

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 27 January 2023

Public Authority: Commissioner of the City of London Police
Address: Police Headquarters
Guildhall Yard East
London
EC2V 5AE

Decision (including any steps ordered)

1. The complainant has requested all information relating to the Memorandum of Understanding (MoU) and National Guidance.
2. The Commissioner's decision is that Commissioner of the City of London Police (the Police) has not has not interpreted the request correctly and therefore, on the balance of probabilities, holds further information within the scope of the request.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Provide a fresh response based on the interpretation outlined in paragraph 20 of this decision notice.
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 FOIA and may be dealt with as a contempt of court.

Request and response

5. On 15 February 2021, the complainant wrote to the Police and requested information in the following terms:

"In 2018, work was being undertaken on an MoU for insurers; guidance across forces outlining what information can be shared, in which circumstances, under the correct GDPR gateways and recommend a time scale and charging framework.

This involved your Information Management Services, the creation of draft documentation for ABI/Lloyds consultation with their members, submission to constabularies, endorsement of the National Crime Operations Coordination Committee, undergo consultation/rework, presented to the NPCC for agreed guidelines and cascading to their teams.

I am seeking all information relating to the MoU from its current version to the present."

6. The Police responded on 4 March 2021. It stated that the requested information is exempt from disclosure under Section 22 of FOIA.
7. Following an internal review, the Police wrote to the complainant on 21 June 2021. It stated that it was upholding its position that the information was exempt under Section 22.

Scope of the case

8. The complainant contacted the Commissioner on 4 June 2022 to complain about the way their request for information had been handled.
9. The Commissioner contacted the Police regarding this investigation, it confirmed that it no longer wished to rely on Section 22, but rather Section 21. The Commissioner has since determined that Section 21 cannot apply as the information was published after the request was made, all requests for information must be considered as of the date they are received.
10. The complainant contacted both the Commissioner and the Police advising they were dissatisfied with the response, as their request also asked for "all information relating to the MoU from its current version to the present" and this information was not provided.
11. The Commissioner considers whether the Police, on the balance of probabilities, holds any additional information within the scope of the request.

Reasons for decision

Section 1 (1) information held or not held

12. Section 1(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.

13. In scenarios such as this, 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.

14. For clarity, the Commissioner is not expected to prove categorically whether the information is held, he is only required to make a judgement on whether the information is held on the civil standard of the balance of probabilities.

The Police's position

15. The Police confirmed with the Commissioner that it had received the request asking for all information and correspondence relating to the MoU.

16. The Police explained that it had been tasked with updating the MoU, but the MoU is owned by Association of British Insurers (ABI) and National Police Chiefs Council (NPCC). The Police further advised that it is the ABI and NPCC responsibility to publish the information and not the Police's.

17. The Police finally advised that it had widened its search and located the document in the public domain and provided this link to the complainant.

The complainant's position

18. The complainant advised that the Police had only addressed part of the request and although the complainant had since received a finalised version of the MOU, they explained that this did not address the remaining requested information.

The Commissioner's decision

19. Whilst the Commissioner appreciates that the Police has "widened their search for the MoU," it did not mention any searches done for the remaining requested information.
20. The Commissioner has decided that the Police has not interpreted the request correctly. The request included **all** information relating to the MoU from its current version to the present. The Commissioner's view is that this would include different versions of the MoU, draft documents for consultation and all related correspondence – not just the final published document. The Police has not provided evidence that demonstrates that it has addressed this part of the request and the Commissioner considers it likely that some more information is likely to be held.
21. The Commissioner therefore requires the Police provide a fresh response based on the interpretation outlined in paragraph 20 of this decision notice.

Other matters

22. Although the Police are under no legal obligation under FOI to conduct an internal review, the Commissioner still considers it still to be good practice when requested to do so by a complainant. An internal review should be completed with 20 working days, but within a maximum of 40 working days.
23. In this case the internal review as requested on 16 March 2021, the Police did not complete this internal review until 21 June 2021. The Commissioner deems this to be an unacceptable amount of time to conduct an internal review.
24. The Commissioner would also like to remind the Police that it is expected that engagement with the Commissioner takes place. If the Police need any extensions to respond to the Commissioner these should be requested, any emails sent by the Commissioner should at the very least be acknowledged.

Right of appeal

25. 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

26. 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.
27. 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

Catherine Fletcher
Team Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF