

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: **11 January 2024**

Public Authority: **Chief Constable of Cleveland Constabulary**
Address: **St Mark's Hose**
St Mark's Court
Thornaby
Stockton on Tees
TS17 6QW

Decision (including any steps ordered)

1. The complainant made a five point request for information relating to Operation Magnolia and the investigation into the Kerklevington Detention Centre. Cleveland Police confirmed that it does not hold information within the scope of point five of the request.
2. The Commissioner's decision is that, on the balance of probabilities, Cleveland Police does not hold information within the scope of point five of the request and has therefore complied with section 1(1) of FOIA.
3. The Commissioner does not require Cleveland Police to take any further steps.

Request and response

4. On 2 July 2023, the complainant wrote to Cleveland Police and requested information in the following terms:

"With regard to the sexual, physical and mental abuse of child[ren] that were detailed at Kerklevington detention centre from the late 1960's sixties to the early 1980, under the freedom of information act could you please provide me with the following information.

1. Whether a Gold Commander or Gold Group was appointed to provide oversight of this investigation? If so, on what date and what was the rank of the Commander or senior officer leading the Group?
2. Whether a Senior Investigating Officer was appointed to lead this investigation? If so, on what date and what was the rank of the officer?
3. Was a policy log (sometimes called a policy book) opened for this investigation? If so, on what date was the first entry and on what date was the last entry?
4. Was a closing report produced for Operation Magnolia? If so, on what date and what was the rank of the officer signing it off?
5. How many officers were recorded as having logged time to this operation?"
5. Cleveland Police responded on 1 August 2023 providing information in relation points one to four and stating that no information was held in relation to point five of the request.
6. On 1 August 2023 the complainant wrote to Cleveland Police stating that he did not accept that no information is held in relation to point five of his request.
7. At internal review Cleveland Police upheld its original decision.

Scope of the case

8. The complainant contacted the Commissioner on 18 August 2023 stating that he was unhappy with Cleveland Police's response to point five of his request which stated that no information was held.
9. On 31 October 2023, during the Commissioner's investigation Cleveland Police wrote to the complainant stating the following:

"Having made further enquiries we could report on how many people are currently working on the Magnolia enquiry team, and dedicated roles"
10. On 9 January 2024 the complainant wrote to the Commissioner stating that he had received the information offered by Cleveland Police but remained dissatisfied with the response to point five of his request.
11. The Commissioner therefore considers that the scope of his investigation is to consider whether, on the balance of probabilities, Cleveland Police holds any information in relation to point five of the complainant's request.

Reasons for decision

Section 1 – information not held

12. Section 1 of the FOI 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.

The complainant's position

- 13. In his complaint to the Commissioner the complainant argued that he does not accept that Cleveland Police do not have to maintain auditable information in relation to man hours that have currently been spent on investigating Operation Magnolia.
- 14. The complainant argued that this specific operation has been ongoing for almost a decade and if Cleveland Police have no record of the hours put in by officers it would be impossible to figure out the overall cost of the operation.
- 15. The complainant also argued that if the requested information has not been recorded then other public authorities, such as the Home Office, would be unable to confirm or deny if the overall figure was accurate. He also proposed that Cleveland Police's own financial audit and financial budget could not be accurate if this type of information was not recorded.

Cleveland Police's position

16. In its internal review Cleveland Police stated the following:

"We are still unable to identify how many officers were recorded as having logged time to Operation Magnolia as this investigation began in 2014 and many will have worked as 'action crew' over the years. Also, some officers completed actions whilst assigned to other roles so it would be impossible to say how many and how much time was spent on Operation Magnolia. Some officers have worked on the investigation for years, and some might have worked on it for a couple of days, but we do not have a central register that records this..."

17. In its submission to the Commissioner Cleveland Police confirmed that it contacted its Head of Finance and Payroll Services to see if any further

information could be provided from a finance/payroll perspective and, as a result of this, confirmed that the type of information requested is not routinely recorded as there is no requirement to do so.

18. Cleveland Police also confirmed to the Commissioner that there is no statutory requirement to record officer hours against jobs/operations.
19. During the investigation the Commissioner asked Cleveland Police how the overall cost of the operation would be recorded if there is no recording of officer time on the operation.
20. Cleveland Police responded to the Commissioner stating that it has previously disclosed the overtime costs and other expenditure such as hire cars and not the overall cost of the operation and that it would be impossible to calculate the amount of time officers have spent on the operation with any accuracy and that this is mainly because officers were not always working exclusively on the operation.

The Commissioner's findings

21. The Commissioner has considered the complainant's concerns and understands why he would consider that Cleveland Police holds information in relation to point five of his request. However, FOIA only looks at information that is held by a public authority and there is no requirement for further information to be created to respond to a request for information. A public authority cannot provide information that it does not hold.
22. The Commissioner has also considered the explanations from Cleveland Police and sees no reason to doubt the explanations as to why it does not record the amount of officers logging time on Operation Magnolia and, other than state his view, the complainant has not provided any evidence to indicate that Cleveland Police holds such information.
23. Therefore the Commissioner accepts Cleveland Police's position that it does not hold recorded information in relation to point five of the complainant's request. As such, the Commissioner has decided that Cleveland Police has complied with section 1(1) of FOIA.

Right of appeal

24. 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

25. 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.
26. 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
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF