

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 9 June 2022

Public Authority: Chief Constable of Dorset Police
Address: Middlemoor Police HQ
Exeter
Devon
EX2 7HQ

Decision (including any steps ordered)

1. The complainant requested a copy of legal advice regarding political leafleting. While Dorset Police responded, it did not state whether or not it held a copy of the requested information.
2. The Commissioner's decision is that Dorset Police breached sections 1(1)(a) and section 10(1) of FOIA.
3. The Commissioner requires Dorset Police to take the following step to ensure compliance with the legislation:
 - issue a fresh response in accordance with FOIA.
4. Dorset Police must take this step 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 18 January 2021, the complainant wrote to Dorset Police and requested information in the following terms:

"Today, your Assistant Chief Constable tweeted (<https://twitter.com/accsamdereya/status/...>) "our legal advice is political leafleting is not paid work & their is no exemption.

Describing this activity as volunteering services is not at the spirit of the #COVID19 legislation or the ongoing #StayHomeSaveLives messaging”

Please disclose an electronic copy of this legal advice. (You will want to think very carefully before attempting to rely on the section 42 exemption given that your own senior management has waived privilege by stating the content of the legal advice on Twitter.)”

6. The request was made using the 'whatdotheyknow' website.
7. Dorset Police responded on 19 February 2021, advising the complainant to make the request to the National Police Chiefs Council (NPCC).
8. The complainant requested an internal review on 19 February 2021.
9. On 29 March 2021 Dorset Police told him:

“With regards to the below e-mail we replied to your request on the 19th Feb 2021 in which we advised that the National Police Chiefs Council (NPCC) hold the information you requested not Dorset Police”.
10. It also confirmed that an internal review was under investigation.
11. Dorset Police provided an internal review on 5 May 2021, following the Commissioner's intervention. Citing section 16 (advice and assistance) of FOIA, it advised the requester to remake his request for a copy of any legal advice to the NPCC.

Scope of the case

12. Following earlier correspondence, the complainant contacted the Commissioner on 6 May 2021 to complain about the way his request for information had been handled.
13. He was dissatisfied that Dorset Police had failed to state whether or not it holds the requested information and, if held, to provide a copy.
14. The analysis below considers whether Dorset Police complied with its obligations in relation to section 1 of FOIA.

Reasons for decision

Section 1 general right of access

15. Section 1 of 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”.

16. Section 10(1) of FOIA provides that a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.

17. While it is acknowledged that Dorset Police responded to the request, and advised the complainant to make the request to a different public authority, it failed to confirm whether or not Dorset Police holds information of the description specified in the request.

18. The Commissioner finds that, in failing to comply with the duty to confirm or deny that it held the requested information within the statutory time limit, Dorset Police breached sections 1(1)(a) and section 10(1) of FOIA.

Right of appeal

19. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

20. 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.
21. 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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