

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

### **Decision notice**

**Date:** 29 June 2023

**Public Authority:** Chief Constable of Merseyside Police  
**Address:** Merseyside Police Headquarters  
Rose Hill  
Cazneau Street  
Liverpool  
L3 3AN

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

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1. The complainant made a multi-part request for information relating to various topics, including safeguarding and misuse of fireworks.
2. Merseyside Police provided some information, denied holding some information within the scope of the request and refused some parts of the request on the grounds that they are not valid requests for recorded information under section 8 of FOIA.
3. The Commissioner's decision is that Merseyside Police was entitled to rely on section 8(1)(c) of FOIA to refuse parts of the request and that, on the balance of probabilities, Merseyside Police does not hold any further information within the scope of the remainder of the request.
4. The Commissioner requires no steps to be taken as a result of this decision.

#### **Request and response**

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5. On 18 January 2023, the complainant wrote to Merseyside Police and requested information in the following terms:  
  
"1) yes or no, Can investigations about misuse of fireworks at a residential property only begin when police first have proof BEYOND REASONABLE DOUBT of that specific property?"

- 2) if so, what is the SPECIFIC legislation wording?
- 3) re safeguarding. A) on what specific grounds would police initiate safeguarding measures to an individual? B) What would these measures be in the FIRST INSTANCE? C) what notes/documentation would be recorded?
- 4)A) After a complaint is completed with merseyside police and in review stage with OPCC [Office of the Police and Crime Commissioner], would a data access analyst from merseyside police contact OPCC for an update of a complaint review and discuss an individual? B) If so, why? C) would they offer ANY advice? D) and how many times has this happened in the past 3 years?
- 5) would a data access analyst normally ignore the emails of a member of the public for their own information but call OPCC and discuss said member of the public with OPCC?
- 6) where in police legislation does it state that firework offences are summary offences (lower tier offences)?”
6. Merseyside Police responded on 1 March 2023. Citing section 8(1)(c) of FOIA, it told the complainant that Q1, Q4 and Q5 are not valid requests for information. As Q2 is dependent on the response to Q1, it said that Q2 is not applicable.
7. It said that, as each case is assessed on the individual circumstances, it was not able to provide a definitive response to Q3. It provided links to relevant information in response to Q6.
8. Merseyside Police told the complainant that requests under FOIA are based on information held in a recordable form, and its response is provided on that basis. It said that, as such, it has not been possible to answer some of the questions. However, outside of FOIA, it provided the complainant with general advice relating to the misuse of fireworks and further information relating to Q5 and Q6.
9. The complainant expressed dissatisfaction with that response on 4 March 2023.
10. Merseyside Police maintained its position at internal review.

### **Scope of the case**

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11. The complainant remains dissatisfied with Merseyside Police’s handling of the request. Where responses had been given, they considered that the information provided did not address their specific request.

12. During the course of the Commissioner's investigation, while Merseyside Police confirmed its view regarding the remainder of the request, it revised its position about its handling of Q6. It told the Commissioner that it did not hold information within the scope of that part of the request.
13. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of FOIA, which gives the public a general right of access to recorded information held by public authorities. However, FOIA does not require public authorities to generate information or to answer questions, provide explanations or give opinions, unless these are already held as recorded information.
14. The Commissioner considers that the scope of his investigation is whether Q1, Q4 and Q5 are valid requests for information. As Q2 is dependent on the outcome of Q1, he will consider Merseyside Police's handling of Q2 if applicable.
15. The Commissioner will also consider whether it has complied with section 1(1) of FOIA in relation to Q3 and Q6 of the request.

## **Reasons for decision**

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### **Section 8 request for information**

16. Section 8(1) of FOIA defines a valid request for information under FOIA as a request which:
  - (a) is in writing,
  - (b) states the name of the applicant and an address for correspondence, and
  - (c) describes the information requested.
17. Section 84 (Interpretation) of FOIA defines "information" as "...information recorded in any form".
18. Therefore, in order to constitute a valid request for information under FOIA, not only must the complainant's request satisfy the criteria in section 8 of FOIA, but it must also be a request for recorded information.
19. The request in this case was made in writing and the complainant provided an address for correspondence. It follows that the only issue

for the Commissioner to consider is its validity in respect of whether it describes the information requested.

20. The Commissioner considers that a request will meet the requirements of section 8(1)(c) if it contains a sufficient description of the recorded information required.
21. The Commissioner accepts that a request in the form of a question is valid under section 8(1)(c), provided it still describes distinguishing characteristics of the information.
22. In its submission to the Commissioner, Merseyside Police reiterated what it had told the complainant, namely that "an FOI response is made based on 'information held' in a recordable form".
23. In relation to Q1 Merseyside Police told the complainant:

"It is not possible to provide a 'yes or no' response to this question under FOIA2000 as each investigation is carried out based on the specific information and circumstances available".
24. Based on that explanation, and having considered the wording of Q1, the Commissioner considers that Q1 is not a request for recorded information which is already likely to be held by Merseyside Police. He considers it highly unlikely that Merseyside Police will have to hand a yes or no answer which it can send to the complainant. He is therefore satisfied that Q1 is not a valid request for recorded information.
25. The Commissioner has next considered whether Q4 and Q5 are valid requests for information.
26. Read objectively, the requests at Q4 and Q5 ask Merseyside Police to comment on the actions of a data access analyst in a hypothetical situation.
27. The Commissioner considers that this is not information which Merseyside Police could realistically be expected to hold, at the time of the request, in recorded form.
28. As set out above, FOIA does not require public authorities to provide explanations or give opinions, unless they are already held as recorded information.
29. He is therefore satisfied that Q5 and Q6 are not valid requests for recorded information.
30. Since the Commissioner is satisfied, for the above stated reasons, that Q1, Q4 and Q5 are not valid requests under section 8(1)(c), Merseyside Police was under no obligation to respond to them under FOIA.

31. As Q2 relies on the response to Q1, it follows that Merseyside Police was not required to respond to that part of the request.

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

32. Under section 1(1) of FOIA anyone who requests information from a public authority is entitled under subsection (a) to be told if the authority holds the information and, under subsection (b), to have the information communicated to them if it is held and is not exempt information.
33. Regarding Q3, Merseyside Police described this part of the request as 'a very broad question'. It told the Commissioner that it responded to the complainant and "provided the guidance/best practice including relevant links and which form would be used".
34. Having considered its response, the Commissioner accepts Merseyside Police's position that it does not hold further recorded information in scope of Q3 of the request.
35. Regarding Q6, Merseyside Police told the Commissioner that, having checked Force systems, they were unable to locate anything definitive regarding 'lower tier' offences. It explained that the information it had provided to the complainant comprised information that was located following a search of open source data.
36. On the balance of probabilities, the Commissioner is satisfied that the information requested at Q6 is not held by Merseyside Police because, while the police are responsible for enforcing the law, they are not responsible for the legislation itself.
37. In light of the above, the Commissioner is satisfied that Merseyside Police has complied with section 1(1) of FOIA.

### **Section 16 duty to provide advice and assistance**

38. Section 16(1) of FOIA states that it shall be the duty of a public authority to provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or who have made, requests for information to it.
39. In this case, having explained to the complainant that it was not possible to answer some of their questions under FOIA, Merseyside Police provided the complainant with advice regarding some aspects of their request.
40. The Commissioner is satisfied that Merseyside Police provided the complainant with advice regarding the misuse of fireworks within private

property, including with regard to contacting other public authorities who may be able to assist them.

41. The Commissioner is also satisfied that the complainant was given advice in relation to matters that were subject to review by the OPCC.
42. He is therefore satisfied that Merseyside Police has complied with its obligations under section 16.

## Right of appeal

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43. 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: 0203 936 8963

Fax: 0870 739 5836

Email: [grc@justice.gov.uk](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

44. 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.
45. 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  
Group Manager  
Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**