

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 21 August 2013

Public Authority: Chief Constable of Thames Valley Police
Address: Police Headquarters
Oxford Road
Kidlington
Oxfordshire
OX5 2NX

Decision (including any steps ordered)

1. The complainant has requested information about a named doctor. The public authority provided some information and advised that nothing else was held. The Commissioner accepts that, on the balance of probabilities, the public authority holds no further information. The public authority is not required to take any steps.

Background

2. The complainant made an earlier related complaint (which can be found on the Commissioner's website¹) concerning a request for information about the same doctor. The public authority refused to confirm or deny whether it held any relevant 'personal information' about that doctor. The Commissioner upheld the public authority's position and the decision was appealed by the complainant.
3. The First-tier tribunal heard the case and it was determined that the requested information could not be the doctor's 'personal information' as he was deceased. Under the terms of the Data Protection Act 1998 (the "DPA"), 'personal data' means data which relates to a living individual.

¹http://www.ico.org.uk/~media/documents/decisionnotices/2012/fs_50453212.pdf

(Other issues were also covered, but they are not relevant to this particular case).

4. As part of the hearing process, the complainant has had sight of relevant papers in respect of his appeal to the First-tier tribunal.

Request and response

5. On 16 May 2013 the complainant wrote to the public authority and requested information in the following terms:

"(1) When and how did Thames Valley Police first discover that Dr Keith Cooper - made mention to in your letter - had died?

You state in your letter that quote: "We believe that he (Dr Cooper) is still alive": unquote.

(2) As a police inquiry had supposedly taken place involving Dr Cooper what prompted you to say that you "believed Dr Cooper to be still alive"?

Considering that Dr Cooper had been under investigation and had died almost one year prior to your letter to [name removed - employee at the Commissioner's office], it is inconcievable [sic] to believe that you had no knowledge of Cooper's death. As it happens Dr Cooper died 19 Oct 2011 yet your letter was dated 24 aug 2012. Knowing of this circumstance you made mention to the Data Protection Act that would be breaching Dr Coopers's [sic] right to privacy. Yet you were fully aware that not only had Cooper died almost ony [sic] year earlier, but he had also published on the internet the results of a vile and illegal biological experiment he had conducted on five human test subjects - none of whom have ever been found.

(3) It is known that "closed papers" were forwarded by T.V.P. to the Commissioners Office and to solicitor [name removed].

Why was the Commissioner and his solicitor given possession of the "closed papers" with myself being denid [sic] access to them?

[Name removed - public authority employee] unless you provide a good explanation for your actions you are to be regarded as purposely obstructing the course of justice which you will know to be a criminal offence".

6. The public authority responded on 17 June 2013 advising that it held no information.

7. Following an internal review the public authority wrote to the complainant on 12 July 2013. It amended its position advising that it did hold some information in respect of the first part of his request explaining:

"I can therefore provide you with the information held which confirms when we first discovered that Dr Keith Cooper had died. This was as a result of being provided with a copy of Information Tribunal decision EA/2012/0210 via e-mail from the Information Tribunal on the 5th March 2013.

No information is held for points 2 & 3 of your request. These could be regarded as 'not valid FOI requests' as you are actually asking a question and not asking for information held.

You will be aware that the tribunal decision concluded that we were mistaken in our belief that the data related to a living person.

For Point 3, I will suggest that this needs to be directed at the Information Commissioner as Thames Valley Police were not a respondent in the tribunal proceedings".

Scope of the case

8. The complainant contacted the Commissioner on 13 July 2013 to complain about the way his request for information had been handled. He said:

"Please record this as a complaint. TVP do have the information asked for as they approached me for information as to the whereabouts of Dr Keith Cooper. They were also aware of the time and place that Dr Cooper had died. For TVP to say that no information is held shows just how corrupt this police force is".

9. The complainant confirmed that he wished the Commissioner to consider whether or not the public authority held any further information regarding the death of Dr Cooper and why it believed him to be alive at the time of the earlier request. The Commissioner will therefore consider whether any further information is held in respect of the first two parts of the complainant's request.

Reasons for decision

Section 1 – general right of access

10. Sections 1(1)(a) and (1)(1)(b) of the FOIA state that any person making a request for information is entitled to be informed by the public authority whether it holds the information and if so, to have that information communicated to him.
11. In cases such as this, the Commissioner will consider whether, on the balance of probabilities the requested information is held. In order to make his decision, the Commissioner will ask the public authority questions as to the nature of the requested information and the searches it has carried out to try and locate it. He will then consider the context of the case, the nature of the requested information, the arguments provided by the complainant, the public authority's responses and any evidence to suggest whether the information in question is held.
12. The complainant has advised the Commissioner as follows:

"Thames Valley Police having asked me for information relating to the whereabouts of one Dr Keith Cooper were well aware when he had died for they were supposedly investigating him prior to his death. Dr Cooper died within the jurisdiction of Thames Valley Police on 19 Oct 2011 meaning that they - Thames Valley Police - knew very well of the the [sic] time and place that Dr Cooper died.

... The "internal review" response from TVP is of course pure nonsense".
13. He subsequently added:

"TVP did have information prior to my making a FOI request. Det Con [name removed] (TVP) after I had made a complaint regarding the conduct of one Dr Keith Cooper asked me for information as to Dr Cooper's whereabouts in order that he be interviewed on matters ... After making inquiries ... I was informed ... that Cooper was employed at the University of Calgary, Canada, where he was an emeritus professor. Det Con [name removed] (TVP) asked for and was given this information "before" my request was submitted to TVP".
14. The Commissioner asked the public authority to explain how it had searched for any information it might hold. He also asked it to respond to the complainant's observations.
15. The public authority explained:

"A search of our crime and incident system (CEDAR) indicates that we hold no information on Dr Cooper's death. As such, we have no information held to say that he died. It is not the function of the

police service to record this information unless the individual has died in certain circumstances [sic] which requires police intervention.

As outlined in our response ... the answer to Point 1 was provided in the form of an e-mail which included the Tribunal Decision. This is the first time we knew he had died. There is no information held on CEDAR to say that he was dead".

It confirmed that it had undertaken searches on its system using both the doctor's and complainant's names.

16. The Commissioner enquired whether the public authority had a record of the complainant's earlier complaint about Dr Cooper and, if so, whether it had made any enquiries in an effort to ascertain the whereabouts of Dr Cooper. It advised:

"Yes, we do have a record of [the complainant]'s complaint in 2010 on our CEDAR system, but this contains no information in connection with the request for information under FOI. The OIC [officer in the case] did contact Calgary University and was told that Dr Cooper had retired. This is recorded information and [the complainant] was informed of this fact by DC [name removed] - in an e-mail dated 13th May 2010 when the case was filed".

(The Commissioner here notes that this particular piece of information itself would not fall within the scope of the request as it does not relate to the doctor's death).

17. The Commissioner also asked whether or not the constable named by the complainant was one of their officers and, if so, whether he had been approached. The public authority advised that it had approached the named officer and that he had no recorded information to say that Dr Cooper had died. He clarified that, at the time of his enquiries in 2010, Dr Cooper was presumed to still be alive but could not be located.
18. The Commissioner has considered the complainant's arguments and notes his obvious belief that further information is and should be held. However, the Commissioner has to consider whether, on the balance of probabilities, the requested information *is* held, not whether it should be held. The enquiries made by the public authority back in 2010 were in response to allegations made by the complainant. They were unable to trace Dr Cooper at that time and, as they have stated, the related complaint was 'filed'. Furthermore, as explained above, the public authority would not routinely record deaths.
19. Therefore, although Dr Cooper may have died within the policing area of this public authority (which the Commissioner has not verified), unless this was brought to its attention for a police-related reason, for example suspicious circumstances, then the public authority would have no

reason to be made aware of and record the death. Whilst the complainant might associate the death with a complaint he made in 2010, this complaint had already been 'filed' so there would be no reason to suppose that the public authority was actively looking for Dr Cooper's whereabouts.

20. It can be assumed that the complainant himself was unaware of Dr Cooper's death when he made his earlier request for information, as referred to in '*Background*' above. If he had been, then he could have advised the public authority accordingly and the previous complaint would have been considered with this factor taken into consideration. As the complainant himself was unaware, the Commissioner can see no reason for the public authority to have been in a different position. The Commissioner is also of the belief that, had the public authority been aware of Dr Cooper's death, it would have advised him accordingly during his earlier investigation and that case would not have proceeded to tribunal stage on the basis of section 40(2) where it would obviously fail.
21. Having considered the public authority's reasons as to why it does not hold any further information, the Commissioner concludes that they are reasonable and persuasive. Given this, and as the complainant has not provided any evidence to the contrary, the Commissioner is satisfied that, on the balance of probabilities, the public authority does not hold any further information.

Right of appeal

22. 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

23. 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.
24. 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

Jon Manners
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