

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 20 October 2014

Public Authority: Office for the Police & Crime Commissioner for Norfolk

Address: Building 8
Jubilee House
Falconers Chase
Wymondham
Norfolk
NR18 0WW

Decision (including any steps ordered)

1. The complainant has requested information about the Police & Crime Commissioner for Norfolk. The Office of the Police & Crime Commissioner for Norfolk (the "OPCCN") advised that it does not hold any recorded information. The Commissioner accepts this position. He does not require any steps.

Request and response

2. On 2 January 2014, the complainant wrote to the OPCCN and requested information in the following terms:
 - "1. Whether Mr Bett¹ attended the scene of a road traffic incident in Westacre, Norfolk on 4th December 2013.
 2. If so, was [sic] accompanied by a police officer.

¹ Mr Bett is the Police & Crime Commissioner for Norfolk

3. *If so, what was the identity of that officer, and what was his rank and his police force.*
 4. *Did Mr Bett seek to remove evidence from the scene of the incident.*
 5. *Was Mr Bett threatened with arrest by the police officers attending the scene.*
 6. *If so, is the Essex Police Force investigating the role of Mr Bett, in addition to the circumstances of the road traffic incident."*
3. The OPPCN responded on 23 January 2014. It stated that it held no information.
4. On 9 July 2014 the complainant again wrote to the OPPCN. He advised that he was resubmitting his request because he believed that his previous response:
- "... should have been based upon the information in the possession of the Commissioner and not on the basis of the information available to his office, i.e. those working for him".*
5. On 17 July 2014 the OPCCN replied. It explained to the complainant:
- "... it is the public authority which is required to publish information that it holds. In this regard, it is the Office of the Police and Crime Commissioner for Norfolk that is defined as the public body and regardless of who the Police and Crime Commissioner is at any point, it is the information this office holds that is covered under FOI. Therefore, my previous response to you still stands".*
6. On 17 July 2014 the complainant requested an internal review on the grounds that it is the Police & Crime Commissioner himself who is the public authority rather than that of his Office.
7. Following an internal review the OPCCN wrote to the complainant on 31 July 2014. It stated:
- "... the individual Police and Crime Commissioner is not deemed to be the public authority. Public authorities are as defined within the Freedom of Information Act".*

Scope of the case

8. The complainant contacted the Commissioner on 31 July 2014 to complain about the way his request for information had been handled. The basis of his complaint is as follows:

"Stephen Bett is the Police and Crime Commissioner for Norfolk. I believe that, in such capacity, Mr Bett holds information relating to events that took place in Norfolk on 4 December 2013.

I maintain that Mr Bett is obliged by the Act to state whether or not he holds that information, and if he does to disclose it unless he is able to establish that the Act excuses its disclosure.

In such event, he must identify the relevant provision or provisions of the Act.

My reasoning is this. Mr Bett, in his capacity as Police and Crime Commissioner for Norfolk, constitutes legally a corporation sole and that corporation sole is a "public authority" for the purposes of the Act.

Put in basic terms, the Act attaches to information held by Mr Bett in such capacity.

[Name removed] argues that the public authority for the purposes of the Act is an indeterminate body – with no separate legal status – referred to as "the Office for the Police and Crime Commissioner for Norfolk".

Again, put in basic terms I suggest that she means the group of individuals making up Mr Bett's staff and employed by him at Norfolk Police HQ where he is based.

[Name removed] has stated, probably quite correctly, that none of those individuals holds the information that I have requested. This shows a misunderstanding of the application of the Act.

Please will the Information Commissioner make a ruling, and in so doing bear in mind his own earlier decision notice in this context dated 27 August 2013²".

9. The Commissioner will consider whether or the OPCC holds the requested information under the terms of the FOIA.

Reasons for decision

Section 1 – information not held

10. Section 1(1)(a) of the FOIA requires a public authority to inform the requester in writing whether or not recorded information is held that is relevant to the request. Section 1(1)(b) requires that if the requested information is held by the public authority it must be disclosed to the requester unless a valid refusal notice has been issued.
11. In cases where a dispute arises over the extent of the recorded information that was held by a public authority at the time of a request, the Commissioner will consider the complainant's evidence and argument. He will also consider the actions taken by the authority to check that the information is not held and any other reasons offered by the public authority to explain why the information is not held. He will also consider any reason why it is inherently likely or unlikely that information is not held. For clarity, the Commissioner is not expected to prove categorically whether the information was held, he is only required to make a judgement on whether the information was held on the civil standard of the balance of probabilities.
12. The Commissioner asked the OPCCN to confirm whether or not the Police & Crime Commissioner had attended the road traffic accident. It advised that he had not attended it in an official capacity and it was unaware as to whether or not he had attended it in a private capacity. It went on to explain to the Commissioner that:

"Had Mr Bett been at the scene of the accident in his capacity as Police and Crime Commissioner (e.g. he was on a pre-arranged patrol of the area as Police and Crime Commissioner with Police Officers and as part of that patrol came across/was called to the scene), then I would have responded differently and I would have disclosed why he was there."
13. The Commissioner asked the OPCCN to explain what searches it had undertaken to establish whether it holds any information. It confirmed that it has asked its Chief Executive, it had checked Mr Bett's diary, Mr Bett's personal assistant had been asked and also that his official email account had been checked. The Commissioner notes that there are only a small number of staff and it was relatively straightforward to ascertain the appropriate parties to approach. The Commissioner accepts that these were the appropriate searches to ascertain whether any recorded information is held.
14. It is clear from the complainant's perspective that he also agrees that these searches would be unlikely to have any positive results as he has

indicated above that it is probably quite correct that none of the staff hold the requested information. It therefore follows that the complainant is of the opinion that Mr Bett is required to also consider any information that he may or may not hold in a private capacity. This is because the complainant is of the opinion that the FOIA relates to Mr Bett personally and that any activity he undertakes is subject to the FOIA. This is clearly not the case. The FOIA covers Mr Bett's official duties as a Police & Crime Commissioner, his private activities are not funded by the public purse and are not covered by the FOIA.

15. Therefore, on the balance of probabilities, the Commissioner accepts the OPCCN's position that it does not hold any recorded information.
16. The Commissioner also notes that, had any information been held by the OPCCN, it would clearly have constituted the 'personal data' of Mr Bett, and would concern him acting in a 'private' rather than 'public' capacity. In such a case, confirmation as to its existence would, in all likelihood, be in breach of the data protection principles. It would therefore have been likely that section 40(5) of the FOIA would have applied, and the OPCCN would not have been obliged to confirm or deny whether it held such information. However, as he has concluded that the information was not in fact held by the OPCCN, the Commissioner has not pursued this particular point further.

Right of appeal

17. 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@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

18. 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.
19. 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
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF