Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 9 November 2020

Public Authority: Chief Constable of Northamptonshire Police

Address: Force Headquarters
Wootton Hall
Northampton
NN4 0JQ

Decision (including any steps ordered)

1. The complainant requested information relating to Northamptonshire Police's handling of interviews under caution.

2. Northamptonshire Police asked for confirmation of the requester's identity which they declined to give. Northamptonshire Police refused to deal with the request, citing section 8(1)(b) (request for information) of the FOIA.

3. The Commissioner's decision is that, in the circumstances of this case, Northamptonshire Police was not entitled to consider the request did not meet the criteria for a valid request at section 8(1)(b) of the FOIA without confirmation of the complainant's identity.

4. The Commissioner requires Northamptonshire Police to take the following step to ensure compliance with the legislation:

   - issue a fresh response to the complainant.

5. Northamptonshire 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

6. On 23 March 2020, the complainant wrote to Northamptonshire Police and requested information in the following terms:

> *"PACE interviews are usually conducted in a face to face situation, in the present climate re the corona virus I am seeking to establish whether other methods may be used to conduct such interviews remotely.*
>
> *Please provide any information/documents as to how the force will deal with interviews under caution that may be required when a person has not been arrested as is not in custody".*

7. The request was made using the *'whatdotheyknow'* website.

8. Northamptonshire Police responded on 30 March 2020. It refused to provide the requested information, citing section 8 of the FOIA, on the basis that the complainant had not stated their name.

9. There was further correspondence between Northamptonshire Police and the complaint, with Northamptonshire Police confirming on 31 March and 7 April 2020 that it was unable to process the request until the complainant provided confirmation of their identity.

Scope of the case

10. The complainant contacted the Commissioner on 12 April 2020 to complain about the way their request for information had been handled.

11. The complainant considered that Northamptonshire Police had been provided with sufficient information to respond to the request.

12. During the course of the Commissioner's investigation, Northamptonshire Police confirmed that it considered that the applicant in this case had not provided their real name.

13. The analysis below considers whether Northamptonshire Police was entitled to refuse to deal with the request unless confirmation of identity was provided in light of the requirement of section 8(1)(b) of the FOIA.

Reasons for decision

Section 8 Request for information

14. Section 8(1) of the FOIA sets out the requirements for a request to be valid for the purposes of that Act. Section 8(1)(b) requires that a request must state the name of the applicant and an address for correspondence.

15. The Commissioner, in her guidance on section 8[1], states:

> *"The requester can be an individual, a company or an organisation but in each case they must provide their real name. A request made under a pseudonym will be invalid".*

16. This means that a public authority is not obliged to deal with a request made under a pseudonym, and someone who uses a pseudonym when making a request cannot enforce the rights provided by the FOIA in respect of that request.

17. The Commissioner explains further :

> *"In our view, the intention of the legislation is for the requester to provide their real name so their request could be processed in accordance with the requirements of the FOIA.*
>
> *This is supported by the fact that there are circumstances under the FOIA where a requester's true identity can be relevant, for example, where an authority is considering aggregating the cost of requests or refusing a request as vexatious or repeated".*

18. The request in this case was made using the public website '*whatdotheyknow',* and was 'signed' using a 4 letter acronym. In subsequent correspondence, the company name was also provided.

19. During the course of the Commissioner's investigation, Northamptonshire Police described the various checks it had undertaken, at the time of the request, to establish whether or not the request met the criteria specified in section 8(1)(b). For example, it told the Commissioner that it had checked whether either of the names provided by the applicant are registered with Companies House. It also explained that it had checked the website provided, describing it as "*under construction*" with no staff details listed.

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[1] https://ico.org.uk/media/for-organisations/documents/1164/recognising-a-request-made-under-the-foia.pdf

20. It told the Commissioner that, having conducted several checks, it was unable to verify the company.

The Commissioner's view

21. The Commissioner does not expect identity verification to become a routine part of FOIA request handling. However, there are circumstances under the FOIA where a requester's true identity can be relevant, for example, where an authority is considering aggregating the cost of multiple requests from the same person or refusing a request as vexatious or repeated. In such circumstances the identity of the requester will be relevant and where the public authority has reason to believe that a requester may not be using their own name, the Commissioner accepts that it may seek confirmation of their identity.

22. Inevitably, this means that requesters who *are* using their real names will also be asked to confirm as such.

23. Regarding the request in this case, the Commissioner acknowledges that, under the heading 'Requests submitted by organisations', her guidance on section 8 states:

> *"If the request is from a company, then the authority should accept either its full registered name or a name that exists as a legal entity (such as a trading name) as valid.*
>
> *Where the request is from a sole trader, the authority should accept either the proprietor's name or the company name.*
>
> *Again, companies' names should generally be accepted at face value, but in any case where the authority has reason to verify the authenticity of the company, it should check Companies House or the Charity Commission Register to clarify whether it is a genuine organisation".*

24. Furthermore, she accepts that her guidance '*Consideration of the identity or motives of the applicant*'[2] also states that when determining whether a request is valid it will be permissible for a public authority to enquire about the identity of the requester if it has reason to believe that they have not provided their real name.

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[2] https://ico.org.uk/media/for-organisations/documents/1145/motive_blind_v1.pdf

25. The question for the Commissioner to consider is not whether the applicant used their real name, but whether Northamptonshire Police acted proportionately in asking them to confirm their identity before it would consider the request.

26. The Commissioner is mindful that Northamptonshire Police disputed that the request was valid and believed that it was appropriate to seek proof of identity. During the course of her investigation, the Commissioner asked Northamptonshire Police to explain the reasons behind the decision to ask for proof of identity in this case.

27. In its submission, describing what followed as "*To confirm Northamptonshire Police reasons for requesting identification*", Northamptonshire Police described the checks it had made. It did not, however, address the rationale behind seeking proof of identity.

28. While the Commissioner accepts that the nature of the checks it made were in accordance with those referred to in her guidance, from the evidence she has seen, the Commissioner is not satisfied that Northamptonshire Police has explained its grounds for considering that the requester may be employing a pseudonym, or why the requester's identity is relevant to how it deals with the request.

29. It follows that she is not satisfied that Northamptonshire Police was entitled to consider that the request was not valid under section 8(1)(b) of the FOIA without proof of the complainant's identity.

Right of appeal

30. 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

31. 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.

32. 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 ……

Laura Tomkinson
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Wycliffe House
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