

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 17 November 2014

Public Authority: Office of the Police & Crime Commissioner for Cleveland

Address: Cleveland Police Headquarters
Ladgate Lane
Middlesbrough
TS8 9EH

Decision (including any steps ordered)

1. The complainant has requested information about efforts made to recover monies or benefits from Cleveland chief officers.
2. The Commissioner's decision is that the Office of the Police & Crime Commissioner for Cleveland is correct to state that it does not hold the requested information.
3. The Commissioner does not require the Office of the Police & Crime Commissioner for Cleveland to take any further steps.

Request and response

4. On 4 September 2013, the complainant wrote to the Office of the Police & Crime Commissioner for Cleveland (the PCC) and requested information in the following terms:

"I ask for the information held specifically on efforts to recover monies/benefits from Cleveland chief officers. This would include the amounts, what the initial payments were for, how much has been repaid in each individual case etc. The only legal proceedings I am aware of are those involving Sean Price. I am asking for information on other efforts to recover monies from other chief officers."

5. The PCC responded on 24 February 2014. It explained that it did not hold recorded information in relation to efforts made to recover monies or benefits from Cleveland chief officers other than former Chief Constable Sean Price, of which the complainant was already aware.
6. Following an internal review the PCC wrote to the complainant on 24 March 2014, upholding its original decision.

Scope of the case

7. The complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant stated that he believed that the PCC held more information.
8. The Commissioner will consider whether the PCC is correct to state that, on the balance of probabilities, it does not hold any further information, and also the time taken to deal with the request.

Reasons for decision

9. Section 1(1) of the FOIA 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."

10. In situations where there is a dispute between a public authority and a complainant about whether the requested information is held, the Commissioner has to decide it on the civil standard of the balance of probabilities.
11. In applying this test the Commissioner will consider the scope, quality, thoroughness and results of the searches and other explanations offered as to why the information is not held.
12. The Commissioner asked the PCC a series of questions regarding whether it held any further information.
13. The PCC explained that at the time of the request, no efforts had been made to recover monies/benefits from Cleveland chief officers, apart from one (Chief Constable Sean Price).

14. The PCC went on to explain that the efforts to recover additional payments and benefits made to former Chief Constable Sean Price, were the subject of an issued claim by the PCC in the High Court. At the hearing which took place on 13 June 2014 it was ordered that there should be a trial of two preliminary issues in this claim, namely whether the various payments made to Sean Price were made lawfully. Issues in relation to change of position, good faith, human rights and the defendant's conduct, should be tried at a later date.
15. The PCC also explained that, depending on the outcome of the above proceedings, it may be possible that efforts would be made to recover monies/benefits from other Cleveland officers but that was not the case at the time of the request.
16. The PCC also confirmed that if the position does change, it would consider the complainant's request again.
17. The complainant explained that, in response to a separate request, the PCC had disclosed a letter entitled 'Additional Payments and Benefits Paid to Senior Police Officers' which had been sent to a senior police officer. Some information had been redacted under section 42 (legal professional privilege). The complainant considered that it should have been disclosed in response to his present request.
18. The Commissioner asked the PCC to explain why it had not disclosed it in response to the present request. The PCC explained that it had been sent out to the officer concerned so that he could provide any necessary background or context. The decision to try to recover monies/benefits had not been taken at the point the letter was sent out.
19. The Commissioner is satisfied that at the time the letter in question was sent out, the PCC had not decided whether it was going to try to recover monies/benefits from the senior officer in question. Therefore, he considers that this letter did not fall under the scope of the present request.
20. Taking all of the above into account, the Commissioner is satisfied that, on the balance of probabilities, the PCC does not hold any information.

Section 10 – Time for compliance

21. Section 10(1) requires that a public authority must issue a refusal notice within the time for compliance, which is 20 working days following the date of receipt.
22. In this case the PCC issued its refusal notice outside 20 working days, and therefore breached section 10(1).

Other matters

23. The complainant explained to the Commissioner that it appeared that his office's position would appear to be falling on the side of a public body largely ignoring a report of the district auditor. The complainant explained that this would be a pretty serious issue.
24. The complainant also told the Commissioner that he was in a position to view the district audit report, review the information Cleveland says it holds and consider whether holding virtually no information on action taken would be likely to be a credible position.
25. However, the Commissioner's remit is to consider under the FOIA whether, on the balance of probabilities, there was any further information held by the PCC. If the complainant is concerned that the PCC is ignoring a district audit report, he will need to complain to the PCC and the district auditor concerned.

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: 0300 1234504

Fax: 0116 249 4253

Email: GRC@hmcts.gsi.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.

Signed

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