

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 1 September 2023

Public Authority: Chief Constable of Humberside Police
Address: Police Headquarters
Priory Road
Hull
HU5 5SF

Decision

1. The complainant has requested information relating to the transfer of appropriate authority responsibilities of the Chief Constable.
2. The Commissioner's decision is that on the balance of probabilities, Humberside Police does not hold the information requested and has complied with its obligations under section 1(1) of the FOIA.
3. However, the Commissioner finds that Humberside Police breached section 10 (time for compliance) of FOIA in its handling of the request.
4. The Commissioner does not require any steps to be taken as a result of this decision.

Request and response

5. On 1 March 2023 the complainant requested information of the following description:
"1. Copies of all Deeds and/or all written agreements of Delegation concerning the transfer of Appropriate Authority responsibilities of the Chief Constable to any other member of his police force in respect of

recording and investigating complaints against police officers from 01/01/2000 up until the current date.”

6. Humberside Police responded to the request on 25 April 2023 stating that the information requested was not held.
7. On 30 May 2023 Humberside Police provided an internal review maintaining its position.

Reasons for decision

8. Section 1(1) of FOIA provides 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.”

9. In cases such as this the Commissioner follows the lead of a number of First-tier Tribunal (Information Rights) decisions in applying the civil standard of the balance of probabilities.
10. In cases where a dispute arises over the extent of the recorded information that was held by a public authority at the time of a request, the Commissioner considers any evidence and arguments provided by the complainant. He will also consider the actions taken by the authority to check that the information is not held and any other reasons offered by the public authority to explain why the information is not held. Finally, he will consider any reason why it is inherently likely or unlikely that information is not held.
11. In its submission to the Commissioner, Humberside Police explained that it consulted with its Legal Services Unit and Professional Standards Department who conducted electronic and manual searches as it deemed these were the two areas who were likely to hold the information. It stated that consultations were also made with staff within the Information Governance Unit, Legal Services Unit, Professional Standards Department and its Chief Officer. It stated that the keyword searches it carried out included:

- "deeds of Delegation concerning the transfer of Appropriate Authority responsibilities of the Chief Constable"
 - "written agreements concerning the transfer of Appropriate Authority responsibilities of the Chief Constable"
 - "Transfer of appropriate authority"
 - "Transfer of appropriate authority deeds"
 - "Transfer of appropriate authority written agreements"
12. Humberside Police confirmed that the searches by the relevant departments were on personal computer and connected to the Humberside Police network which would allow access to network resources and emails.
13. Humberside Police stated that following consultation with its Legal and Professional Standards Department it had been advised that there is no business purpose for which the requested information should be held nor statutory requirements upon Humberside Police to retain the requested information. Humberside Police also confirmed that no deletion or destruction has occurred as no recorded information was ever held relevant to the scope of the request.
14. In his complaint to the Commissioner, the complainant explained that he found it 'undeliverable' that a Chief Constable can designate his power to other personnel without any information been generated or legal agreements been in place. He referred the Commissioner to the Police Reform Act 2002 and College of Policing as evidence in support of his view that the requested information must be held.
15. Whilst the Commissioner understands the complainant's frustration that documentation should be held by Humberside Police in relation to the delegation of Chief Constable powers, it is not within the Commissioner's remit to consider, or comment on, a public authority's compliance with legislation he does not regulate.
16. The Commissioner is therefore satisfied that, on the balance of probabilities, Humberside Police does not hold any recorded information in relation to this request. Accordingly, he does not consider that there is a breach of section 1 of the FOIA.

Section 10 time for compliance

17. Under section 1(1) of FOIA, anyone who requests information from a public authority is entitled under subsection (a) to be told if the authority holds the information and, under subsection (b), to have the information communicated to them if it is held and is not exempt information.
18. Section 10(1) of FOIA states that a public authority must respond to a request promptly and "not later than the twentieth working day following the date of receipt".
19. From the evidence provided to the Commissioner in this case, Humberside Police did not deal with the request for information in accordance with FOIA as it failed to provide a full response to the requestor within 20 working days. The Commissioner finds that Humberside Police breached section 10(1) by failing to respond to the request within 20 working days

Right of appeal

20. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

21. 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.
22. 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

Gerrard Tracey
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Wycliffe House
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Wilmslow
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SK9 5AF