

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 15 February 2024

**Public Authority:** Chief Constable of Lancashire Constabulary  
**Address:** Police Headquarters  
Saunders Lane  
Hutton  
Lancashire  
PR4 5SB

#### **Decision (including any steps ordered)**

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1. The complainant has requested information about a fatal car crash from Lancashire Constabulary. Lancashire Constabulary refused to provide a report it had written for the Coroner, citing section 32(1) (Court records) of FOIA; this was not challenged by the complainant. Regarding the additional information sought, it advised that this was not held.
2. The Commissioner's decision is that Lancashire Constabulary interpreted the wording of the request too narrowly and that two items it located do fall within the scope of the request. In failing to recognise this, it breached section 8 of FOIA. Based on the civil standard of the balance of probability, the Commissioner finds no further information is held.
3. The Commissioner requires Lancashire Constabulary to take the following steps to ensure compliance with the legislation:
  - Disclose the email and attachment described in paragraph 28, or issue a valid refusal explaining why they, or any of their content, are exempt from disclosure.
4. Lancashire Constabulary 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 the Act and may be dealt with as a contempt of court.

## Background

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5. Lancashire Constabulary has confirmed that:

“PC Nick Dumphreys was a police officer for Cumbria Constabulary. He died in January 2020 after his police vehicle lost control and set on fire, a BMW with a N57 engine, due to engine failure which cut the supply of oil causing a fire. Lancashire Constabulary undertook the forensic collision investigation on behalf of the coroner to ensure no conflict of interest and uphold transparency. The inquest resulted in a ‘Prevention of future deaths report’ which made several recommendations to police forces in relation to the use of the N57 engine, how ‘end of life’ police cars are disposed of and called for national standards to be set for police garages and mechanics”.

## Request and response

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6. On 17 May 2023, the complainant wrote to Lancashire Constabulary and requested the following information:

“The Lancashire force produced a report for the inquest into the death of PC Nick Dumphreys, who was killed driving a Cumbria force car in January 2020.

Please could you supply me with the following:

- A copy of the report
- Any information, documentation, emails and messages, whether held in paper or electronic form, that mention the remit of the Lancashire force’s investigation into the crash. I would like anything that sets out or discusses what the force should or should not look at, which has been either sent to or from the force or its officers or staff.

I would be grateful if you could supply the information as soon as possible. If you can supply some but not all of the information, please supply what you can”.

7. On 9 August 2023, Lancashire Constabulary responded, late. It confirmed holding some of the requested information but advised that it was exempt from disclosure by virtue of section 32(1)(a) of FOIA (the Commissioner was later advised that this related to the first part of the request, ie the report). Regarding the second part of the request, it explained:

“Lancashire Constabulary was engaged to investigate the collision, which included appointing a forensic collision investigator – a specialist officer who provides expert evidence on matters within their expertise. Forensic collision investigators work to national standards.

We were unable to identify any additional requirements over and above the products of the collision investigation, and these have already been made available to the Coroner”.

8. The complainant requested an internal review on 10 August 2023. She did not dispute the citing of section 32 of FOIA, however, regarding the response to the second part of the request she said:

“Your response seems like something the press office might provide in answer to a question (although press offices shouldn't be involved in FOI requests, given they supposed to be applicant and motive blind). But I'd like the actual material please.

For example, if you were “unable to identify any additional requirements over and above the products of the collision investigation” I'd like the documents that say that, please.

I'm also not sure what that phrase means”.

9. Lancashire Constabulary provided an internal review on 12 August 2023 in which it maintained its position. It said: “I can clarify that the paragraph you are querying in your original FOI response means ‘No Information Held’ for that part of the request”.

10. On 5 September 2023, the complainant responded. She said:

“As a last ditch attempt before I go back to the ICO – can I ask if the force is absolutely sure it holds no information whatsoever regarding the force's investigation into the crash?

Your review has clarified that there is ‘no information held’ regarding my request for: Any information, documentation, emails and messages, whether held in paper or electronic form, that mention the remit of the Lancashire force's investigation into the crash. I would like anything that sets out or discusses what the force should or should not look at, which has been either sent to or from the force or its officers or staff.

But you also say the force was engaged to investigate the collision and a forensic collision investigator was appointed (which we know to be the case).

How is it possible that this happened without anyone talking to anyone about it? There must be messages from Cumbria to Lancashire and to and from the collision investigator themselves”.

11. On 6 September 2023, Lancashire Constabulary replied saying:

“I can look further in to this, but I think it is a national agreement that if there is an RTC in a force area that involves a serving officer that this has to be investigated by another Force, so I think that would be the reason (so it would just be basically handed over, as the ‘terms of reference’ are already in the agreement). I can officially confirm this is the case, but I will need to make some enquiries”.

12. On 6 September 2023, the complainant again wrote to Lancashire Constabulary. She said:

“I understand that it is accepted practice that a force does not investigate itself. But there must be some paperwork / communication / messages etc showing that Cumbria asked Lancashire to investigate. Similarly there must be some information showing what the relevant Lancashire officers then did.

The police national decision model requires decisions to be recorded. Guidance for investigating fatal road collisions requires the involvement of a number of officers in each case and is clear about what they should do. They must have communicated with each other and recorded their notes, decisions, findings and points to check.

It’s not possible that one force phoned the other to ask it to investigate and from that point onwards no-one wrote, recorded or communicated any information at all, other than the final coroner’s report”.

13. There was no further response.

### **Scope of the case**

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14. The complainant contacted the Commissioner on 4 October 2023 to complain about the way her request for information had been handled. Her grounds included the comments made above.

15. By way of additional information she said:

“The report written by Lancashire Police for the inquest of PC Nick Dumphreys did not mention the many previous fires affecting

similar police cars and caused by the same fault. It had been an issue for some years and all forces were supposed to have had guidance on using these cars as a result. So, to not consider this in their crash investigation report seems odd. I've been trying to find out why. I'm concerned that they appear to either be withholding information from me or to have carried out a fairly substantial and important review without any of the required conversations, note taking, liaison etc taking place".

16. The Commissioner will consider below, on the balance of probabilities, whether or not any information is held in respect of the second part of the request.
17. 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 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**

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### **Section 8 – Request for information**

18. Section 8(1) of FOIA deals with the validity of requests for information and states:
  - "...any reference to "a request for information" is a reference to such a request which-
  - (a) is in writing,
  - (b) states the name of the applicant and an address for correspondence, and
  - (c) describes the information requested".
19. If a request does not comply with all of the requirements of section 8(1)(a) - (c), then it is invalid. This means there is no obligation for a public authority to confirm or deny whether the information is held under section 1(1), or to issue a formal refusal notice under section 17.
20. Section 16 of FOIA does state, however, that public authorities have a duty to provide advice and assistance, "...so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made, requests for information to it". The Commissioner

considers this duty to extend to requesters who have made invalid requests.

21. The request in this case was made in writing and a name and address was given. The Commissioner is therefore only considering whether or not the request describes the information requested.
22. Section 84 of FOIA defines 'information' for the purposes of section 1(1) of FOIA (ie information which an applicant can request under FOIA) as "information recorded in any form...".
23. Therefore, not only must the complainant's request satisfy the criteria in section 8 of FOIA, it must also be a request for recorded information, in order to constitute a valid request for information under FOIA. A public authority is not required to create new information that it does not already hold, in order to answer an FOIA request.
24. In his guidance on section 8<sup>1</sup>, the Commissioner states: "Authorities should...treat any description that allows the requested information to be distinguished from other information held by the authority as valid under Section 8(1)(c)".
25. The Commissioner also acknowledges that a request in the form of a question will be valid under section 8(1)(c), provided it describes distinguishing characteristics of the information being sought.
26. As part of its searches for information, Lancashire Constabulary located some emails which it subsequently deemed to be 'out of scope' of the request. The Commissioner asked for copies of these, which were duly provided, and asked Lancashire Constabulary to clarify why it did not consider them to fall within the scope of the request.
27. Lancashire Constabulary advised (emphasis added):

"...the emails form part of the forensic collision investigation that was undertaken on behalf of the coroner and do not form part of the remit of the investigation as the remit was to forensically investigate the police vehicle as per national standards. Remit would be defined as the task or 'the terms of reference' of the investigation. The applicant confirms this is what they are requesting as the initial request from the applicant states that they

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<sup>1</sup> <https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/recognising-a-request-made-under-the-freedom-of-information-act-section-8/>

wanted **'anything that sets out or discusses what the force should or should not look at, which has been sent to or from the force or its officers and staff'**. The Forensic Investigation Team attended the scene following a call from the FIM [Force Incident Manager] and the investigation followed based on national standards. There was no direction from Cumbria police about the remit of the investigation. The applicant also stated in a follow up email to their IR (06/08/2023) that **'there must be some communication showing what Cumbria asked Lancashire to investigate'**. This is clarification that the applicant believes that the remit was directed by Cumbria police- which it was not. As stated there was contact from Cumbria's FIM to Lancashire's FIM but this was to initiate the independent investigation by the Forensic Investigation Team- not to direct them what to investigate. The coroner directs the forensic collision and the Forensic Collision Investigation Team are independent of any Police Force. The emails do not contain information about the remit of the scope of the investigation and what the collision team should or should not look into (as they were looking into the police vehicle collision as whole as per national standards), the emails contain information about the investigation itself which I considered out of scope for this request".

28. The Commissioner accepts that the complainant has used this terminology in her correspondence. However, she also asked Lancashire Constabulary whether: **"the force is absolutely sure it holds no information whatsoever regarding the force's investigation into the crash"**, which is a much more "open" wording.
29. Having considered the wording of the request, the Commissioner is satisfied that none of the emails located specifically outlines "anything that sets out or discusses what the force should or should not look at", nor do any suggest that Cumbria Constabulary asked Lancashire Constabulary to investigate anything. However, the Commissioner does consider that Lancashire Constabulary has taken a very narrow interpretation of the request and, in his view, one of the emails, dated 27 January 2020 and entitled "Fatal RTC M6 Cumbria", is within the scope of the request in that it refers to a plan of action. Furthermore, the email dated 30 January 2020, entitled "LanCon collision investigation of Cumbria PVI", contains an attachment entitled "Gold Group – Terms of Reference" which he also finds to be within the scope of the request. He accepts that the other emails do not fall within the scope of the request.
30. Lancashire Constabulary is therefore required to either disclose these items or issue a valid refusal notice stating why they, or any of their content, is exempt from disclosure.



## Section 1 – General right of access

31. Section 1 of FOIA states that any person making a request for information is entitled to be informed by the public authority whether it holds that information and, if so, to have that information communicated to them.
32. In this case, the complainant suspects that Lancashire Constabulary holds further information from which it could answer the request. Lancashire Constabulary's position is that it does not.
33. In cases where there is some dispute about the amount of information located by a public authority and the amount of information that a complainant believes might be held, the Commissioner – following the lead of a number of First-tier Tribunal decisions – applies the civil standard of the balance of probabilities. In essence, the Commissioner will determine whether it is likely, or unlikely, that the public authority holds information relevant to the complainant's request.
34. The Commissioner will consider the complainant's evidence and arguments. He will also consider the actions taken by the public authority to check whether the information is held and any other reasons offered by the public authority to explain why the information is not held. He will also consider any reason why it is inherently likely or unlikely that information is not held. 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 proof of the balance of probabilities.
35. Therefore, the Commissioner has sought to determine whether, on the balance of probabilities, Lancashire Constabulary holds any further recorded information within the scope of the second part of the request. Accordingly, he asked Lancashire Constabulary to explain what enquiries it had made in order to reach the view that it did not hold information.
36. The Commissioner initially asked Lancashire Constabulary to explain what the usual process was for actioning this type of investigation asking, in this particular case, which parties were involved and how was the process formalised.
37. In its response, Lancashire Constabulary explained:

“Once it has been established that a fatality has occurred following a road traffic incident or collision the Senior Investigating Officer (SIO) will inform the coroner of the death. The SIO is then responsible for the investigation and reports to the coroner. The Forensic Collision Investigation Report written by the expert collision investigation team is submitted to the coroner for the purposes of the coronial inquest.

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In the event a PVI [police vehicle incident] that results in the death of a serving police officer it is best practice for a neighbouring police force to undertake the forensic collision investigation on behalf of the coroner to avoid any conflict of interest. It is also common for neighbouring police forces to ask for mutual support in the event of any PVI, regardless of whether a fatality has occurred. This is because the Forensic Collision Investigation Unit is an independent team that concentrates its expert knowledge investigating how the PVI occurred.

Following the PVI in Cumbria that led to the death of PC Nick Dumphreys a phone call was received by Lancashire Constabulary's Force Incident Manager (FIM) asking for mutual support. The FIM contacted the Senior Road Traffic Collision Investigator who attended the scene along with the Forensic Collision Investigation Team. It is commonplace for the request to come into the Force via a telephone call to the Force Incident Manager (FIM).

There is not any further information held surrounding the 'remit' of this investigation as the remit of any road traffic fatality is documented in the College of Policing Authorised Police Practice (APP)<sup>2</sup>. Whilst the applicant finds it hard to believe there is no information held, the question posed is about the 'remit' of the investigation and there is a formal forensic investigation that all road death investigations will undergo. There was no additional 'remit' to the investigation into the death of PC Nick Dumphreys for the inquest".

38. The Commissioner initially noted that there may be a record of the call for assistance coming into the force from Cumbria Constabulary. Whilst this would be unlikely to contain "anything that sets out or discusses what the force should or should not look at", he raised the query with Lancashire Constabulary to establish whether this had been considered.
39. The Commissioner was advised that the call for assistance was actually made on a mobile phone by Cumbria Constabulary's FIM directly to Lancashire Constabulary's FIM and that there was no actual record of it. A further check had also been made with the force's Command and Control room and no record of any call had been found.
40. The Commissioner also enquired regarding any further searches for information that had been made. He was advised that email searches

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<sup>2</sup> <https://www.college.police.uk/app/roads-policing/investigation-fatal-and-serious-injury-road-collisions>

were undertaken, as well as consultation with senior officers who were involved in the investigation.

41. Regarding the searches, the Commissioner sought further detail and was told:

“Following the incident there was a Gold Command structure in place to oversee the forensic investigation. The Gold Commander, ACC Peter Lawson (now deceased), was approached when the initial request was received. ACC Lawson explained what happened in this incident and how Lancashire Constabulary became the investigating force. ACC Lawson confirmed a call was received by the Force Incident Manager (FIM) of Lancashire Constabulary from the FIM of Cumbria Constabulary. A Senior Investigating Officer and the Collision Investigation Team were then deployed to the scene. It was the job of Lancashire Constabulary’s Collision Investigation Team to examine the vehicle, the scene and make sure it is secured and recorded on behalf of the coroner. ACC Lawson explained that the coroner then directs the investigation with the forensic investigator working to the national standards previously mentioned. Other than information held for the purpose of the forensic investigation and there is no further information held regarding the ‘remit’ of the investigation. The ‘remit’ is the forensic investigation”.

42. As Lancashire Constabulary had made reference to Gold Command being setup, the Commissioner enquired as to whether there were any command logs which may hold any information. He was told that two logs had been considered but that they had been deemed out of scope as they did not contain anything “that sets out or discusses what the force should or should not look at”. The Commissioner requested copies of these, which were provided for his consideration; he can confirm that they are not relevant to the request.

43. Lancashire Constabulary also advised that:

“Searches were undertaken on Outlook via a tool called Archive Manager. This can pull back any emails with key word searches. Searches were undertaken using the name ‘Dumphreys’ ‘BMW’ ‘Collision’, ‘Cumbria’, ‘Fatality’. A limited number of emails were returned but none were in relation to the ‘remit’ of the investigation”.

44. The Commissioner’s views on these emails / attachments has been considered above in paragraphs 18 - 30.
45. On 8 February 2024, in further correspondence with the Commissioner, the complainant advised:

"I was listening again to the official inquest recording the other day. One Cumbria police staff member's statement referred to the various logs of the incident and mentioned two emails they had sent to the crash investigator at Lancashire police with requested information".

46. The Commissioner asked the complainant whether she knew any of the officers' names; she responded giving details of two officers. Therefore, the Commissioner asked Lancashire Constabulary specifically about these two officers and whether they had been consulted. He was advised:

"I can confirm the Collision Investigation Team were contacted about this FOI and I spoke to PC [name redacted] at the time, who is now retired. PC [name redacted] was the lead investigator and hence I directed this FOI to him as well as the Gold Commander...".

47. Lancashire Constabulary added that the other name had not featured in any of the 'hits' which had been returned when it did its information searches so they had not been contacted. However, at the Commissioner's suggestion, it did contact this other party and they confirmed that they did not hold any information.
48. For completeness, the Commissioner asked for sight of the full report in case there was anything recorded in it to suggest that further information was held, or in case it gave any further background that would be relevant to the wording of the request. There was no such content.

### **The Commissioner's conclusion**

49. When, as in this case, the Commissioner receives a complaint that a public authority has not disclosed some or all of the information that a complainant believes it holds, it is seldom possible to prove with absolute certainty that it holds no relevant information. However, as set out in the paragraphs, above, the Commissioner is required to make a finding on the balance of probabilities.
50. When dealing with a complaint to him under FOIA, it is not the Commissioner's role to make a ruling on how a public authority deploys its resources, on how it chooses to hold its information, or the decisions it makes to hold some, but not other, information. Rather, in a case such as this, the Commissioner's role is simply to decide whether or not, on the balance of probabilities, the public authority holds the requested information.
51. The complainant's views are explained clearly above and the Commissioner considers that it is entirely reasonable for her to expect

there to be further recorded information concerning the remit and investigation of the accident.

52. However, the Commissioner considers that Lancashire Constabulary contacted relevant parties to ascertain whether or not any information was held in respect of the request.

53. While appreciating the complainant's frustration that Lancashire Constabulary does not hold further information within the scope of the second part of her request, the Commissioner is mindful of the comments made by the Information Tribunal in the case of **Johnson / MoJ (EA2006/0085)**<sup>3</sup> which explained that FOIA:

"... does not extend to what information the public authority should be collecting nor how they should be using the technical tools at their disposal, but rather it is concerned with the disclosure of the information they do hold".

54. Based on the information provided, the Commissioner is satisfied that, on the balance of probabilities, no further recorded information within the scope of the request is held. He is therefore satisfied that Lancashire Constabulary has complied with the requirements of section 1 of FOIA in this case.

### Other matters

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55. Although they do not form part of this notice the Commissioner wishes to highlight the following matter of concern.

56. Although not mentioned in the grounds of complaint, the Commissioner has also made a record of the delay in responding to the request in this case. This may form evidence in future enforcement action against Lancashire Constabulary, should evidence from other cases suggest that there are systemic issues that are causing delays.

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<sup>3</sup><http://informationrights.decisions.tribunals.gov.uk//DBFiles/Decision/i90/Johnson.pdf>

## Right of appeal

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57. 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](mailto:grc@justice.gov.uk)  
Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

58. 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.

59. 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  
Senior Case Officer  
Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**