

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 10 October 2012

Public Authority: Chief Constable of South Wales Police

Address: South Wales Police Headquarters
Cowbridge Road
Bridgend
CF31 3SU

Decision (including any steps ordered)

1. The complainant has requested whether it is a matter of South Wales Police's written procedural policy not to prosecute for the crime of perjury and conspiracy to commit perjury. South Wales Police (SWP) confirmed that it holds no recorded information relevant to this request.
2. The Commissioner's decision is that SWP has complied with its obligations under section 1(1)(a) of the Freedom of Information Act 2000 ('the Act').

Request and response

3. On 3 April 2012, the complainant wrote to SWP and requested information in the following terms:
"...I want to know if it is a matter of South Wales Police Force's written procedural policy not to prosecute for the crime of Perjury, and Conspiracy to commitment[sic] perjury?"
4. SWP responded on 3 May 2012. It stated that:
"...the decision as to whether a prosecution will or will not be brought is that of the Crown Prosecution Service. South Wales Police hold no recorded information to answer your request."
5. Following an internal review SWP wrote to the complainant on 23 May 2012 upholding its original response.

Scope of the case

6. The complainant contacted the Commissioner expressing dissatisfaction with SWP's response. The Commissioner has therefore considered whether SWP's response is compliant with section 1(1)(a) of the Act. The complainant also made criticisms of SWP which are beyond the scope of the Commissioner's remit and therefore the scope of this decision notice.
7. The Commissioner considers that SWP has complied with its duties under section 1(1)(a) of the Act.

Reasons for decision

8. Under section 1(1) of the Act, in response to a request for information a public authority is only required to provide recorded information it holds and is not therefore required to create new information in order to respond to a request.
9. In his consideration of this case, the Commissioner is mindful of the former Information Tribunal's ruling in EA/2006/0072 (Bromley) that there can seldom be absolute certainty that information relevant to the request does not remain undiscovered somewhere within the public authority's records. When considering whether a public authority does hold any requested information the normal standard of proof to apply is the civil standard of the balance of probabilities.
10. The Commissioner's judgement in cases such as this therefore is based on the public authority's submissions and where relevant, details of any search undertaken.
11. SWP has confirmed that the actual decision whether or not to prosecute is taken by the Crown Prosecution Service with the police responsibility only extending as far as deciding whether or not to refer a case. Nevertheless, SWP checked with its Legal Services and Professional Standards Department which confirmed that SWP do not hold a policy which states not to prosecute for perjury and conspiracy to commit perjury.
12. Given the nature of the information requested and the role of SWP in relation to the decision to prosecute for perjury and conspiracy to commit perjury, the Commissioner considers that the explanation provided is reasonable and that SWP has conducted a proportionate

search for any relevant information. The Commissioner accepts that on the balance of probabilities, that SWP is unlikely to hold any information relevant to the complainant's request. The Commissioner has therefore concluded that the Council's 'information not held' response is compliant with section 1(1) of the Act.

Right of appeal

13. 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: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

14. 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.
15. 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

Anne Jones
Assistant Commissioner
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF