

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 19 November 2009

Public Authority: West Yorkshire Police
Address: PO Box 9
Laburnum Road
Wakefield
WF1 3QP

Summary

The complainant requested copies of any reports that the public authority had drawn up in respect of a particular inquiry. He also advised that if it refused to disclose any reports he would like some statistical information.

The public authority confirmed it held some relevant information but withheld it all under the exemptions in sections 30(1) and (2) (investigations and proceedings by public authorities) of the Freedom of Information Act ("the Act"). During the Commissioner's investigation the public authority released the requested statistical information and confirmed that the only reports it held at the time of his request were files which had been prepared for the Crown Prosecution Service (CPS).

At a late stage of the investigation the public authority further advised that the CPS files had not in fact been drawn up by itself but had been compiled by another police force. It therefore told the complainant that it actually held no further information within the scope of his request.

In failing to correctly advise the complainant that it held no relevant reports the Commissioner finds that the public authority breached sections 1(1)(a) and 10(1). The complaint is therefore partially upheld.

The Commissioner's role

2. 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 the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

The request

3. On 3 May 2006 the complainant made the following request to the public authority:

"I am requesting information held by West Yorkshire Police regarding the inquiry into allegations surrounding the treatment/handling of [name removed].

- *What reports have been drawn up by West Yorkshire Police into this investigation, including any reports sent to the CPS or to the police authority regarding costs?*
- *I request copies of all reports drawn up by West Yorkshire Police relating to this inquiry.*

If there is an issue with officer identity, I would expect names can be redacted. If the police are to refuse to disclose any reports, I would ask that some statistical information held by the force is made available.

This would include the date the inquiry started, the numbers of officers suspended during the inquiry, the number remaining suspended, the number disciplined (and with what sanctions and for what offences)."

4. On 30 May 2006 the public authority responded to the complainant. It confirmed that it did hold information that was relevant to his request but refused to disclose it citing sections 30(1) and (2) of the Act.
5. On 31 May 2006 the complainant asked for an internal review. A review panel apparently met on 21 July 2006 but it is not known whether or not this response was sent out to the complainant at the time. Following a conversation with the complainant the public authority sent out a copy of the panel's findings on 11 January 2007. This upheld its original decision to withhold the information and made further reference to section 40 of the Act.

The investigation

Scope of the case

6. On 12 January 2007 the complainant contacted the Commissioner to complain about the way his request for information had been handled. This related to the non-provision of any of the requested information. As he did not complain about the late provision of his internal review the Commissioner has not considered this further.
7. A partial disclosure was made during the investigation in relation to the date the inquiry started, the numbers of officers suspended during the inquiry, the number remaining suspended and the number disciplined (and with what sanctions and for what offences). The Commissioner therefore considers that this part of the request

was adequately complied with. This Notice therefore only considers the non-provision of any reports drawn up by the public authority.

Chronology

8. On 3 September 2008 the Commissioner advised both parties that he was commencing his investigation. He raised his initial queries with the public authority.
9. The public authority informed the Commissioner that the information covered by the request was part of an ongoing case being considered by the Criminal Cases Review Commission (the CCRC). The complainant was advised on 13 October 2008 that this was the position and that the information he had requested formed part of that ongoing investigation. In light of this, the Commissioner asked if he would consider withdrawing his complaint. He declined to do so.
10. On 23 October 2008 the Commissioner raised further queries with the public authority regarding what reports it actually held and whether any statistical information could be released. Following further email exchanges a response was received by the Commissioner on 3 December 2008. Unfortunately some queries were not addressed and these were chased on 8 December 2008. A further response was submitted on 18 December 2008.
11. On 22 December the Commissioner advised that he would write to the complainant with a further update. He sought the public authority's approval for providing the complainant with some of the information which it had given to him.
12. On 15 January 2009 the Commissioner wrote to the complainant with an update. This update included some information which had been provided by the public authority. The Commissioner confirmed that, at the time of his request, the only reports in existence were advice files which had been prepared for the Crown Prosecution Service (the CPS). He also confirmed that these had all since fed into an ongoing criminal enquiry which the CCRC had formally lodged with the Court of Appeal (this had occurred after his request). Responses about the date the inquiry started, the numbers of officers suspended during the inquiry, the number remaining suspended and the number disciplined (and with what sanctions and for what offences) were all provided at this stage with the consent of the public authority.
13. On the same day, the complainant raised further queries. He found it hard to accept that there were no further written reports in respect of such a costly inquiry. He also believed that there would be further discipline-related information. The Commissioner brought his concerns to the attention of the public authority.
14. Following the Commissioner's suggestion, the public authority wrote to the complainant on 3 March 2009. It again confirmed that the only reports in existence at the time of his request were CPS files. It also made reference to a large report which had been produced by the CCRC subsequent to the request being made.
15. On 17 March 2009 the Commissioner again contacted the complainant and asked him if he would withdraw his complaint in light of the ongoing CCRC case. The

complainant responded saying that he did not accept that disclosure could be prejudicial.

16. On 18 March 2009 the Commissioner telephoned the CCRC. He was advised that, after being lodged with the Court of Appeal, the information within that case was then considered to be *sub judice*¹. He advised the complainant accordingly but the complainant still did not agree to close the case.
17. On 20 April 2009 the Commissioner contacted the public authority and requested further information regarding its original citing of section 30. This was partly because he had been led to believe that the investigation had been carried out by another force rather than by the public authority itself. As such, he thought it unlikely that section 30 could properly be cited by the public authority itself.
18. In its response of 29 April 2009 the public authority confirmed that it had not carried out any of the investigation itself. It clarified that the investigation had commenced at the behest of the CCRC. The CCRC had engaged a different police force to conduct enquiries on its behalf. As a consequence, all of the information it held at the time of the request was actually prepared by a different police force. In effect, it had not actually drawn up any reports itself as the CPS files had been compiled by another party. It further confirmed that it had compiled some other information itself but that this had all post-dated the request.
19. Following further liaison with the Commissioner, the public authority wrote to the complainant on 30 April 2009. It apologised for its misunderstanding of his request but stated that it should have actually advised him that, at the time of his request, no reports were held.
20. On the same day the complainant raised issues with the Commissioner regarding the apparent wording of his request. In his response the Commissioner advised him that he could only consider "*all reports drawn up by West Yorkshire Police*", as this was what was originally requested by the complainant. The Commissioner further clarified that the public authority had already written to the complainant on 3 March 2009 and confirmed to him that the only reports in existence at the time of his request were in fact those compiled for the CPS. He also advised the complainant that he had only just been made aware of the fact that these reports were not drawn up by the public authority itself. In view of this, the Commissioner again asked the complainant to withdraw his complaint.
21. The Commissioner chased a response from the complainant on 5 May 2009, 11 May 2009 and 18 May 2009. On 26 May 2009 he wrote to him and advised him that he would close his case if he had no response before noon that day. Later that day the Commissioner closed the case.
22. On 27 May 2009 the complainant contacted the Commissioner. He advised that he still required a Decision Notice as he wanted a record of how the public authority

¹ *sub judice*: under the consideration of a judge or court and therefore prohibited from public discussion elsewhere (source: Shorter Oxford English Dictionary, fifth edition).

had spent so much money on an inquiry which had taken so many years to complete. He also wanted a decision regarding the applicability of section 30.

23. The Commissioner explained, by return, that he had tried unsuccessfully to contact the complainant on several occasions, which is why he had eventually closed the case. He further explained that, as no information was held which fell within the scope of his request, it was not appropriate to address section 30. He advised the complainant that any decision would therefore only be based on procedural breaches made by the public authority.
24. In a further effort to resolve the complaint informally the Commissioner again approached the public authority to ascertain whether there was any additional information it was willing to provide to the complainant to support its position. It made a further response and the Commissioner passed the relevant information to the complainant on 11 June 2009.
25. On 1 July 2009 the complainant made the point that: *"...it is very important that the Commissioner publicly notes that West Yorkshire Police holds no recorded information/produced no information on an inquiry that cost over £2m"*.
26. The Commissioner raised a further query with the complainant on 9 July 2009. He sent a reminder on 15 July 2009 but no response was received.

Findings of fact

27. The CPS reports in this case are now part of a criminal appeal. Details about the appeal can be found online at: http://www.ccr.gov.uk/news/news_503.htm and http://www.ccr.gov.uk/news/news_502.htm
28. This CCRC website states that inquiries were undertaken by North Yorkshire Police.

Analysis

Procedural matters

Section 1(1)

29. Section 1(1) of the Act provides 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. "

30. The Commissioner has considered whether the public authority has complied with section 1(1)(a) and (b) of the Act.

31. The public authority confirmed that it held information relevant to the request but claimed that it was exempt under sections 30(1), 30(2) and 40(2). However, as shown above, the public authority did not actually hold any information relevant to the scope of the request. Therefore, the public authority has breached section 1(1)(a) of the Act by failing to communicate this to the complainant in response to his request.

Section 10(1)

32. Section 10(1) of the Act provides that:-

“Subject to subsections (2) and (3), 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.”

33. The Commissioner has considered whether or not the public authority complied with section 10(1) of the Act.
34. The public authority failed to advise the complainant that it held no information within the statutory time for compliance. The Commissioner therefore considers that it breached section 10(1) of the Act in relation to its obligation under section 1(1)(a).

The Decision

35. The Commissioner’s decision is that the following elements of the request were not dealt with in accordance with the Act:
- the public authority breached section 1(1)(a) of the Act by failing to advise the complainant that it did not hold any information relevant to the scope of the request;
 - the public authority breached section 10(1) of the Act by failing to advise the complainant that it held no information within 20 working days.

Steps required

36. The Commissioner requires no steps to be taken.

Other matters

37. The Commissioner would like to thank staff at the Criminal Cases Review Commission who provided him with helpful background information in consideration of this case.

Right of Appeal

38. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal
Arnhem House Support Centre
PO Box 6987
Leicester
LE1 6ZX

Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@tribunals.gsi.gov.uk.
Website: www.informationtribunal.gov.uk

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.

Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is served.

Dated the 19th day of November 2009

Signed

**Gerrard Tracey
Assistant Commissioner**

**Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**