

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 3 September 2020

Public Authority: Chief Constable of Greater Manchester Police

Address: Openshaw Complex

Lawton Street

Openshaw

Manchester

M11 2NS

Decision (including any steps ordered)

1. The complainant has requested the findings of an investigation. Greater Manchester Police ("GMP") stated that information was held, but was exempt from disclosure under sections 31(1)(a), 31(1)(b), and 40(2). During the course of the Commissioner's investigation, GMP stated to the Commissioner that it was uncertain of the parameters of the request.
2. The Commissioner's decision is that GMP has failed to provide appropriate advice and assistance (under section 16) to the complainant so as to enable them to clarify their request, and further, has breached section 10.
3. The Commissioner requires GMP to take the following steps to ensure compliance with the legislation.
 - Provide appropriate advice and assistance to the complainant so as to enable them to clarify their request.
4. The public authority 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 14 February 2019, the complainant wrote to the GMP and requested information in the following terms:

BACKGROUND:

An IOPC spokesperson said:

"Following the publication of allegations of serious corruption in a national newspaper we asked Greater Manchester Police to carry out a scoping exercise to establish the exact nature of the allegations. GMP has shared the findings of this exercise with us and we are satisfied that there are no conduct matters that need to be independently investigated."

<https://www.manchestereveningnews.co.uk/...>

REQUEST:

1. Provide the "...the findings of this exercise" referred to above by IOPC.

Note:

The IOPC has said you sent them a single hard copy which was then returned to you.

"Greater Manchester Police provided a single hard copy of their report to the IOPC and this document was returned to them once it had been read and reviewed. We therefore do not hold this information. You may wish to re-direct your request to Greater Manchester Police."

6. GMP responded on 29 March 2019. It stated that the information was withheld under sections 30(1), 31(1)(a), and 31(1)(b).
7. On 13 April 2019, the complainant wrote to the GMP and asked it to undertake an internal review.
8. Following an internal review GMP wrote to the complainant on 18 October 2019. It revised its position and explained that the information was withheld under sections 31(1)(a), 31(1)(b), and 40(2).

Scope of the case

9. The complainant contacted the Commissioner on 18 October 2019 to complain about the way his request for information had been handled.
10. The scope of the case was accepted at that time to be the determination of whether GMP was entitled to withhold information under specific exemptions. GMP subsequently stated to the Commissioner that it was

uncertain of the parameters of the request, as there were two potential interpretations of what information was sought.

11. In such a situation, it is not appropriate for the Commissioner to consider the application of exemptions when the request requires clarification. The Commissioner therefore considers it necessary to address whether the request requires clarification, and whether GMP has complied with section 16.

Reasons for decision

Section 16 – Advice and assistance

12. Section 16(1) of the FOIA states that:

It shall be the duty of a public authority to provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made, requests for information to it.

13. When a public authority receives an unclear or ambiguous request, its Section 16 duty to provide advice and assistance will be triggered and it must go back to the requester to ask for clarification.
14. Under Section 1(3) of the FOIA, once the public authority has informed the requester that it requires further clarification, it will not be under any further obligation to respond until that clarification has been provided.

GMP's position

15. GMP has informed the Commissioner that it originally considered that the request sought the "*report of the IOPC*" (as referenced in the 'note' included in the request). However, GMP has now identified that the actual request refers to the "*the findings of the exercise*".
16. GMP has explained to the Commissioner that it is unsure whether the requester seeks the report in its totality, or only that part which represents its 'findings'. GMP has elaborated that the findings part of the report is likely to be suitable for public disclosure subject to some redactions of names under section 40(2).

The Commissioner's conclusion

17. Having reviewed the phrasing of the request, the Commissioner does not consider it sufficiently clear whether the requester is seeking the report in its totality, or simply the 'findings' part of it.
18. Having considered GMP's handling of the request, and its admission that it is uncertain what information is actually sought, the Commissioner finds that GMP has failed to comply with section 16 by providing the requester with appropriate advice and assistance so as to enable them to clarify the request.

Section 10(1) – Time for compliance

19. Section 10 of the FOIA states that responses to requests made under the Act must be provided "*promptly and in any event not later than the twentieth working day following the date of receipt.*"
20. From the evidence presented to the Commissioner in this case, it is clear that, in failing to issue a response to the request within 20 working days, GMP has breached section 10 of the FOIA.

Other matters

21. The Commissioner reminds GMP of the importance of seeking clarification on any request which is unclear. The failure to seek such clarification is highly likely to result in wasted resources, as it may lead to the authority considering information that is not ultimately sought by the requester.

Right of appeal

22. 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

23. 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.
24. 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

Laura Tomkinson
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