

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 5 November 2019

Public Authority: Chief Constable of Hampshire Constabulary
Address: Police Headquarters
Romsey Road
Winchester
Hampshire
SO22 5DB

Decision (including any steps ordered)

1. The complainant has requested anonymised information about possible drug use by a murderer, from Hampshire Constabulary ("HC"). HC advised the complainant that it held no recorded information.
2. The Commissioner's decision is that HC does hold some information which falls within the scope of the request. In failing to disclose this information to the complainant, HC has breached section 1(1)(a) of the FOIA.
3. The Commissioner requires HC to take the following steps to ensure compliance with the legislation:
 - disclose a copy of the form G15M with any personal information redacted.
4. HC must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 2 May 2019, the complainant wrote to HC and requested information in the following terms:

"I wish to make an inquiry under Freedom of Information about the case of the killer of Barry Hounscome, of Gosport, Hants, which recently concluded in court.

Let me stress for the avoidance of all doubt that I do not in any way seek to identify the culprit, now 17. I have no interest in, and no desire to, establish his identity. I repeat. This is not a request to know the identity of the killer of Dr Hounscome.

I seek to know if the Hampshire police at any stage sought to discover if the killer had used any psychotropic drugs, legal (e.g. antidepressants, SSRIs, benzodiazepines etc, or steroids) or illegal (e.g. marijuana). And, if so, what the police established.

I believe it is strongly in the public interest, given the extremely grave and distressing nature of this case, for it to be known whether the culprit was using any such drugs, whose use is often found in the perpetrators of such crimes in this country and abroad. It is in the public interest because such a correlation should be investigated, in the interest of long-term public safety. I can see no reason in law, now the trial has concluded with a conviction, why such information should be withheld".

6. On 8 May 2019, HC responded. It refused to confirm or deny that it held the requested information, citing the exemption at section 40(5) (personal information) of the FOIA.
7. Following an internal review, HC wrote to the complainant on 24 May 2019. It revised its position and said: *"The investigation found no signs of drug misuse in relation to the accused either prior or at the time of the offence".*
8. On 24 May 2019, the complainant responded, asking: *"... can I check that you in fact read my request, which did not ask what you found, but what you sought?"*
9. On the same day, HC wrote back asking:

"Just so I'm crystal clear are you asking whether we conducted a drugs test on the offender?

I'm happy to discuss if you call me on the telephone number below".

10. The complainant responded, again on the same day, advising:

"No, I am asking whether you inquired into his past use of drugs, legal or illegal. The presence of drugs in his body at the time, while obviously important, is not the only thing that would need to be

established. And if it were established that such a test was negative it would not answer my question. I am not talking about temporary intoxication, but about long-term mental illness brought about by the use of psychotropics...

Three types of drugs are commonly associated with mental illness leading to violence..."

11. On 24 May 2019, HC responded advising:

"It is my view that we have already answered your question.

We included the word 'prior' in our previous response. As such, no information is held which falls into the scope of your request".

12. The complainant again responded, complaining about the misspelling of his name and saying:

*"... I'm sorry to say that I suspect this error (like the non-responsive answer that you sent me to day) demonstrates a general unwillingness to pay much attention to what I am asking about, which, is not about what you found, but about, whether you *actively looked into* the culprit's past use of drugs. This can only be established by asking those involved, but this is surely not impossible. I wish we could resolve this without going round the houses. It's incredibly important, and by taking my query more seriously you might help to save lives in future. The correlation between psychotropic drug use and violent crime in this country is striking, and grows all the time. But if you don't look, you don't see it. Any chance of a last rethink?"*

13. In responding, on the same day, HC apologised for the misspelling and advised:

"I can confirm that I have taken your request seriously and contacted the Senior Investigating Officer. They provided the clarification that no use of drugs was established at the time of the offence or prior to it taking place.

I can assure you I'm trying to help but appear to be failing to manage your expectations. I'm not sure what more I can say other than from an FOI legal perspective, no information is held which falls into the scope of your request.

Happy to discuss".

14. Attempts at informally resolving this case were also made during the Commissioner's investigation, unsuccessfully.

Scope of the case

15. The complainant contacted the Commissioner on 1 June 2019 to complain about the way his request for information had been handled.
16. On 14 June 2019, the Commissioner wrote to the complainant asking for more information, including his grounds of complaint. On the same day, he responded, saying:

*"My concern is that the Hampshire Constabulary are not prepared to reveal negative information to me, namely that they did *not* investigate the drug use of the culprit in the Hounsme homicide. I seek your assistance in persuading them to confirm this".*

17. On 15 August 2019, the Commissioner wrote to the complainant, explaining that she was only able to investigate whether or not HC had handled the request in accordance with the FOIA. Specifically, she advised that she could only consider whether HC was correct when it said that it does not hold the information requested. She said that she was not able to require HC to answer a question, she could only require it to provide recorded information (unless it is exempt from disclosure under the FOIA).
18. Following further correspondence, the complainant agreed that the Commissioner would consider whether, on the civil standard of the balance of probabilities, HC holds any recorded information.
19. 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 the FOIA. The FOIA is to do 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. The 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

20. Section 1(1) of the FOIA states:

"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."

21. 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.
22. The Commissioner will take into account the complainant's evidence and arguments. She will 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. She 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, she is only required to make a judgement on whether the information is held on the civil standard of proof of the balance of probabilities.
23. In responding to her questions about whether or not any information is held, HC advised the Commissioner that the crime is recorded on its Crime Recording System and a Major Incident System called HOLMES; it advised that these systems had both been searched for relevant information.
24. HC further explained that the Senior Investigating Officer for the case had been approached and asked regarding the offender's drug use; he had advised that no information is held and the complainant had been advised accordingly.
25. HC clarified that, if it were held, any information would be held electronically and would have shown up on the searches undertaken. It further advised that no such information would have been destroyed as such data would be retained for 100 years.
26. However, HC also advised the Commissioner that a reference to "*substances*" was included on a standard G15M form, and it provided a copy to her. This "*authority to take intimate samples*" form is held as part of the offender's custody record.
27. In this case, the complainant is trying to establish whether or not drug use of the suspect was investigated by HC. HC has advised that no information is held. However, the Commissioner considers that the

G15M form is caught within the scope of the request and should have been provided to the complainant, with any personal data of the offender redacted. Unfortunately, whilst it may not specifically answer the question the complainant has posed, it nevertheless does refer to the taking of substances so the Commissioner considers that it is recorded information which falls within the scope of the request. In failing to disclose this to the complainant the Commissioner finds that HC has breached section 1(1)(a) of the FOIA.

28. The Commissioner is satisfied that the searches undertaken by HC are appropriate and would be likely to identify any further information held which is relevant to the request. Therefore, other than the form G15M, the Commissioner accepts that, on the civil standard of the balance of probabilities, no further information is held.

Other matters

29. Although they do not form part of this notice the Commissioner wishes to highlight the following matters of concern.

Making a request

30. The Commissioner has produced guidance for the public which gives suggestions as to how to make a clear information request. This includes some helpful 'do's' and 'don'ts' which she recommends should be taken into account. The guidance can be found on her website¹.

¹ <https://ico.org.uk/your-data-matters/official-information/>

Right of appeal

31. 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

32. 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.
33. 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
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF