

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 23 May 2012

Public Authority: Chief Constable of Hampshire Constabulary

Address: Police Headquarters

West Hill

Romsey Road

Winchester

Hampshire

SO22 5DB

Decision (including any steps ordered)

1. The complainant requested information held by the Hampshire Constabulary (the 'Constabulary') in relation to a cycling event that took place in the New Forest on 2 October 2011.
2. The Commissioner's decision is that the Constabulary has disclosed the relevant information. The Constabulary did initially refuse to disclose the information by inappropriately relying on section 12 of the Freedom of Information Act ('FOIA'), but it subsequently disclosed the information during the course of the Commissioner's investigation.
3. However, the time the Constabulary took to produce the requested information breached section 10 of the FOIA.

Request and response

4. On 2 November 2011, the complainant wrote to the Constabulary and requested information in the following terms:

"could you please let me have the information set out below in respect of a Cycle Time Trial ("Sportive") held on roads in the New Forest on or about 2nd October 2011. The event was part of the "Wiggle super series"

- Was the Chief Constable (or any Officer acting on his behalf) consulted/advised about this event?

- If the Chief Constable was consulted/advised in writing, or a note was made of the consultation, please disclose the relevant document/s and replies to consultation.
 - Did the HC receive any complaints about the event, if so how many? If in writing, please supply the document.
 - Who is the "Force Cycle Racing Liaison Officer" and where is s/he stationed?"
5. The Constabulary responded on 28 November 2011. It stated that to respond to the third item in the request would exceed the cost limit specified in the Freedom of Information (Fees and Appropriate Limit) Regulations 2004 ("Fees Regulations"), and so issued a refusal notice relying on section 12 of the FOIA. Under section 12, if one part in a request exceeds the appropriate limit then the request can be refused in its entirety.
6. Following an internal review the Constabulary wrote to the complainant on 9 January 2012. It stated that it would uphold its decision that section 12 was applicable as the cost of complying with the third part of the request would exceed the appropriate cost limit.

Scope of the case

7. The complainant contacted the Commissioner to complain about the way his request for information had been handled. He stated that he considered his request to come under the Environmental Information Regulations (EIR) rather than the FOIA. As the EIR do not have a cost limit, the complainant believed the Constabulary was using the FOIA so that they would not have to answer his request. (Although the Commissioner would point to the related 'manifestly unreasonable' exception under regulation 12(4)(b) of the EIR.)
8. The complainant considered his request to come under EIR because "the event was to be held in the New Forest, an area which is a National Park with some of the highest environmental protection in Europe", and that due to the size of the event it would have direct consequences that would constitute a release into the environment.
9. The Commissioner is of the view that the request can reasonably be interpreted as not requesting environmental information. He is therefore satisfied that the request was correctly considered by the Constabulary to come under the FOIA. The request explicitly refers to complaints received about a cycling event, notification of the event sent to the Chief Constable of the Constabulary, and the identity of the Constabulary's Cycle Liaison Officer; the request does not make any reference to the

New Forest, or any aspect of the event that could have resulted in a release into the environment. That the event occurred in a National Park does not mean that any request in connection with it can be automatically classified as environmental information; the content of the request also has to be taken into consideration.

10. Therefore, as the Commissioner is satisfied that the Constabulary was correct to consider the request under FOIA, he proceeded to investigate this case by questioning the assertion that the information could not be provided within the cost limits and thus whether section 12 could be validly relied upon.

Reasons for decision

Section 12

11. Section 12 of the FOIA provides that a public authority will not be obliged to comply with a request for information where the cost of compliance is estimated to exceed the appropriate limit.
12. This limit is set in the Fees Regulations at £450 for public authorities such as the Constabulary. This is calculated at the rate of £25 per hour and so equates to 18 hours' work (2½ working days).
13. In estimating whether complying with a request would exceed the appropriate limit, a public authority can only take into account the following activities:
 - determining whether it holds the information;
 - locating the information, or a document containing it;
 - retrieving the information, or a document containing it; and
 - extracting the information from a document containing it.
14. The Commissioner asked the Constabulary to provide a detailed and reasonable estimate of the time taken and cost that would be incurred by providing the information falling within the scope of the third request.
15. In its response, the Constabulary stated that "complaints in respect of events are not recorded centrally but could be held by a range of different individuals across the force and within disparate departments, sections or Operational Command Units". It then listed the different sections it considered the force would have to search in order to provide a sufficient response to the request.

16. The Constabulary also stated "the force would stress it offered advice and assistance to [the complainant] by suggesting he narrow down his request to allow the force to identify the individual most likely to hold the information."
17. The Commissioner asked questions about the methods employed by the Constabulary to collect and collate the complaints that it receives, particularly complaints it receives about large events.
18. The Constabulary then contacted the Commissioner and explained that it was aware of the number of complaints that had been received about the cycling event, and was willing to disclose this information to the complainant.
19. On 27 March 2012 the information was disclosed. The Commissioner then sought to establish why the information had originally been withheld.
20. The Commissioner asked the Constabulary a series of questions to determine the reasons behind the change from its original position and how it could be sure that the information disclosed was a correct answer to the request.
21. The Constabulary stated that it had obtained this figure solely from the Constabulary's Cycle Liaison Officer, as opposed to their previous estimate which encompassed several "disparate departments, sections or Operational Command Units".
22. When the Commissioner asked how the Constabulary knew this figure was accurate, the Constabulary stated that it had originally "applied the request literally and should have had more confidence to refer to the most likely formal complaint route in the first instance." It also stated that it was "as certain as can be" that the information disclosed was a correct answer to the complainant's request.
23. The Commissioner explained to the Constabulary that if it was certain that their answer was sufficient to answer the request then they should have given that answer in the first instance, rather than using section 12.
24. As the Constabulary are no longer applying section 12 to the third part of the request, the relevant information for the other parts of the request have also been disclosed to the complainant.
25. It is the Commissioner's view that the Constabulary has now provided all the information that falls within the scope of the complainant's request.

Section 10

26. Section 10(1) of the FOIA states that:

(1) 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.

27. Whilst the Constabulary did disclose the requested information, it did not provide it within twenty working days of the receipt of the request. Therefore it has breached section 10 of the FOIA.

Right of appeal

28. 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

29. 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.
30. 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
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