Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 4 October 2018

Public Authority: Chief Constable of Surrey Police
Address: Surrey Police Headquarters
PO Box 101
Guildford
GU1 9PE

Decision (including any steps ordered)

1. The complainant requested information relating to a non-disclosure agreement between Surrey Police and Vodafone.

2. The Commissioner's decision is that Surrey Police has breached section 10(1) of the FOIA in that it failed to provide a valid response to the request within the statutory time frame of 20 working days.

3. The Commissioner requires Surrey Police to take the following step to ensure compliance with the legislation.

   - Surrey Police must issue a response to the request in accordance with its obligations under the FOIA.

4. Surrey Police must take this step within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 22 June 2018, the complainant wrote to and requested information in the following terms:

"On 8 December 2017, I received a letter from you, together with a purported copy of the NDA. The copy of the NDA, watermarked with 'Surrey Police FOI 165-17-937' sent to me was stripped of all its metadata despite the accompanying letter assuring me that 'no redactions of removals of information' had been made to it.

The accompanying letter went on to state:

'Despite extensive searches, we have been unable to locate the original NDA. I have had it confirmed to me of its existence and also I have been provided with a copy of the NDA[...]The NDA has an effective date of 24 Nov 09 and I have been informed that written notice of its termination has never been given by either party, albeit evidence adduced in the process has been made public at court (see clause 10). We do hold a copy of the NDA.'

- *'I have had it confirmed to me of its existence'*

Who confirmed its existence to you? Was it a representative from Vodafone? If you are able to confirm a name, was it [name redacted]

- *'I have been informed that written notice...'*

Who informed you that written notice of its termination has not been given? Was it a representative from Vodafone? If you are able to confirm a name, was it [name redacted]?

- *'I have been provided with a copy of the NDA'*

Who provided you with the copy? Was it a representative from Vodafone? If you are able to confirm a name, was it [name redacted]?

Was it provided to you at some time between 19 September 2017 (when you first accepted my FOI request), and 8 December 2017 (when you answered my request)?

- *'We do hold a copy of the NDA.'*

As you have already indicated that you could not locate a copy of the NDA, can you confirm that this statement applies only from the time it was sent to you, presumably sometime between 19 September 2017 – 8 December 2017?

Please note that this is a new FOI request that has arisen both as a result of the response provided on 8 December 2017 and more recent correspondence from [name redacted] at Vodafone."

6. Surrey Police acknowledged the request on 25 June 2018, confirming that it would provide a response within 20 working days.

Scope of the case

7. The complainant contacted the Commissioner on 8 June 2018 to complain about Surrey Police's failure to respond to his information request.

8. On 28 August 2018 the Commissioner wrote to Surrey Police, reminding it of its responsibilities and asking it to provide a substantive response to the complainant within 10 working days.

9. Despite this intervention Surrey Police has failed to respond to the complainant.

Reasons for decision

10. Section 1(1) of FOIA states 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."*

11. Section 10(1) of the FOIA states that a public authority must respond to a request promptly and "*not later than the twentieth working day following the date of receipt.*"

12. From the evidence provided to the Commissioner in this case, it is clear that Surrey Police did not deal with the request for information in accordance with the FOIA. The Commissioner finds that Surrey Police has breached section 10(1) by failing to respond to the request within 20 working days and it is now required to respond to the request in accordance with the FOIA.

Right of appeal

13. 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
    Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

14. 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.

15. 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 .....

Ben Tomes
Team Manager
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Wycliffe House
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Wilmslow
Cheshire
SK9 5AF