary to describe the searches it carried out for information falling within the scope of the request and the search terms used. She also asked other questions, as is her usual practice, relating to how Norfolk Constabulary established whether it not it held the requested information.
25. In its substantive response to the Commissioner, Norfolk Constabulary confirmed that the requested information, if held, would be held in its electronic folders as a policy document.
26. With regard to the nature of the searches it had conducted, Norfolk Constabulary described the searches it carried out for information falling within the scope of the request and the search terms used.
27. Norfolk Constabulary told the Commissioner that a search of the relevant folders, using the search terms 'scheme' and 'delegation', was negative. Norfolk Constabulary also confirmed that it had not held any information falling within the scope of the request which had been destroyed.
28. While appreciating the complainant's frustration that, at the time of the request, Norfolk Constabulary did not hold the requested information, the Commissioner is mindful of the comments made by the Information Tribunal in the case of *Johnson / MoJ* (EA2006/0085)¹ that the FOIA:

"... does not extend to what information the public authority should be collecting nor how they should be using the technical tools at their disposal, but rather it is concerned with the disclosure of the information they do hold".
29. Having considered Norfolk Constabulary's response, and on the basis of the evidence provided to her, the Commissioner is satisfied that, on the balance of probabilities, Norfolk Constabulary did not hold the requested information at the time of the request.
30. The Commissioner therefore considers that Norfolk Constabulary complied with its obligations under section 1(1) of the FOIA.

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<http://informationrights.decisions.tribunals.gov.uk//DBFiles/Decision/i90/Johnson.pdf>

Right of appeal

31. 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

32. 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.

33. 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

**Deborah Clark
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Wycliffe House
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Wilmslow
Cheshire
SK9 5AF**