

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 10 June 2020

Public Authority: Chief Constable of Humberside Police

Address: Police Headquarters
Priory Police Station
Priory Road
Hull
HU5 5SF

Decision (including any steps ordered)

1. The complainant has requested information about Humberside Police's policies and procedures relating to Body Worn Video.
2. The Commissioner's investigation established that Humberside Police held information falling within the scope of the request which it did not disclose when responding to the request. The Commissioner's decision is, therefore, that by failing to disclose information which was not exempt, within 20 working days, Humberside Police breached sections 1(1) and 10 of the FOIA.
3. As the complainant now has a copy of the information in question, the Commissioner does not require any steps.

Request and response

4. Prior to making this request, on 12 March 2019, the complainant had requested from Humberside Police various items of information relating to its use of Body Worn Video. Humberside Police did not respond to

that request until 9 July 2019, following a decision notice issued by the Commissioner under reference FS50844247¹.

5. In the meantime, while he was awaiting Humberside Police's response to that request, on 5 June 2019, the complainant submitted the following request for very similar information, under the FOIA:

"I would be most grateful if Humberside Police could provide full and complete copies, including any associated background documents, of their policies and procedures together with their implementation and review dates, relating to the use of Body Worn Video (BWV) by Appointed Officers from Humberside Police during their investigation of complaints which have been recorded under the Police Reform Act 2002, and in particular, the use of BWV by Appointed Officers whilst they are on the property of or within the homes of complainants.

I understand Humberside Police should also carry out some form of public consultation in respect of how they will use BWV in this manner to ensure compliance with the Data Protection Act 2018 and Article 8 of the ECHR.

Consequently, please also provide full and complete copies of any public consultations and/or Data Privacy Impact Assessment (DPIA) pertaining to the use of BWV by Appointed Persons."

6. Humberside Police failed to reply to the new request and so on 11 July 2019, the complainant wrote to it, pointing out that he had not received a response.
7. Following the Commissioner's intervention, Humberside Police responded to the new request on 13 September 2019. It told him:

"It has been ascertained that documents relevant to this request have previously been provided under FOI reference F-2019-00680 [ie in its response of 9 July 2019]".
8. On 16 September 2019, the complainant requested an internal review of this response.
9. Humberside Police acknowledged receipt of his request for a review the same day, but no internal review was forthcoming.

¹ <https://ico.org.uk/media/action-weve-taken/decision-notices/2019/2615258/fs50844247.pdf>

Scope of the case

10. The complainant contacted the Commissioner on 28 January 2020 to complain about the way his request for information had been handled by Humberside Police. He stated that it had failed to carry out an internal review of the request.
11. The complainant subsequently clarified that his complaint was specifically about Humberside Police's failure to disclose to him a particular version of a document that he knew it held.
12. The complainant said that in December 2019 he became aware that Humberside Police had updated its '*Body Worn Video Policy & Procedure*' from version 4 to version 5. According to the copy of version 5 which is published on Humberside Police's website², this revision took place on 30 April 2019.
13. The complainant considered that the revised document fell within the scope of this request, and also within the scope of his previous request of 12 March 2019, and that it had not been disclosed to him by Humberside Police in response to either request.
14. The complainant suggested that by failing to disclose to him version 5 of the *Body Worn Video Policy & Procedure*, Humberside Police may have deliberately concealed information from disclosure, which is an offence under section 77 (offence of altering etc. records with intent to prevent disclosure) of the FOIA. The ICO's Criminal Investigations Team has considered this allegation and has judged that there is insufficient evidence to substantiate this claim.
15. On the question of whether version 5 of the *Body Worn Video Policy & Procedure* should have been disclosed in response to the complainant's earlier request, the Commissioner notes that it fell outside of the scope of that request, by virtue of its date of revision (30 April 2019) being some seven weeks after that request for information was submitted (12 March 2019).
16. The Commissioner is satisfied that the complainant has obtained for himself a copy of version 5 of the *Body Worn Video Policy & Procedure*,

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<https://www.humberside.police.uk/sites/default/files/Body%20Worn%20Video%20Devices.V5.0.pdf>

by virtue of him providing the Commissioner with a link to the document's location on Humberside Police's website.

17. The analysis below therefore considers Humberside Police's compliance with section 1 and section 10 of the FOIA in respect of the request dated 5 June 2019. The Commissioner has commented on Humberside Police's failure to conduct an internal review in the 'Other matters' section at the end of this decision notice.

Reasons for decision

Section 1 – general right of access

Section 10 - time for compliance

18. 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.
19. 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.
20. In this case, the complainant requested information on 5 June 2019 and Humberside Police held information falling within the request's scope which it did not disclose to him in response to the request.
21. Therefore, Humberside Police has breached sections 1(1) and 10(1) of the FOIA by failing to disclose the requested information within 20 working days.
22. Confirming that version 4 of the *Body Worn Video Policy & Procedure* had previously been disclosed to the complainant, Humberside Police said:

"Unfortunately it has not been realised that the version provided previously was version 4, and it was not realised that an amendment had been made and a version 5 was in existence.

It would appear that the document had simply been reviewed from the file of F-2019-00680, rather than requested again from the Policy Unit. For this we can only apologise as it has been an oversight when responding to a request believing to be a further duplicated."

23. As the Commissioner is satisfied that the complainant has obtained a copy of version 5 of the document from Humberside Police's website, the Commissioner requires no further action in response to this complaint.

24. However, the Commissioner has made a record of this breach. The Commissioner uses intelligence gathered from individual cases to inform her insight and compliance function. This aligns with the goal in her draft "Openness by design"³ strategy to improve standards of accountability, openness and transparency in a digital age. The Commissioner aims to increase the impact of FOIA enforcement activity through targeting of systemic non-compliance, consistent with the approaches set out in her "Regulatory Action Policy"⁴.

Other matters

25. Although they do not form part of this notice the Commissioner wishes to highlight the following matters of concern.

Internal review

26. The Commissioner cannot consider a public authority's failure to complete an internal review in a decision notice because such matters are not a formal requirement of the FOIA. Rather they are matters of good practice which are addressed in the code of practice issued under section 45 of the FOIA.
27. Part VI of the section 45 Code of Practice states that it is desirable practice that a public authority should have a procedure in place for dealing with complaints about its handling of requests for information, and that the procedure should encourage a prompt determination of the complaint. The Commissioner considers that these internal reviews should be completed as promptly as possible. While no explicit timescale is laid down by the FOIA, the Commissioner considers that a reasonable time for completing an internal review is 20 working days from the date of the request for review. In exceptional circumstances it may take longer but in no case should the time taken exceed 40 working days.
28. In this case, the Commissioner notes that Humberside Police does have such a complaints procedure. Humberside Police's response of 13 September 2019 informed the complainant that he was entitled to request a review of any aspect of its handling of the request, which he

³ <https://ico.org.uk/media/about-the-ico/consultations/2614120/foi-strategy-document.pdf>

⁴ <https://ico.org.uk/media/about-the-ico/documents/2259467/regulatory-action-policy.pdf>

did on 16 September 2019. However, it did not subsequently conduct an internal review of the request.

29. Humberside Police explained to the Commissioner that it had exchanged regular correspondence with the complainant but that he was in the habit of submitting frequent, overlapping requests. It said that it had cause to warn him in November 2019 that further requests on the same subject matter would be considered "*Manifestly Unfounded*".
30. The Commissioner notes that the complainant's request, and his request for an internal review, both pre-date November 2019. Had a thorough internal review been conducted, it would hopefully have identified that a newer version of the *Body Worn Video Policy & Procedure* had been created and a copy would have been provided to the complainant. This would have resulted in the complainant receiving information he was entitled to have at a much earlier stage, which, in turn, might have avoided the matter being escalated to the Commissioner.
31. Humberside Police's attention is drawn to the importance of internal reviews in the request handling process and to the Commissioner's comments in paragraph 24, above.

Right of appeal

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

33. 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.

34. 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