

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 20 January 2020

Public Authority: Hampshire Police and Crime Panel
Address: Elizabeth II Court
The Castle
Winchester
SO23 8UJ

Decision (including any steps ordered)

1. The complainant made three information requests for information with regards to the Hampshire Police and Crime Panel (the HPCP) sub-committee. The HPCP provided information to parts of the request and advised it did not hold information to other parts of the request.
2. The Commissioner's decision is that the HPCP holds further information than that provided and breached section 10(1) of the FOIA as it responded to the requests outside the required 20 working days of the FOIA.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Issue a fresh response to the complainant to the parts of his requests as identified in the decision notice at paragraphs 35, 41 and 66 below.
4. The public authority 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

5. On 14 February 2019 the complainant made the following request in relation to Hampshire Police and Crime Panel (HPCP) (recorded under HPCP ref: 15494):

"1. You did not mention the date of your subcommittee meeting

2. You did not advise the names of the persons present

I believe the HPCP Sub Committee is corrupt and demonstrably so. I assure you this matter will not rest here. But in the meanwhile, please note the following FOIA requests.

3. Provide a copy of the minutes of the above meeting above, duly signed and authorized with the HPCP stamp.

4. Provide a list of all persons present at the meeting together with details of their professional/academic qualifications and their current employment status.

5. Provide a copy of all documents submitted to the subcommittee by Mr Lane

6. A copy of all legal advice submitted to you and the subcommittee in respect of my complaint. I understand the subcommittee is open to the public so there can be no question of level privilege."

6. On 15 February 2019 the complainant made the following request in relation to HPCP (recorded under HPCP ref 15493):

"1. You did not mention/supply the date of the above meeting. Please confirm.

2. Advise all the names of the persons present at the meeting, including their professional/ academic qualifications and employment status.

3. Provide a copy of the meeting minutes, duly signed and approved, legitimised, and authorised with the HPCP proper stamp.

4. Provide a copy of all submissions/comments made by Mr Lane, and any other documents submitted in support.

- 5. Provide the new PCC procedure/instructions that you say demonstrate how the PCC will henceforth examine and scrutinize complaints made by the public.*
- 6. Provide a copy of any legal advice given to you. Since the subcommittee is an open-to-public meeting, any said legal advice is not protected by legal privilege. Full disclosure is required."*
7. And on the 3 March 2019 the complainant made the following request in relation to HPCP (recorded under HPCP ref 15554):

 - "1. For each of the years 2015/16/17 and 2018 how many times has the HPCP sub committee met in secret with both the public and press excluded*
 - 2. Provide the reasons/justification for each and any such exclusion.*
 - 3. Provided the names of all the sub-committee members who were present at the secret meeting, and their employment status.*
 - 4. Provided a copy of the minutes of meeting for all the secret meetings when the press and public were excluded.*
 - 5. Provide the conclusions/results/actions arising from all the secret meetings".*
8. The HPCP responded to all three requests on the 8 April 2019.
9. For the first request (HPCP ref 15494) the HPCP responded by advising the date of the referred to meeting and then applied section 21 to the remainder of the request – information accessible by other means – and provided online links to the information. Except for part 5 of the request, which the HPCP provided a copy of the information it held.
10. For the second request (HPCP ref 15493) the HPCP responded stating that all but part 5 are repeat requests to the first request and so referred the complainant to its responses to the first request. With regards to part 5 of the complainant's second request, the HPCP advised it does not hold the information requested – copies of the procedures operated by the Office of the Police and Crime Commissioner – because it is a separate entity and the HPCP stated that he would need to request this information from the Office of the Police and Crime Commissioner directly.
11. For the third request (ref 15554) the HPCP responded that the information is not held.

12. On the 23 and 24 April 2019, the complainant requested that the HPCP conduct an internal review of its responses to his requests, which the HPCP provided on the 2 May 2019.
13. For the requests (ref 15493 and 15494) the HPCP addressed the complainant's objection to being provided with electronic links, as he wanted to receive hard copies of the information. The HPCP stood by its application of section 21 to provide links, but decided, as a courtesy, to provide a hard copy of the minutes.
14. For the third request (ref 15554) the HPCP found that it responded outside the required timeframe, but did not uphold the complainant's objection to Hampshire County Council (the council) responding on behalf of HPCP. It explained that the HPCP is a statutory joint committee set up in accordance with the Police Reform and Social Responsibility Act 2011, consisting of representatives from all of the Local Authorities that cover the area of Hampshire Constabulary.
15. The HPCP explained that the council was appointed by those Local Authorities to act as the Lead Authority to support the Panel by making and co-ordinating arrangements to ensure effective setting-up and maintenance of the Panel in accordance with statutory requirements. This includes the administration of the meetings of the Panel and answering FOIA requests on behalf of the Panel.
16. The HPCP also stated that it is not a requirement of the FOIA that responses should be signed by specific individuals.

Scope of the case

17. The complainant contacted the Commissioner on 6 March 2019 raising several concerns with the Commissioner about the HPCP's response to his requests.
18. The complainant outlined information he considered had not been provided and stated that the HPCP are not following correct procedures.
19. The Commissioner has advised the complainant that she is not able to make determinations on some aspects of the complaint raised, such as whether they should be signing documents. However, the Commissioner is able to determine whether or not information is held and therefore considers the scope of the case is to determine whether the HPCP has provided the complainant with all the information it holds within the scope of the requests.

Reasons for decision

Section 1 of the FOIA – Information held/ not held

20. Section 1 of the FOIA states that any person making a request for information to a public authority is entitled to be informed in writing by the public authority whether it holds information within the scope of the request, and if so, to have that information communicated to him.
21. Where there is some dispute between the amount of information identified by a public authority and the amount of information that a complainant believes may be held, the Commissioner, following the lead of a number of First-tier Tribunal decisions must decide whether, on the civil standard of the balance of probabilities, the public authority holds any information which falls within the scope of the request (or was held at the time of the request).
22. The complainant has identified to the Commissioner the information he considers has not been provided to him, this being:
 - i. "Secret Meetings"
 - ii. "Exempt minutes"
 - iii. "Legal advice"
23. The Commissioner has addressed each of these separately with the HPCP

Secret Meetings

24. With regards to the complainant's request (HPCP ref 15554) for information about 'secret meetings', the complainant has stated to the Commissioner that a 17 January 2019 report states at Paragraph 3 "*the press and public were excluded from the meeting during three items of business*".
25. The complainant considers this an example of a "secret meeting" and therefore the HPCP's response to his request (request 15554) that there were none is incorrect and questions whether there have been others in the timeframe he has set out in his request.
26. The Commissioner presented the above to the HPCP to ask its interpretation of 'secret meetings' compared to that of the complainant's and on reflection, whether it considers its response was correct.

27. The HPCP responded to the Commissioner advising that the meeting¹ referred to, above, by the complainant was held in public on the 17 January 2019.
28. It should be noted that the complainant's request was only for the years 2015, 2016, 2017 and 2018.
29. The HPCP has gone on to explain to the Commissioner that the press and public were excluded from the meeting after item 3 of the agenda, with the agreement of all Members present at the meeting, as it was likely, in the view of the nature of the business, to be exempt information relating to personal data – which the HPCP states is clearly stated in the minutes of the meeting.
30. The HPCP has told the Commissioner that it has explained to the complainant, on numerous occasions, that prior to 6 July 2018, the complaints sub-committee operated as a working group of the Panel and therefore, in accordance with its published terms of reference, meetings were not held in public and minutes were not recorded.
31. The HPCP has further explained to the Commissioner that at the 6 July 2018 meeting, the Panel agreed to appoint the complaints sub-committee as a formal sub-committee of the Panel, and from this date, all meetings have been held in public. The HPCP says that on no occasion have the Panel met "in secret". On all occasions meetings of the complaint's sub-committee have been held in accordance with the Terms of Reference agreed by the Police and Crime Panel.
32. On reflection of the complainant's meaning for "secret meetings" to that explained by the HPCP above, that being a closed meeting, the HPCP listed for the Commissioner all of its closed meeting dates and private held meetings within the date range of the complainant's request.

Commissioner's decision regarding "secret meetings"

33. Although the HPCP states the meetings prior to 6 July 2018 were not recorded, it does know the dates of when these meetings were held,
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¹

<http://democracy.hants.gov.uk/ieListDocuments.aspx?Cid=671&MId=5649&Ver=4>

when the Complaints Sub-committee was a working group to review complaints. The complainant's request recorded under HPCP ref 15554, his first question was:

"For each of the years 2015/16/17 and 2018 how many times has the HPCP sub committee met in secret with both the public and press excluded"

34. The Commissioner considers that, after review of the complainant's explanation of "secret meeting", that the HPCP holds dates of meetings relevant to the request.
35. The Commissioner therefore requires the HPCP to issue a fresh response to the complainant's first question of this request (HPCP ref 15554) now there is clarity on what is being asked for.

Exempt Minutes

36. With regards to the copies of the minutes that the complainant has been provided, he has queried with the Commissioner that he has not been provided with any "exempt minutes", and that they only contain a "summary of exempt minutes".
37. The HPCP has told the Commissioner that copies of exempt minutes are held for all meetings, where relevant, but are not published as these contain personal information and would be exempt from disclosure.
38. The exempt minutes are details of investigations conducted, the Panel's consideration of these complaints and the outcome of the investigations.
39. The HPCP states that the complainant has previously been provided with all the information he is entitled to regarding these complaints, held in the exempt minutes, to a different request he has made and was brought to the Commissioner under case reference FS50808064² and the decision notice was issued in August 2019.
40. The HPCP has told the Commissioner that the complainant did not raise the issue of the exempt minutes, in his internal review request, and so the HPCP did not look in to this at the time of the review. It has stated to the Commissioner it is happy to respond to the complainant on the exempt minutes not being provided.

² <https://ico.org.uk/media/action-weve-taken/decision-notice/2019/2615722/fs50808064.pdf>

Commissioner's decision regarding "exempt minutes"

41. The Commissioner considers that the HPCP should address this part of the request, with regards the exempt minutes not being provided, by issuing a fresh response under the FOIA to the complainant on this matter.
42. The Commissioner appreciates that the complaints/ investigation details were requested in a previous request, but the complainant should be provided with the reasons why the exempt minutes have not been provided to this request.

Legal Advice

43. The complainant has stated to the Commissioner:

"I also remind you that HPCP have failed to provide me with the "legal advice" they have received from Portsmouth City HPCP. I have explained that such advice does not comply with ECJ ruling that all "legal advice" must be independent. Portsmouth is part of Hampshire and falls within the jurisdiction of the HPCP. There is just one Constabulary for Hampshire. In addition, Portsmouth provides HPCPlors to the HPCP. Portsmouth City HPCP is not an independent supplier of "legal advice" to HCP.I request you instruct HPCP to comply with my RFI"

44. The Commissioner firstly points out that it is outside her remit to determine whether or not any legal advice complies with an ECJ ruling or whether the advice is independent.
45. The focus for the Commissioner is whether the referred to legal advice is held. The Commissioner provided the HPCP with the above paragraph and asked whether it holds the legal advice being referred to.
46. The HPCP has responded to the Commissioner stating that the complainant's requests for legal advice were as follows:
 - (request 15494) *"A copy of all legal advice submitted to you and the subcommittee in respect of my complaint. I understand the subcommittee is open to the public so there can be no question of legal privilege".*
 - (request 15493) *"Provide a copy of any legal advice given to you. Since the subcommittee is an open-to-public meeting, any said legal advice is not protected by legal privilege. Full disclosure is required."*

47. The HPCP has advised the Commissioner that these requests were submitted by the complainant in reference to a response sent to him by the Police Crime Panel (the PCP) on 8 February 2019 regarding his complaint. This complaint was considered by the PCP on 17 January 2019 and all other questions in these FOIA requests and his previous correspondence relate specifically to that meeting. Therefore, the HPCP state that the complainant's requests for copies of legal advice about his complaint has been interpreted as legal advice provided during or in preparation for the meeting dated 17 January 2019, when his complaint was considered.
48. The HPCP state that this is consistent with the rest of the complainant's questions within these information requests.
49. The HPCP has told the Commissioner that the legal advisor did not attend the meeting or provide advice during the meeting and any advice that may have been given prior to the meeting was given verbally. Therefore the HPCP states that no information with regards to legal advice is held falling within the scope of the requests.
50. The HPCP has advised the Commissioner that the Democratic Services Officer to the Panel has reviewed the PCP complaints mailbox, including any sub folders, as any legal advice to the Panel would have been received to this specific mailbox and stored electronically within a specific folder.
51. The HPCP states that folders relating to other complaints reviewed during the same time period have also been checked to ensure that no advice provided to the complainant's complaint had either been adjoined to another complaint or misfiled.
52. The HPCP has advised the Commissioner that the minutes for the meeting were reviewed, along with electronic notes captured by the Democratic Services Officer who supported the meeting. The HPCP maintain that no legal advisor was present or contacted during the meeting.
53. The Democratic Services Officer has stated that the complaint would have been discussed with the legal adviser by phone in advance of the meeting, however this discussion would not have been recorded other than a brief phone note.
54. The HPCP has stated that the Democratic Services Officer and Democratic Services Manager were the most relevant officers to contact in relation to this request because they support the complaint process and the complaints sub-committee.

55. The HPCP have told the Commissioner that legal advice to this complaint would only have been stored electronically in the form of emails from the legal advisor, or within the notes made by the supporting officer. No legal advice would be stored in hard copy.
56. The Democratic Services Officer to the Panel has carried out searches using the complainant's name as well as the references that were assigned to his two complaints and has also used the name of the legal advisor in order to view all emails received from him.
57. The HPCP has stated that the relevant officers have confirmed that no information has been deleted or destroyed and they make every effort to retain any email communication that relates to advice or decisions for complaints.
58. The HPCP has advised the Commissioner that records relating to any complaint are retained for the length of term of the Police and Crime Commissioner (the PCC), as a minimum. And although there is no statutory requirement to retain legal advice relating to complainants, advice from the Local Government Association is to retain complaints related information for the term of the current PCC. The relevant section of the Policing and Fire Governance Guidance for Police and Crime Panel states:

"...complainant can withdraw or discontinue their complaint at any time by notifying the panel in writing with the person's signature and the commissioner or deputy commissioner must be informed. A record of all complaints received should be kept until 12 months after the commissioner or deputy commissioner leaves the post."

Commissioner's decision regarding "legal advice"

59. The HPCP's position is that any legal advice that would have been received was given verbally and not recorded. It has approached the relevant officers, who were involved in this case, in order to determine that no information is held in recorded form other than the previously mentioned phone note.
60. The HPCP has had these officers search the relevant email files and ran searches under the complainant's name, legal advisors name and checked the supporting officer's electronic notes. And it is has confirmed that these are the places the information would be held if held.
61. The Commissioner on review of the above is satisfied that the HPCP has searched and checked with the most relevant officers for any legal advice who were involved in the case. However other than the phone note, the HPCP are adamant no other recorded advice is held.

62. The Commissioner can understand why the complainant would expect there to be records of legal advice in relation to such a case, and where legal advice appears to have been sought and given. But as demonstrated here, sometimes what is expected to be held or to be recorded has not happened.
63. It is not argued by the HPCP that no advice has been given, it is the argument that no advice has been recorded. And it is not the Commissioner's remit to determine whether information should be recorded, she can only determine if it is recorded.
64. Without any evidence that records have been made, it is difficult for the Commissioner to find that information is held. Therefore, in this case, the Commissioner finds that on the balance of probabilities, the only information held falling within the scope of the request relating to legal advice is the phone note referred to in paragraph 53.
65. The Commissioner has seen what this note states, and is of the view that this could be interpreted as being legal advice and therefore potentially within the scope of the request.
66. The Commissioner therefore requires the HPCP to issue a fresh response to the complainant under the FOIA with regards to the recorded phone note.

Section 10 of the FOIA

67. Section 10(1) of the FOIA requires public authorities to respond to requests for information within 20 working days following their receipt.
68. In this case, the three requests were made on the 14 and 15 February 2019 and 3 March 2019 and the HPCP responded to them on 8 April 2019. All three responses were made outside the required 20 working day timeframe.
69. Therefore the Commissioner finds HPCP breached section 10(1) of the FOIA to each of the three information requests.

Right of appeal

70. 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

71. 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.
72. 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

Andrew White
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