

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 16 April 2024

Public Authority: Chief Constable of West Yorkshire Police
Address: PO BOX 9
Laburnum Road
Wakefield
WF1 3QP

Decision (including any steps ordered)

1. The complainant has requested information about a police officer who was filmed discharging a PAVA Irritant spray. West Yorkshire Police ("WYP") disclosed some information, but it relied on various provisions of section 40 (Personal information) to refuse other parts of the request. However, during the Commissioner's investigation, WYP withdrew its reliance on exemptions to withhold the information which was the subject of the complaint, and it disclosed it.
2. The Commissioner's decision is that WYP breached sections 1(1)(a) and (b) and section 10(1) by failing to comply with the request within the 20 working day time for compliance
3. The Commissioner does not require further steps as a result of this decision.

Request and response

4. On 26 October 2023, referring to a public order incident where an officer was filmed discharging a PAVA spray, the complainant requested information in the following terms:
 - "1. Please initially confirm that this officer is currently employed by West Yorkshire Police. Please also state the length of time between her ending basic training and [date of incident redacted].

2. Please also confirm that this officer has received basic training in the use of PAVA irritant spray and was authorised by the force in the carrying and use of such. Please state the name of any senior officer who authorised this for her.
3. I require you to confirm if this officer has been removed from frontline duties in which she interacts with the public or encounters the public pending the results of a PSD [Professional Standards Department] investigation into her conduct in the incident this weekend seen widely in the media. This data is requested on the basis of public safety. If she has not been removed from such duties please explain why.”
5. WYP responded on 1 December 2023. It confirmed that the officer in question was a serving WYP officer and that they had completed all training required, including the use of PAVA Irritant spray. It refused to disclose information on the officer’s length of service since basic training, or on authorising officers, citing section 40(2) (Personal information) of FOIA. It would neither confirm nor deny whether it held information on point (3) of the request, citing section 40(5) of FOIA.
6. At internal review, WYP said it was satisfied it had applied the exemptions correctly.

Scope of the case

7. The complainant contacted the Commissioner on 5 January 2024 to complain about the way his request for information had been handled. He asked the Commissioner to investigate WYP’s application of section 40(2) of FOIA to part (2) of the request, and section 40(5) of FOIA to part (3). He also complained about the initial handling of his request, and that WYP exceeded the 20 working day time for compliance when responding.
8. During the Commissioner’s investigation, on 10 April 2024, WYP issued a revised response to parts (2) and (3) of the request. For part (2), it disclosed that the authorising officer was the Chief Constable and that authorisation was granted following successful completion of relevant training. For part (3), it confirmed that PSD reviewed the incident, summarised its findings and said that the officer had not been suspended or restricted from duty.
9. The complainant contacted the Commissioner to say that he remained dissatisfied, giving reasons which the Commissioner will address, in turn.

10. The complainant firstly said that part (1) of the request had:

"...not received a response in either the initial communication or the revised response. In fact, it has been ignored in both responses... I still require a response to the initial question put".

11. The Commissioner disagrees with this assessment. As set out in paragraph 5, in its initial response to the request, WYP confirmed that the officer was a serving WYP officer and it refused to disclose information on their length of service, citing section 40(2) (Personal information) of FOIA. It has therefore provided a response to part (1), albeit part of that response was to apply an FOIA exemption to withhold some information.

12. In his complaint to the ICO, the complainant specifically complained about WYP's response to parts (2) and (3) of the request, stating:

"The second and third question made originally failed to receive a response, and these are the two key areas. I would like you to consider if West Yorkshire Police have been correct in refusing to provide this information.

Those are the aspects of the information requested that have been refused. I seek a review on if the grounds of refusal and reasons given for refusal are consistent with the obligations of the Chief Constable in relation to the relevant information rights law."

13. He did not express any concerns about part (1) of the request. The Commissioner wrote to him, confirming that, based on his complaint, the scope of the investigation was to investigate WYP's responses to parts (2) and (3). The complainant did not contact him to ask that part (1) also be investigated. Consequently, the Commissioner only made enquires relating to parts (2) and (3) of the request.

14. The Commissioner considers that the complainant is now seeking to extend the scope of the investigation beyond the matters he originally asked the Commissioner to investigate. The Commissioner is not obliged to consider concerns which are only drawn to his attention at the end of an investigation. Accordingly, he has not considered WYP's response to part (1) of the request.

15. As regards part (3) of the request, the complainant said:

"...a revised response has been provided in relation to the question of if this officer has been removed from frontline duties. The revised response claims that the decision was made by West Yorkshire Police own Professional Standards Department. This is not correct. It has been widely publicised in the national media that this officer has been subject to investigation by IOPC, the independent office of police

conduct. The decision to ratify her ability to continue on public facing duties, comes not from PSD but from IOPC. On this basis, the information provided in the revised response is factually incomplete and incorrect. It is further misleading.

16. The Commissioner is satisfied that WYP has responded to part 3 of the request. It has addressed the request to know if the officer was suspended/restricted and explained that they weren't and that a PSD review found the officer had acted proportionately.
17. On the general question of the accuracy of information disclosed in response to an FOIA request, the Tribunal has stated:

“...if the records are faulty or inadequate and the information turns out therefore to be inaccurate that is irrelevant: the right under the Act is to information which is held, not information which is accurate.”¹
18. More recently, the Tribunal has noted that “the “accuracy” of information...is not within the ICO’s powers”².
19. The Commissioner is therefore not required to consider whether any information disclosed is inaccurate.
20. In light of the above, the only matters that remain to be considered in this decision notice are the procedural elements relating to the handling of the request.

¹ Home Office v The Information Commissioner EA/2008/0027

² Preston v Information Commissioner – EA/2020/0361

Reasons for decision

Section 1 – General right of access **Section 10 - Time for compliance**

21. Section 1(1)(a) of FOIA states that a person who asks for information is entitled to be informed whether the information is held. If it is held, section 1(1)(b) states that the person is entitled to have that information communicated to them.
22. Section 10(1) of FOIA states that on receipt of a request for information, a public authority should respond within 20 working days.
23. In this case, WYP took 26 working days to respond to the request. Furthermore, it refused to disclose information which it later agreed was not exempt.
24. These actions resulted in breaches of sections 1(1)(a), (b) and 10(1) of FOIA.
25. The reason for the delayed response appears to be that the complainant submitted this request to WYP's "Right of access" email address. He received a response to that email, simply stating:

"Right of access gives you the right to access your own personal information.

The below does not fall in to the remit of a right of access request."
26. It did not offer to forward the request, or provide an alternative address for the receipt of FOIA requests.
27. Following a further exchange of correspondence between the parties, WYP forwarded the request to its FOIA team on 30 October 2023.
28. The Commissioner's guidance on handling FOIA requests³ makes it clear that they cannot be disregarded if they are sent to the 'wrong' part of a public authority. On receipt of the request in this instance, WYP should have recognised it as an FOIA request and referred it to the correct business area. By failing to do this, it required further work by the complainant and resulted in delays to the request being dealt with.

³ <https://ico.org.uk/for-organisations/foi/guide-to-managing-an-foi-request/introduction/>

29. The Commissioner considers that WYP's handling of the request was not in accordance with good practice and that it resulted in breaches of sections 1(1) and 10(1) of FOIA.
30. The Commissioner has made a note of the breaches in this case, for monitoring purposes.

Right of appeal

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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

Website: 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.

Samantha Bracegirdle
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