



Freedom of Information Act 2000 (Section 50)

Decision Notice

Dated 18 May 2006

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

Summary Decision and Action Required

The Commissioner's decision in this matter is that the public authority has not dealt with the Complainant's request in accordance with Part I of the Act in that it has failed to respond to a request for information made to it.

The Commissioner accordingly requires the public authority to respond to the request as required by Section 1.

- 1. Freedom of Information Act 2000 (the 'Act') – Applications for a Decision and the Duty of the Commissioner**
 - 1.1 The Information Commissioner (the 'Commissioner') has received an application for a decision whether, in any specified respect, the Complainant's request for information made to the public authority has been dealt with in accordance with the requirements of Part I of the Freedom of Information Act 2000 (the 'Act').
 - 1.2 Where a complainant has made an application for a decision, unless:
 - a complainant has failed to exhaust a local complaints procedure, or
 - the application is frivolous or vexatious, or
 - the application has been subject to undue delay, or
 - the application has been withdrawn or abandoned,the Commissioner is under a duty to make a decision.
 - 1.3 The Commissioner shall either notify the complainant that he has not made a decision (and his grounds for not doing so) or shall serve a notice of his decision on both the complainant and the public authority.

2. The Complaint

- 2.1 On 3 January 2005 the complainant requested the following information from the public authority:

Information relating to correspondence between the complainant and staff of the public authority in October 2004.

The request is set out in full in the annex to this Notice.

- 2.2 On 27 January, the public authority wrote to the complainant to provide what was described in its letter as a 'partial response.' The complainant was informed that it was not possible to meet his requirements in full and was advised that as his request related to a previous complaint, he should write directly to the Professional Standards Department at Lancashire Constabulary.
- 2.3 The complainant replied to the above letter on 1 February to complain that he did not believe that should be expected to direct a request for information to a particular named department within the public authority to which he had already written; that no exemptions were claimed; that he did not receive advice and assistance; and that he had received no details of the Constabulary's internal review procedure.
- 2.3 Throughout February, the complainant wrote by email on a number of occasions to both the Information Assurance Department and Professional Standards Department at Lancashire Constabulary. The Commissioner has evidence of seven such emails. On 28 February he asked eighteen questions, none of which were requests for information, and on 8 March he made four further requests. No evidence has been made available to the Commissioner that the complainant received a response to his requests or received any further communication from the Information Assurance Department.
- 2.4 On 19 April, the complainant wrote to the Commissioner to complain about the handling of his request.

3. Relevant Statutory Obligations under the Act

- 3.1 **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.”

- 3.2 **Section 17** provides that –

“A public authority which... is to any extent relying:

- on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request, or
- on a claim that information is exempt information

must, within the time for complying with section 1(1), give the applicant a notice which –

- (a) states that fact,
- (b) specifies the exemption in question, and
- (c) states (if that would not otherwise be apparent) why the exemption applies.”

4. Review of the case

- 4.1 The case officer, acting on behalf of the Commissioner, contacted the public authority by letter on 26 July 2005 to remind it of its obligations under section 1 and section 17 of the Act. She asked the public authority to confirm whether or not the information requested by the complainant on 3 January had been supplied to him.
- 4.2 The public authority responded on 28 July by explaining that the requests related to an ongoing complaint surrounding the general investigation of another incident and that exemptions from the duty to provide information were not therefore relied upon because the requests did not fall within the remit of the Act.
- 4.3 The case officer explained to the public authority that this response was not in accordance with the requirements of section 1. Although she appreciated that this was only part of an ongoing dispute, she suggested that this aspect of it might be best resolved by the public authority responding properly to the request, confirming or denying for each point whether the information was held, and, if the information was held, supplying it to the complainant, or refusing to do so on the grounds that any part of Part II of the Act applied.
- 4.4 Following further communication between the case officer and public authority, and some delay in response, the public authority wrote again to the complainant. This letter supplied a response to the request of 8 March. In relation to the request of 3 January, the public authority repeated its assertion that the request related to the investigation of a complaint and that the complainant should contact the Professional Standards Department, It also stated that the information was not held in the format requested.
- 4.5 The case officer wrote on three occasions in October and November with further questions. No response was received. On 10 January 2006, the case officer was contacted by telephone by another member of staff at the public authority. An email was received on 27 January and a further letter sent on 30 January.
- 4.6 The email stated that much of the complainant’s initial request consisted not of requests for recorded information but of questions about long standing issues dealt with by the Professional Standards Department (previously known as the Police

Complaints Department). The only question the public authority regarded as being covered by FOI was in respect of a file held by the Professional Standards Department containing investigative material and correspondence. The file had been reviewed and much of the information provided. Information not provided was withheld on the grounds that it related to third parties. The email further stated that a member of the Professional Standards Department would be visiting the complainant in order confirm and address any outstanding issues between the two parties.

- 4.7 The letter confirmed all of the above and further noted that the complainant had another request in October 2005, this for personal information, and submitted more correspondence in December and January about information requests. The public authority was unclear as to which request this correspondence related.
- 4.8 On 15 February 2006, the case officer wrote to the public authority enclosing the complainant's initial request, set out in list form, rather than in the paragraphs as written in that request. She requested that for each point the public authority confirm whether or not information had been provided, was held or was exempt.
- 4.9 Following further correspondence, the public authority telephoned the case officer to advise that the complainant had instigated a further complaint about the handling of his request and his initial complaint, which was being addressed by the Professional Standards Department. It was confirmed that it would be difficult to respond properly to the previous letter because of this. The public authority also stated that because of the ongoing correspondence from the complainant it was no longer clear as to what information had been provided to him.
- 4.10 An agreement was reached that the case with the Commissioner be put on hold until the outcome of this investigation. The complainant contested this decision, and after further consultation with the public authority, it was decided that this Decision Notice be issued.
- 4.11 Throughout the course of this investigation, the complainant continued to write to the Commissioner to raise further points.

5. The Commissioner's Decision

- 5.1 The Commissioner's decision in this matter is that the public authority has not dealt with the Complainant's request in accordance with the following requirements of Part I of the Act:

Section 1(1) – in that it has failed to inform the complainant in writing whether it holds information of the description specified in the complainant's request.

- 5.2 The Commissioner is of the view that, to comply with its obligations under section 1, the public authority should have, for every point in the complainant's request, informed the complainant whether or not the information specified in that point was held. Where the information was held, the public authority should have communicated this to the public authority, or properly refused to do so.

- 5.3 Requests for information should be recognised as such. The Commissioner appreciates that in this case it may be reasonable to suggest that some of the requests were, in fact, questions rather than requests for recorded information, but the complainant made clear that his was a Freedom of Information request; and the correct response was to have treated it as such. Although it may be suggested that the public authority was initially assisting the complainant by suggesting that his requests be dealt with outside the legislation, the complainant emphasised that the request had been made under the Act and that he expected it to be dealt with as such.
- 5.4 A public authority as a whole has a duty to respond to requests for information. It was not therefore reasonable to repeatedly redirect the complainant to a specific named department within the public authority.

6. Action Required

- 6.1 The Commissioner requires the public authority to confirm or deny to the complainant, for each of the points listed in the annex to this notice, that the information requested is held. If the request is not for recorded information, the public authority should deny the information is held. If held, the Commissioner requires the public authority to inform the complainant whether or not it has already been supplied, and if not, to supply it or to issue a refusal notice in respect of it in accordance with the requirements of part 17 of the Act.
- 6.2 In the event that the public authority requires additional information from the complaint in order to be able to locate the requested information or is uncertain as to the scope or nature of the request it should contact the complainant in order to clarify the request or to offer assistance to the complainant in reframing the request in accordance with section 16 of the Act.
- 6.3 The Commissioner requires these steps to be carried out within 30 days of the date on which this Decision Notice is served.

7. Right of Appeal

- 7.1 Either party has the right to appeal against this Decision Notice to the Information Tribunal (the "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@dca.gsi.gov.uk

Reference: FS50072183

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

Dated the 18th day of May 2006

Signed

**Phil Boyd
Assistant Commissioner**

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

ANNEX

**Full text of request for information from Lancashire Constabulary made by complainant on 3 January 2005
"E-Mail dated 06/09/04 from [name]"**

Can you supply me all the information as regards [name]'s careful consideration of my paperwork and the nature and detail of any advice from the Fraud Office at the Headquarters. In particular [...]:
any details of her review,
her reasoning behind the decisions,
the nature of her (if any) enquires,
the person with whom she made enquires (if any)
whether anyone was interviewed as a result of my allegations,
the specific evidence gained from her enquires (if any),
how she actually dealt with the information provided via my paperwork,
how she raised her points with the fraud office at HQ,
how the Fraud Office responded,
how the advice from the Fraud Office impacted upon her considerations,
why I wasn't formally interviewed or given an opportunity to make a formal statement,
why when I informed her that new evidence had come to my attention nobody got back to me and
any other information relevant to my request.

Letter from [name] dated 18 October 2004

Can you supply all information relating to the administrative handling of my supposed complaint and explain fully all reasoning behind the reported outcome of my complaint from [redacted name]?

In particular can you supply full summary of the evidence and detail of the nature of the "careful consideration of the clearly difficult and complex nature" by the Senior Detective at Lancaster.

Which issues were difficult?

Which issues were complex?

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The reasoning behind the conclusions of the senior Detective Officer at Lancaster.
Whether any persons who were the subject of my allegations were interviewed and if not why not

Why when evidence came to my attention at a later stage and you were formally informed no contact was made as implied?

Why was it considered that I had actually made a complaint and any other information relevant to my request.

E-Mail to [name] 21 October 2004

Can you please explain fully and provide information as to why when I contacted Lancashire Constabulary and informed them of the existence of new evidence contact wasn't made as implied and why this seems to contradict the statement in the third paragraph of [redacted name] letter dated 18th October 2004?

Can you supply me any other detail relevant to my request.

Corrected E-Mail to [name] 21/10/04.

Why was the important content of this e-mail totally and utterly ignored and no further contact made with me by Lancashire Constabulary?"