



**First-tier Tribunal
(General Regulatory Chamber)
Information Rights**

Appeal Reference: EA/2018/0010

Determined, by consent, on written evidence and submissions

Before

Judge Stephen Cragg Q.C.

Tribunal Members

Mr Andrew Whetnall

and

Mr Nigel Watson

Between

Neil Gilliatt

Appellant

-and-

The Information Commissioner

Respondent

DECISION AND REASONS

BACKGROUND

The request

1. The Appellant made a request for information on 12 March 2016 to the Humberside Police (HP) in the following terms: -

Under subsection (2) of Section 26 of the Criminal Justice and Courts Act 2015 a police officer “is liable, on conviction on indictment, to imprisonment for a term not exceeding 14 years or a fine (or both)” if he fails under subsections (5) and (6) of the 2015 Act to exercise a power for the purpose of achieving the detriment of another person. Within the last few months Humberside police has, to my knowledge, stated the following in relation to two

separately reported incidents of perjury; -one committed by North East Lincolnshire Council, and the other by two members of the public in their witness statements which were outright lies.

“Humberside Police do not investigate allegations of perjury unless a request to do so comes from the court themselves”.

Please see the link below which is a letter dated 13 January 2016 containing the above statement.

https://www.whatdotheyknow.com/request/humberside_police_wrongly_classified#comment-65970

There has clearly been a failure in exercising police powers in both cases to the detriment of another person for which the officer who has acted improperly is open to a term of imprisonment or a fine (or both). Please disclose all related material (statutory or policy) which lawfully permits or advises Humberside police that it may refuse to investigate allegations of perjury unless a request to do so comes from the court.

2. There was some delay and confusion in the handling of the request but on 10 June 2016, following an internal review, HP wrote to the Appellant to say they did not hold the information requested.

The Decision Notice

3. As recorded in the Decision Notice of 20 December 2017, HP told the Commissioner that it had searched its intranet where all its policies and practices were kept, and the results were negative. HP’s Professional Standards Branch had already confirmed to the Appellant that perjury allegations were not investigated unless a court recommended it (although, as the Commissioner notes in paragraph 12 of the Commissioner’s Response, the Appellant was also given the proviso ‘unless there are other aggravating circumstances which make an investigation imperative’), but it also confirmed it held no information relating to this, having searched. HP also contacted its legal department which provided the advice, but that department said that it had obtained the information from the CPS website, and HP provided the Commissioner with a link to the CPS website.

4. HP confirmed that it had never held any recorded information, and the statement at issue had arisen on the specifics of the Appellant's complaint to it, and on the basis of advice from its legal team. The Commissioner decided that there was no evidence that HP were concealing the information.
5. The Commissioner considered on the balance of probabilities that HP did not hold any further recorded information in relation to the request, and therefore there had not been a breach of section 1 FOIA.
6. HP took almost three months to respond to the request and therefore the Commissioner found there was a breach of the requirement in section 10(1) FOIA to provide a response no later than 20 working days after the request.

The appeal

7. The Appellant appealed on 9 January 2018. He is aggrieved by the explanations obtained by the Commissioner from HP, especially the response that the approach taken by HP in relation to perjury allegations is sanctioned by the information on the CPS website when this does not seem to be the case. He does not accept the Commissioner's reasons for finding that the information is not held, and says that HP's explanations have no credibility. He contends that HP's statement to him amounts to a blanket policy adopted by HP towards perjury allegations. He says that as the CPS website does not support the statement made by HP it is difficult to see how the Commissioner can refer to HP's reference to the website as supporting a conclusion that HP does not hold recorded information.

DISCUSSION

8. Public authorities are under a general duty to disclose information they hold where it is requested: section 1 FOIA. By s1(1)(a) FOIA any person making a request for information to a public authority is entitled to be informed in

writing by the public authority whether it holds information of the description specified in the request. By section 1(4) FOIA the information is the information in question held at the time when the request is received, and information itself means information recorded in any form: see section 84 FOIA.

9. When a public authority says that it does not hold the information requested, the Commissioner (and now this Tribunal) has to consider the searches made by the public authority and the explanations given and decide, on the balance of probabilities, whether the public authority is holding the information requested. As the Commissioner says in her response, we are concerned with recorded information that is held by HP, and not the knowledge or understanding of an individual or individuals about, for example, HP's approach to perjury allegations or the legal position in relation to this.
10. The statement to the Appellant by HP in relation to allegations of perjury is couched in terms of a general approach to cases, and the Appellant makes this point in his appeal. However, simply because the statement has been expressed in this manner to the Appellant does not necessarily mean that recorded information about this general approach is held by HP.
11. We note (as mentioned above) that when HP responded to a complaint from the Appellant about the arresting officer, they added the proviso that in addition to a recommendation from a court, there could be circumstances where 'other aggravating circumstances' could make an investigation into a perjury allegation imperative. This earlier statement is actually closer to the CPS guidance which, in essence, says that a court can make a recommendation that there is an investigation, but says in terms that an absence of a recommendation 'does not mean that there is no justification for an investigation'.
12. All this Tribunal (and the Commissioner) can decide upon is whether the information requested ('all related material (statutory or policy) which lawfully permits or advises Humberside police that it may refuse to investigate

allegations of perjury unless a request to do so comes from the court') is held by HP or not.

13. We have set out above the searches that the Commissioner has recorded as being carried out by HP. We have no reason to believe that HP have not carried out the searches they say they have carried out, with the results as reported by the Commissioner. We agree with the Commissioner that the searches were appropriate and were sufficient to identify any information within the scope of the request. We agree with the Commissioner that the fact that the searches were carried out and no information identified means that on the balance of probabilities the information is not held, and we so find.

CONCLUSION

14. For the reasons set out above we are satisfied that the HP does not hold the information sought by the Appellant and we dismiss the appeal.

15. This decision is unanimous.

Signed

Stephen Cragg QC

Judge of the First-tier Tribunal

Date: 16 May 2018.

Promulgation Date: 21 May 2018

(Case considered by Panel on 28 March 2018).