

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 30 July 2024

Public Authority: The Police, Fire and Crime Commissioner for Staffordshire

Address: Ground Floor
Block 9
Weston Road
Stafford
ST18 0Y

Decision (including any steps ordered)

1. The complainant has requested information in connection to a non-FOIA complaint that he made to the Police, Fire and Crime Commissioner for Staffordshire (the "PFCC"). The PFCC advised that it did not hold costing information and provided an explanation regarding the remainder. The complainant subsequently referred only to one part of his request, namely that the PFCC did not hold costing information.
2. The Commissioner's decision is that, on the civil standard of the balance of probabilities, the costing information requested is not held. He does not require any steps.

Request and response

3. On 24 August 2023, the complainant wrote to the PFCC and requested the following information:

"It is a fact that in September 2019 a formal complaint was issued [by the complainant] about the former Chief Constable [name redacted] this matter being accepted and recorded by your predecessor under OPCC Ref No: [redacted]. Attempts were then made by the former PCC [Police & Crime Commissioner] [name

redacted] to have the complaints quashed. The reasoning provided was that the complaints were 'Vexatious' and 'Made without Foundation'

Subsequently an 'Appeal' was made to the IOPC [Independent Office for Police Conduct] about this bizarre decision because the complaints were made on the grounds of documented evidence generated by the Chief Constable [name redacted] and his Staff? The IOPC recorded this appeal under their reference number [redacted] and on the 14th of October 2020 'Directed' the PCC to conduct an 'Investigation'

Whilst under the spectre of 'Investigations' the former Chief Constable was permitted to retire and or resign from his post, and receive substantial financial benefit from the 'Public Purse' without any actual investigations taking place. The extent of the known actions by the former PCC [name redacted] in this matter was to 'Scope' the complaint information?

Under your tenure in the post of the PCC it appears the extent of your actions was to repeat the 'Scoping Exercise' without conducting any 'Investigation' or appointing any qualified investigating officer.

- 1] Considering the complaints directed for 'Investigation' by the IOPC are now some four years old without any apparent resolution; what has been the cost to the tax payer so far?
 - 2] What is the intent of the PCC [Police & Crime Commissioner] to resolve the matter? Appoint an independent and qualified person to investigate the issue or continue to 'Scope' the matter for an undetermined time?
 - 3] Given that the IOPC 'Directed' an investigation what reasons does the PCC provide for not complying with that direction and failing to comply with his statutory duty under the Police Reform Act to hold the former Chief Constable to account".
4. This request was submitted by post and the PFCC says that it did not receive it. The complainant contacted the Commissioner regarding an apparent non-response and the Commissioner contacted the PFCC. The PFCC subsequently responded to the request on 15 November 2023. It advised that complainant that part (1) of the request was not a valid information request and that no information was held. Regarding part (2), it advised that, given its complexity, the complaint was still ongoing. Regarding part (3) it advised: "[t]he direction is being

complied with and whilst the time taken is lengthy it is important to ensure that matters raised are addressed”.

5. On 22 November 2023, the complainant requested an informal review. He made various comments and also said:

“Please review your response to question [1] and provide the cost of ‘Scoping the Information’ without any formal investigations being conducted? I believe you must apply the ‘Public Interest Test’ in this matter”.

He did not directly refer to a review of any other part of the request.

6. On 6 December 2023, the complainant chased a response to his request for an internal review; he also made a further information request (which is being considered alongside this complaint under reference IC-286740-L3J7). When doing so, he added the following rationale:

“It has been stated; that ‘No information is held’ and that it is not a valid request under FOI legislation; however I consider the request to be entirely valid and justified because;

- The OPCC has embarked on a process which does not comply with the directions issued by the IOPC or the ‘Statutory Duty’ of the PCC to investigate complaints against a Chief Constable.
- Correspondence received from PCC [names redacted] have provided confirmation that Senior Staff have been engaged in the ‘Scoping’ process; a methodology the OPCC ‘Chose’ to employ, and which is apparently still incomplete? (Gross incompetence at best)
- ‘NO’ Independent Investigations have been conducted, and regardless of the ‘Scoping’ conclusions; if any ever emerge, will still [sic] have to be conducted as required by the Police Reform Act and the ‘Direction’ of the IOPC.
- The unauthorised ‘Scoping Process’ is a potential misuse of public funds.

I believe based on the known facts, that there has been ‘Gross Misconduct’ and a ‘Misuse of Public Funds’ in conducting a ‘Scoping’ process when directed by the IOPC to conduct an ‘Investigation’ The ‘No Information Held’ response appears to suggest that no records have been maintained surrounding the costs to the tax payer?

You have inadvertently disclosed not only an abuse of process, but potentially a financial irregularity involving false accounting? How

is it possible to 'Scope' a subject for over three years and not incur costs?".

7. The PFCC provided an internal review on 1 February 2024 in which it maintained its position.

Scope of the case

8. The complainant contacted the Commissioner on 4 February 2024, to complain about both this request and the latter one. The Commissioner has read his grounds but it should be noted that he can only deal with requests for recorded information within his remit of overseeing FOIA. Several issues that the complainant has raised are not matters falling within the Commissioner's jurisdiction, so they cannot be considered or commented on in this notice.
9. In respect of this request, the complaint centres on part (1), ie the cost element which the PFCC says is not held. This will be considered below.
10. 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 1 of FOIA. FOIA is concerned with transparency of information held by public authorities. It 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.

Reasons for decision

Section 1 – General right of access

11. This is being considered in respect of part (1) of the first request for costing information.
12. 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.
13. In this case, the complainant suspects that the PFCC holds information from which it could answer the request. The PFCC's position is that it does not.

14. 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.
15. 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.
16. Therefore, the Commissioner has sought to determine whether, on the balance of probabilities, the PFCC holds any costing information about the complaint which is referred to in both requests. Accordingly, he asked it to explain what enquiries it had made in order to reach the view that it did not hold this information.
17. In responding to the Commissioner's enquiries, the PFCC explained:

"There are no systems or processes in place to make a record therefore, no mechanisms or methods available to ascertain any costings or estimated costings in this case or any other similar case. When dealing with cases/investigations/complaints staff are required to deal with matters accordingly and as part of business as usual, timings on these may vary for a variety of reasons".

The Commissioner's conclusion

18. 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.
19. 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.

20. The Commissioner considers this to be an entirely plausible explanation from the PFCC. Much in the same way as the Commissioner conducts his own investigations, the costs for doing so are not broken down to such a granular level.
21. While appreciating the complainant's frustration that the PFCC does not record this information, the Commissioner is mindful of the comments made by the Information Tribunal in the case of Johnson / MoJ (EA2006/0085)¹ 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".
22. Based on the information provided, the Commissioner is satisfied that, on the balance of probabilities, this information is not held.

Other matters

Receipt of posted requests

23. When considering complaints about delayed or failed responses to information requests the Commissioner's priority is to ensure requesters receive a response as quickly as possible, where one has not been provided. Therefore, in this case, the Commissioner contacted the PFCC and asked it to respond to the first request.
24. As there was no actual evidence to suggest that the PFCC received the request, the Commissioner cannot assume that this was the case. Therefore, he will not issue a decision notice finding that there was a breach in such circumstances.
25. The Commissioner would therefore suggest that if the complainant wishes to correspond by post it might be preferable to use recorded delivery. Alternatively, it is an option for him to use email as he clearly has email access.

¹<http://informationrights.decisions.tribunals.gov.uk//DBFiles/Decision/i90/Johnson.pdf>

Right of appeal

26. 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

27. 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.
28. 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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