

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 3 March 2014

**Public Authority:** Police and Crime Commissioner for Northumbria  
**Address:** 2nd Floor Victory House  
Balliol Business Park  
Benton Lane  
Newcastle upon Tyne  
NE12 8EW

### **Decision (including any steps ordered)**

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1. The complainant requested information about the Police and Crime Commissioner for Northumbria (PCC for Northumbria) from her office, including information about correspondence received by the office and how that correspondence is dealt with.
2. The PCC for Northumbria provided the complainant with some information in response to his request but refused to disclose the remainder citing sections 40 (personal information) and 44 (prohibitions on disclosure). It subsequently additionally cited section 12 (cost of compliance exceeds appropriate limit) in respect of some of the requested information.
3. The Commissioner's decision is that the PCC for Northumbria was entitled to withhold the information on the basis of sections 12 and 40(2) of FOIA. The Commissioner does not require the public authority to take any steps as a result of this decision notice.

### **Request and response**

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4. On 8 May 2013 the complainant wrote to the Police and Crime Commissioner for Northumbria. The complainant explained that the background to his request:

*"concerns a detailed letter I sent marked 'For the personal attention of Vera Baird' ...."*

5. Full details of the request can be found in the annex to this decision notice.
6. In summary, his correspondence comprised 24 questions or requests for information:
  - Points 1 and 2 related to information about the obstruction of the pavement by parked vehicles;
  - Points 3 – 7 related to information about communications with the Police and Crime Commissioner for Northumbria, Ms Vera Baird;
  - Point 8 asked whether it is the case that a member of the public cannot write to or phone Ms Baird directly;
  - Point 9 asked by whom the Police and Crime Commissioner is employed;
  - Points 10 and 11 asked about the procedure relating to complaints about the Police and Crime Commissioner;
  - Points 12 to 18 related to the Police and Crime Commissioner's and Deputy Police and Crime Commissioner's salary, hours of work, expenses and staff numbers and roles;
  - Points 19 and 20 related to the publication scheme;
  - Points 21 and 22 related to complaints;
  - Point 23 asked if Ms Baird has read his letter; and
  - Point 24 asked how many surgeries Ms Baird has held for one-to one contact with individual members of the public.
7. The PCC for Northumbria responded on 24 May 2013. It denied holding the information requested at points 1 and 2. It responded to points 3 to 24.
8. Following an internal review the PCC for Northumbria wrote to the complainant on 30 July 2013. It revised its position with respect to points 1, 2 and 22, confirming that it holds information within the scope of those parts of the request. However, it refused to disclose that information, variously citing section 40 of FOIA (personal information) and 44(1) (prohibitions on disclosure).
9. The PCC for Northumbria provided further information in response to points 6 and 24.

## Scope of the case

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10. The complainant contacted the Information Commissioner (the Commissioner) on 10 September 2013 to complain about the way his request for information had been handled. He told the Commissioner:

*"My original information request dated 8 May 2013 contained 24 numbered questions. I will now use the same numbers to highlight what they did wrong".*

11. The Commissioner wrote to the complainant advising that he considered the scope of his investigation to be with respect to points 2, 5 and 22 of the request.

12. In response, the complainant told the Commissioner:

*"... I disagree with this.*

*In my letter of complaint to the Information Commissioner I also made serious complaints about the Police Commissioner's response to my points 4, 6, 7, 8, 9, 12, 14 and 16.*

*These complaints include deliberately giving false, misleading, contradictory and inadequate information. ....Specifically, I believe the Police Commissioner has breached Section 77 by 'preventing the disclosure ... of the information to the communication of which the applicant would have been entitled'.*

*It simply cannot be accepted that they have repeatedly given false information in response to an FOIA request".*

13. The Commissioner has considered whether the PCC for Northumbria has committed an offence under section 77 of the FOIA in the 'Other Matters' section of this decision notice.
14. In his correspondence the complainant expressed concern about the way the PCC for Northumbria handled point 2 of his request. With respect to that part of the request, the PCC for Northumbria advised the complainant how to make a subject access request (SAR) under the provisions of the Data Protection Act (DPA). The Commissioner considers that it is appropriate that any decision as to whether or not a data subject is entitled to be told whether personal data about them is being processed should be made in accordance with the scheme of that Act.
15. During the course of the Commissioner's investigation, the complainant confirmed that he had made a subject access request to the PCC for Northumbria for any of his own personal information that may be held.

16. In light of the above, the Commissioner considers the scope of his investigation to be in regard to the PCC for Northumbria's handling of the points 2, 5 and 22 of the information request. In view of a SAR having been made, where appropriate, he has focussed his investigation on third party personal data.

## **Reasons for decision**

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### *Points 2 and 22*

17. The Commissioner has first considered how the PCC for Northumbria handled points 2 and 22 of the request.
18. The PCC for Northumbria initially told the complainant that it did not hold information within the scope of point 2. Following its internal review, it confirmed that it holds information within the scope of point 2 – information regarding the obstruction of the pavement by parked vehicles. However, it told the complainant that it considered section 40 of FOIA was engaged. It told him:

*"the information you have requested is exempted information as it relates directly to yourself or other individuals".*

19. In response to point 22, the PCC for Northumbria said that three complaints had been received. With respect to that information it told him:

*"You should note that the complaints ... were assessed .... and all three were deemed not to be valid complaints....the information you have requested is exempted information as it relates directly to other individuals. Accordingly, this data is considered as Personal Data and is exempt from public disclosure".*

20. It cited sections 40(2) and 44(1) of FOIA in respect of that information.

### *Section 40 personal information*

21. Section 40(2) of FOIA provides an exemption from the disclosure of personal data where the information is the personal information of a third party and its disclosure would breach one of the data protection principles of the Data Protection Act (DPA).

### *Is the information personal data?*

22. The first step for the Commissioner to determine is whether the requested information constitutes personal data, as defined by the DPA.

23. Personal data is defined in section 1(1) of the DPA as:

*"data which relate to a living individual who can be identified-*

*(a) from those data, or*

*(b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller, and includes any expression of opinion about the individual and any indication of the intention of the data controller or any other person in respect of the individual."*

24. The two main elements of personal data are that the information must 'relate' to a living person and that the person must be identifiable. Information will relate to a person if it is about them, linked to them, has some biographical significance for them, is used to inform decisions affecting them, has them as its main focus or impacts on them in any way.

25. Having viewed the withheld information, the Commissioner is satisfied that those parts which have been indicated by the public authority constitute personal data.

*Would disclosure contravene a data protection principle?*

26. Having accepted that the information requested constitutes the personal data of living individuals other than the applicant, the Commissioner must next consider whether disclosure would breach one of the data protection principles.

27. In this case, the Commissioner understands that the PCC for Northumbria considers that the principle at issue is the first principle. That principle deals particularly with the privacy rights of individuals and the balance between those rights and other legitimate interests in processing personal data. It states that:

*"Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless –*

*(a) at least one of the conditions in schedule 2 is met, and*

*(b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met."*

28. In the case of a FOIA request, the personal data is processed when it is disclosed in response to the request. This means that the information can only be disclosed if to do so would be fair, lawful and meet one of the DPA Schedule 2 conditions (and Schedule 3 conditions if relevant). If

disclosure would fail to satisfy any one of these criteria, then the information is exempt from disclosure.

*Would it be fair to disclose the requested information?*

29. In considering the fairness element of the first data protection principle, the Commissioner takes into account a number of factors depending on the circumstances of each case. In this case, he has considered:
- the reasonable expectations of the data subjects and the nature of the information;
  - the consequences of disclosure; and
  - any legitimate interests in the public having access to the information and the balance between these and the rights and freedoms of the individuals who are the data subjects.

*Reasonable expectations of the data subject*

30. In correspondence with the Commissioner the PCC for Northumbria told him:

*"The reasonable expectations of the individuals affected in this case are that their data would not be further processed in this way. For those individuals who have engaged in correspondence with the [PCC for Northumbria] Commissioner ... there is a legitimate expectation that all associated correspondence would be dealt with in a sensitive manner.....".*

31. The Commissioner acknowledges that there will be circumstances where, for example due to the nature of the information and/or the consequences of it being released, the individual will have a strong expectation that information will not be disclosed.
32. The Commissioner also recognises that it is reasonable to expect that a responsible public authority will not disclose certain information and that it will respect confidentiality.
33. In that respect, the Commissioner acknowledges that information relating to complaints will carry a general expectation of privacy.

*Consequences of disclosure*

34. When considering the consequences of disclosure in this case, the Commissioner has taken into account the nature of the withheld information. He has also considered the fact that disclosure under freedom of information legislation is disclosure to the public at large and not just to the complainant.

35. In this case, the Commissioner is satisfied that it is plausible for those who have some knowledge of the subject matter to recognise individuals either directly or indirectly as a result of the content and context of the withheld complaint information.
36. In light of the nature of the information and the reasonable expectations of the individuals concerned, the Commissioner is satisfied that release of the withheld information would not only be an intrusion of privacy but could potentially cause unnecessary and unjustified distress to the individuals concerned.

*Balancing the rights and freedoms of the data subject with legitimate interests*

37. Despite the reasonable expectations of individuals and the fact that damage or distress may result from disclosure, it may still be fair to provide the information if there is an overriding legitimate interest in disclosure to the public. Under the first principle, the disclosure of the information must be fair to the data subject, but assessing fairness involves balancing their rights and freedoms against the legitimate interest in disclosure to the public.
38. The Commissioner accepts that there is a wider public interest in transparency of public sector organisations. However, in the circumstances of this case, he does not consider that the legitimate interest in the public accessing the withheld information would outweigh the potential damage and distress which could be caused to the data subjects by disclosure of that information. Therefore the Commissioner is unable to conclude that disclosure of the withheld information is necessary to meet a legitimate public, rather than personal, interest.
39. In view of the above, the Commissioner is satisfied that the withheld information is personal data and that disclosure of any of it would breach the first data protection principle as it would be unfair to the individuals concerned. As the Commissioner has determined that it would be unfair to disclose the requested information, it has not been necessary to go on to consider whether disclosure is lawful or whether one of the conditions in Schedule 2 of the DPA is met. The Commissioner therefore upholds the Council's application of the exemption provided at section 40(2) of the FOIA.
40. As section 40 is an absolute exemption there is no need to consider the public interest in disclosure separately.

*Section 44 prohibitions on disclosure*

41. The PCC for Northumbria also cited section 44 in respect of some of the information withheld by virtue of section 40(2), namely the information requested at point 22 of the request.
42. As the Commissioner has concluded that section 40(2) is correctly engaged in respect of that information he has not found it necessary to consider the PCC for Northumbria's application of section 44 to that information.

*Point 5*

43. The Information Commissioner has next considered how the PCC for Northumbria handled point 5 of the request. Point 5 follows on from points 3 and 4 of the request and relates to the number of written communications that have been received, read, and responded to, by Ms Baird.
44. In response to point 3, the PCC for Northumbria told the complainant Ms Baird had received 398 pieces of correspondence.
45. With respect to that correspondence, in response to points 4 and 5 of his request for information the PCC for Northumbria told the complainant:

*"4. The Commissioner does read all correspondence received from members of the public. Correspondence from the public are then responded to under the direction of the Commissioner and procedures for responding to correspondence received from the public.*

*5. The Commissioner directs and has approved all procedures for responding to communications received from the public".*

46. Referring to its handling of point 5 of the request, during the course of the Commissioner's investigation the PCC for Northumbria acknowledged that:

*"this part of the request .... may not have been fully answered in the original response and the subsequent review".*

47. In correspondence with the Commissioner it described the process involved in responding to correspondence received into the Police and Crime Commissioner's Office and estimated that *"in order to assess those which she may have personally answered"* would exceed the appropriate limit.

*Section 12 cost of compliance exceeds appropriate limit*

48. Section 12 of FOIA provides an exemption from a public authority's obligation to comply with a request for information where the cost of compliance is estimated to exceed the appropriate limit.
49. This limit is set in the fees regulations at £600 for central government departments and £450 for all other public authorities. The fees regulations also specify that the cost of complying with a request must be calculated at the rate of £25 per hour, meaning that section 12(1) effectively imposes a time limit of 18 hours in this case.
50. In estimating whether complying with a request would exceed the appropriate limit, Regulation 4(3) states that an authority can only take into account the costs it reasonably expects to incur in:
  - determining whether it holds the information;
  - locating the information, or a document containing it;
  - retrieving the information, or a document containing it; and
  - extracting the information from a document containing it.
51. The four activities are sequential, covering the retrieval process of the information from the public authority's information store.
52. In correspondence with the complainant, the PCC for Northumbria confirmed that:

*"the Commissioner has received 398 pieces of correspondence from the general public in writing or via email".*
53. During the course of the Commissioner's investigation, the PCC for Northumbria explained:

*"There is a process in place that ensures that the Commissioner reads all correspondence received from members of the public and following this, she directs the most appropriate action and individuals within her Office to provide adequate and appropriate responses to those individual members of the public".*
54. It confirmed, however, that in order to assess how many of the items of correspondence which she may have personally answered would require the PCC for Northumbria to examine the records held in respect of each of the 398 pieces of correspondence.
55. Explaining that the records are held in both electronic and paper format, it considered five minutes per piece of correspondence to be a reasonable estimate. It told the Commissioner:

*"398 x 5 is equivalent to 33.17 hours which exceeds the cost threshold in this case".*

56. The Commissioner is disappointed that the PCC for Northumbria failed to provide the complainant with an estimate of the work involved in complying with his request. In his view, having failed to provide that estimate initially, the internal review provided the opportunity for the PCC for Northumbria to reconsider its handling of the request when the complainant expressed his dissatisfaction with its response.
57. In reaching a conclusion in this case the Commissioner has taken into account the intention of Parliament in relation to section 12(1) - that a public authority is not obliged to comply with a request if to do so would exceed the appropriate cost limit.
58. In this case, he is satisfied that, as a result of his intervention, the public authority has provided adequate explanations to demonstrate that it would exceed the appropriate limit to locate and retrieve the requested information. Section 12(1) does therefore apply and the PCC for Northumbria is not required to comply with point 5 of the request.

## **Other matters**

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*Points 4, 6, 7, 8, 9, 12, 14 and 16*

59. In correspondence with the Commissioner the complainant said that he had serious complaints about the PCC for Northumbria's response to points 4, 6, 7, 8, 9, 12, 14 and 16 of his information request:

*"These complaints include deliberately giving false, misleading, contradictory and inadequate information".*

*"In my view, the repeated giving of false, misleading and inadequate information is totally unacceptable. Again and again they have been as transparent as a brick wall".*

60. Section 77 of the FOIA states that a criminal offence is committed if any person alters, defaces, blocks, erases, destroys or conceals any information with the intention of preventing the applicant from receiving any of the information he is entitled to receive.
61. In order to secure a conviction in criminal proceedings, each element of an offence must be proven to the criminal standard, that being 'beyond reasonable doubt', as opposed to the lesser civil standard of 'balance of probabilities'. If this standard of proof is not met, any prosecution will fail.

62. In order to uphold a section 77 offence the Commissioner has to prove that there was a clear intention to prevent disclosure on the part of the public authority.
63. The Commissioner has considered the circumstances of this case, but does not believe that there is evidence to suggest that it was the PCC for Northumbria's intention to block disclosure of the information requested. Therefore the Commissioner has not undertaken a criminal investigation in this case.

## Right of appeal

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64. 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](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

65. 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.
66. 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 .....**

**Jon Manners**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**

## Annex

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The request for information in this case:

1. During the period 1 December 2012 to 1 May 2013, does the Commissioner hold any records regarding the obstruction of the pavement by parked vehicles?
2. Please supply copies of all records held in any form concerning in any way the obstruction of the pavement by parked vehicles.

In this context, the term 'Commissioner' means Vera Baird, the Deputy Commissioner and the entire staff of the Police and Crime Commissioner.

All records relating to obstruction of the pavement are required including internal and external emails, computerised or hand-written notes, memos, agendas, minutes, records of phone-calls, communications between the Commissioner and Deputy Commissioner, communications between the Commissioner and Northumbria police, communications between the Commissioner and Northumberland County Council, communications between the Deputy Commissioner and Northumbria police, communications between the Deputy Commissioner and Northumberland County Council and any other record in any form concerning in any way the obstruction of the pavement by parked vehicles.

3. How many written communications by letter or email has the Commissioner received from the public during the period 1 December 2012 to 1 May 2013?
4. How many of the above communications have been read by Vera Baird, Police and Crime Commissioner?
5. How many of the above communications have been responded to by Vera Baird, Police and Crime Commissioner?
6. Of the members of the public who wrote to the Commissioner by letter or email between 1 December 2012 and 1 May 2013, how many subsequently had one-to-one face-to-face meetings with Vera Baird, Police and Crime Commissioner?
7. Are all letters and emails from the public to Vera Baird, Police and Crime Commissioner, automatically dealt with on receipt by the Deputy Commissioner?

8. Before the election, Vera Baird's publicity material invited members of the public to "Write to me" at a Labour Party address and to "Phone me on" a Newcastle number.

After the election, is it the case that a member of the public cannot in fact write directly to or directly phone Vera Baird at all?

I would add that Vera Baird's pre-election publicity invited the public to "Write to me" and "Phone me on", not my Deputy.

9. By whom is the Commissioner employed?
10. Is there a procedure for making a complaint about the Commissioner?
11. What is this procedure?
12. For how many hours per week is the Commissioner employed?
13. What is the Commissioner's annual salary?
14. For how many hours per week is the Deputy Commissioner employed?
15. What is the Deputy Commissioner's annual salary?
16. How many staff does the Commissioner have and what are their roles?
17. Are the Commissioner's expenses placed in the public domain?
18. Are the Deputy Commissioner's expenses placed in the public domain?
19. Does the Commissioner have a publication scheme produced in line with the Information Commissioner's Office model publication scheme?
20. Please supply a copy of the publication scheme on paper.
21. Between 1 December 2012 and 1 May 2013, how many complaints, if any, have been made against the Commissioner, Deputy Commissioner or staff?
22. Please supply copies of any complaints redacting names.
23. Has Vera Baird read this letter?

24. Between 1-12-12 and 1-5-13, how many surgeries has Vera Baird held for one-to-one contact with individual members of the public?