

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 22 June 2021

Public Authority: Chief Constable of West Yorkshire Police
Address: PO Box 9
Laburnum Road
Wakefield
WF1 3QP

Decision (including any steps ordered)

1. The complainant has requested from West Yorkshire Police (WYP) information about the operation of its Public Protection Units (PPUs).
2. The Commissioner's decision is that WYP failed to respond to the request within 20 working days, which is a breach of section 1 (General right of access) and section 10(1) (Time for compliance) of the FOIA.
3. As the information has since been disclosed to the complainant, the Commissioner requires no steps.

Request and response

4. On 16 December 2019, the complainant wrote to WYP and requested information in the following terms:
 - "1. PPU's across your force region are no longer staffed by DC's [Detective Constables] but rather by PC's [Police Constables]. Please confirm this is correct.
 2. When did this change occur across every station you have with a PPU?
 3. What is the anticipated cost saving to the force of this change?

4. What were the figures for supposed breach of any form of Order in the same length of time last year as in the same period this year for which PC's have been employed in PPU's in the role previously taken by DC's? Question applies to Havertop Lane Station.

5. I ask the same question as above but in relation to arrests.

6. How many of these arrests were accompanied by a charge of supposedly resisting arrest & also assault on officer's made by the officers involved? I want this data for a comparable period in which DC's were engaged at Havertop Lane and the same length of time that PC's have been doing this.

7. Please provide anonymised discipline and complaints records as well as criminal records for PC PPU officers currently employed at Havertop Lane Police Station at Normanton."

5. On 2 March 2020, following the Commissioner's intervention, WYP issued its substantive response to the request. For part (1), WYP said that it does not use the term 'PPU' and it provided a breakdown of safeguarding departments staffed by Police Constables. It denied holding the information requested in parts (2)-(7) of the request.
6. Later the same day, and following a query from the complainant, WYP issued a revised response. The revised response included some data in respect of part (1) which it said it had omitted from the original response by mistake.
7. Following an internal review WYP wrote to the complainant on 2 April 2020, maintaining its position.

Scope of the case

8. The complainant initially contacted the Commissioner on 28 January 2020 to complain that he had not received a response to his request for information. This was rectified on 2 March 2020, and on 2 April 2020, following receipt of the internal review, he contacted the Commissioner to complain about the way his request for information had been handled. He considered that WYP must hold further information.
9. The complainant suggested that, when responding to his request, WYP may have deliberately concealed information from him, which is an offence under section 77 (offence of altering etc. records with intent to prevent disclosure) of the FOIA. The ICO's Criminal Investigations Team has considered this allegation and has judged that there is insufficient evidence to substantiate this allegation.

10. During the Commissioner's investigation, WYP located further information which fell within the scope of the request. On 5 August 2020 it informed her:

"Errors were made when the original request was investigated which resulted in inadequate information being gathered. As a result the request was investigated afresh and relevant information has now been provided to [the complainant]".

11. It issued a revised response to the complainant the same day, disclosing further information. Following further queries and discrepancies highlighted by the complainant, it issued additional revised responses on 21 August 2020 and 9 September 2020, each of which included further information.
12. On 15 September 2020, the complainant confirmed to the Commissioner that he was satisfied that each part of the request had now received an acceptable response and he withdrew his complaint. The Commissioner made a record of the deficiencies in the handling of the request and closed her case file on the matter.
13. However, prior to that, on 11 September 2020, the complainant had asked WYP to conduct an internal review of its handling of the request, specifically focusing on the following points:

"1. Why the data provision exceeded the length of time allowed in law by a significant margin.

2. Why the data provided on two prior occasions was inadequate and incomplete.

3. Why it required the intervention of ICO before a response was provided or the data provided in the form requested."

14. On 16 October 2020, responding to the complainant's request for an internal review, WYP apologised for the delays and errors in the handling of his request. It did not address the three points specified by the complainant, saying that it did not hold any information about them. It told the complainant to complain to the Commissioner if he remained dissatisfied.
15. On 17 October 2020 the complainant contacted the Commissioner again. Pointing to WYP's failure to address these points, he said he wished to *"appeal the content"* of the latest internal review and he asked the Commissioner to determine whether the internal review had been conducted correctly.

16. There is no obligation under the FOIA for a public authority to provide an internal review process and the Commissioner is not able to consider how internal reviews have been conducted under section 50 of the FOIA.
17. However, as the complainant asked WYP to explain the delays and apparent errors in its handling of his request, and it did not engage with him on this, the Commissioner has considered WYP's compliance with sections 1 and 10 of the FOIA, which concern the statutory timescale for compliance. She has commented on the internal review response in the 'Other matters' section at the end.

Reasons for decision

Section 1 – general right of access

Section 10 - time for compliance

18. 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.
19. Section 10(1) of the FOIA states that on receipt of a request for information, a public authority should respond to the applicant within 20 working days.
20. The complainant submitted his request on 16 December 2019 and it was not until 9 September 2020 that he received all the information WYP held which fell within its scope.
21. WYP therefore breached sections 1(1)(a),(b) and section 10(1) of the FOIA. Since the information has now been disclosed to the complainant, no steps are required.
22. The Commissioner notes in this case that each fresh disclosure was only made as a result of a query or challenge from the complainant himself and she considers it unacceptable for a public authority to respond to requests in this piecemeal fashion. WYP's attention is drawn to the need to establish, at the outset of the request-handling process, exactly what information is being requested and what information it holds, clarifying this with the requester if necessary.
23. The handling of this request also appears to have been plagued with what WYP has described as "*human errors*". The Commissioner expects WYP to exercise appropriate care when responding to requests for information.

24. The Commissioner uses intelligence gathered from individual cases to inform the ICO's insight and compliance function. This aligns with the goal in our draft "Openness by design"¹ strategy 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 Policy"².

Other matters

Internal review

25. While it is good practice to do so, there is no obligation under the FOIA for a public authority to provide an internal review process. However, where a public authority chooses to offer one, the section 45 code of practice³ sets out, in general terms, the procedure that should be followed.
26. The section 45 code states that the internal review procedure should provide a fair and thorough review of procedures and decisions taken in relation to a request. The Commissioner therefore considers that by failing to offer some explanation regarding the specific points the complainant asked, WYP did not adhere to the section 45 code.

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>

³ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/744071/CoP_FOI_Code_of_Practice_-_Minor_Amendments_20180926_.pdf

Right of appeal

27. 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

28. 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.
29. 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

Samantha Bracegirdle
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF