

Freedom of Information Act 2000 (FOIA)

Decision Notice

Date: 31 July 2012

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

Decision (including any steps ordered)

1. The complainant requested copies of communications between Lancashire Constabulary and Northumbria Police. Lancashire Constabulary said that it did not hold some of the requested information, and refused to confirm or deny whether it held the remainder under section 40(5) of the FOIA. The Commissioner's decision is that Lancashire Constabulary handled the request in accordance with the FOIA, and requires no further steps to be taken.

Request and response

2. On 20 August 2011, the complainant requested the following information from Lancashire Constabulary:

"Under the Freedom of Information Act please can you provide me with any documents, information or communications made between Chief Constable of Lancashire Constabulary, Steve Finnigan and Chief Constable of Northumbria Police Sue Sim since 1st July 2011 and until this request is answered.

Also, please supply following information under freedom of information act;

1. Please can you provide me with any documents, information concerning any contact, both written or verbal, between above dates and between any member of Lancashire Constabulary staff and also any member of Northumbria Police staff, including both FOI/DPA

departments concerning following requests and or that subject matter;
<http://www.whatdotheyknow.com/request/co...>
<http://www.whatdotheyknow.com/request/te...>

- 2. Please supply all information concerning any relationship, either professional or personal, between Steve Finnigan and Sue Sim.*
3. The two requests cited by the complainant were made by third parties to Lancashire Constabulary on 19 July 2011:

"1. How many complaints have Lancashire Constabulary made to facebook concerning alleged Infringes of copyright during the past 12 months and up until the date this request is answered.

2. Please supply full details of all/any complaints made, copies of all correspondence between Lancashire Constabulary and facebook and also copies of all/any such complaints.

3. Please supply all information and documents concerning person(s) within Lancashire Constabulary who made such complaints to facebook and reason(s) and background for all/any such complaints."

and 20 July 2011:

"Has any act of terrorism by a terrorist organisation, or person\persons acting on behalf of such an organisation been perpetrated within your force area over the period of the last 15 years"

4. Lancashire Constabulary responded on 14 October 2011. It stated that the request of 20 August 2011 was being refused under section 14 of the FOIA on the grounds that the request was vexatious.
5. Following an internal review Lancashire Constabulary wrote to the complainant on 23 November 2011. At this stage Lancashire Constabulary withdrew its reliance on section 14 and accepted the request as valid.
6. Lancashire Constabulary advised that it did not hold any information relating to communication between the Chief Constables of Lancashire Constabulary and Northumbria Police dated from 1 July 2011 until the date of the response to the request. Lancashire Constabulary also advised that it did not hold any of the information requested at part 1 of the request. Finally, Lancashire Constabulary refused to confirm or deny whether it held the information requested at part 2 of the request under section 40(5) of the FOIA.

Scope of the case

7. The complainant contacted the Commissioner to complain about the way his request for information had been handled. The Commissioner notes that Lancashire Constabulary withdrew reliance on section 14 following its internal review, and accepted that the request was valid. The Commissioner considers that this demonstrates the value of the internal review procedure, as it allows authorities an opportunity to reconsider its decisions and revise them if appropriate.
8. During the course of the Commissioner's investigation Lancashire Constabulary agreed to confirm to the complainant that it did not hold any information concerning any professional relationship between the Chief Constables of Lancashire Constabulary and Northumbria Police. Therefore the Commissioner's decision in this case relates to the following issues:
 - Lancashire Constabulary's refusal to confirm or deny whether it held information concerning any personal relationship between the Chief Constables of Lancashire Constabulary and Northumbria Police (as set out in part 2 of the request); and
 - Lancashire Constabulary's assertion that it did not hold any information relating to part 1 of the request, and that it did not hold any information relating to communication between the Chief Constables of Lancashire Constabulary and Northumbria Police dated from 1 July 2011 until the date of the response to the request.

Reasons for decision

Section 1 – information not held

9. Section 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.
10. The First-Tier Tribunal (Information Rights) has confirmed that the Commissioner's decision in such cases should be based on the civil standard of proof, i.e. the balance of probabilities. Therefore the question for the Commissioner is whether or not information is likely to be held; he can not comment as to whether information *should* be held.

11. The Commissioner considers it appropriate to take into account the manner and extent of the public authority's search for the requested information. If the Commissioner is satisfied that the authority acted reasonably in concluding that it does not hold the information then the Commissioner will find that, on the balance of probabilities, the information is not held.
12. In this case Lancashire Constabulary maintained that it did not hold information relating to communication between the two Chief Constables during the time periods specified by the complainant, nor did it hold any information concerning any professional or working relationship between the two Chief Constables. Lancashire Constabulary explained that the search for these parts of the request was limited to the Chief Constable's office, as it was considered that any information relevant to these parts of the request would be held by this office. Lancashire Constabulary did not identify any other departments or individuals who may hold relevant information.
13. Lancashire Constabulary also maintained that it did not hold any information constituting communication between staff of the two police forces relating to the information requests specified by the complainant. Lancashire Constabulary took the view that relevant information would be held by the information compliance and disclosure section, and it restricted its search accordingly. As this business area confirmed that it held no information, Lancashire Constabulary concluded that it as a public authority did not hold the information.
14. The Commissioner considers it reasonable to assume that communications received or sent by the Chief Constable of Lancashire Police, or information relating to any professional relationship with another Chief Constable, would be held by her office. Similarly, the Commissioner considers it reasonable to assume that communication relating to information requests would go through the department responsible for handling such requests. Therefore the Commissioner accepts that Lancashire Constabulary's decision to limit the searches to the two business areas was appropriate.
15. In considering whether information is likely to be held, the Commissioner will also consider the complainant's reasons for believing that the information is held. In this case the complainant did not provide the Commissioner with any information or evidence to suggest that the information he requested was likely to be held, although he alleged that various public authorities, including Lancashire Constabulary, had *"simply been copying and pasting each others 'vexatious' notices and replies"*.

16. The Commissioner has seen no evidence to suggest that Lancashire Constabulary conducted an inadequate search of the business areas identified as relevant. Therefore, on the balance of probabilities he is satisfied that Lancashire Constabulary does not hold any information which is relevant to these parts of the request.

Section 40(5) – refusal to confirm or deny whether personal information is held

17. Section 40(5)(b)(i) of the Act provides that a public authority is not obliged to confirm or deny whether information is held if to do so would:
- constitute a disclosure of personal data, and
 - this disclosure would breach any of the data protection principles or section 10 of the Data Protection Act 1998 (the DPA).

Would confirming or denying that the requested information is held constitute a disclosure of personal data?

18. The DPA defines personal information as:

"...data which relate to a living individual who can be identified

a) from those data, or

b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller, and includes any expression of opinion about the individual and any indication of the of the data controller or any person in respect of the individual."

19. Lancashire Constabulary applied the exemption at section 40(5)(b)(i) to the part of the request which was for

"... all information concerning any relationship, either professional or personal, between Steve Finnigan and Sue Sim."

20. As indicated above, Lancashire Constabulary confirmed that it did not hold information relating to any professional relationship, and refused to confirm or deny whether it held any information relating to any personal relationship. The Commissioner is satisfied that the remaining requested information would (if it were held) be considered personal data relating to the two Chief Constables. This is because the individuals are identified by the posts they hold in their respective police forces.

Would confirming or denying that the requested information is held breach a data protection principle?

21. The first data protection principle says that personal data must be processed fairly and lawfully. Lancashire Constabulary claimed that confirming or denying whether any of the remaining requested information was held would be unfair to the relevant individuals and would therefore breach the first data protection principle.
22. The Commissioner has also produced guidance to assist public authorities when considering requests for personal information of their employees¹. The Commissioner's guidance suggests that when considering what information third parties should expect to have disclosed about them, a distinction should be drawn as to whether the information relates to the third party's public or private life.
23. The Commissioner recognises that individuals who undertake public duties should expect that some information relating to these duties will be disclosed into the public domain. In this case the two individuals are the highest ranking police officers in their respective police forces. The Commissioner is of the view that the two individuals should expect that Lancashire Constabulary would confirm or deny whether it holds information relating any "professional", i.e. "working" relationship. However the Commissioner is of the clear view that information relating to an individual's private life (ie their home, family, social life or finances) will deserve more protection than information about their public life. By definition this information can be easily distinguished from "professional" information.
24. In this case the Commissioner considers that the two Chief Constables as private individuals would have a reasonable and legitimate expectation that information relating to any personal relationship would remain private, unless it could be considered relevant to their employment. For example, officials in many public sector organisations are required to declare relevant personal interests or issues such as family relationships or financial interests. The Commissioner must be careful to avoid disclosing in this decision notice whether or not Lancashire Constabulary does in fact hold information relating to any kind of personal relationship. However the Commissioner can confirm that he has seen no evidence to suggest that circumstances exist which

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http://www.ico.gov.uk/for_organisations/freedom_of_information/guide/~media/documents/library/Freedom_of_Information/Practical_application/INTERPRETING_A_REQUEST.ashx

would require Lancashire Constabulary to confirm or deny whether it held relevant information.

25. Therefore the Commissioner finds that Lancashire Constabulary correctly applied the exemption at section 40(5) to this part of the request.

Right of appeal

26. 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: 0300 1234504
Fax: 0116 249 4253
Email: informationtribunal@hmcts.gsi.gov.uk
Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

27. 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.
28. 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

Alexander Ganotis
Group Manager – Complaints Resolution
Information Commissioner’s Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF