

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 30 April 2014

Public Authority: Chief Constable of North Wales Police
Address: Police Headquarters
Glan-y-Don
Abergele
Colwyn Bay
LL29 8AW

Decision (including any steps ordered)

1. The complainant requested copies of emails between the Press Department of North Wales Police and the local and national media that made reference to a particular named individual. North Wales Police provided some information but withheld other information under section 40(2) and 44 of the FOIA. The Commissioner's decision is that, on the balance of probabilities, North Wales Police does not hold any additional emails other than those which it has disclosed (subject to some information within the emails being withheld under sections 40 and 44). The Commissioner does not require any steps to be taken.

Request and response

2. On 7 October 2013, the complainant wrote to North Wales Police and requested information in the following terms:

"Copies of all emails between North Wales' Press Department and members of the media both local & national to include print broadcasting and in particular not confined to online journalist [sic]".
3. On the same day, the complainant confirmed that that his request referred to "emails that make reference to Ched Evans".

4. On 14 October 2013 North Wales Police responded to the request and provided copies of emails, subject to some information being redacted under section 40(2) of the FOIA.
5. The complainant requested an internal review of North Wales Police's handling of the request on 14 October 2013, stating that "the reason you give is spurious".
6. North Wales Police responded on 14 October 2013 asking the complainant to clarify the basis of his internal review request, and what particular aspect of its response he was dissatisfied with. North Wales Police confirmed that some of the information it had provided in response to the request had been redacted because it constituted third party personal data.
7. The complainant responded on the same day advising that he did not agree with North Wales Police's interpretation of the law and repeated that he considered its response to be "both spurious and further more incorrect in law". He also queried North Wales Police's reference to information which had been redacted.
8. North Wales Police responded on 15 October 2013 and provided a copy of the information it had disclosed in relation to the request, which showed the parts which had been redacted as "XXXXX". North Wales Police asked the complainant to confirm whether his internal review request related to its application of section 40 to withhold certain parts of the information requested.
9. On 15 October 2013 the complainant responded to North Wales Police expressing concern at the amount of information held relevant to the request. He also queried whether the copy emails provided in response to his request were genuine.
10. North Wales Police provided the outcome of its internal review on 30 October 2013. It confirmed that searches were carried out within the emails and archives of the Press Department at the time of the original request and again as part of the review process. North Wales Police advised that as a result of the review it had located one additional email. It disclosed a copy of the email, subject to third party personal data being redacted under section 40(2). It also withheld the attachment to the email under sections 40(2) and 44(1)(a). In addition, North Wales Police reviewed the information it had originally disclosed and provided some additional information that it had originally withheld. Finally, North Wales Police confirmed that the emails it had disclosed were genuine and represented correspondence between external media and its press department relating to the subject matter in question.

Scope of the case

11. The complainant contacted the Commissioner on 8 November 2013 to complain about the way his request for information had been handled.
12. The Commissioner wrote to the complainant to clarify whether his complaint related to the information which North Wales Police had withheld under sections 40 and 44, the amount of information held relevant to the request, or a combination of the two issues. The complainant confirmed that his complaint referred only to the amount of information held by North Wales Police relevant to his request.
13. In light of the above, the Commissioner considers the scope of the case to be whether North Wales Police held any further information relevant to the complainant's request of 7 October 2013, at the time of the request.

Reasons for decision

Section 1 – General right of access

14. Section 1 of the FOIA 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.
15. In cases where a dispute arises over the extent of the recorded information that was held by a public authority at the time of a request, the Commissioner will consider the complainant's evidence and arguments. He will also consider the actions taken by the authority to ascertain information falling within the scope of the request and he will consider if the authority is able to explain why further information was not held. For clarity, the Commissioner is not expected to prove categorically whether additional information was held. He is only required to make a judgement on whether the information was held "on the balance of probabilities"¹. Therefore, the Commissioner will consider both:
 - the scope, quality, thoroughness and results of the searches and

¹ This approach is supported by the Information Tribunal's findings in *Linda Bromley and Others / Environment Agency* (31 August 2007) EA/2006/0072

- other explanations offered as to why further information is not held.
16. North Wales Police advised the Commissioner that it has four Press Officers and the Head of Corporate Communications. The press officers are the first point of call for the media and for officers wanting to contact the media. North Wales Police confirmed that full searches were conducted of all five individuals' networked email accounts to check for any emails sent to the local and national media which made reference to Ched Evans. Searches were conducted on receipt of the original request and again at the time of the internal review, when one additional email was located. The search term used for the searches was the name of the individual concerned, as outlined in the complainant's request.
 17. Other than the emails which have been disclosed (with some information withheld under sections 40(2) and 44(1)(a) of the FOIA), North Wales Police confirmed that no additional information was located as a result of the searches it conducted. North Wales Police also confirmed that, to its knowledge, no information relevant to the request had been deleted or destroyed.
 18. The complainant has raised concern at the lack of information held by North Wales Police prior to the conclusion of the case against Mr Evans in April 2012. By way of background information, North Wales Police advised that Ched Evans was arrested on 30 May 2011 and subsequently charged on 26 July 2011. Information relating to the arrest was released into the public domain on 31 July 2011 by Sheffield United Football Club, Mr Evans' employer. North Wales Police stated that it did not release any information that identified Mr Evans during the time between his arrest and the time he was charged. Once charges were brought against Mr Evans, the investigation was complete and the information was then passed to the Crown Prosecution Service. North Wales Police advised that, at the time, no information would be permitted for release in relation to the investigation or the trial.
 19. North Wales Police advised the Commissioner that:

"The short period of time between the arrest and the charge, and the lack of public knowledge of the crime until after charges were brought highlights the limited amount of information in our possession in respect of [name redacted]'s Freedom of Information request. Other than to say an individual has been charged no further information would be given to the media until the conclusion of court proceedings".
 20. Based on the representations provided by North Wales Police the Commissioner is satisfied that it has carried out adequate searches of all places where relevant information would be held. There is no evidence of any inadequate search or grounds for believing there is a motive to

withhold information. Based on the searches undertaken and the other explanations provided by North Wales Police, the Commissioner is satisfied that, on the balance of probabilities, North Wales Police held no further recorded information relevant to the complainant's request other than that which has already been disclosed to him, or withheld under sections 40(2) and 44(1)(a).

Right of appeal

21. 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: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

22. 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.
23. 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

Anne Jones
Assistant Commissioner
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF