

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 28 October 2009

Public Authority: Chief Constable of Lancashire Constabulary
Address: Lancashire Constabulary Headquarters
PO Box 77
Hutton
Preston
Lancashire
PR4 5SB

Summary

The complainant requested procedures, protocols and policies for the sharing of information between Lancashire Constabulary and other public authorities. The public authority refused the request, citing the exemption provided by section 22(1) (information intended for future publication). The basis for this was that the information requested by the complainant was being reviewed as part of the steps being taken by the public authority to comply with the Management of Police Information code of practice and would be made available via its publication scheme in due course. The Commissioner finds that this exemption was not applied correctly as the public authority did not have an intention to publish the information within a reasonable period from the date of the request. Additionally, in refusing to disclose the information requested on the basis of this exemption, the public authority failed to comply with the requirements of sections 1(1)(b) and 10(1). The Commissioner also finds that the public authority failed to comply with the requirement of section 17(3)(b) in that it did not explain to the complainant why it believed that the public interest in the maintenance of the exemption outweighed the public interest in disclosure. The public authority is required to disclose the information in question.

The Commissioner's Role

1. 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 Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

The Request

2. The complainant made the following information request on 5 May 2008:

"Please provide me with all the Lancashire Constabulary's written procedures, protocols and policies in relation to information sharing with other public authorities."
3. The public authority responded to this on 30 May 2008. This response stated that the information would not be disclosed and the exemption provided by section 22(1) (information intended for future publication) was cited. The explanation for this was that the public authority intended to make the information falling within the scope of the complainant's request available through its publication scheme at a later date.
4. The complainant responded to this on 30 May 2008 and requested that the public authority carry out an internal review of its handling of the request. The public authority responded with the outcome to the review on 14 August 2008. The refusal under section 22(1) was upheld, with the public authority stating that the information requested by the complainant was being updated as part of the Management of Police Information project. The public authority stated that the information would be made available via its publication scheme once it was complete.

The Investigation

Scope of the case

5. The complainant contacted the Commissioner initially on 20 August 2008 and specified the failure to disclose the information requested as the basis for his complaint. He also raised the issue of the length of time taken by the public authority to complete the internal review.
6. During the correspondence between the Commissioner's office and the public authority about this case, the public authority referred to its extensive wider dealings with the complainant and to the disclosure of information to the complainant during correspondence not directly related to the information request in question here. In response to a request to do so by the Commissioner's office, the public authority produced a list of all the information it held that fell within the scope of the request and confirmed whether or not this had previously been disclosed to the complainant. The information that the public authority stated it held and that has not been disclosed to the complainant as it is considered subject to section 22(1) is that referred to below at paragraph 11; the "Information Sharing Agreements" and "Constabulary Disclosure".
7. The analysis in this Notice covers only these two classes of information. The other information that the public authority included in its list of information relevant

to this request is not covered in this Notice as the public authority states that this information has been disclosed to the complainant previously. The public authority has provided to the Commissioner copies of cover letters sent with the information disclosed. The Commissioner accepts this as evidence that these disclosures took place.

Chronology

8. The Commissioner contacted the public authority initially on 6 May 2009. The background to this case was set out and the public authority was asked to confirm if the information in connection with which it had previously cited section 22(1) had now been made available via its publication scheme. Alternatively, if the information requested by the complainant had not been made available, the public authority was asked to respond confirming whether it maintained that section 22(1) was engaged and, if so, to confirm when the information is to be published.
9. The public authority responded to this on 27 May 2009. It stated that the information requested by the complainant was being reviewed as part of the work undertaken by the public authority to comply with the Management of Police Information (MoPI) guidelines. This work was to be published via its publication scheme *"in due course"*.
10. A further exchange of correspondence between the Commissioner's office and the public authority followed in which it was stressed that this case related to the information request of 5 May 2008 and that the extensive wider correspondence between the complainant and the public authority was not directly relevant to this case. The public authority was also asked to be specific about the information that it held that fell within the scope of the request.
11. The public authority responded on 14 August 2009 and stated that the information that it held that was within the scope of the request and that had not been disclosed to the complainant fell under two headings: "Information Sharing Agreements" and "Constabulary Disclosure". The public authority stated that the information held that fell under these headings was being developed as part of the Management of Police Information project and that this would be made available via the publication scheme once finalised. The public authority stated that it was required to have completed its MoPI work by the end of 2010, but that it hoped to have this work completed and to be in a position to make this information available within six months.

Background

12. The website of the National Policing Improvement Agency describes MoPI as a statutory code of practice introduced in 2005 in response to the recommendation of the Bichard enquiry report. The public authority has stated that full compliance with MoPI is required by the end of 2010.

Analysis

Exemptions

Section 22

13. The public authority has cited section 22(1), the wording of which is set out in full in the attached legal annex, as are all other sections of the Act referred to in this Notice. This exemption provides that information intended for future publication is exempt if the publication was planned at the time of the request and if it is reasonable for the information to be withheld until the date of publication. This exemption is also subject to the public interest, meaning that the information should be disclosed if the public interest favours this, even where it is clear that the exemption is engaged.
14. In order to determine whether section 22(1) is engaged the Commissioner needs to consider the following questions:
 - Is the information requested actually held by the public authority?
 - Did the public authority have an intention to publish the information in the future when the request was submitted?
 - In all the circumstances of the case, is it 'reasonable' that information should be withheld from disclosure until the date of publication (whether that date is determined or not)?
15. Turning to the first question above, whether the information is held by the public authority, as noted previously in this Notice the issue of what information the public authority held that fell within the scope of the request was addressed during the investigation. The public authority provided a schedule setting out the information it held that fell within the scope of the request. Included within this were the "Information Sharing Agreements" and the "Constabulary Disclosure". The Commissioner accepts this clarification from the public authority as confirmation that the information in question is held by the public authority and was at the time of the request.
16. The issue to be considered in connection with the second question above is whether there was an intention to publish the information at the time that the request was received. The exemption would not be engaged if the public authority decided only upon or after receiving a request that the information requested was to be published in future.
17. The Commissioner notes that the explanation provided in the refusal notice focussed on a new publication scheme that the public authority intended to introduce several months after the date of the request. By the internal review stage and in correspondence with the Commissioner the basis on which the public authority argued that section 22(1) was engaged shifted from the publication scheme to focus on the Management of Police Information code of practice. The stance of the public authority is that the information withheld from the complainant was being created or amended as part of the work undertaken by the public authority to comply with MoPI.

18. Whilst the public authority has not provided to the Commissioner any fixed date by which the information will be published, it has stated that it is required to comply in full with MoPI by the end of 2010, but that it expects publication to be within the next six months. Noting that MoPI was introduced in 2005, the Commissioner accepts that the public authority was taking steps in connection with this at the time of the request and that these steps included developing the information in question here. The Commissioner also notes that his model publication scheme includes within its definitions for police forces 'data sharing policies' which would appear to apply to the information in question here, suggesting that this information will be made available via the publication scheme of the public authority once it is finalised. On the basis that the public authority was undertaking work to comply with MoPI at the time of the request and that the information in question should be made available via its publication scheme once finalised, the Commissioner accepts that the public authority did have an intention to publish the information at the time that the request was submitted.
19. Turning to whether it is reasonable for the information to be withheld until the date of publication, the key issue here is the period of time between the request and the intended date of publication. The Commissioner's guidance on this exemption states the following on this issue:

"Generally, the sooner the intended date of publication, the better the case for maintaining the exemption."
20. In the refusal notice, the public authority indicated that the information in question would be published once its new publication scheme was in place. The public authority was vague about when this would take place, indicating only that the new publication scheme should be in place *"this winter"*.
21. At the internal review stage, the point at which the public authority first referred to MoPI as the basis for the citing of section 22(1), the public authority made no reference to the publication date. Instead, the public authority referred to the information falling within the scope of the complainant's request being made available via the publication scheme in a *"phased approach"*.
22. The information had not been published at the time of the drafting of this Notice. This is not the issue here, however. Instead, it is necessary for the Commissioner to consider and reach a conclusion on whether the public authority had a genuine intention at the time of the request and internal review to publish the information in question within a reasonable period. That the public authority has yet to publish this information does not necessarily mean that it did not have a genuine intention to publish within a reasonable period at the time of the request.
23. Whilst the public authority initially referred to the date at which its new publication scheme would be introduced as the defining factor as to when the information would be published, it is clear from the internal review response and from the arguments advanced to the Commissioner in connection with this case that the time of publication was, in fact, dependent on the completion of the work

undertaken in connection with MoPI. The public authority has stated that it is required to comply with MoPI in full by the end of 2010.

24. This deadline for the completion of work associated with MoPI is the only specific and fixed date that applies to the publication of the withheld information. Section 22(1)(a) is specific that the date of publication need not have been set for this exemption to be engaged. The Commissioner would, therefore, have accepted that publication was intended at the time of the request to take place at an earlier, albeit undefined, date than the end of 2010, had the public authority presented convincing evidence that this was the case. However, at neither the refusal notice nor internal review stages when in correspondence with the complainant, nor when in correspondence with the Commissioner's office, did the public authority present convincing evidence that there had been an intention at the time of the request to publish the information requested within a reasonable period from the request.
25. Instead, the evidence available to the Commissioner suggests that the only clear and fixed time frame within which the information requested will be published is the end of 2010. The Commissioner does not accept that publication by the end of 2010 represents a reasonable period following a request made in May 2008.
26. The conclusion of the Commissioner is that it was not reasonable in the circumstances for the information to be withheld from disclosure until the date of publication. The basis for this decision is that the public authority did not, at the time of the request, have a firm intention to publish the information requested within a reasonable period from the date of the request. The Commissioner finds, therefore, that the exemption provided by section 22(1) is not engaged. As this conclusion has been reached at this stage, it has not been necessary to go on to consider the balance of the public interest.

Procedural Requirements

Section 1

27. In failing to disclose the information requested on the basis of an exemption that the Commissioner concludes was not engaged, the public authority failed to comply with the requirement of section 1(1)(b).

Section 10

28. In failing to disclose the information requested within 20 working days of the date of the request, the public authority failed to comply with the requirement of section 10(1).

Section 17

29. At neither the refusal notice nor internal review stage did the public authority give any explanation as to why it believed that the public interest favoured the maintenance of the exemption. In so doing the public authority failed to comply with the requirement of section 17(3)(b).

The Decision

30. The Commissioner's decision is that the public authority failed to comply with the requirements of sections 1(1)(b) and 10(1) in that it refused to disclose the information requested on the basis of an exemption that the Commissioner now finds was not engaged. The Commissioner also finds that the public authority failed to comply with the requirement of section 17(3)(b) to provide an explanation of its reasoning about the balance of the public interest.

Steps Required

31. The Commissioner requires the public authority to take the following steps to ensure compliance with the Act:
- disclose to the complainant the information previously withheld under section 22(1).
32. The public authority must take the steps required by this notice within 35 calendar days of the date of this notice.

Failure to comply

33. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Other matters

34. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern.
35. The Commissioner's published guidance on internal reviews states that a review should be conducted within 20 working days, unless there are exceptional circumstances, in which case the review period may be extended to 40 working days. In this case the Commissioner notes that there appeared to be no exceptional circumstances, but that the public authority failed to provide the outcome to the review within 20 working days. Neither did the public authority provide the outcome to the review within 40 working days. The public authority should ensure that internal reviews are carried out promptly in future.

Right of Appeal

36. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal
Arnhem House Support Centre
PO Box 6987
Leicester
LE1 6ZX

Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@tribunals.gsi.gov.uk.
Website: www.informationtribunal.gov.uk

37. 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.
38. Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is served.

Dated the 28th day of October 2009

Signed

**Lisa Adshead
Senior Policy Manager**

**Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Legal Annex

Section 1

Section 1(1) provides 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.”

Section 10

Section 10(1) provides that –

“Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.”

Section 17

Section 17(3) provides that -

“A public authority which, in relation to any request for information, is to any extent relying on a claim that subsection (1)(b) or (2)(b) of section 2 applies must, either in the notice under subsection (1) or in a separate notice given within such time as is reasonable in the circumstances, state the reasons for claiming -

(a) that, in all the circumstances of the case, the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing whether the authority holds the information, or

(b) that, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.”

Section 22

Section 22(1) provides that –

“Information is exempt information if-

- (a) the information is held by the public authority with a view to its publication, by the authority or any other person, at some future date (whether determined or not),*
- (b) the information was already held with a view to such publication at the time when the request for information was made, and*
- (c) it is reasonable in all the circumstances that the information should be withheld from disclosure until the date referred to in paragraph (a).”*