

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 18 December 2023

Public Authority: Chief Constable of Humberside Police

Address: Police Headquarters
Priory Road
Hull
HU5 5SF

Decision (including any steps ordered)

1. The complainant has requested information about a FOIA disclosure log. Humberside Police (HP) confirmed that it does not hold information within the scope of the request.
2. The Commissioner's decision is that, on the balance of probabilities, HP is correct when it says that it does not hold any information within the description set out in the request. However, the Commissioner finds that HP breached section 10(1) of FOIA as it failed to provide its response to the request within the statutory 20 working days.
3. The Commissioner does not require HP to take any further steps.

Request and response

4. On 5 June 2023, the complainant wrote to HP and requested information in the following terms:

"1. Does Humberside Police publish a FOIA disclosure log, listing all previous FOIA requests and responses?"

2. If the answer is 'No', please disclose all email correspondence between the Information Commissioner's Office and Humberside Police, since 1st January 2009, where the term 'FOIA disclosure log' features in either the subject line or in the body text of the email."
5. HP responded on 6 July 2023. It stated that the information is not currently published on its website, and that it had recently moved to a Single Online Home platform and the website was still being reviewed and updated. It also stated that it aims to publish this information on its website in the future.
6. Following an internal review HP wrote to the complainant on 7 August 2023. It upheld its original response.

Reasons for decision

Section 1 – general right of access

7. Section 1(1) of FOIA provides that any person making a request for information to a public authority is entitled to be informed in writing by the public authority whether it holds information of the description specified in the request and, if that is the case, to have that information communicated to him.
8. FOIA provides a right of access to information which is held by a public authority in recorded form at the time when it receives the request. This does not extend to the right to ask questions, or to seek explanations or clarifications, unless those explanations or clarifications are already held by the public authority in recorded form.
9. In cases where a dispute arises over whether relevant recorded information is held by the public authority at the time of the request, the Commissioner – following the lead of a number of First-tier Tribunal decisions – applies the civil standard of the balance of probabilities. In essence, the Commissioner will determine whether it is more likely than not that the public authority holds information relevant to the complainant's request.
10. With regard to part 1 of the request, the Commissioner is satisfied that it was in fact asking a question rather than seeking recorded information held by HP. HP provided clarification regarding the current situation with its website and publication scheme, however HP was not obliged to provide this clarification under FOIA.
11. With regard to part 2 of the request, HP did not set out its position regarding any relevant information either during its initial response to

the request or in its internal review outcome. Therefore, as part of his investigation into the complaint about this matter, the Commissioner asked HP to set out its full and final position regarding any information which it may hold within the scope of part 2 of the request.

12. HP confirmed that it had conducted searches for information within the scope of part 2 which had returned no relevant information when it initially received the request. It is unclear why this position was never confirmed to the complainant in either of HP's responses.
13. However, despite being confident that it had already conducted adequate searches at the time of receiving the request, HP performed its searches again during the Commissioner's investigation. HP explained that its searches were conducted within the email systems for the Information Governance Unit, and that it was extremely unlikely that any relevant information would be held in any other locations as any correspondence between the ICO and HP is limited to the Information Governance Unit. Devices are all networked resources for every member of staff, and no personal devices are used. HP conducted its searches using the terms 'FOIA disclosure log', 'Information Commissioners Office' and 'ICO'. Again, these searches returned no results within the description set out at part 2 of the request.
14. The Commissioner is satisfied that HP conducted appropriate and proportionate searches, in terms of both the location and search terms employed. He therefore finds that, on the balance of probabilities, HP is correct when it says that it holds no information within the scope of part 2 of the request.

Procedural matters

15. Section 10(1) of FOIA provides that a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.
16. As HP failed to provide its response to the request within the statutory 20 working days, the Commissioner finds that it breached section 10(1) of FOIA.

Right of appeal

17. 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

18. 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.
19. 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

Michael Lea
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Wycliffe House
Water Lane
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Cheshire
SK9 5AF