

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 30 July 2019

Public Authority: Chief Constable of Humberside Police
Address: Humberside Police HQ
Priory Road
Hull
HU5 5SF

Decision (including any steps ordered)

1. The complainant has requested information about the management of personal information during the execution of a search warrant from Humberside Police ("HP"). HP provided some information and maintained that further information was not held.
2. During the Commissioner's investigation HP identified a document which had not previously been provided to the complainant. The Commissioner requires HP to take the following steps to ensure compliance with the legislation:
 - Disclose the draft Standard Operating Procedure 2014 identified to the Commissioner by email on 18 July 2019.
3. In failing to disclose this document within 20 working days HP has breached sections 1(1) and 10(1) of the FOIA.
4. In respect of any further information which may be held, the Commissioner's decision is that, on the civil standard of the balance of probabilities, no further information is held.
5. HP must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

6. On 21 November 2018 the complainant wrote to HP, via the “*What do they know?*” website, and requested information in the following terms:

"I would be most grateful if Humberside Police could provide full and complete copies, including any associated background documents, of their policies and procedures relating to the processing, storage and retention of personal data this is obtained by your organisation's 'Police Evidence Gathering Unit' [PEGU] during the execution of a search warrant within a residential dwelling".

7. HP responded on 20 December 2018 and provided a copy of its Property Management policy.
8. The complainant requested an internal review on 21 December 2018, adding that this policy did not seem relevant to his request.
9. Despite the Commissioner’s intervention, to date no internal review has been provided.

Scope of the case

10. The complainant initially contacted the Commissioner on 26 January 2019 to complain about the lack of response to his request for an internal review. The Commissioner wrote to HP about this on 14 February 2019, asking for an internal review to be provided within 20 working days.
11. On 16 March 2019, the complainant wrote to the Commissioner again to advise that an internal review remained outstanding.
12. On 9 April 2019, the Commissioner wrote to HP to HP to commence an investigation, saying that this was being done without an internal review due to the length of time taken.
13. On 8 May 2019, during the Commissioner’s investigation, HP wrote to the complainant and provided an internal review. It advised him:

"To provide full documents and any associated documents relating to processing, storage and retention of personal data would be deemed excessive and could be argued the original request could have been exempt under s.12

Furthermore, Humberside Police does not have a department which goes by the name of 'Police Evidence Gathering Unit'.

In a bid to assist with your request further, I have liaised with the Records Management Unit who have provided the following Records Management Policy (attached) which directly relates to the processing, storage and retention of personal data, including that obtained as 'Intelligence', which would possibly occur as a result of a search warrant executed".

14. On 9 May 2019, the complainant wrote to HP and disputed this response in respect of it having no Police Evidence Gathering Unit ("PEGU"). He stated that he had a copy of one of its Inspector's pocket notebooks ("PNB") and that an entry in it dated 22 August 2018 recorded that a search warrant had been executed at an address and "Police Evidence Gathering Unit also on scene and filmed". He added:

"It is explicitly clear from Inspector [name removed]'s formal record that Humberside Police do have a Police Evidence Gathering Unit who also must retain and exercise pertinent policy and procedures surrounding the overt filming of occupiers, their home, outbuildings, land, vehicles and personal possessions during the execution of a search warrant".

(The complainant also provided a copy of the notebook entry both to HP and the Commissioner).

15. Following HP's response of 8 May 2019, on 13 May 2019 the Commissioner wrote to the complainant for his views, also asking for any remaining grounds of complaint.
16. The complainant responded on 13 May 2019 and advised that, as evidenced in the PNB entry, HP clearly does have a PEGU. He also considered that HP must have a policy covering the filming of a person / family at their home. He added:

"Consequently, I am requesting full and complete copies, including any associated background documents, of HP's policies and procedures relating to the processing, storage and retention of personal data that is obtained by the PEGU during the execution of a search warrant within a residential dwelling.

Following HP's recent response, I have since discovered that other police organisations have a 'Evidence Gathering Team' and not a PEGU. In the circumstances, I believe it would highly desirable if HP could speak with Inspector [name removed] to establish whether his description of the PEGU is factually accurate".

If indeed it is simply an oversight by Inspector [name removed], then I believe HP have been pedantic in this matter surrounding the description of the department concerned and as of a consequence,

they also failed in their duty to provide advice and assistance to me under the Act by requesting clarification from me in this regard”.

17. On 5 June 2019, following further liaison with the Commissioner, HP wrote to the complainant again with further details. It explained that it had found a policy which was more specific to his request and provided this to him, albeit it post-dated his request. Regarding the use of “PEGU” it explained that it had liaised with the named Inspector who had confirmed that he had used “old terminology” rather than “EGT” (Evidence Gathering Trained). It added that EGT does not refer to a unit or department but rather specifically trained Officers from across the Force.
18. On 6 June 2019, the Commissioner wrote to the complainant again to ascertain whether or not he was now satisfied with this latest response. He responded, on the same day saying that:

“Unfortunately, the information provided by Humberside Police does not reflect the specific context of my request, i.e. the use of audio visual recording equipment during the execution of a search warrant within a residential dwelling... ”
19. On 11 June 2019, the Commissioner asked HP whether there was any predecessor to the policy it had found, as the current one had been written after the request was made. On 18 July 2019, HP advised her:

*“I have liaised further with the author of the current Evidence Gathering Teams policy who advised he had written something similar in 2014, however had [sic] **not** been signed off as Force Policy. This was stored in his personal folder, therefore not retrievable/searchable on the original check. In respect of openness I attach a copy of this 'predecessor', however note it was never a Force Policy, rather a SOP at local level”.*
20. The Commissioner will consider whether or not HP has provided all the information held below. She has also commented on the length of time to undertake an internal review in “Other matters” at the end of this notice.
21. 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.

Reasons for decision

Section 1 – general right of access

22. 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.

Draft Standard Operating Procedure 2014

23. The Commissioner will initially consider the document which was located during her investigation (see paragraph 19), which has been located but not disclosed to the complainant.
24. HP provided the Commissioner with a copy of this document which was written prior to the “*Deployment of Evidence Gathering Teams (EGT) within Humberside*” policy (the disclosed policy which actually post-dated this request). It advised that it had:

*“ ... liaised further with the author of the current Evidence Gathering Teams policy who advised he had written something similar in 2014, however had [sic] **not** been signed off as Force Policy. This was stored in his personal folder, therefore not retrievable / searchable on the original check. In respect of openness I attach a copy of this ‘predecessor’, however note it was never a Force Policy, rather a SOP at local level. The current Policy was written as a result of a request to purchase SD [secure digital] cards for the EGT CCTV system, in which the requirement for the Policy was raised by Information Security Manager, and the attached document formed its basis”.*

25. The Commissioner notes that this draft document has not been provided to the complainant. Furthermore, she enquired as to whether or not it was considered suitable for disclosure and was told:

“There is no reason not to disclose. However, this was not signed off or integrated as Force Policy and was stored in an Officers personal folder, therefore not previously retrieved. It does however fall under ‘associated documents’ as was the basis for the current policy already disclosed”.

Any further information

26. In this case, the complainant suspects that HP holds information from which it could answer the request. HP’s position is that it does not. 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 information relevant to the complainant's request.

27. The Commissioner will consider the complainant's evidence and arguments as well as 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 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.
28. In respect of the processing, storage and retention of personal data, HP has already disclosed its Records Management Policy. The Commissioner therefore enquired whether this the only policy / procedure which HP holds which would specifically cover this. She was advised:

"Having liaised with Records Management manager and Policy Manager, it has been agreed this is the policy which would cover the processing, storage and retention of personal data in this circumstance".

29. In respect of searches for information which have been undertaken, HP advised the Commissioner that it had:

"Searched the intranet and our docstore as this is where all policies are 'held'.

Called/Emailed Insp [name removed] as mentioned in the original disclosure for any background on EGT.

Called the Records Management Dept, also spoke to Records Supervisor (MoPI) [Management of Police Information] in relation to processing, storage and retention of personal data. It was agreed the policy already disclosed was correct. In relation to background documents for MoPI it was advised this was not stand alone to Humberside Police and suggested [the complainant] would have access to MoPI documents via College of Policing website.

Emailed the author of the current policy (already disclosed), to find any background information.

Emailed Information Security Manager who co-wrote the current policy.

Emailed Policy Manager in relation to storage of any other versions/back ground documents.

Emailed Senior Information Compliance Officer”.

30. In respect of the comment above relating to background documents for MoPI, ie the Records Management Policy which has been disclosed, the Commissioner notes that HP considers that more information might be held by the College of Policing. However, whilst this may not have been made apparent to the complainant, the Commissioner notes that he does not consider that the documents provided to him answer his request, therefore any background information which may be held by the College of Policing is unlikely to be of specific use to him.

The Commissioner’s conclusion

31. When, as in this case, the Commissioner receives a complaint that a public authority has not disclosed some or all of the information that a complainant believes it holds, it is seldom possible to prove with absolute certainty that it holds no relevant information. However, as set out in the paragraphs, above, the Commissioner is required to make a finding on the balance of probabilities.
32. Clearly the identified document falls within the scope of the request and should have been disclosed to the complainant. HP is therefore now required to provide that to him.
33. In respect of any further information which may be held, the Commissioner considers that HP contacted the relevant parties to consider whether or not any information was held in respect of the request. Based on the information provided above, with particular regard to the comment that a policy was seen to be required when purchasing SD cards so obviously did not at that stage exist, the Commissioner is satisfied that, on the balance of probabilities, no further recorded information within the scope of the request is held. She is therefore satisfied that HP has complied with the requirements of section 1 of the FOIA in this case.

Section 10 - time for compliance

34. Section 1(1) of the FOIA states that an individual who asks for information is entitled to be informed whether the information is held and, if the information is held, to have that information communicated to them.

35. Section 10(1) of the FOIA states that on receipt of a request for information a public authority should respond to the applicant within 20 working days.
36. From the information provided to the Commissioner in this case it is evident that HP did not deal with the request for information in accordance with the FOIA. In this case HP has breached sections 1(1) and 10(1) by failing to disclose the document identified at paragraph 19 above within 20 working days.

Other matters

37. Although they do not form part of this notice the Commissioner wishes to highlight the following matters of concern.

Internal review

38. The Commissioner cannot consider the amount of time it took a public authority to complete an internal review in a decision notice because such matters are not a formal requirement of the FOIA. Rather they are matters of good practice which are addressed in the code of practice issued under section 45 of the FOIA.
39. Part VI of the section 45 Code of Practice states that it is desirable practice that a public authority should have a procedure in place for dealing with complaints about its handling of requests for information, and that the procedure should encourage a prompt determination of the complaint. The Commissioner considers that these internal reviews should be completed as promptly as possible. While no explicit timescale is laid down by the FOIA, the Commissioner considers that a reasonable time for completing an internal review is 20 working days from the date of the request for review. In exceptional circumstances it may take longer but in no case should the time taken exceed 40 working days; it is expected that this will only be required in complex and voluminous cases, which this request was not. The Commissioner is therefore concerned that it took over 4 months for HP to conduct an internal review in this case.
40. The Commissioner will use intelligence gathered from individual cases to inform her insight and compliance function. This will align with the goal in her draft Openness by Design strategy¹ to improve standards of accountability, openness and transparency in a digital age. The

¹ <https://ico.org.uk/media/about-the-ico/consultations/2614120/foi-strategy-document.pdf>

Reference: FS50817217



Commissioner aims to increase the impact of FOIA enforcement activity through targeting of systemic non-compliance, consistent with the approaches set out in her Regulatory Action Policy².

² <https://ico.org.uk/media/about-the-ico/documents/2259467/regulatory-action-policy.pdf>

Right of appeal

41. 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@justice.gov.uk

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

42. 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.
43. 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

Carolyn Howes
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