

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 26 April 2017

Public Authority: Office of the Police and Crime Commissioner for Thames Valley

Address: The Farmhouse
Thames Valley Police Headquarters
Oxford Road
Kidlington
OX5 2NX

Decision (including any steps ordered)

1. The complainant requested information relating to the delegation of responsibility for the site management of the Thames Valley Police Headquarters site and relating to the management of the parking regime.
2. The Office of the Police and Crime Commissioner (Office of the PCC) for Thames Valley was unable to determine what the information described in part (1) of the request might be, and requested clarification from the complainant. With respect to the second part of the request, it said that it did not hold the requested information.
3. The Commissioner's decision is that the Office of the PCC has responded to the first part of the complainant's request as far as it is able, given the nature of the initial request and the clarification it has obtained from the complainant. She is satisfied that, on the balance of probabilities, it does not hold information within the scope of part (2) of the request.
4. The Commissioner requires no further action to be taken.

Request and response

5. Following earlier correspondence, on 1 October 2016 the complainant wrote to the Office of the PCC and requested information in the following terms:

"Prior to the Stage 2 Transfer Plan (April 2014) it was necessary for any actions carried out by the Chief Constable on behalf of the PCC to have been formally delegated as specified in the PRSR Act [Police Reform and Social Responsibility Act 2011] or to have been 'contracted' under goods and services to provide the site management of HQ South and other properties....."

1. Will the PCC now provide a copy of such appointment or a letter of delegation or to state that no action took place in contradiction of the Police Reform and Social responsibility Act and Standing Orders.

2. What action has the PCC taken since April 2014 to hold the Chief Constable to account for failing to manage the parking regime within the CDC approved limits of c 360 spaces".

6. The Office of the PCC responded on 31 October 2016. It denied holding the requested information within the scope of part (1) of the request.
7. With respect to the question at part (2) of the request, the Office of the PCC said that it had not taken any action to hold the Chief Constable to account.
8. The complainant requested an internal review on 5 November 2016. He disputed both the content and the timing of the Office of the PCC's response.
9. The Office of the PCC provided an internal review on 14 November 2016. With regard to part (1) of the request, it told the complainant that there was no need for a separate letter of delegation and provided him with links to the Framework for Corporate Governance. With respect to part (2), it explained that there is no specific legal condition requiring the PCC to hold the Chief Constable to account and therefore no action had been taken in that respect.
10. Further correspondence continued between the parties.
11. On 13 December 2016, the Office of the PCC told the complainant that, if he believed that it held some other recorded information that would satisfy his request, it required further information from him to identify and locate the recorded information he was requesting.
12. On 22 December 2016, the Office of the PCC told the complainant that his response of 18 December 2016 did not provide the required clarification.

Scope of the case

13. Following earlier correspondence, the complainant provided the Commissioner with the relevant documentation on 24 January 2017 to complain about the way his request for information had been handled.
14. In his correspondence, the complainant explained:

"A request for information re relevant clauses etc. in Standing Orders has not been supplied by the Police and Crime Commissioner.....It is understood that both organisations Thames Valley Police and the PCC Office were separately constituted until April 2014....My request was for the procedures prior to this date where Standing Orders for delegating powers should have been followed or for Services and Goods, an order or letter of appointment".
15. Following the Commissioner's intervention, the Office of the PCC wrote to the complainant on 1 February 2017 seeking to informally resolve matters. The Office of the PCC advised that, having revisited the request, it reasonably required further information to identify and locate the information requested in part (1) of the request. It also confirmed that it considered that it had answered part (2) of the request.
16. However, rather than the matter being resolved, there was further correspondence between the parties.
17. During the course of her investigation, the Office of the PCC confirmed that it required further information in order to identify and locate the information requested.
18. The Commissioner acknowledges that the complainant considers that the PCC is not complying with a legal planning obligation. However, in a case such as this, it is not within her remit to consider or comment on compliance with any legislation aside from the FOIA.
19. 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 FOIA. The FOIA is to do with transparency of information held by public authorities. It gives an individual the right to access recorded information (other than their own personal data) held by public authorities. The FOIA does not require public authorities to generate information or to answer questions, provide explanations or give opinions, unless this is recorded information that they already hold.
20. In light of the above, the analysis that follows considers the Office of the PCC's handling of the request: whether it handled part (1) appropriately based on the wording of the request and whether, on the balance of

probabilities, it held information within the scope of part (2) of the request.

Reasons for decision

Section 1 general right of access

21. Section 1(1) of the FOIA says that an individual who asks for information from a public authority is entitled to (a) be informed whether the authority holds the information and, (b) if the information is held, to have that information communicated to them.
22. Section 1(3) of the FOIA says that a public authority is not obliged to comply with section 1(1) of the FOIA where it has asked the applicant to supply further information about the request in order to identify and locate the requested information, and has not received this further information.

The complainant's view

23. The complainant considers that the requested information is accessible and should be provided. He also considers that in his correspondence with the Office of the PCC he has *"acted positively and clearly"*.
24. He told the Commissioner on 3 January 2017:

"It is believed the writer has clearly outlined to the PCC where such information can be accessed and the OPCC is being deliberately obstructive without just reason".

25. On 10 February 2017 the complainant wrote to the Office of the PCC:

"... to clear up confusion and to avoid reams of rhetoric, I have attempted to simplify below the intent....".

26. In his correspondence, he posed questions, including questions numbered 1a and 1b relating to a transfer of funds and a transfer of responsibility for finance and estate management. He wrote:

"...In order to conclude this request, will the PCC please respond to the answers requested in 1a and 1b".

The Office of the PCC's view

27. In its submission to the Commissioner, the Office of the PCC acknowledged that, on initial receipt of the request, it *"tried to interpret"* part (1) of the request and provide the requester with the information it thought he was requesting.

28. The Office of the PCC accepted that, in the circumstances, in accordance with section 1 of the FOIA and the Commissioner's guidance, clarification should have been sought from the complainant. Arguing that "*this initial omission*" has been rectified "*to no avail*" during the course of its correspondence with the complainant, the Office of the PCC told the Commissioner:

"Multiple attempts have been made during the course of this matter to both clarify the information it is that [the complainant] is seeking, provide him with advice and assistance, provide him with guidance around the relevant law and governance structures, and disclose to him information that may address his queries".

29. With respect to part (2) of the request, the Office of the PCC told the complainant that, as the PCC has not held the Chief Constable to account on the specified matter, no recorded information fell to be provided to him. Having reviewed the relevant planning application, it explained:

".. the application was approved subject to the following five conditions....

Condition 5 relates to the development and operation of a travel plan to reduce dependency on the private car but there is no specific legal condition requiring the PCC to hold the Chief Constable to account for managing the parking regime... and therefore no action has been taken in this respect".

30. In its substantive response to the Commissioner, the Office of the PCC explained that the PCC has a statutory duty to hold the Chief Constable to account but that there is no prescribed way in which this must be done. It explained that, in Thames Valley, the PCC holds the Chief Constable to account by way of quarterly meetings, which are held in public and follow pre-determined agendas, and monthly meetings at which the PCC can raise any performance or management issue with the Chief Constable.
31. The Office of the PCC confirmed that the Chief Executive of the Office of the PCC searched all the minutes taken from all the monthly meetings dating back to 2012:

".... None of the minutes contained any reference to the Chief Constable being held to account for the parking issues raised by [the complainant]. There is no other record which would show the PCC formally holding the Chief Constable to account for an issue of the type with which [the complainant] is concerned".

The Commissioner's view

32. The Commissioner's guidance¹ on section 1 of the FOIA makes it clear that public authorities must interpret information requests objectively and avoid reading into the request any meanings that are not absolutely clear from the wording.
33. When an authority receives an unclear or ambiguous FOIA request its duty under section 16 of the FOIA to provide advice and assistance will be triggered and it must go back to the requester to ask for clarification.
34. If, following the provision of reasonable advice and assistance, the requester is still unable to supply the required clarification, the authority will not be expected to offer advice and assistance a second time.

Part (1) of the request

35. The Commissioner's view with respect to the information requested at part (1) of the request is that, as noted above, attempts were made by the Office of the PCC to bring the two parties together in a common understanding of the scope of the original request.
36. The evidence suggested that the Office of the PCC went to some lengths to try to understand what the complainant was asking for and that it disclosed information to him in an effort to meet his request. However, the evidence also suggested that, while continuing to correspond with the Office of the PCC, the complainant's attempts to respond constructively to its requests for clarification were not fruitful.
37. Under section 1(3) of the FOIA where a public authority reasonably requires further information in order to identify and locate the information requested, and has informed the applicant that it requires that clarification of the request, it is not obliged to comply with the request unless it is supplied with that clarification.
38. In the circumstances of this case, the Commissioner considered that the Office of the PCC was justified in requiring further information from the complainant in order to identify and locate the information requested at part (1) of the request.

¹ <https://ico.org.uk/media/for-organisations/documents/1162/interpreting-and-clarifying-a-request-foia-eir-guidance.pdf>

39. Having reviewed the correspondence that passed between the public authority and the complainant in this regard, the Commissioner was satisfied that the Office of the PCC was not required to go to greater lengths in order to understand the request.
40. The Commissioner was therefore satisfied that the Office of the PCC was not obliged to comply with section 1(1) of the FOIA by virtue of section 1(3).

Part (2) of the request

41. In scenarios such as this one, where there is some dispute between the public authority and the complainant about the amount of information that may be held, the Commissioner, following the lead of a number of Information Rights Tribunal decisions, applies the civil standard of the balance of probabilities. In other words, she must decide whether, on the balance of probabilities, a public authority holds any information which falls within the scope of the request (or was held at the time of the request).
42. In deciding where the balance of probabilities lies, the Commissioner will consider the searches carried out by the public authority, in terms of the extent of the searches, the quality of the searches, their thoroughness and the results the searches yielded. She will also consider any other information or explanation offered by the public authority which is relevant to her determination.
43. Having considered the Office of the PCC's response and on the basis of the evidence provided to her, the Commissioner is satisfied that on the balance of probabilities the Office of the PCC does not hold the requested information.
44. The Commissioner therefore considered that the Office of the PCC had complied with its obligations under section 1(1) of the FOIA.

Other matters

45. The Commissioner considered that the Office of the PCC took reasonable steps in attempting to assist the complainant in making his request. The Commissioner was satisfied that, in the circumstances, the Office of the PCC's efforts represented a reasonable attempt to engage with the complainant in order to fulfil the duty to provide appropriate advice and assistance under section 16 of the FOIA.

Right of appeal

46. 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

47. 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.
48. 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