

## **Freedom of Information Act 2000 (Section 50)**

### **Decision Notice**

**Date: 29 November 2010**

**Public Authority:** Cambridgeshire Constabulary  
**Address:** Hinchingsbrooke Park  
Huntingdon  
PE29 6NP

### **Summary**

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The complainant requested disclosure of any comments or complaints made to the Constabulary, and any response provided or action taken regarding its policing of a protest at KuDos Pharmaceuticals in Cambridge. The Constabulary replied that it held no information in respect of this request. The complainant went on to provide copies of correspondence falling within the scope of his own request. During the Commissioner's investigation the Constabulary explained that it was unable to locate any information during the searches it had undertaken and relied on section 12(2) of the Act with regard to further searching. The Commissioner's decision is that the Constabulary was correct in its application of section 12(2) although in not informing the complainant of this application it breached section 17(5). The Constabulary is also in breach of section 16(1) in not providing advice and assistance following its refusal under section 12(2).

### **The Commissioner's Role**

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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**

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2. On 14 March 2010 the complainant made the following request for information to the Constabulary:

"Please provide me with the following:

-Disclosure of any comment(s) or complaint(s) about the behaviour of any officers with regard to their policing of a protest that took place on 15 December 2009 at KuDOS Pharmaceuticals 410 Cambridge Science Park, Milton Road, Cambridge, CB4 0PE.

-Disclosure of any reply to such comment(s) or complaint(s).

-Disclosure of any documentation, disciplinary measures or advice given to any officer due to such comment(s) or complaint(s)."

3. The request was made via the 'What Do They Know' website and was not directly received by the Constabulary.
4. On 16 April 2010 the complainant made his request again directly to the Constabulary. He received an acknowledgement of the request on 19 April 2010.
5. On 30 April 2010 the Constabulary responded stating that the information was not held.
6. On the same day the complainant requested an internal review. He sent the Constabulary the text of two pieces of correspondence regarding the policing of the protest at KuDOS Pharmaceuticals which he had obtained from another source.
7. On 5 May 2010 the Constabulary provided some information which it maintained was provided outside of the Act. This information detailed the action taken by the Constabulary in response to correspondence it had received.
8. On the same day the complainant confirmed that he still requested an internal review.
9. On 14 May 2010 the Constabulary provided a review upholding its original response that no information was held.

## **The Investigation**

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### **Scope of the case**

10. On 20 May 2010 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider the following points:
  - The Constabulary confirmed holding some correspondence only after the complainant provided copies of the correspondence which he had acquired from another source.
  - Despite this, the internal review upheld the initial response.
11. The Commissioner has determined that the date on which the request was received by the Constabulary is not a significant factor in this case. The Commissioner notes that this matter did not form part of the applicant's complaint. The focus of his decision is the Constabulary's application of section 12.

### **Chronology**

12. On 6 August 2010 the Constabulary contacted the Commissioner with its determination of a timetable of events in the case.
13. On 2 September 2010 the Commissioner began his investigation and requested clarification on the Independent Police Complaints Commission guidance on 'complaints' definition and classification to aid an accurate understanding of the scope of the complainant's request.
14. On 6 September 2010 the Constabulary provided the Commissioner with a full explanation of the IPCC determination of a complaint or 'expressions of dissatisfaction'.
15. On 10 September 2010, following further discussion with the Constabulary regarding the possible locations, storage and nomenclature used in respect of correspondence received by the Constabulary, the Commissioner wrote to the Constabulary requesting more information on the searches undertaken to locate the requested information.
16. On 28 September 2010 the Constabulary responded and concluded that a complete search of all its records would exceed the appropriate limit as defined by the Freedom of Information and Data Protection

(Appropriate Limit and Fees) Regulations 2004 and it therefore wished to rely on section 12(2) in this regard.

## Findings of Fact

17. During his investigation the Commissioner was made aware of the many different ways the Constabulary may hold information. These are summarised below:

- Correspondence to the Constabulary can be received at any of its sixteen police stations.
- Correspondence received at any of the Constabulary's stations will be processed by any number of officers who may log that correspondence on the stations' own systems.
- The Constabulary's Web Communications team will distribute emails the force receives appropriately, depending on their content. If the correspondence concerns a particular officer it will be sent to the officer's supervisor. If a particular officer is not identified the email will be sent to the Professional Standards Department.
- If correspondence is sent to a supervising officer, that officer may exercise his/her discretion in whether or how that correspondence is handled further.
- There are no set procedures which determine whether or not notes concerning correspondence may be taken and/or may be referred to the Professional Standards Department. Consequently information relating to correspondence may or may not also be held on an officer's personal file.
- Correspondence addressed to the Chief Constable would usually be sent to the officer dealing with correspondence on his behalf. This officer will then record the communication on the 'Document Tracking' system with a title assigned by the officer at his/her discretion.
- There is no naming protocol currently operating. The Constabulary indicated that the easiest way to track correspondence is by the name of the sender.
- Each officer has their own pocket note book which can be used to record verbal comments. This information could be held by any officer.
- The Constabulary confirmed to the Commissioner that it received the complainant's request on 16 April 2010.

## Analysis

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### Procedural Matters

18. The Constabulary failed to respond to the complainant's request sent to the 'What Do They Know' website. After twenty two working days the complainant made his request directly to the Constabulary and the Constabulary responded promptly informing him that no information was held.
19. When the complainant requested an internal review he referred the Constabulary to correspondence he had obtained from another source. He sent the Constabulary some correspondence he had obtained which contained comments about the behaviour of a specific officer at the KuDOS Pharmaceuticals protest. The complainant also provided the response sent by the Constabulary to the source of this correspondence.
20. Having received the correspondence supplied to the complainant by a third party, the Constabulary was able to contact the officer who had dealt with the correspondence. The Constabulary was then able to confirm to the complainant what action it had been taken in respect of this correspondence. The Constabulary stated that the confirmation was provided to the complainant outside of the Act.
21. Nevertheless the Constabulary upheld its original response that no information was held regarding the complainant's request.
22. The Commissioner notes that the correspondence, whether classified as a complaint or an expression of dissatisfaction, was held and therefore information falling within the scope of the request is held.
23. The Commissioner requested that the Constabulary provide him with detailed information on the processes followed when correspondence is received. The Commissioner understands that there is no central point for receiving and handling correspondence. There are sixteen police stations which may receive correspondence and officers located at those stations are able to process it by logging on their own systems. There is also the 'Web Communication' team who receive emails and despatch them to relevant recipients. The Constabulary explained to the Commissioner that an email received by that team, which refers to a particular named officer, as in this case, is sent to the officer's supervisor. The action taken after this is not a defined procedure.

24. The Commissioner further questioned the Constabulary on its management of different types of correspondence with regard to consistency and tracking, in order to establish that the Constabulary had made appropriate searches to locate any correspondence relevant to the request in this case.
25. The Commissioner notes that in the case of Linda Bromley & others and the Environment Agency (EA/2006/0072), the Tribunal said: "...there can seldom be absolute certainty that information relevant to a request does not remain undiscovered somewhere within a public authority's records..." (*para 13*). The Commissioner acknowledges that his decision as to what would represent an appropriate search or search strategy will have to depend on the circumstances of each case but he would expect to see evidence of either a reasonable and logical search strategy.
26. The Commissioner considers that the lack of a determined handling procedure results in correspondence being dealt with in a number of different ways as described in paragraph 16, 'Findings of Fact'. This variation effects the action taken as a result of the correspondence and also the subsequent tracking of the correspondence. Although there is a Document Tracking system, searches cannot be made to locate information of a particular type. There is no grouping or classification of correspondence into categories, each document is recorded in the order that it is received.
27. To be certain of finding all or any correspondence relating to a specific matter (in this case the protest at KuDos Pharmaceuticals) which may be recorded on the Document Tracking system, a manual search of the letters recorded is also necessary. As this system is only one possible location, the other systems within the Constabulary would require a similar manual search.
28. The request in this case is for comments or complaints on 'the behaviour of any officers with regard to their policing' the Commissioner therefore asked the Constabulary to clarify the searches undertaken specifically with respect to those officers in attendance at the protest.
29. The Constabulary confirmed that as there was no "operational order" regarding this specific protest and therefore the officers attending would have been some of the officers on duty in Cambridge on that day (approximately 50). There is no record of which officers were involved and therefore attendance would need to be checked by contacting all those officers, establishing who attended and then searching their files for any referred comment or complaint. As the

supervising officer has discretion regarding any action taken with respect to a comment or complaint about an officer, some supervisors may speak with the officer concerned but not make formal notes in his/her file whilst others may make notes or refer the matter to the Professional Standards Department ('PSD') for independent review. Consequently, if the above procedure was undertaken the Constabulary would still be unable to say with any degree of confidence whether or not it held correspondence relevant to the request.

30. In focussing on the complaints element of the request the Constabulary contacted the PSD to search for officer complaints on its database and those it holds manually. This search did not provide any information. It was initially assumed by the Constabulary that any complaint (particularly those not identifying a specific officer) would be held at the PSD.
31. The Constabulary is unable to search its emails unless it is provided with either the date/time the email was sent, the email address from which it was sent or the person/address to which it was sent. This situation means that the Constabulary's emails cannot be accessed in response to a request, as in this case, for a specific topic or event. Currently, once on the Constabulary database emails are not collated or classified into a folder. The Constabulary is now aware of its lack of clarity in recording complaints/comments and this is being addressed by the creation of a database. Once this database is operational the Constabulary will have access to comments/complaints about a specific matter and an audit trail of the action taken regarding any conduct/behaviour issues. This would have assisted with the provision of the information requested in this case. However, at the time of the request, this was not possible.
32. Searches of the Document Tracking system were undertaken using the following titles: 'Kudos', 'Demonstration' and 'Science Park'. However no information was located. As previously explained such a search would only provide correspondence recorded under those headings if they were used by the person logging the correspondence.
33. The Commissioner has determined, on the basis of the information the Constabulary disclosed to the complainant on 5 May 2010, that the Constabulary holds information relevant to the complainant's request

## **Section 12(2)**

34. The Constabulary did not rely on the exemption contained in section 12(2) in its responses to the complainant. However it explained to the Commissioner that it would not be possible to undertake all possible



searches for the requested information within the limits of the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ('the Regulations')

35. The Commissioner requested further detail on the breakdown of the time required to search for the information sought by the complainant. The Commissioner asked the Constabulary to consider the costs it reasonably expected to incur in determining whether it held the information, in locating the information, retrieving the information and extracting the information
36. The Constabulary explained that its IT team had constructed a 'structured query language' search which produced a list of correspondence from the Headquarters' Document Tracking database recorded between the date of the demonstration (15 December 2009) and the date of the Constabulary's response (30 April 2010). This database was chosen because all letters addressed to the Chief Constable are recorded there and it was considered that correspondents would be likely to address the requested correspondence to the Chief Constable. The list comprised 497 documents which would be required to be opened and read, taking an estimated four minutes each to process resulting in over 33 hours work for this single source of correspondence. Although the Commissioner considers that four minutes per document is a generous length of time to be taken he was nevertheless satisfied that this search to locate and retrieve the information along with the other searches required to provide a complete assessment would be likely to exceed the 18 hours allowed.
37. The Commissioner acknowledges the broad scope of the complainant's request. This, together with the Constabulary's unstructured records management system which necessitates thorough searches of a number of locations, lead the Commissioner to conclude that, on the balance of probabilities, the Constabulary would be correct to rely on section 12(2).

### **Section 16(1)**

38. In its reliance on section 12(2) the Constabulary has a duty to provide advice and assistance to the complainant in its attempt to comply with the request. Under this obligation the Constabulary could have assisted the complainant to refine the broad scope of his request which could have resulted in either a shorter time frame or restricted locations for the searches to be undertaken. The Commissioner acknowledges that the Constabulary's failure to provide advice and assistance may have disadvantaged the complainant.



## **Section 17**

39. The Constabulary issued a refusal notice to the complainant which did not comply with the requirements of section 17(1). The Constabulary failed to specify an exemption in its response and why the exemption applied. It later relied on the exemption contained in section 12(2). In relying on a claim that section 12(2) applies a public authority must, in accordance with section 17(5), provide the applicant with a refusal notice stating that fact within the time for complying with section 1(1). The Commissioner considers that the Constabulary did not meet its obligations under section 17(5).

## **The Decision**

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40. The Commissioner's decision is that the following elements of the request were not dealt with in accordance with the Act:
- The Constabulary breached section 17(5) in not stating its reliance on section 12(2) to the complainant.
  - The Constabulary breached section 16(1) in not providing advice and assistance following a refusal under section 12.

## **Steps Required**

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41. The Commissioner requires the Constabulary to take the following steps to ensure compliance with the Act:
- To carry out its section 16 duty arising from section 12.
42. The Constabulary must take the steps required by this notice within 36 calendar days of the date of this notice.

## Right of Appeal

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43. 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,  
Arnhem House,  
31, Waterloo Way,  
LEICESTER,  
LE1 8DJ

Tel: 0845 600 0877

Fax: 0116 249 4253

Email: [informationtribunal@tribunals.gsi.gov.uk](mailto:informationtribunal@tribunals.gsi.gov.uk).

Website: [www.informationtribunal.gov.uk](http://www.informationtribunal.gov.uk)

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.

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 29<sup>th</sup> day of November 2010**

**Signed .....**

**Andrew White  
Group Manager**

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

## **Legal Annex**

### **Exemption where cost of compliance exceeds appropriate limit**

**Section 12(1)** provides that –

“Section 1(1) does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit.”

**Section 12(2)** provides that –

“Subsection (1) does not exempt the public authority from its obligation to comply with paragraph (a) of section 1(1) unless the estimated cost of complying with that paragraph alone would exceed the appropriate limit.”

### **Duty to provide Advice and Assistance**

**Section 16(1)** provides that -

“It shall be the duty of a public authority to provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made, requests for information to it.”

**Section 16(2)** provides that –

“Any public authority which, in relation to the provision of advice and assistance in any case, conforms with the code of practice under section 45 is to be taken to comply with the duty imposed by subsection (1) in relation to that case.

### **Refusal of Request**

**Section 17(1)** provides that -

“A public authority which, in relation to any request for information, 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."

**Section 17(5)** provides that –

"A public authority which, in relation to any request for information, is relying on a claim that section 12 or 14 applies must, within the time for complying with section 1(1), give the applicant a notice stating that fact."