

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 23 September 2019

Public Authority: Office of the Sussex Police and Crime Commissioner

Address: Sackville House
Brooks Close
Lewes
East Sussex
BN7 2FZ

Decision (including any steps ordered)

1. The complainant requested information relating to recording decisions taken by Sussex Police.
2. The Office of the Sussex Police and Crime Commissioner (OPCC) denied holding the requested information.
3. The Commissioner's decision is that, on the balance of probabilities, the OPCC did not hold information within the scope of the request.
4. The Commissioner requires no steps to be taken as a result of this decision.

Request and response

5. On 22 May 2019, the complainant wrote to the OPCC and requested information in the following terms:

"Please send me the information you hold on Sussex Police's refusal to record complaints of crimes at all, and the steps Sussex Police and Crime Commissioner has taken to recognise this as maladministration and to tackle it".

6. The request was made using the 'whatdotheyknow' website.

7. By way of context to the request, the complainant explained that he considered that Sussex Police "*misrecorded my report of crime*".
8. The OPCC responded on 23 May 2019. It denied holding the requested information.
9. Following an internal review the OPCC wrote to the complainant on 14 June 2019. It upheld its original position.

Scope of the case

10. The complainant contacted the Commissioner on 14 June 2019 to complain about the way his request for information had been handled.
11. The analysis below considers whether, on the balance of probabilities, the OPCC held information within the scope of the request.

Reasons for decision

Section 1 – general right of access

12. Section 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."

13. In scenarios such as this one, where there is some dispute between the public authority and the complainant about the amount of information that may be held, the Commissioner, following the lead of a number of First Tier Tribunal decisions, applies the civil standard of the balance of probabilities.
14. For clarity, the Commissioner is not expected to prove categorically whether the information is held, she is only required to make a judgement whether, on the balance of probabilities, a public authority holds any information within the scope of the request.
15. In this case, the Commissioner has sought to determine whether, at the time of the request and on the balance of probabilities, the OPCC held information within the scope of the request.

16. In deciding where the balance of probabilities lies, the Commissioner will consider the complainant's evidence and arguments. She will also consider the searches carried out by the public authority, in terms of the extent of the searches, the quality of the searches, their thoroughness and the results the searches yielded. In addition, she will consider any other information or explanation offered by the public authority which is relevant to her determination.

The complainant's view

17. The complainant disputed that the OPCC did not hold relevant information. He explained that, having made a similar request for information to another public authority, that public authority had suggested he contacted the Police and Crime Commissioner for Sussex Police, given her statutory duty and electoral mandate to hold the Chief Constable to account on behalf of the public.

The OPCC's view

18. In its initial correspondence with the complainant, the OPCC simply told him that it did not hold any information within the scope of his request. It did, however, give him advice on what to do if he was dissatisfied with a recording decision taken by Sussex Police.
19. In subsequent correspondence with the complainant, it further explained:

"The Police Reform & Social Responsibility Act (2011) established the role of the Police & Crime Commissioner. The Commissioner has a number of statutory responsibilities, including holding the Chief Constable to account for delivering policing that is efficient, effective and responsive to the needs of the public, as referred to in your reply email.

The Act also protects the operational independence of the police by making it clear that the Chief Constable is responsible for operational policing and the direction, command and control of his officers and staff, including any decision to record complaints of crime and any alleged maladministration".

20. Similarly, the OPCC told the Commissioner that the decision as to whether, or not, to record a crime is an operational policing one for each police force area and falls within the remit of the Chief Constable rather than the Police and Crime Commissioner.
21. During the course of her investigation, the Commissioner asked the OPCC to describe the searches it carried out for information falling within the scope of the request, and the search terms used. She also

asked other questions, as is her usual practice, relating to how the OPCC established whether or not it held the requested information.

22. The OPCC confirmed that it carried out searches on the electronic records it held. It told the Commissioner:

"The search terms used included "refusal to record" and "maladministration" but did not result in the retrieval of any relevant information".

23. The OPCC confirmed that it had carried out further searches during the course of the Commissioner's investigation, but that, again, no relevant information had been retrieved.

24. In that respect, the OPCC told the Commissioner:

"... there is no specific business purpose for which the requested information should be held by the OSPCC [Office of the Sussex Police and Crime Commissioner]".

The Commissioner's view

25. The Commissioner acknowledges that the requested information may be of interest to the complainant. However, while appreciating the complainant's frustration that the OPCC did not hold the requested 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 the 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. Having considered the OPCC's response, and on the basis of the evidence provided to her, the Commissioner is satisfied that, on the balance of probabilities, the OPCC did not hold information within the scope of the request.
27. The Commissioner therefore considers that the OPCC complied with its obligations under section 1(1) of the FOIA.

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

Right of appeal

28. 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: 0870 739 5836

Email: grc@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

29. 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.
30. 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

Carolyn Howes
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