

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 16 March 2021

Public Authority: Chief Constable of West Yorkshire Police
Address: PO Box 9
Laburnum Road
Wakefield
WF1 3QP

Decision (including any steps ordered)

1. The complainant requested information relating to the movement of audio interview tapes. West Yorkshire Police denied holding the requested information.
2. The Commissioner's decision is that West Yorkshire Police does not hold information within the scope of the request.
3. The Commissioner requires no steps to be taken as a result of this decision.

Request and response

4. Following earlier correspondence, on 8 June 2020 the complainant wrote to West Yorkshire Police and requested information of the following description (bold text is the complainant's emphasis):

*"... I now wish to raise a further FOI request. This **is in relation to the disclosure you have provided.** Please see below.*

*"(a) Records relating to the movement of 14 audio tapes shown below indicate tapes have been booked out but **not** booked back in.*

*Please provide any recorded **information** you hold about where they are now **located** or whether they have been **destroyed**.*

1-3. Lines 4-6 on page 7224 (Dated out 10/2/11),

4. Line 8 on page 7224 (Dated out 1/3/11),
- 5-6. Lines 21-22 on page 7225 (Dated out 22/11/11),
7. Line 11 on page 7227 (Dated out 30/11/12),
8. Line 26 on page 7229 (Dated out 25/11/14),
9. Line 22 on page 7230 (Dated out 2/7/15),
10. Line 25 on page 7230 (Dated out 16/9/15),
11. Line 7 on page 7231 (Dated out 27/11/15),
12. Line 18 on page 7231 (Dated out 6/5/16),
13. Line 23 on page 7231 (Dated out 11/4/18),
14. Line 28 on page 7231 (Dated out 11/4/18)

(b) Records relating to the movement of 2 audio tapes shown below indicate tapes have been booked **in** but had **not** previously been booked **out**.

Please provide any recorded **information** you hold about where they were **originally located**

1. Line 10 on page 7226 – Dated in on 21/3/12 but had never been dated out.
2. Line 10 on page 7231 - Dated in on 6/1/16 but had never been dated out.

(c) Records relating to the movement of 5 audio tapes shown below indicate tapes have been booked in **prior** to them having been booked out

Please provide any additional recorded **information** you hold about the **accuracy** of this data

1. Line 1 on page 7223 - Dated out 31/8/10 but date returned was 10/8/10.
2. Lines 17-20 on page 7225 - Dated out 7/11/11 but date returned was 26/10/11.
3. Line 11 on page 7229 - Dated out 2/4/14 but date returned was 1/4/14.
4. Lines 12-14 on page 7231 - Dated out 15/1/16 but date returned was 6/01/16.

5. Line 22 on page 7231 - Dated out 5/3/18 but date returned was 6/3/17, one year earlier!"

5. West Yorkshire Police responded on 25 August 2020. It denied holding the requested information.
6. Following an internal review, West Yorkshire Police wrote to the complainant on 14 October 2020, maintaining its original position.

Scope of the case

7. Following earlier correspondence, the complainant provided the Commissioner with the relevant documentation, on 14 October 2020, to support his complaint about the way his request for information had been handled.
8. It is accepted that the request in this case was made in relation to a previous disclosure that West Yorkshire Police had provided to the complainant. The complainant was dissatisfied with West Yorkshire Police's handling of the request under consideration in this case, believing that West Yorkshire Police does hold the requested information.
9. As is her practice, the Commissioner wrote to both parties setting out the scope of her investigation. She advised the complainant that the focus of her investigation would be to determine whether West Yorkshire Police handled his request in accordance with the FOIA: specifically, that it would look at whether West Yorkshire Police is correct when it says that it does not hold the information he requested. She invited him to contact her if there were matters other than these that he considered should be addressed.
10. The complainant responded the same day, confirming the scope of the case as correct.
11. 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 I of the FOIA. The FOIA is concerned 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.
12. The analysis below considers whether, on the balance of probabilities, West Yorkshire Police holds information within the scope of the request.

Reasons for decision

Section 1 general right of access

13. Section 1 of the FOIA states that:

"Any person making a request for information to a public authority is entitled –

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him".

14. 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 First-tier Tribunal decisions, applies the civil standard of the balance of probabilities.

15. 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 the balance of probabilities.

16. In this case, the Commissioner has sought to determine whether, on the balance of probabilities, at the time of the request, West Yorkshire Police held the requested information.

17. In deciding where the balance of probabilities lies, the Commissioner will consider the complainant's evidence and arguments. She will also 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. In addition, she will consider any other information or explanation offered by the public authority which is relevant to her determination.

The complainant's view

18. The complainant disputed West Yorkshire Police's 'no information held' response.

19. He told the Commissioner:

"I believe that the retention of garbage data on the 202-master tape register log is very serious. This information is very easily obtainable from readily available records".

20. In his correspondence, he explained his reasons for suggesting why West Yorkshire Police must hold the requested information, referencing such matters as minimum retention periods for tapes, audit trails mentioned in policies, and record disposal logs.

West Yorkshire Police's view

21. As is her practice in a case such as this, the Commissioner asked West Yorkshire Police to explain what enquiries it had made in order to reach the view that it did not hold the requested information. She did so with a series of detailed questions. These included asking whether West Yorkshire Police had a business need or statutory obligation to hold this information. She also asked about the searches that had already been undertaken and asked West Yorkshire Police to conduct fresh searches if its previous searches had not been thorough enough.
22. The Commissioner is satisfied from West Yorkshire Police's response that it took account of these points when maintaining its position.
23. For example, in its submission West Yorkshire Police explained how tapes are initially held locally before being moved to central long-term storage. West Yorkshire Police advised that, as well as conducting physical searches, following the Commissioner's intervention, a fresh search of the Master Tape Movement Record (202) ("the Record") was conducted.
24. As a result of that further search, West Yorkshire Police confirmed:
- "No additional information was held on the Record at the time of the fresh search to indicate where the tapes identified in the request were now or whether they have been destroyed".*
25. It also told the Commissioner that West Yorkshire Police do not hold any additional information about the accuracy of the information held on the Record. It explained that there is no audit process for checking the accuracy of information held on the Record.
26. West Yorkshire Police acknowledged that there is a business purpose for holding the requested information. It explained that such records should be held to ensure the integrity of the evidence and for accountability purposes.
27. It also acknowledged that where tapes have been removed and returned from storage the policy is for the Record to be completed. It accepted, however, that, on occasions, this may not have happened due to human error.

The Commissioner's view

28. The Commissioner recognises that the requested information is clearly of interest to the complainant. She acknowledges the comprehensive documentation he submitted in support of his complaint, providing background to the request and his reasons for believing that the requested information is held.
29. She acknowledges that the complainant disputes the accuracy of the information held by West Yorkshire Police.
30. In that respect, the Commissioner acknowledges that West Yorkshire Police acknowledged that it was possible that records were not completely accurate as a result of human error.
31. The Commissioner is also mindful, however, that the FOIA is solely concerned with access to information and not with the accuracy or adequacy of recorded information held by a public authority.
32. Having considered West Yorkshire Police's response, and on the basis of the evidence provided to her, the Commissioner is satisfied that West Yorkshire Police carried out necessary searches to identify the requested information that was held at the time of the request.
33. Based on the information provided, the Commissioner is satisfied that, on the balance of probabilities, no recorded information within the scope of the request is held. She is therefore satisfied that West Yorkshire Police has complied with the requirements of section 1 of the FOIA in this case.

Right of appeal

34. 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

35. 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.
36. 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

Laura Tomkinson
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