

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 23 June 2022
Public Authority: Chief Constable of Nottinghamshire Police
Address: Nottinghamshire Police HQ
Sherwood Lodge
Arnold
Nottingham
NG5 8PP

Decision (including any steps ordered)

1. The complainant requested information from Nottinghamshire Police about a police operation at Library Garden between 5 November 2021 and 16 December 2021. By the date of this notice, Nottinghamshire Police had not issued a substantive response to this request.
2. The Commissioner's decision is that Nottinghamshire Police has failed to complete its deliberations on the balance of the public interest within a reasonable time and has therefore breached section 17(3) of FOIA.
3. The Commissioner requires Nottinghamshire Police to take the following step to ensure compliance with the legislation.
 - Having confirmed whether or not information is held within the scope of the request: either disclose the requested information, if held, or, to the extent that information is to be withheld, issue a refusal notice in accordance with the requirements of section 17 of the FOIA.
4. Nottinghamshire Police must take this step 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 FOIA and may be dealt with as a contempt of court.

Request and response

5. The initial information request was made to Nottinghamshire Police on 16 December 2021, using the form available on their website. The complainant has advised us that the request:

“asked for copies of all internal and external communication relating to the police operation on the Library Garden between 5th Nov 21 and 16 December 21 including communication between Newark & Sherwood District Council and Notts Police – see email 201221 first attachment.”

6. On 21 January 2022, Nottinghamshire Police wrote to the complainant, confirming that a request was received on 16 December 2021, for the following information:

“All documents, including written communications, relating to police attendances and operations on The Library Garden/proposed London Rd Car park extension in Newark between 5th November 2021 and 16th December 2021.

Communications between Newark and Sherwood District Council and Notts Police are included in this request, as well as all other relevant internal or external communication and documentation relating to the Library Garden/proposed London Rd Car park extension over the stated period of time.”

Nottinghamshire Police explained that it held information relevant to the complainant's request, but that it would need to extend the time taken to complete its public interest test considerations in respect of an exemption under section 31 of FOIA.

Scope of the case

7. The complainant contacted the Commissioner on 12 May 2022 to complain about the delay in Nottinghamshire Police's consideration of the public interest test.
8. On 25 May 2022, the Commissioner wrote to Nottinghamshire Police using the email address displayed on its website for making information requests of 'freedomofinformation@notts.police.uk'. On 26 May 2022, we received notification that the email could not be delivered as “the recipient's domain does not exist”.

9. On 26 May 2022, the Commissioner again wrote to Nottinghamshire Police, again sending the correspondence to 'freedomofinformation@notts.police.uk' and also sending it to 'freedomofinformation@Nottinghamshire.pnn.police.uk'. The message appears to have been delivered as no notification to suggest that it had failed was received.

The email reminded Nottinghamshire Police of its responsibilities and asked it to provide a substantive response to the complainant within 10 working days. To date, a substantive response has still not been provided.

10. The Commissioner has considered whether Nottinghamshire Police has complied with its obligations in relation to section 17 of FOIA.

Reasons for decision

11. Section 1(1) of 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."

12. Section 10(1) of FOIA states that a public authority must respond to a request promptly and "not later than the twentieth working day following the date of receipt".

13. Section 17(3) of FOIA states that where a public authority is relying on a qualified exemption, it can have a "reasonable" extension of time to consider the public interest in maintaining the exemption or disclosing the information.

14. FOIA does not define how long a reasonable time is. The section 45 Code of Practice on request handling states that "it is best practice for an extension to be for no more than a further 20 working days".¹ This

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/744071/CoP_FOI_Code_of_Practice_-_Minor_Amendments_20180926_.pdf

means that the total time spent responding to a request should not exceed 40 working days unless there are exceptional circumstances.

15. In this case, the total time taken by Nottinghamshire Police has exceeded 40 working days. The Commissioner does not consider there to be any exceptional circumstances and finds that, by failing to complete its deliberations on the public interest within a reasonable time frame, Nottinghamshire Police has not complied with section 17(3).
16. Nottinghamshire Police is now required to finalise its public interest considerations under section 17(3) of FOIA and respond to the complainant.

Right of appeal

17. 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

18. 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.
19. 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

Claire Churchill
Team Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF