

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 19 February 2020

Public Authority: Police and Crime Commissioner for Northumbria
Address: 2nd Floor
Victory House
Balliol Business Park
Benton Lane
Newcastle upon Tyne
NE12 8EW

Decision (including any steps ordered)

1. The complainant has requested from the Police and Crime Commissioner for Northumbria ("the PCC") information about meetings between the former Police and Crime Commissioner, members of parliament, and councillors. The PCC disclosed information in response to the request but the complainant believed that it held more information.
2. The Information Commissioner's decision is that, on the balance of probabilities, the PCC has disclosed to the complainant all the information it holds falling within the scope of his request.
3. The Information Commissioner requires no steps as a result of this decision.

Request and response

4. On 8 July 2019, the complainant, a journalist, wrote to the PCC and requested information in the following terms:

"Please would you let me know in writing if you hold information of the following description:

Information concerning meetings between the Police and Crime

Commissioner and members of parliament, and councillors, since and including 2017.

Please may I see the information."

5. The PCC responded on 19 July 2019. It stated that a new Police and Crime Commissioner was to be elected that day, and thus the information it could provide related to the previous post-holder, who met with many stakeholders, including MPs, ministers and councillors, in her role as Police and Crime Commissioner. It provided a link to the disclosure log on its website which contained its responses to some previous requests for information.
6. The complainant requested an internal review on 19 July 2019, saying that the initial response had not provided details of the outgoing Police and Crime Commissioner's meetings. He subsequently clarified that information about Police and Crime Panel meetings could be excluded from the scope of the request.
7. The PCC provided the outcome of the internal review on 25 July 2019. It disclosed a list of 30 meetings between 2017 and 2019, which it said it had extracted from the previous Police and Crime Commissioner's diary entries. The list included the names of the meeting attendees, and, in some cases, the subject of the meeting. It said that "*no minutes were taken by the OPCC [Office of the Police and Crime Commissioner]*".

Scope of the case

8. The complainant contacted the Information Commissioner on 16 September 2019, to complain about the way his request for information had been handled. He explained that he had recently become aware of information which suggested that the PCC had not disclosed to him all the information which it held which fell within the scope of the request.
9. The complainant suggested that, when responding to his request, the PCC may have deliberately concealed information from him, which is an offence under section 77 (offence of altering etc. records with intent to prevent disclosure) of the FOIA. The ICO's Criminal Investigations Team has considered this allegation and has judged that there is insufficient evidence to substantiate this allegation.
10. The analysis below therefore considers whether, on the balance of probabilities, the PCC disclosed all the information it held which fell within the scope of the request.

Reasons for decision

Section 1 – general right of access

11. Section 1(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 believes that the PCC holds information about meetings between the former Police and Crime Commissioner and MPs and councillors, between 2017 and July 2019, which it has not disclosed. The PCC's position is that it does not.
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 Information Commissioner – following the lead of a number of First-tier Tribunal decisions – applies the civil standard of the balance of probabilities. In essence, the Information Commissioner will determine whether it is likely, or unlikely, that the public authority holds information relevant to the complainant's request.
14. The Information 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 not held. For clarity, the Information 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. The complainant referred the Information Commissioner to the information that had been disclosed as a result of the internal review, and in particular, the only two entries for 19 January 2018, which said:

*"19 January – Meeting with Ian Lavery MP to discuss constituent case
19 January – Meeting with Ronnie Campbell MP to discuss constituent case"*.
16. The complainant explained that he had become aware that a meeting had occurred on 19 January 2018 between the former Police and Crime Commissioner, both of the above named MPs and the former Labour

leader of Northumberland County Council, Grant Davey. No information about such a meeting was included in the disclosure that had been made to him.

17. The complainant said he approached the PCC on 12 September 2019, asking it for clarification about this meeting. The PCC responded on 13 September 2019, confirming that the leader of Council had been present at the meeting with the former Police and Crime Commissioner and the two MPs, and apologising for the omission, in respect of which it said:

"The omission of Grant Davey from the first FOI was an administrative error. Unfortunately his name didn't come up in the searches and for this we apologise. Yesterday all four participants of the meeting were confirmed.

Meetings discussing constituents' private matters are not minuted as this would break confidentiality."

18. The complainant then approached the former Police and Crime Commissioner herself for more information about the meeting. He was able to provide to the Information Commissioner a copy of an email to him from the former Police and Crime Commissioner, who confirmed that a meeting had taken place with the two MPs and the Council leader, its subject matter (in general terms) and that she had made a note to call someone after the meeting.
19. The complainant expressed concern that no information about a meeting between *"the four most senior Labour politicians in the county [and] the local statutory police watchdog"* had been disclosed when it clearly fell within the scope of his request. He felt its omission was significant, given his belief that the meeting may have been to discuss a *"... potential police investigation into widespread allegations of corruption"* at a council body and a local football club.

The PCC's position

20. The PCC said:

"In order to answer the question, a full search of the former Commissioner's diary was carried out. Following our response, the requestor made further contact with our office as there was indication that the response we provided had not satisfied him. As a result a further search was undertaken again, with findings attached and the same information that had been provided in our first response was provided to the requestor."

21. The PCC said that it had access to the former Police and Crime Commissioner's electronic diary, which it searched for information falling within the scope of the request. Furthermore, the books, papers and

emails it held for the former Police and Crime Commissioner were also reviewed for relevant information. No additional information about her meetings on 19 January 2018 had been retrieved and so it was satisfied that it had disclosed to the complainant all the information it held which fell within the scope of the request.

22. In respect of the specific meeting identified by the complainant, the PCC said it had conducted keyword searches using the surnames of each of the individuals who the complainant said had attended the meeting, and also the topic he believed had been discussed. It had been unable to locate any relevant information as a result of the searches, beyond that which had already been disclosed to the complainant, and it concluded that this was because it did not hold such information.
23. Furthermore, it believed that it had never held any recorded information about the meeting, saying that no information connected to the Police and Crime Commissioner's current or former diary entries, or meeting notes, would be deleted or destroyed by any PCC staff, other than in accordance with formal retention policies.
24. The PCC said that it was not under any statutory obligation to retain the information described in the request, but it would retain information where there was a specific business purpose for which it was deemed relevant. It had adopted Northumbria Police's Document Retention Policy, which specifies that agendas, minutes and meeting notes relating to committee, Senior Management Team and Senior Partnership meetings should be retained for a minimum period of 6 years.
25. In conclusion, the PCC said:

"To clarify, I can confirm that all documentation relating to meetings that fall into the scope of the request that was at the time of the request and remains held by the OPCC for Northumbria have been interrogated to ensure that all relevant data has been disclosed as part of our response. I note the content of your email dated the 17th November 2019 where you state that the basis for the requestor is concerned [sic] that we have not disclosed all of the information which falls into the scope of the request due to the fact that he has provided yourselves with a copy of an email he recently received from the former Commissioner (whilst not in her capacity as PCC for Northumbria). In this email, you state she confirms the meeting took place and that she made a note to make a call to someone. It may be that this was a handwritten note that was not retained by the Commissioner. What I can confirm is that neither it or any other notes or information in addition to those that have already been provided, that are relevant to the scope of the request are held by the OPCC for Northumbria."

The Information Commissioner's conclusion

26. The Information Commissioner considers that it is not evident from the PCC's initial response to the request that it had indeed conducted "a full search" for information, as it merely provided a broad statement about the former Police and Crime Commissioner's meetings and directed the complainant to information which was not, on the face of it, relevant to his request. However, she is satisfied that such a search was carried out when the complainant asked for an internal review, which resulted in information of the type described in the request being disclosed to him.
27. The complainant was then able to provide proof that a meeting had taken place on 19 January 2018, which he considered was not represented in the disclosed information. The PCC does not dispute that the meeting took place, it simply says that the PCC holds no discrete recorded information about it.
28. The complainant was able to provide information about the meeting which allowed the PCC to conduct keyword searches, which should have located information about the meeting if such information was held. The PCC says that it was unable to locate any information as a result of such searches. It has referred the Information Commissioner to its retention policy, which says that information of this type would be held for six years before being considered for destruction. This suggests that, if information had been created by the PCC in respect of the meeting, it would still be held and would be retrievable in response to the searches that have been conducted.
29. The complainant has not explained how he first became aware of the meeting involving the Council leader. However, when he approached the former Police and Crime Commissioner about it, describing the PCC's records as "misleading" and suggesting there may have been a "cover up", she readily confirmed that a meeting between the named parties had taken place. She said that the omission of the Council leader's name from the attendance record of the meeting would have been an administrative error on the PCC's part, and that the subject of the meeting was as described in the record (ie constituency matters). She insisted that she had never had a meeting about, or otherwise discussed, the matters alluded to by the complainant, with the people at the meeting. She invited the complainant to get in touch again if he felt she could be of further assistance.
30. Having been told by the complainant that the PCC said it held no information about the meeting, the former Police and Crime Commissioner's willingness to acknowledge that a meeting had indeed taken place, and to engage with the complainant about it, is not indicative to the Information Commissioner of a deliberate attempt to 'cover up' or conceal the meeting. The former Police and Crime

Commissioner commented that if the facts of the meeting were not clear from the PCC's records, this was purely the result of an administrative error. She also clarified, in response to a query from the complainant, that she did not usually make notes when councillors and MPs were asking for advice, which was a frequent occurrence, because any action points were usually for them to take away and deal with, and often the issues were private or explained to her anonymously. She recalled, however, that an aide to one of the MPs had made notes at the meeting, and so the Information Commissioner notes the possibility that a record of it might exist elsewhere. She also said that she had made a note to call someone following the meeting.

31. When, as in this case, the Information 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 paragraphs 13 and 14, above, the Information Commissioner is required to make a finding on the balance of probabilities.
32. Having considered the information provided to her by both the PCC and the complainant, the Information Commissioner considers it highly likely that the two meeting entries for 19 January 2018, which were disclosed to the complainant, pertained to the same meeting, at which the leader of the Council was also present, but he was not noted down at the time as being an attendee. The Information Commissioner is satisfied, from the information that the PCC has provided to her about the searches it conducted, that, on the balance of probabilities, it does not hold information which identifies him as having been present at the meeting.
33. With regard to the former Police and Crime Commissioner's recollection that during the meeting she made a note to call someone, this is indicative that she may have made a note of a name and, perhaps, a telephone number, but there is nothing to point to that note (or a note of the call) being retained once the call was made.
34. On that point, it is not for the Information Commissioner to determine why the PCC does not hold these items of information, she must merely establish, on the balance of probabilities, what information the PCC does or does not hold for the purposes of disclosure under the FOIA.
35. The PCC has explained why the information that it does hold does not extend beyond a note of the attendees and the broad subject matter of the meeting, and why meetings involving constituency work tend not to be minuted. While appreciating that the complainant may be frustrated that the PCC does not hold more comprehensive information, the Information Commissioner is mindful of the comments made by the

Information Tribunal in the case of *Johnson / MoJ* (EA2006/0085)¹, that the FOIA:

"... does not extend to what information the public authority should be collecting nor how they should be using the technical tools at their disposal, but rather it is concerned with the disclosure of the information they do hold".

36. Taking all the above into account, the Information Commissioner is satisfied that, on the balance of probabilities, the PCC has disclosed to the complainant all the information it holds which falls within the scope of the request and that in doing so it has complied with its duty under section 1(1) of the FOIA.

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<http://informationrights.decisions.tribunals.gov.uk//DBFiles/Decision/i90/Johnson.pdf>

Right of appeal

37. 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

38. 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.
39. 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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