

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 6 November 2018

Public Authority: Chief Constable of Staffordshire Police
Address: Police Headquarters
PO Box 3167
Stafford
ST16 9JZ

Decision (including any steps ordered)

1. The complainant has requested information which he believes Staffordshire Police holds about a verbal dispute between a police officer and a nightclub owner. Staffordshire Police disclosed a small amount of information and said that it did not hold anything further.
2. The Commissioner's decision is that, on the balance of probabilities, Staffordshire Police has disclosed all the information it holds. The Commissioner requires no steps.

Request and response

3. On 29 March 2018, the complainant, a solicitor acting for the nightclub owner, wrote to Staffordshire Police and requested information in the following terms:

"Can we be provided with a full copy of the email trail between [police officer's name redacted] and/or [police officers' names redacted] which was disclosed at section 18 of the documentation provided by Staffordshire Police in respect of a review of the premises licence for [nightclub name redacted] considered by Stoke-on-Trent city council on 29th of August 2017, an extract of which we have been provided with and is attached to this FOI below:

"From: [redacted]
Sent: 08 June 2017 01:26

To: [redacted]

Subject: RE: [nightclub name redacted]

[addressee's name redacted],

I spoke to [name redacted] when dealing with one of his door staff who was working his door illegally. I found [name redacted] to be rude and confrontational. He instructed his door staff to film me and get my number when I advised that the member of staff should not be working.

He was insistent the police were wrong as the member of door staff banned had not been found guilty at court and demanded to see paperwork.

I found him to be unprofessional and was surprised at how uncooperative he was given we are supposed to be working in partnership with each other. I hope he does not display this attitude when dealing with all officers working the down as it will no doubt lead to conflict in the future."".

4. Staffordshire Police responded on 17 April 2018. It would neither confirm nor deny (NCND) whether it held the requested information, citing the exemptions at sections 30(3) (investigations and proceedings) and 40(5) (personal information) of the FOIA.
5. The complainant requested an internal review on 14 June 2018. Staffordshire Police provided the outcome of the review on 16 July 2018. It upheld its decision.

Scope of the case

6. The complainant contacted the Commissioner on 20 July 2018 to complain about the way his request for information had been handled. He said that an NCND response was untenable, as the email quoted in his request confirmed that Staffordshire Police did hold relevant information.
7. During the course of the Commissioner's investigation, Staffordshire Police revised its position, confirming that it held information falling within the scope of the request. The information comprised:
 - an email which preceded the one quoted in the request, asking for an account of the alleged incident;
 - the email quoted in the request, sent in response to the first email;

- a blank email, forwarding the two emails to another officer; and
 - a covering email, forwarding the email chain for consideration as part of the nightclub's licensing review.
8. The overall amount of information falling within the request's scope was very small, the bulk of it being the email that the complainant already had a copy of. Nevertheless, Staffordshire Police disclosed the chain of four emails to the complainant.
 9. The complainant said that he did not accept that these were the only emails in the chain, and asked the Commissioner to investigate Staffordshire Police's revised position.
 10. The analysis below considers whether, on the balance of probabilities, Staffordshire Police has disclosed all the information it holds which falls within the scope of the request.

Reasons for decision

Section 1 – general right of access

11. Section 1 of the FOIA states that any person making a request for information is entitled to be informed by the public authority whether it holds that information and, if so, to have that information communicated to him.
12. In this case, the complainant clearly believes that a longer chain of emails exists, of which only part has been disclosed. Staffordshire Police's position is that it has disclosed to the complainant the full email chain and that it does not hold any further information falling within the request's scope.
13. In cases where there is some dispute about the amount of information located by a public authority and the amount of information that a complainant believes might be held, the Commissioner – following the lead of a number of First-tier Tribunal decisions – applies the civil standard of the balance of probabilities. In essence, the Commissioner will determine whether it is likely or unlikely that the public authority holds further information relevant to the complainant's request.
14. The Commissioner will consider the complainant's evidence and arguments. She will also consider the actions taken by the public authority to check whether the information is held and any other reasons offered by the public authority to explain why the information is not held. She will also consider any reason why it is inherently likely or unlikely that information is, or is not, held. For clarity, the Commissioner

is not expected to prove categorically whether the information is held, she is only required to make a judgement on whether the information is held on the civil standard of proof of the balance of probabilities.

The complainant's position

15. It was the complainant's opinion that the emails were part of a longer email exchange on the subject of his client's nightclub. He maintained that the email which was presented as being the first in the chain, refers to an earlier email. He also argued that the email does not include an automatically generated "footer", containing the sender's signature and contact details, which suggests that it is not the full email.

Staffordshire Police's position

16. Staffordshire Police maintained its position that it had disclosed all relevant information to the complainant. The Commissioner asked it a series of detailed questions, designed to give her an understanding of its reasons for believing this. Staffordshire Police answered all the questions, providing the Commissioner with the search terms used, the locations searched and reasons why this would be expected to have located any further information not already identified and disclosed.
17. Staffordshire Police explained that its emails are sent, received and held on a network system. Searches were made of its email archive/retention system ("Cryoserver"), which is where all emails received or sent by Staffordshire Police network, by any individual who has an email address linked to that network, are stored for seven years, even after deletion elsewhere. The only information located by the search was the email chain, which had been disclosed to the complainant, in full.
18. Staffordshire Police provided the Commissioner with a copy of the first email in the chain (which the complainant had said appeared to lack a footer with the sender's signature or contact details) as it appears on Cryoserver. The Commissioner saw that the email is as it appears in the email chain which has been disclosed to the complainant. Staffordshire Police said that it had contacted the sender of the email, who had confirmed both that it was the first email in the chain and that his emails do not contain a footer.

The Commissioner's conclusion

19. When, as in this case, the Commissioner receives a complaint that a public authority has not disclosed all of the information that a complainant believes it holds, it is seldom possible to prove with absolute certainty that it holds no further relevant information. However, as set out in paragraphs 13 and 14, above, the Commissioner is required to make a finding on the balance of probabilities.

20. The complainant disputes Staffordshire Police's position, stating that the first email in the chain instructs the recipient "...to reply to an email which is clearly earlier in the email chain". The Commissioner does not share this interpretation of the first email. Her reading of the email is that it is self-contained, and that it sets out the response that the sender would like the recipient to provide. It does not contain any reference or allusion to an earlier email. Furthermore, the subject title of the email is not prefixed by "Re:" (as the subject title of the email quoted in the request was) implying that it is indeed the initial email in the chain.
21. The complainant has also argued that the absence of a footer (and in particular, the sender's signature) in the first email indicates that it is not the full email. On that point, Staffordshire Police says that the officer does not use a footer in his emails.
22. The Commissioner notes that in fact the email in question *is* signed, albeit with what appears to be the sender's nickname. The Commissioner further notes that the later, blank email in the chain, sent by the same officer to another person, does not contain a footer, and it does not contain his nickname. This suggests to her that the name used in the first email has been added in free-hand by the sender, when typing the body of the email, and that he does not use a footer in his emails. It also indicates to the Commissioner that Staffordshire Police disclosed the first email in its entirety.
23. The Commissioner is satisfied that Staffordshire Police has provided a detailed and cogent explanation for believing that it has disclosed all the information that it holds which falls within the scope of the request. It has explained how the requested information is held and why the particular searches carried out would be expected to return all relevant information. It has responded to the points of concern raised by the complainant with reasoned and well-evidence explanations. In contrast, the complainant has not provided any arguments which throw doubt on Staffordshire Police's position. Rather, he appears to be relying on a belief that further information *must* be held.
24. Taking all the circumstances of the case into account, the Commissioner is satisfied that, on the balance of probabilities, Staffordshire Police has disclosed to the complainant all the information it holds which falls within the scope of the request and therefore that it complied with section 1 of the FOIA.

Right of appeal

25. 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

26. 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.
27. 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

Samantha Bracegirdle
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