

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 2 February 2022

Public Authority: Chief Constable of Greater Manchester Police
Address: GMP Headquarters
Central Park
Northampton Road
Manchester
M40 5BP

Decision (including any steps ordered)

1. The complainant has requested from Greater Manchester Police ("GMP") information about a meeting. Having initially advised the complainant that the requested information was not held, during the Commissioner's investigation GMP located and disclosed some information; some exemptions were applied but these were not queried by the complainant.
2. The Commissioner's decision is that GMP breached section 10(1) of FOIA by failing to comply with both section 1(1)(a) and 1(1)(b) within the statutory time period. Furthermore, in failing to disclose information within the statutory time limit it breached sections 1(1)(a) and (b) of the FOIA. No steps are required.

Request and response

3. On 3 July 2020, the complainant wrote to GMP and requested information in the following terms:

"Enclosed is a copy of a report from the Telegraph newspaper dated 24 February 2019. In accordance with the Freedom of Information act I request the following information in respect of the following words of the newspaper report:

"Officers from the Greater Manchester Police met with Marie Stopes abortion clinic staff this month to offer them increased support around a centre in South Manchester and agree a plan with nurses ahead of the 40-day anti-abortion effort in March".

1. When and why did this meeting take place and who were present at that meeting?
2. Please supply copies of any notes made in preparation for that meeting and any notes made which record the proceedings of, and decisions take [sic] at that meeting and which are in possession of Greater Manchester Police.
3. Please supply details of the "plan" mentioned in the above Telegraph report.

This is the third occasion on which I have asked these questions. You have advised me that you have this information in your possession. I look forward to hearing from you in reply to the requests above".

4. In a postal letter (the complainant's chosen way of corresponding) dated 2 October 2020, GMP wrote to him in what appears to be a generic letter sent to all outstanding requests. It apologised for the delay and further advised:

"If we do not hear from you within seven days of today's date, we will assume that you no longer wish to proceed with the request and we will close it".

5. GMP's letter was not posted until 6 October 2020 (as franked) and was therefore not received until 7 October 2020. The complainant responded on the same day confirming that he did still require a reply.
6. On 7 December 2020 GMP responded to the request. It denied holding the requested information.
7. The complainant requested an internal review on 29 December 2020. GMP provided an internal review on 17 June 2021. It maintained its position.
8. On 5 January 2022, during the Commissioner's investigation, GMP revised its position. It located information which it disclosed, with some redactions; it maintained that no further information was held.

Scope of the case

9. Following receipt of his internal review, the complainant wrote to the Commissioner on 23 June 2021 to complain about the way his request

for information had been handled. He asked the Commissioner to consider the following:

- the non-response to an earlier request which he said he had submitted on 17 April 2020;
 - the 7 day time limit he was given to respond (paragraph 6 above);
 - timeliness in responding to both his request and his internal review;
 - how he had previously been advised that information was held but that compliance would exceed the cost limit yet subsequently told that nothing was held; and
 - the misinterpretation of his request.
10. Following the late disclosure of information by GMP, the complainant advised the Commissioner that he still required a decision notice to document the handling of his request.
11. Some of the matters the complainant has referred to are commented on in "Other matters" at the end of this notice.
12. 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 FOIA. FOIA is concerned with transparency and provides for the disclosure 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. 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

Section 10 - time for compliance

13. Section 1(1) of 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.
14. Section 10(1) of FOIA provides that a public authority should comply with section 1(1) within 20 working days. Section 1(1)(a) initially requires a public authority in receipt of a request to confirm whether it holds the requested information.
15. The request was submitted on 3 July 2020 and the complainant did not receive a response, which confirmed that the public authority was in possession of some of the relevant information, until 5 January 2022.

16. The Commissioner finds that GMP has breached section 10(1) by failing to comply with section 1(1)(a) within the statutory time period. In failing to confirm it held information GMP breached section 1(1)(a) of the FOIA.
17. Section 1(1)(b) requires a public authority to provide disclosable information by the completion of the internal review. As it failed to do so, the Commissioner also finds a further breach of section 10(1) and a breach of section 1(1)(b).

Other matters

18. Although they do not form part of this notice the Commissioner wishes to highlight the following matters of concern.
19. In response to some of the points made by the complainant the Commissioner asked GMP to offer some explanation. He was advised as follows.

Handling of requests

20. The Commissioner raised various issues with GMP regarding the handling of the complainant's request. He also suggested to GMP that it would be helpful if it could provide explanations to the complainant so he could understand what had happened. Unfortunately, whilst explanations were provided to the Commissioner they were not passed on to the complainant. They are therefore included below for his information.

Seven day time limit given to respond

21. The Commissioner asked GMP for further information about whether it had received the complainant's request of 17 April 2020 and also the point made by the complainant in paragraph 6 above whereby he was given seven days to respond or his request would be 'closed'. GMP advised:

"During the initial outbreak of the Covid-19 pandemic a decision was taken by force command to pause responses to FOI requests. This was done to allow key business areas to concentrate resources on the emergency Covid-19 response, whilst accommodating the directive to work from home, where possible, and making necessary changes to working procedures, etc.."

The requests received during this time continued to be logged and acknowledged. As the emergency situation eased, the decision was taken to resume the processing of FOI requests. However, as a

backlog had accrued, a scoping study was carried out to determine how many requests were still needed. Requesters were contacted and given a short timescale in which to respond, so that we could gather that information as quickly as possible and allocate to staff to process the requests as soon as they possibly could.

I am very sorry that the complainant felt disadvantaged by this short time frame. On reflection, it was perhaps more geared towards email correspondents, than those preferring to correspond via the post. I apologise sincerely for this inconsideration. Had he contacted us by phone as soon as he received the letter, we would have been able to reinstate his request”.

22. The Commissioner understands the immense pressures placed on public authorities during the coronavirus pandemic and he is sympathetic to the difficult decisions such authorities had to make, between prioritising front-line services and continuing to meet their obligations under the FOIA. However, whilst it is noted that a reasonable explanation and apology was offered in GMP’s response to the Commissioner’s enquiries (although it did not actually clarify whether or not his earlier request had been received), something similar was not offered directly to the complainant. This would have been useful to him.

Inconsistency with earlier request refused on costs grounds

23. Although it subsequently revised its position, GMP initially advised the complainant that it did not hold the requested information in this request. However, it had previously advised him that information was held in respect of an earlier request from 2019, which was refused on cost grounds.
24. The Commissioner asked GMP if it could offer any explanation regarding its earlier position, whereby it had confirmed that the information requested was held, versus the current request where it initially advised him that no information was held.
25. GMP advised as follows:

“The complainant's request in 2019 consisted of 2 parts. Part A contained questions regarding the report in the Telegraph about police visiting the Marie Stopes clinic and in Part B, details, such as who called the police, details of the allegations, actions taken, etc., were requested for all occasions since 2016 when GMP have been "called in", under similar circumstances to that reported in the newspaper.

The caseworker sent a request for the Part B information to the business area that can search for and locate historical data. They advised that the request would need to be narrowed down as

various search criteria would return numerous incidents and crimes and that a manual review would be necessary to identify those relevant to the request. This was estimated to exceed the fees limit.

The caseworker then responded with a s.12 refusal. As is the agreed national practice, if one question within the request would take the force over the fees limit to answer, the whole of the request can be refused. Unfortunately, though, in this case, the advice and assistance given did not specify that it was just the information in Part B that, although was held, attracted the exemption. The information requested in Part A was not specifically addressed in the response.

The further reduced / refined request that was received consisted only of questions relating to the Telegraph report and any meeting that may have taken place. Enquiries were made with the relevant division and we were advised that no notes were held in relation to any visit, hence the "no information held" response".

26. The Commissioner accepts this rationale, albeit the response was not made clearly to the complainant at the time. As above, this explanation was not offered directly to the complainant which would have been helpful.

Revisiting the request

27. The complainant had pointed out that his internal review response advised him: "I can confirm that there is no information held for the month of July 2020" whereas his request referred to a newspaper article dated 24 February 2019. The Commissioner therefore raised enquiries with GMP.
28. In its initial response, GMP advised:

"... I think that there may have been a misunderstanding or miscommunication in relation to the date of a possible visit and have reason to believe that the information received from the division could be related to the events in 2020 and not 2019.

I understand that the vigil that was reported in the 2019 article has been running twice a year for several years, and it has been normal practice for officers to attend the clinic and speak to staff to offer reassurance. Assumptions may have been made by the division that, as we were making enquiries of them in 2020, the information requested was in relation to most recent event (i.e. the one that took place in 2020).

We are, therefore, revisiting how we have handled the request. It has been re-tasked and further enquiries are currently being made for any information relating to the preparations for the 2019 vigil”.

29. GMP subsequently advised that its enquiries had established that its original response had erroneously been given in relation to 2020 rather than as per the request.
30. The lack of attention to detail, as clearly expressed by the complainant in his request, means that a lot of unnecessary work has required by all parties.

Internal review

31. There is no statutory requirement to conduct an internal review under the terms of FOIA. However, such a provision does apply under the EIR and the Commissioner considers it best practice to adhere to the same principles under the terms of FOIA¹.
32. Within these guidelines, the Commissioner considers that the review procedure should involve a thorough re-examination of the original decision and handling of the request and that it should be genuinely possible to have a previous decision amended or reversed.
33. Clearly on this occasion the review was not adequate as it failed to address the actual wording of the request.
34. Furthermore, 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 FOIA. Rather they are matters of good practice which are addressed in the code of practice issued under section 45 of FOIA.
35. However, the Commissioner has issued guidance in which he has stated that, in his view, internal reviews should take no longer than 20 working days to complete, and, even in exceptional circumstances, the total time taken should not exceed 40 working days.
36. In this case, the internal review was not completed in accordance with that guidance. The Commissioner expects GMP to ensure that the internal reviews it handles in the future adhere to these timescales.

¹ https://ico.org.uk/media/for-organisations/documents/1613/internal_reviews_under_the_eir.pdf

37. The Commissioner will use intelligence gathered from individual cases to inform his insight and compliance function. This will align with the goal in his draft Openness by Design strategy² to improve standards of accountability, openness and transparency in a digital age. The Commissioner aims to increase the impact of FOIA enforcement activity through targeting of systemic non-compliance, consistent with the approaches set out in our Regulatory Action Policy³.

² <https://ico.org.uk/media/about-the-ico/consultations/2614120/foi-strategy-document.pdf>

³ <https://ico.org.uk/media/about-the-ico/documents/2259467/regulatory-action-policy.pdf>

Right of appeal

38. 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

39. 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.

40. 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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SK9 5AF