



**FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER**

Appellant: Chief Constable of Lancashire Constabulary

Tribunal Ref EA/2011/0278

Respondent: The Information Commissioner

Second Respondent: Mr Tony Wise

Before: NJ Warren
D Stephenson
M Jones

DECISION NOTICE

1. On 15 May 2009 the Lancashire Police Authority dismissed a complaint which Mr Tony Wise had made against the Chief Constable of Lancashire. A few days later Mr Wise made an information request, in compendious form, to the Authority concerning the handling of his complaint. A large bundle of documents was disclosed. Amongst them was information about a meeting held on 7 November 2008 attended by the Authority's Chief Executive, the Chief Constable of Lancashire and his deputy. (The deputy has since become Chief Constable of Staffordshire but it is convenient to refer to him throughout this decision as the Deputy Chief Constable.) An email (page 33) from a policy and performance officer at the Lancashire Police Authority indicated that a draft response to Mr Wise had been discussed at the meeting.
2. Some 18 months later on 15 December 2010 Mr Wise made an information request to the Lancashire Constabulary, again in compendious form. It asked for various items of information in relation to the 7 November 2008 meeting "at which the Lancashire Police Authority response to the complainant was discussed". It is this request which is the subject of this appeal.
3. Lancashire Constabulary refused to comply with the request on the ground that it was vexatious. They took this view in the light of past dealings with Mr Wise. There is no need for us to set out that history in detail but it is convenient to refer here first to a

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lucid and even handed account of the relationship at pages 271-3 of the bundle. This appears in a report from the Chief Constable of Cheshire, to which we will refer again. An agreed chronology also appears at pages 26-30.

4. Mr Wise appealed successfully to the Information Commissioner who ordered the constabulary to respond to the request. The constabulary, in turn, appealed to the Tribunal.
5. Events have moved on since then. In particular, in November 2011 there appeared the report by the Chief Constable of Cheshire to which we have already referred. The Chief Constable investigated seven complaints made by Mr Wise against the Chief Constable and his deputy. Complaint numbers 6 and 7 (page 371) deal with their participation in the meeting on 7 November 2008. It appears from the report that the Chief Executive, the Chief Constable and the Deputy Chief Constable all deny any discussion at the meeting of the substance of Mr Wise's complaint against the Chief Constable. The Chief Executive accepts that Mr Wise was mentioned by name but only to the extent that she felt that in future there should be one point of contact at the constabulary for dealing with Mr Wise. The Deputy Chief Constable produced a copy of his day book to the investigation. Against the word "Wise" was an arrow pointing to the name "Martyn Leveridge" and a further arrow to the phrase "Case conference". This was the name of the officer who was to become the single point of contact. The Chief Constable confirmed the discussion about a single point of contact. His day book contains no reference to Mr Wise.
6. The appeal was listed for hearing on 24 February at Manchester. Mr Wise appeared in person. Mr Cross appeared for the Information Commissioner. Mr Keogh appeared for the Lancashire Constabulary.
7. At the outset we enquired what if anything was now in dispute between the parties.
8. Mr Wise confirmed that his request concerned only matters relating to himself and not to any other persons or matter discussed at the meeting. He was unable to identify any information that he was short of but he stressed that this might be through his own inevitable ignorance of what information existed.

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9. Mr Keogh submitted that whichever view we took on the question of whether the information request was vexatious, the Constabulary's position was that all the information which it held about the meeting had now been disclosed in the report from the Chief Constable of Cheshire. It was agreed that there should be a short adjournment to allow discussions to take place.
10. On resuming the hearing, we were told by Mr Keogh that he had no desire to pursue the issue of vexatiousness if it was to no purpose. He and Mr Cross united in suggesting that evidence be called as to what information was held by the Constabulary at the time of the request. We agreed to that.
11. Mr Carl Melling then gave evidence limited to this issue. He told us that he was in charge of a team of 12 people working in the section of the Constabulary that dealt with data protection and information rights. He told us that, whilst still treating the request as vexatious, when it came to the internal review stage he had made enquiries of the Chief Constable's staff officer. He had been told that the only information recorded about the meeting, in respect of Mr Wise, was a "small minor entry" in the Deputy Chief Constable's day book. No other information was held by the Constabulary about the 7 November 2008 meeting as far as he knew.
12. After retiring once more, we indicated a provisional view that we accepted Mr Melling's evidence and that we were minded to issue what might be called an "outcome decision" about the request. There was no need for us to resolve the question of vexatiousness. We proposed simply to use our power in Section 58 of the Act to substitute a new decision notice altering the steps which the Constabulary was obliged to take. We proposed to say that the Constabulary should disclose the information contained in the Chief Constable of Cheshire's report.
13. (It is perhaps necessary here to mention two technical points. The power in Section 58 is to substitute "such other notice as could have been served by the Commissioner". Obviously, the Chief Constable of Cheshire's report post dates the Commissioner's notice. However, the information contained in it does not. The second point is that the duty is to disclose information recorded in any form. It is therefore sufficient, on our findings, to disclose the information in the report and unnecessary to produce photocopies of the day books.)

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14. Mr Cross and Mr Keogh both submitted that release of the information in paras 359-467 of the report would fully satisfy the obligations of the Constabulary in response to the information request. They consented to an order in those terms.
15. Mr Wise dissented. His first point, which he specifically asked us to record, was that he didn't believe anything that the police said. We have recorded that argument but it would be an error of law and a breach of the rules of natural justice for us to adopt that approach.
16. Mr Wise then referred us to pages 51 and 236-51 of the bundle as well as to the minutes of three subcommittee meetings. These, together with the email message to which we have already referred, suggested, he said, cooperation between the Police Authority and the Constabulary at the November 2008 meeting and at other times. This in turn suggested that other information might exist. He stated that the report from the Chief Constable of Cheshire was "full of holes".
17. It is not for us to explore exactly what happened at the 2008 meeting. That task fell to the Chief Constable of Cheshire. It seems to us, however, that some of the material referred to by Mr Wise amounts to no more than the loose use of language. We accepted Mr Melling's evidence that his reference to "liaison" at page 51 was exactly that. Similarly, the email from someone who did not attend the meeting would not, in our view, be preferred as evidence over that of the Chief Executive, the Chief Constable and the Deputy Chief Constable who did.
18. It might be possible to take a narrow view and to hold that since the Police Authority's response to Mr Wise's complaint was not discussed at the meeting on 7 November 2008 then, by definition, the Constabulary held no evidence about it.
19. Taking a less strict view, we are still satisfied that the constabulary held no other information about the meeting at the time of Mr Wise's request than is contained in the report from the Chief Constable of Cheshire. This finding is based on the evidence of Mr Melling which is supported, in our judgment, by that report; its detailed nature renders it most unlikely that Mr Melling's evidence is mistaken. We therefore amend the Commissioner's decision notice so that the single step which the constabulary is

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ordered to take is to disclose the information contained in paragraphs 359-467 of the report from the Chief Constable of Cheshire.

20. For completeness, we should record that the written evidence of the Chief Executive of Lancashire Police Authority was received very late. Mr Wise had asked for her to attend so that he could question her “fairly but briefly”. The Tribunal had suggested that he put his questions in writing. He then produced a list of 48 questions. Having regard to Rule 2, we concluded that we had sufficient material on which to base a fair decision and it would be disproportionate to adjourn for the questions to be answered or for the Chief Executive to attend.

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| Signed: | NJ Warren | Date: | 15 March 2012 |
| | Chamber President | | |



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DECISION NOTICE

1. Permission to appeal is refused.
2. The assertions to which the applicant refers were not ignored by the Tribunal. They were considered but found to be outweighed by other material. See paras 16 and 17 of the decision.

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| <p>Signed: NJ Warren</p> | <p>Date: 13 April 2012</p> |
| <p>Chamber President</p> | |