

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 21 May 2018

**Public Authority:** Police and Crime Commissioner for Hampshire

**Address:** St. George's Chambers  
St. George's Street  
Winchester  
Hampshire  
SO23 8AJ

### Decision (including any steps ordered)

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1. The complainant asked whether the Police and Crime Commissioner for Hampshire is or has ever been a member of the Freemasons. The Office of the Police and Crime Commissioner for Hampshire ("the PCC") said that it did not hold information from which the request could be answered.
2. The Commissioner's decision is that, on the balance of probabilities, the PCC did not hold the requested information. However, the Commissioner found breaches of section 1 and section 10 of the FOIA in the PCC's failure to respond to the request within 20 working days.
3. The Commissioner requires no steps to be taken.

## Request and response

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4. On 4 December 2017, the complainant submitted a multi part request to the PCC, part of which asked the Police and Crime Commissioner:

*"2) Are you now, or have you ever been, a Freemason?"*

5. The PCC responded on 5 January 2018. In respect of point 2) of the request, it stated

*"The office holds no information to offer in response to the request".*

6. The complainant requested an internal review on 11 January 2018. The PCC responded on 6 February 2018, stating that having conducted a search it had *"...not located anything that will assist in answering this question"*.

## Scope of the case

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7. The complainant contacted the Commissioner on 13 February 2018 to complain about the PCC's response to point 2) of the request, which he described as *"unbelievable"*.
8. The analysis below considers whether, on the balance of probabilities, the PCC holds the information described at point 2) of the request.

## Reasons for decision

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### Section 1 – general right of access

9. Section 1 of the FOIA states that any person making a request for information is entitled to be informed by the public authority whether it holds that information and, if so, to have that information communicated to him.
10. In this case, the complainant clearly believes that the PCC holds information from which it can answer the request. The PCC's position is that it does not.
11. In cases where there is some dispute about the amount of information located by a public authority and the amount of information that a complainant believes might be held, the Commissioner – following the lead of a number of First-tier Tribunal decisions – applies the civil standard of the balance of probabilities. In essence, the Commissioner

will determine whether it is likely, or unlikely, that the public authority holds information relevant to the complainant's request.

12. The Commissioner will consider the complainant's evidence and arguments. She will also consider the actions taken by the public authority to check whether the information is held and any other reasons offered by the public authority to explain why the information is not held. She will also consider any reason why it is inherently likely or unlikely that information is not held. For clarity, the Commissioner is not expected to prove categorically whether the information is held, she is only required to make a judgement on whether the information is held on the civil standard of proof of the balance of probabilities.

*The complainant's position*

13. The complainant regarded the PCC's statement that it did not hold any information from which point 2) of the request could be answered as "*unbelievable*" and said that all the PCC need do to answer the request would be to put the question to the Police and Crime Commissioner. It accused the PCC of executing a "*deliberate attempt to obstruct the truth*".
14. The complainant did not offer any reason to the Commissioner as to why the PCC would be likely to hold the requested information.

*The PCC's position*

15. The PCC explained that the Police and Crime Commissioner is an elected position, and the PCC plays no part in the administration of the election process. Any biographical information it holds about the Commissioner will therefore have been obtained from other public sources or created after the election or from declarations that the Commissioner makes upon taking office. Such information would be held by the PCC's communications and governance teams.
16. All PCC business is conducted on networked resources. Use of freestanding computers for official business is strictly forbidden by the PCC's IT policies. All information is held electronically. Any manual forms or records are digitised and the originals are destroyed at the earliest opportunity, unless there is a statutory reason for keeping them.
17. The PCC conducted searches across its networked systems. The searches did not return any information from which it could ascertain whether the Commissioner was, or had ever been, a Freemason.
18. The PCC said that electronic searches were carried out by the communications team for any profile documents it held about the Commissioner using the search term "Freemason", for press cuttings in

which he might have been quoted saying "Freemason" and for any social media postings that may have addressed this question.

19. The governance team carried out an electronic search for any official documentation in which the Commissioner may have declared any current or previous membership of the Freemasons, with particularly focus on the Register of Interests, which he was required to sign upon taking office.
20. The current version of the Register of Interests form can be viewed on the PCC's website<sup>1</sup>. Current membership of a Freemason lodge would be deemed a disclosable interest under Section 5 of the form, and consequently the PCC told the Information Commissioner that it would expect that any current membership held by the Commissioner would be disclosed there. The ICO notes that section 5 of the current form does not contain such a declaration by the Commissioner.
21. The PCC confirmed that there is no business purpose for which the requested information would routinely be held. While it was required to maintain the Register of Interests, which would contain details of any current Freemason membership (if held), there was no requirement on it to establish and publish information about the Commissioner's previous membership status.

*The Commissioner's conclusion*

22. When, as in this case, the Commissioner receives a complaint that a public authority has not disclosed some or all of the information that a complainant believes it holds, it is seldom possible to prove with absolute certainty that it holds no relevant information. However, as set out in paragraphs 11 and 12, above, the Commissioner is required to make a finding on the balance of probabilities.
23. The Commissioner is satisfied that the PCC has provided a detailed and cogent explanation for believing that it does not hold the requested information. It has explained how information is held and why the particular searches carried out would be expected to return relevant information, if held. It has also explained that any current membership of the Freemasons would be reflected in the Register of Interests, which it publishes, and that there is no statutory obligation on it to collect and

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<sup>1</sup> <https://www.hampshire-pcc.gov.uk/wp-content/uploads/2017/08/NOTSETOL-MFP-1ANOTSET.pdf>

retain information about the Commissioner's previous Freemason membership status.

24. The complainant has expressed disbelief that the PCC does not hold information from which the request can be answered. He has not explained why he believes such information would be held. Instead, he has suggested that the PCC should simply ask the Commissioner the question and provide him with the response.
25. The FOIA gives an individual the right to access recorded information held by public authorities. It does not require public authorities to create new information or to answer questions, provide explanations or give opinions, unless this is recorded information that they already hold. Thus, the PCC is not required by the FOIA to take the complainant's suggested course of action.
26. The Commissioner is satisfied in this case that the PCC has demonstrated that it has reasonable grounds for considering that the searches it conducted would have revealed all relevant information, and that its belief that it does not hold any information is similarly reasonable.
27. Taking all the above into account the Commissioner is satisfied that that, on the balance of probabilities, the PCC did not hold any information from which it could answer part 2) of the request and therefore that it has not breached section 1 of the FOIA.

## **Section 1 – general right of access**

### **Section 10 - time for compliance**

28. Section 1(1) of the FOIA states that an individual who asks for information is entitled to be informed whether the information is held and, if the information is held, to have that information communicated to them.
29. Section 10(1) of the FOIA states that on receipt of a request for information a public authority should respond to the applicant within 20 working days.
30. In this case, the PCC has breached sections 1(1) and 10(1) by failing to respond to the request within 20 working days.

## Right of appeal

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31. 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)

32. 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.
33. 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 .....**

**Samantha Bracegirdle**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**