

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 24 April 2023

Public Authority: Chief Constable of Northumbria Police
Address: Northumbria Police Headquarters
Middle Engine Lane
Wallsend
Tyne & Wear
NE28 9NT

Decision (including any steps ordered)

1. The complainant has requested disclosure of advice provided to the Chief Constable of Northumbria Police ("Northumbria Police").
2. The Commissioner's decision is that Northumbria Police has correctly relied on section 42(1) when refusing this request.
3. The Commissioner's decision is that Northumbria Police breached sections 10(1) and 17(1) of FOIA, as it failed to confirm or deny whether the requested information was held and failed to provide an appropriate refusal notice within 20 working days.
4. The Commissioner does not require further steps.

Request and response

5. On 20 November 2022, the complainant wrote to Northumbria Police and requested information in the following terms:

"In 2018 we reported to Northumbria Police serious criminal fraud by false representation involving the HM Land Registry, Tribunals and the Court of Appeal which has now been dismissed as a civil issue under reference to a legal opinion said to be produced by an independent barrister. Under reference to the Freedom Of Information Act, we

demand that Northumbria Police disclose the advice you base your decision on. In fact, if the barrister's review does support Northumbria Police's decision, there is no reason not to disclose the advice to justify your decision. Failure to disclose the advice used to the detriments of victims of crime, will be considered as an attempt to hide misconduct in Northumbria Police which will be a public issue."

6. Northumbria Police responded on 5 December 2022. It stated that it was relying on Section 40(5) and would therefore neither confirm nor deny if it held the requested information.
7. Following an internal review, Northumbria Police wrote to the complainant on 16 January 2023. It stated that it was upholding its original decision.

Scope of the case

8. The complainant contacted the Commissioner on 22 January 2023 to complain about the way their request for information had been handled.
9. During the Commissioner's investigation, Northumbria Police accepted that it held the information, but advised that it now wanted to rely on section 42(1) of FOIA to withhold it.
10. The Commissioner considers that the scope of his investigation is to determine whether Northumbria Police was entitled to rely on section 42(1), when refusing this request.

Reasons for decision

Section 42(1) – Legal Professional Privilege

11. Section 42(1) of FOIA provides that information is exempt from disclosure if the information is protected by legal professional privilege and this claim to privilege could be maintained in legal proceedings. Legal professional privilege protects the confidentiality of communications between a lawyer and client.
12. In this case, the complainant has requested legal advice sought by Northumbria Police relating to a report of crime. The Commissioner considers it self-evident from the wording of the request that the information falling within the scope of this request must constitute confidential legal advice provided by a qualified legal adviser to their client. This means that this information is subject to legal professional privilege, and the Commissioner is aware of no evidence suggesting that

this privilege has been waived. The exemption provided by section 42(1) of the FOIA is, therefore, engaged in relation to this information. The Commissioner will now go on to consider the public interest test.

13. The general public interest inherent in this exemption will always be strong due to the importance of the principle behind legal professional privilege: safeguarding openness in all communications between client and lawyer to ensure access to full and frank legal advice. A weakening of the confidence that parties have that legal advice will remain confidential undermines the ability of parties to seek advice and conduct litigation appropriately and thus erodes the rule of law and the individual rights it guarantees.
14. It is well established that where section 42(1) FOIA is engaged, the public interest in maintaining the exemption carries strong, in-built weight, such that very strong countervailing factors are required for disclosure to be appropriate. The Commissioner notes the decision in the *Cabinet Office v Information Commissioner and Gavin Aitchison* (GIA 4281 2012) where, at paragraph 58, Upper Tribunal Judge Williams said:

“...it is also, in my view, difficult to imagine anything other than the rarest case where legal professional privilege should be waived in favour of public disclosure without the consent of the two parties to it”.
15. The complainant advised that if the requested information was not disclosed, it would enable Northumbria Police to “pervert the court of justice, conceal crime and assist offenders.”
16. The Commissioner considers that the balance of public interest lies in withholding the information and protecting Northumbria Police’s ability to obtain free, frank and high-quality legal advice without the fear of premature disclosure. The Commissioner is not satisfied that there are any public interest arguments that outweigh or override the inbuilt public interest in the information remaining protected by legal professional privilege. If the complainant is dissatisfied with the decision of Northumbria Police, there are available avenues to contest that decision. They can also avail themselves of the civil courts if they so wish.
17. The Commissioner has concluded that the public interest in maintaining the exemption at section 42(1) outweighs the public interest in disclosure. Therefore, Northumbria Police has correctly applied section 42(1). The Commissioner requires no further action to be taken by Northumbria Police in relation to this request.

Procedural Matters

18. Under section 10(1) of FOIA a public authority must comply with section 1(1) promptly and within 20 working days following the date of receipt of the request. As Northumbria Police failed to confirm or deny whether the requested information was held within 20 working days, it breached section 10(1).
19. Under section 17(1) if a public authority is refusing to disclose information it must provide the requester with a refusal notice within the same timescale. As Northumbria Police didn't provide a refusal notice, which stated the exemption upon which it ultimately came to rely, within 20 working days of the request, it breached section 17(1).

Right of appeal

20. 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

21. 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.
22. 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

Roger Cawthorne
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SK9 5AF