

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 27 August 2024

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 connected to its website from Humberside Police. Humberside Police provided some information and said that some was not held.
2. The Commissioner's decision is that, on the civil standard of the balance of probabilities, no further information is held. He does find a breach of section 10(1) (Time for compliance) of FOIA. No steps are required.

Request and response

3. On 18 December 2023, the complainant wrote to Humberside Police and requested the following information:

"Under FOIA please provide me with the first date that the Humberside police first published the following subject matters on their official Humberside Police website.

Please also provide me with the last date that the Humberside police published the following subject matters on the official Humberside Police website.

Please find attached all the subject matter that I refer to GUIDE TO PUBLISHED INFORMATION¹ (npcc.police.uk)

Furthermore could you please provide me with the names of the data systems along with how many times that the Humberside Police had changed to a different data system with regards to FOIA since 2000 up until the present date”.

4. On 23 February 2024, Humberside Police responded. It provided most of the requested information however, it advised the complainant that:

“Humberside Police have recently moved onto the Single Online Home platform and do not have access to our old website. Therefore, we are unable to provide a date that we first published the subject matters”.

5. The complainant requested an internal review on 26 February 2024, saying:

“ 1. Why does the Humberside Police continue to violate an Act of Parliament under section 10 of FOIA. I made this request in December last year and have only just received a response.

2. I requested that you provide me with the first date that the Humberside police first published the following subject matters on their official Humberside Police website.

Your response was Information not held. Humberside Police have recently moved onto the Single platform and do not have access to our old website. Therefore, we are unable to provide a date that we first published the subject matters. Please be aware that attempts have been made to gain access to the old website and we apologise for the delay that this has caused.

I do not accept that no information is held. One data set is easily transferable onto the new dataset. It is very hard to permanently delete a record. The Humberside Police would also have to keep a auditable record for the ICO and any other agencies.

¹<https://www.npcc.police.uk/SysSiteAssets/media/downloads/publications/di-sclosure-logs/digital-data-and-technology-coordination-committee/2023/050-2023-national-policing-minimum-requirements-v5.pdf>

3. The reason provided clearly indicates that your organisation has never been compatible with section 19 of FOIA.

I believe that the Humberside Police should now self refer itself to the ICO for continuous violation of section 10 and section 19.

Please do not try to sidestep these issues in your internal review response”.

6. Humberside Police provided an internal review on 21 March 2024 in which it maintained its position.

Scope of the case

7. The complainant contacted the Commissioner to complain about the way his request for information had been handled. He was dissatisfied with timeliness and also with Humberside Police advising that some of the information was not held.
8. The Commissioner will consider these matters below.
9. The complainant has also expressed dissatisfaction with Humberside Police’s publication scheme. The Commissioner has further commented on this in “Other matters” at the end of this notice.

Reasons for decision

Section 8 – Request for information

10. Although not raised as a matter by either Humberside Police or the complainant, based on the wording of the request for an internal review the Commissioner has used his discretion to make the following comments.
11. Section 8(1) of FOIA deals with the validity of requests for information and states:

“any reference to ‘a request for information’ is a reference to such a request which-

 - (a) is in writing,
 - (b) states the name of the applicant and an address for correspondence, and
 - (c) describes the information requested”.

12. If a request does not comply with all of the requirements of section 8(1)(a) - (c), then it is invalid. This means there is no obligation for a public authority to confirm or deny whether the information is held under section 1(1), or to issue a formal refusal notice under section 17.
13. In his request for an internal review, the complainant made additional comments which were supplementary to his original request. These were clearly made in writing and a name and address had already been given. Based on the wording of the commentary, the Commissioner is considering the extent of the information described, ie whether Humberside Police was obliged to respond to the commentary on the paragraphs numbered (1) and (3) of the request for an internal review (as cited in paragraph (5) above).
14. FOIA is concerned with transparency and gives an individual the right to access recorded information (other than their own personal data) held by public authorities. FOIA does not require public authorities to generate information or to answer questions, provide explanations or give opinions, unless this is recorded information that they already hold.
15. In the Commissioner's view, part (1) seeks an explanation and part (3) seeks an action. Neither describes any recorded information.
16. Based on the details above, the Commissioner does not consider that these comments are valid requests within the terms of section 8 and, if it has not already done so, Humberside Police is not required to respond to them under the terms of FOIA.

Section 1 – General right of access

17. Section 1 of FOIA states that any person making a request for information is entitled to be informed by the public authority whether it holds that information and, if so, to have that information communicated to them.
18. In this case, the complainant suspects that Humberside Police holds information from which it could answer part of the request, ie dates on which it first published information on various subject matters. Humberside Police's position is that it does not.
19. In cases where there is some dispute about the amount of information located by a public authority and the amount of information that a complainant believes might be held, 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 likely, or unlikely, that the public authority holds information relevant to the complainant's request.

20. The Commissioner will consider the complainant's evidence and arguments. He will also consider the actions taken by the public authority to check whether the information is held and any other reasons offered by the public authority to explain why the information is not held. He will also consider any reason why it is inherently likely or unlikely that information is not held. For clarity, the Commissioner is not expected to prove categorically whether the information is held, he is only required to make a judgement on whether the information is held on the civil standard of proof of the balance of probabilities.
21. Therefore, the Commissioner has sought to determine whether, on the balance of probabilities, Humberside Police holds any recorded information within this part of the request. Accordingly, he asked it to explain what enquiries it had made in order to reach the view that it did not hold the information.
22. Humberside Police advised that it had consulted with its Communications Department and showed the Commissioner related emails to evidence that this had been done.

The Commissioner's conclusion

23. When, as in this case, the Commissioner receives a complaint that a public authority has not disclosed some or all of the information that a complainant believes it holds, it is seldom possible to prove with absolute certainty that it holds no relevant information. However, as set out in the paragraphs, above, the Commissioner is required to make a finding on the balance of probabilities.
24. When dealing with a complaint to him under the FOIA, it is not the Commissioner's role to make a ruling on how a public authority deploys its resources, on how it chooses to hold its information, or the decisions it makes to hold some, but not other, information. Rather, in a case such as this, the Commissioner's role is simply to decide whether or not, on the balance of probabilities, the public authority holds the requested information.
25. While appreciating the complainant's frustration that Humberside Police does not hold information within the scope of his request, the Commissioner is mindful of the comments made by the Information

Tribunal in the case of Johnson / MoJ (EA2006/0085)² which explained that 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”.

26. The Commissioner considers that Humberside Police contacted an appropriate relevant party to consider whether or not any information was held in respect of this element of the request. Based on the evidence it provided to the Commissioner, he is satisfied that, on the balance of probabilities, no further recorded information within the scope of the request is held. He is therefore satisfied that Humberside Police has complied with the requirements of section 1 of FOIA in this case.

Procedural matters

Section 1 – general right of access

Section 10 - time for compliance

27. Section 1(1) of FOIA states that an individual who asks for information is entitled to be informed whether the information is held and, if the information is held, to have that information communicated to them.
28. Section 10(1) of FOIA provides that a public authority should comply with section 1(1) within 20 working days. Section 1(1)(a) initially requires a public authority in receipt of a request to confirm whether it holds the requested information.
29. The request was submitted on 18 December 2023 and the complainant did not receive a response, which confirmed that Humberside Police was / was not in possession of the relevant information, until 23 February 2024. The Commissioner therefore finds that Humberside Police has breached section 10(1) by failing to comply with section 1(1)(a) within the statutory time period.

²<http://informationrights.decisions.tribunals.gov.uk//DBFiles/Decision/i90/Johnson.pdf>

Other matters

30. Although they do not form part of this notice the Commissioner wishes to comment on the following matter which the complainant raised.

Publication schemes

31. The content of a publication scheme is not something which is considered by way of a decision notice so the Commissioner cannot make any findings in that regard.

32. However, it may interest the complainant to know that Humberside Police³ was one of nine police forces⁴ which was recently subject to an ICO "mini audit". One of the areas which was considered during the audit was publication schemes.

33. Humberside Police advised the Commissioner that, following the mini audit, it was working to ensure that its publication scheme was fully compliant. This is something which may be revisited by our audit team in the future.

³ <https://ico.org.uk/media/action-weve-taken/audits-and-advisory-visits/4029261/humberside-police-foi-audit-executive-summary.pdf>

⁴ <https://ico.org.uk/action-weve-taken/audits-and-overview-reports/police-forces-foi-outcomes/>

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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.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.

Carolyn Howes
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