

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 27 April 2021

Public Authority: Chief Constable of Northumbria Police
Address: Northumbria Police Headquarters
Middle Engine Lane
Wallsend
Tyne & Wear
NE28 9NT

Decision (including any steps ordered)

1. The complainant requested information from Northumbria Police about its application of a legal test.
2. The Commissioner's decision is that Northumbria Police has breached section 10(1) of the FOIA in that it failed to provide a valid response to the request within the statutory time frame of 20 working days.
3. No steps are required.

Request and response

4. On 10 February 2021, the complainant wrote to Northumbria Police and requested information in the following terms:

"The statutory guidance issued by the IOPC mandates that any allegation against police which meets the definition of Serious Corruption must be passed to the IOPC.

The definition provided is:

"Any conduct that could fall within the definition of the statutory offence of "Corruption or other improper exercise of police powers and privileges"

Along with

"Perverting the course of justice or other conduct that is likely to seriously harm the administration of justice, in particular the criminal justice system"

The CPS specifies:

"The course of justice starts when: an event has occurred, from which it can reasonably be expected that an investigation will follow;"

Northumbria Police Officers have repeatedly refused to record allegations of crime in breach of the Home Office Counting Rules requirement which state:

"Whether to Record An incident will be recorded as a crime (notifiable offence) for 'victim related' offences if, on the balance of probability:

(A)the circumstances of the victims report amount to a crime as defined by law (the police will determine this, based on their knowledge of the law and counting rules); and

(B) there is no credible evidence to the contrary immediately available.

A belief by the victim (or a person reasonably assumed to be acting on behalf of the victim, that a crime has occurred is usually sufficient to justify its recording."

So despite an event occurring, from which it can reasonably be expected that an investigation will follow, and the officer not having any credible evidence to the contrary immediately available, the officer refuses to record the allegation of crime.

Formal allegations against those officers specifying that their actions perverted the course of justice have simply never been referred to the IOPC by Northumbria Police.

The IOPC have specified that Northumbria Police apply a "Legal Test" to all allegations and it is only if the allegation meets that legal test that it will be referred to them.

Please therefore provide copies of or links to any and all documentation regarding this Legal Test and any information held as to how it should be or is applied, identifying which members of staff are responsible for applying it.

If possible, within the cost constraints please also provide any statistical information to detail how many times this test has been undertaken by calendar month, and having been applied, how many of those instances resulted in the issue being referred to the IOPC and how many issues remained within Northumbria Police and any reasons provided for those decisions."

5. Northumbria Police acknowledged the request on 11 February 2021 and requested clarification. The complainant provided further clarification via a series of exchanges with Northumbria Police between 11 February 2021 and 22 February 2021. Northumbria Police provided a response to the request on 18 April 2021.

Scope of the case

6. The complainant contacted the Commissioner on 22 February 2021 to complain about Northumbria Police's failure to respond to their request within the statutory time frame of 20 working days.
7. The Commissioner has considered whether Northumbria Police has complied with its obligations in relation to the time for compliance at section 10(1) of the FOIA.

Reasons for decision

8. Section 1(1) of the FOIA states 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."

9. Section 10(1) of the FOIA states that a public authority must respond to a request promptly and "*not later than the twentieth working day following the date of receipt*".
10. From the evidence provided to the Commissioner in this case, it is clear that Northumbria Police did not deal with the request for information in accordance with the FOIA. The Commissioner finds that Northumbria Police has breached section 10(1) by failing to respond to the request within 20 working days.

Right of appeal

11. 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

12. 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.
13. 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

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