

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 8 September 2020

Public Authority: Office of the Police and Crime Commissioner for Derbyshire

Address: Butterley Hall
Ripley
Derbyshire
DE5 3RS

Decision (including any steps ordered)

1. The complainant has requested information about speed camera criteria from the Office of the Police and Crime Commissioner for Derbyshire (the "OPCC"). The OPCC advised the complainant that it did not hold the requested information.
2. The Commissioner's decision is that, on the civil standard of the balance of probabilities, the OPCC does not hold the information, however, the OPCC breached section 10(1) in providing a late response. No steps are required.

Request and response

3. On 8 January 2020, the complainant wrote to the OPCC and requested information in the following terms:

"Will you please answer the following query:-

The DfT [Department for Transport] cancelled their best practice advice of 3 serious or fatal accidents, in September 2018, I believe.

You now quote a S. Derbyshire strict criteria (sic) of four serious or fatal accidents in 3 years.

This rule does not apply, for example, in Leicestershire.

Will you please advise when and who instituted the new criterion in S. Derbyshire”.

4. The OPCC responded on 9 June 2020. It denied holding the requested information and advised the complainant to contact Derbyshire County Council.
5. Following an internal review, the OPCC wrote to the complainant on 17 July 2020. It maintained its position.

Scope of the case

6. The complainant contacted the Commissioner on 20 April 2020, to complain about the way his request for information had been handled. He included the following by way of grounds of complaint:

“The traffic in our village has long been a speeding problem. Unofficial measurements by me show that the speeds far exceed the Highways Dept. thresholds. I have sent graphs and analyses of more than 1200 measurements showing maxima of 73mph in the 30 limit. They are exceptional compared with DfT published statistics. Mis-information is common - Police Commissioner in post election address said speeding was a priority. An email from me received the reply - 'speeding was not within his remit'. After challenge the story became 'the Commissioner was only symbolically responsible. Reply from the Home Office said that he was responsible - never acknowledged by PCC.

Police and Highways always said there must be three serious or fatal accidents in last three years before they can act.

A DfT document in 2018 led me to believe, incorrectly, that their 3SFA [serious or fatal accident] rule was cancelled. They have since confirmed that their guidance, called best practice, is not mandatory. In 2019 Leicestershire CC installed 7 sets of average speed cameras, four in villages that had a total of 1 accident in the three years (information promptly supplied to an FOI request). In November 2018 after discussion of the Leicestershire installations the PCC offered to speak to his opposite number ... and report back. Still waiting.

Further requests from me and Parish Councillor were ignored. Further speed analyses received no reply from OPCC or Highways Director ...

In December 2019 I was informed by the OPCC ... that there was a new strict criteria (sic) in S. Derbyshire that there have to be four

SFA before any consideration of enforcement. This against the background of a steady reduction in SFA nationally and locally.

The introduction of a strict 4SFA criterion effectively enables the Authorities to ignore any request in perpetuity. I question whether this is an abuse of powers.

All attempts to find out by whom and when the new criterion was instigated have met silence.

I requested the information from the OPCC on 8 January, 2020 ... No reply. I repeated the request. No reply.

I asked the DfT by letter. After a prompt I was told that their advice is still in force - no information re. S. Derbyshire.

I sent an FOI request to Derbyshire CC with the same question. No reply ..."

7. The Commissioner will consider whether or not, on the civil standard of the balance of probabilities, the OPCC holds the requested information. She will also consider timeliness.
8. 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 FOIA. The FOIA is concerned with transparency of information held by public authorities. It gives an individual the right to access recorded information (other than their own personal data) held by public authorities. The FOIA does not require public authorities to generate information or to answer questions, provide explanations or give opinions, unless this is recorded information that they already hold.

Reasons for decision

Section 10 - time for compliance

9. Section 1(1) of the FOIA states that an individual who asks for information is entitled to be informed whether the information is held and, if the information is held, to have that information communicated to them.
10. Section 10(1) of FOIA provides that a public authority should comply with section 1(1) within 20 working days. Section 1(1)(a) initially requires a public authority in receipt of a request to confirm whether it holds the requested information.

11. The request was submitted on 8 January 2020 and the complainant did not receive a response denying that the OPCC was in possession of the relevant information, until 9 June 2020. The Commissioner therefore finds that the OPCC has breached section 10(1) by failing to comply with section 1(1)(a) within the statutory time period.
12. The Commissioner will use intelligence gathered from individual cases to inform her insight and compliance function. This will align with the goal in her draft Openness by Design strategy¹ to improve standards of accountability, openness and transparency in a digital age. The Commissioner aims to increase the impact of FOIA enforcement activity through targeting of systemic non-compliance, consistent with the approaches set out in our Regulatory Action Policy².

Section 1 – general right of access

13. As mentioned above, section 1(1) of the FOIA states that an individual who asks for information is entitled to be informed whether the information is held and, if the information is held, to have that information communicated to them.
14. The Commissioner is mindful that when she receives a complaint alleging that a public authority has stated incorrectly that it does not hold the requested information, it is seldom possible to prove with absolute certainty whether the requested information is held. In such cases, the Commissioner will apply the normal civil standard of proof in determining the case and will decide on the 'balance of probabilities' whether information is held.
15. The Commissioner will consider the complainant's evidence and arguments. She will also consider the actions taken by the public authority to check whether the information is held and any other reasons offered by the public authority to explain why the information is not held. She will also consider any reason why it is inherently likely or unlikely that information is not held. For clarity, the Commissioner is not expected to prove categorically whether the information is held, she is only required to make a judgement on whether the information is held on the civil standard of proof of the balance of probabilities.
16. Therefore, the Commissioner has sought to determine whether, on the balance of probabilities, the OPCC holds any recorded information within

¹ <https://ico.org.uk/media/about-the-ico/consultations/2614120/foi-strategy-document.pdf>

² <https://ico.org.uk/media/about-the-ico/documents/2259467/regulatory-action-policy.pdf>

the scope of the request. Accordingly, she asked the OPCC to explain what enquiries it had made in order to reach the view that it did not hold the information. In response to these enquiries she was provided with the following details:

"This gentleman has been in touch with the Office of the Police and Crime Commissioner (OPCC) numerous times regarding the noise and speed of traffic outside his house and ultimately what he is wanting is a fixed speed camera mounting near his home address to counteract the noise and speeding he is experiencing. The gentleman is querying why Leicester have fixed speed cameras, seemingly without a criteria, or a lower criteria, yet Derbyshire have a higher criteria that needs to be met before a camera can be considered (4 serious/fatal accidents in 3 years). We have explained to him that we do not hold the information he has requested in an FOI response and subsequent internal review response undertaken by the Chief Executive of the OPCC. The reason we do not hold the information he has requested is that the Commissioner and the OPCC are prohibited from becoming involved in operational policing matters (like criteria and siting of speed cameras) under the law (Policing Protocol Order 2011) therefore, the issues he is raising are outside the OPCC's scope and are not something that we would deal with or be involved with and therefore, that is why we don't hold the information he has requested.

We have also explained to him that we believe that decisions relating to fixed speed cameras and the criteria used to determine where a speed camera is cited [sic] is decided by Derbyshire County Council at partnership meetings ... These meetings are chaired and organised by Derbyshire County Council with The Highways Agency, Derbyshire Police and other partners all in attendance. Therefore, the advice we have given the gentleman is that he would be better to contact Derbyshire County Council directly to discuss the issues he has further with them as the OPCC does not hold the information he has requested as it falls outside the scope of the Commissioners [sic] role and responsibilities and therefore, there would be no reason why we would hold that information or have a need for that information. We have tried to assist the gentleman as much as we can by directing him to Derbyshire County Council who we believe will hold the information he is requesting and who we believe will be able to assist him further. I believe we have fulfilled our duties under the FOIA 2000 and Section 16 Advice and Assistance".

The Commissioner's conclusion

17. When, as in this case, the Commissioner receives a complaint that a public authority has not disclosed some or all of the information that a complainant believes it holds, it is seldom possible to prove with absolute certainty that it holds no relevant information. However, as set out in the paragraphs above, the Commissioner is required to make a finding on the balance of probabilities.
18. Based on the explanation provided by the OPCC, the Commissioner is satisfied, on the balance of probabilities, that no recorded information within the scope of the request is held. This is simply because such a function is not within the OPCC's remit and there would therefore be no expectation that it would hold any of the requested information. It is noted that the OPCC has tried to assist the complainant by suggesting where to direct his enquiries. However, the OPCC is not required to make any enquiries on his behalf.
19. The Commissioner is therefore satisfied that, on the civil standard of the balance of probabilities, the OPCC does not hold the requested information.

Right of appeal

20. 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

21. 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.
22. 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

Carolyn Howes
Senior Case Officer
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