

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

### **Decision notice**

**Date:** 5 August 2015

**Public Authority:** Chief Constable of Avon and Somerset Constabulary

**Address:** Force Headquarters  
PO Box 37  
Valley Road  
Portishead  
Bristol  
BS20 8QJ

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

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1. The complainant has requested copies of correspondence dated between 1 May 2014 and 21 January 2015 relating to injury on duty ("IOD") pension reviews conducted by Avon and Somerset Constabulary ("the Constabulary"). The Constabulary provided correspondence up to the date of 31 October 2014. It said it held no relevant correspondence after that date. The complainant disputed this.
2. The Commissioner's decision is that, on the balance of probabilities, the Constabulary does not hold any further information falling within the scope of the request. Therefore, the Commissioner does not require the Constabulary to take any steps.

### **Request and response**

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3. On 21 January 2015, the complainant wrote to the Constabulary and made the following request for information:

*"Please forward me any correspondence between Dr David Bulpitt, FMA, Dr Philip Johnson, SMP from Dorset Police and the HR department within Avon and Somerset Constabulary regarding the injury on duty pension reviews.*

*Please look for correspondence from 1st May 2014 until 21st January 2015."*

4. The Constabulary responded on 20 February 2015. It disclosed 14 emails which it said were relevant to the request. It explained that some material was exempt under section 40(2) (personal data of third parties) and that this information had been redacted from the emails.
5. The complainant requested an internal review on 25 February 2015, pointing out that the emails only covered the period to 31 October 2014 and not to the end date specified in his request. He asked for any emails covering the remaining period specified in his request to be disclosed to him. The Constabulary responded on 20 April 2015. It stated that the time frame specified in his request had been considered in its original response. It said that no emails were identified in the period after 31 October 2014 and so it held no further information which it could provide in response to the request.

### **Scope of the case**

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6. The complainant contacted the Commissioner on 6 May 2015 to complain about the way his request for information had been handled. He considered that the Constabulary must hold relevant emails dated after 31 October 2014. He believed that the email traffic about IOD reviews would have been at its highest between November 2014 and January 2015.
7. The Commissioner considers the scope of the case to be whether or not the Constabulary holds further emails which it has not disclosed in response to the complainant's request. No consideration was given to information which may be held in a different format as this was not a specified part of the complaint.

### **Reasons for decision**

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#### **Section 1(1) – information not held**

8. Section 1(1)(a) of the FOIA requires a public authority to inform the complainant in writing whether or not recorded information is held that is relevant to a request. Section 1(1)(b) requires that if the requested information is held by the public authority it must be disclosed to the complainant unless a valid refusal notice has been issued.
9. In scenarios where there is a dispute between the complainant and the public authority as to the extent of any relevant information held by the public authority, the Commissioner, following the lead of a number of

Information Tribunal decisions, applies the civil standard of the balance of probabilities.

10. In other words, in order to determine such complaints the Commissioner must decide whether, on the balance of probabilities, a public authority holds any recorded information falling within the scope of a request (or did so at the time of such a request). Without evidence to suggest that the Council holds further information, this argument cannot carry weight.
11. The Commissioner's judgement in such cases is based on the complainant's arguments and the public authority's submissions and where relevant, details of any searches undertaken. The Commissioner expects the public authority to conduct a reasonable and proportionate search in all cases.

### **The complainant's position**

12. The complainant has disputed the Constabulary's claim that it does not hold further information that falls within the scope of his request. He believes that email traffic about the IOD reviews would have been at its highest between November 2014 and December 2014, since reviews were actually being conducted at that time. He believes that the Constabulary has deliberately withheld information so as to impede scrutiny of the IOD award review process.

### **The Constabulary's position**

13. The Constabulary maintained that it had conducted thorough searches of its systems and provided all the relevant information it held to the complainant. It was simply the case that it held no information relevant to the request dated later than 31 October 2014.

### **The Commissioner's position**

14. The Commissioner asked the Constabulary a series of detailed questions aimed at assessing how it had arrived at the conclusion it held no further relevant information.
15. The Constabulary responded that it had identified four individuals who would hold material relevant to the request, as they were involved in conducting the IOD reviews. They were the Force Medical Adviser named in the request and three members of the Human Resources department. It had searched their email accounts, which is where any email correspondence would be located (none of them used a laptop and their email accounts were networked resources). Any correspondence between them, or with the Senior Medical Practitioner from Dorset Police, was then assessed to see if it related to the IOD review and fell

within the dates specified in the request. Where relevant correspondence was found, this was disclosed to the complainant. No correspondence dated after 31 October 2014 was located.

16. In addition, a manual file which contained information relating to the IOD review was searched for any relevant correspondence. No information which was relevant to the request was identified.
17. The Constabulary has a formal retention policy, which states that all emails are automatically deleted from its server after 12 months, unless saved by a user. The latter part of the window specified by the complainant falls within that 12 month period and so emails would not have been lost due to routine, rolling deletion. The Constabulary's expectation was that its server still contained a complete record of all that it held. As previously stated, it contained no emails which post-dated 31 October 2014 which were relevant to the request.
18. The complainant's complaint to the Commissioner was made on the grounds that the emails disclosed did not cover the full period specified in his request and his belief that there must have been further email exchanges after 31 October 2014. He has not sought to argue that anything in the information disclosed to him suggests that more information would be held (for example, references to other recorded information which the Constabulary then denies holding). Nor has he stated that he is aware that specific items exist or even that he would expect certain items to be held. It is simply a conviction on his part that because the reviews were underway, further emails must have been sent between the parties described in the request.
19. Addressing the complainant's contention that email traffic would have been at its highest during the period November – December 2014, the Constabulary acknowledged that the reviews were underway during this period. It said that in light of that, if necessary, Dr Johnson would have spoken directly with Dr Bulpitt, and that this negated the need for email communication.
20. The Commissioner is mindful of the former Information Tribunal's ruling in EA/2006/0072 (Bromley)<sup>1</sup> that there can seldom be absolute certainty

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<sup>1</sup> [http://foiwiki.com/foiwiki/info\\_tribunal/DBFiles/Decision/i64/Bromley.pdf](http://foiwiki.com/foiwiki/info_tribunal/DBFiles/Decision/i64/Bromley.pdf)

that additional information relevant to the request does not remain undiscovered somewhere within the public authority's records. And having considered the complainant's concerns the Commissioner understands why, logically, he might conclude that more information must be held by the Constabulary. However, without evidence to support this, the complainant's belief is, essentially, conjecture.

21. Set against this, the Constabulary has provided cogent responses to each of the questions put to it by the Commissioner, which set out the steps it has taken to locate information, and an explanation why email correspondence apparently ceased at the end of October 2014 (ie verbal contact). Taking all the above into account, the Commissioner is satisfied that on the balance of probabilities, the Constabulary does not hold further information falling within the scope of the complainant's request.

**Right of appeal**

22. 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: 0870 739 5836  
Email: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)  
Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

23. 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.
24. 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 .....**

**Jon Manners**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**