

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 22 September 2010

Public Authority: Lancashire Police Authority
Address: PO Box 653
Preston
Lancashire
PR2 2WB

Summary

The complainant made a request under the Freedom of Information Act 2000 (the 'Act') to Lancashire Police Authority (the 'Authority') for information relating to why it had not published an article about the Professional Standards Department in its leaflet 'Dialogue' in August 2007, as it had stated it would in the previous edition. The Authority provided a response in which it explained that all articles in 'Dialogue' are driven by interaction between the public and the Authority at public meetings and are subject to the editor's discretion. It clarified that there had been no deliberate omission of the article and confirmed it did not hold any information in relation to the request in accordance with section 1(1)(a) of the Act.

The Commissioner has concluded on the balance of probabilities that the information requested was not held by the Council and therefore it complied with section 1(1)(a) in denying that it held any information.

The Commissioner's Role

1. 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 the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

Background

2. The "Dialogue" publication which is referred to in the complainant's request set out below is a public leaflet which is compiled and published by the Authority. In "Dialogue" December 2006 a section entitled "Raising the Standards" was introduced as part of the publication and assurances were given that this would be a feature for the next few editions. Accordingly, an article under the heading "Focus on the Reactive Unit of the Professional Standards Department (PSD)" was included in the edition of "Dialogue" dated April 2007 and this issue reiterated that the next few editions would look at the PSD from behind the scenes, with the focus on the Intelligence and Anti-Corruption team within PSD. The next issue of "Dialogue" in August 2007 did not include any article on this subject and, as far as the Commissioner is aware, subsequent issues have not featured either a specific article on this subject or any further articles about "Raising the Standards."
3. This prompted the complainant's request to the Authority.

The Request

4. The request that serves as the basis of this notice was submitted to Lancashire Police Authority on 31 August 2008:

"...can you please provide all internal documentation, files, reasons, decisions or any other information to explain why the "Focus on the Intelligence and Anti-Corruption team within PSD" has never been in your public leaflet "Dialogue" as promised it would be in August 2007 or at any other time in the future. Please include all official internal documentation or any other official media that evidences or provides reasons for this decision.

Please include all paper records, emails, information stores on computer, audio or video cassettes, microfiche, handwritten notes or any other form of recorded information including and not exclusive to any written records, typed, handwritten and scribbled notes, emails, spreadsheets, photographs, tapes records, flipcharts, videos, audio tapes, computer tapes, logs, answer phone messages, tapes of telephone conversations, archived records or any other internal documentation or media explaining the reasons or decisions in relation to omitting "Focus on the Intelligence and Anti-Corruption team within

- PSD" from August 2007 "Dialogue", as promised, or from any other issue in the future."
5. On 18 September 2008 the Authority provided a response confirming it did not hold any of the requested information, providing an explanation as to why it had chosen not to publish the intended article.
 6. The complainant requested an internal review of the Authority's decision on 26 September 2008.
 7. The Authority advised the complainant of the outcome of its internal review as part of a meeting of 30 September 2008 with the complainant. The complainant had submitted a number of complaints (which were not requests under the Act) about Lancashire Constabulary and was invited to a meeting with Lancashire Police Authority on 30 September 2008 to discuss these complaints.
 8. This meeting was also attended by the new Chief Executive of the Authority. Towards the end of the meeting she made a brief reference to the complaint which forms the basis of this Notice, explaining to him that it had been her professional decision to change the focus and content of future 'Dialogue' issues. She stated because she had recently arrived in post she was keen to communicate specific information to the public. She affirmed that there was no recorded information which the Authority held in respect of this decision. The Authority has advised the Commissioner that because the complainant appeared to be satisfied with this explanation, as far as the Authority was concerned, the matter was closed.
 9. A handwritten note of the meeting of 30 September 2008 was made and retained by the Authority and was subsequently provided to the complainant in June 2009 in response to a completely separate request under the Act. This note was only made after the meeting of 30 September 2008 took place and thus post-dates the request of 31 August 2008.
 10. The complainant became aware of the existence of what he termed a "round robin" email, which was also disclosed to him as part of the disclosure in June 2009. This email dated 3 September 2008 was created after the complainant's request about the 'Dialogue' matter of 31 August 2008; and was an internal email from an employee of the Authority to other employees containing a suggested response to the complainant's information request, asking for views. This email subsequently was reiterated verbatim in the Authority's initial response to the complainant's request.

11. The complainant wrote to the Authority on 2 October 2009 requesting the outcome of the internal review in writing.
12. The Authority wrote to the complainant on 14 October 2009 upholding its original conclusion that no information was held in respect of its decision to change the content of the following issue of 'Dialogue', adding that it was the Authority's decision to change its approach to cover matters which, in the professional opinion of the Authority, warranted coverage.

The Investigation

Scope of the case

13. On 23 November 2009 the complainant contacted the Commissioner to complain about the way his request for information had been handled.
14. The complainant specifically asked the Commissioner to consider his concerns about the "round robin" email which he believed reflected the Authority's attempts to create a reason in order to hide the real reason for the departure from publishing the particular article. The Commissioner has no remit to consider this allegation and has thus restricted his findings to whether or not information falling within the scope of the request was held as at the date of the request.
15. The complainant also raised other issues that are not addressed in this Notice because they are not requirements of Part 1 of the Act. He asked the Commissioner to consider that he had not received a response to his request for an internal review, which was made to the Authority on 26 September 2008, until he reminded it on 2 October 2009. The Authority then wrote to the complainant with the result of the review on 14 October 2009.

Chronology

16. On 8 February 2010 the Commissioner wrote to the Authority asking it to provide further details about the searches it had undertaken in order to respond to the complainant's request, and asked it to comment as to why it had not carried out an internal review for more than twelve months after receiving the request to do so.
17. The Authority responded to the Commissioner on 18 February 2010 with further information as to the searches it had made, reconfirming that it did not hold any of the requested information. The Authority

- provided its explanation that in its view the matter of the internal review was dealt with in person by the Chief Executive when she met with the complainant on 30 September 2008.
18. Having advised the complainant on 2 March 2010 that the Commissioner was satisfied that the Authority did not hold the requested information, and that the Commissioner had written to the Authority to remind it of the need to treat informal reviews formally and confirm the outcome in writing as a matter of good practice, the complainant submitted his response, together with further documentation in support of his view that the Authority had not been honest about the reason(s) it had not published the article.
 19. Having reviewed the additional correspondence submitted on 3 March 2010 and 8 March 2010, the Commissioner contacted the Authority for a copy of the handwritten note of the meeting held on 30 September 2008 and obtained its consent to provide a copy to the complainant.
 20. The Commissioner subsequently spoke to the Authority on 17 March 2010 to clarify exactly what had been discussed about the 'Dialogue' request at the meeting with the complainant at the meeting held on 30 September 2008.
 21. On 23 March 2010 the Commissioner wrote further to the Authority to determine exactly when it had originally given the copy of the handwritten note to the complainant. In addition, the Commissioner sought further clarification about the internal review and asked for details of the context in which the "round robin" email had been sent, together with verification of whether any responses were generated.
 22. The Authority responded on 1 April 2010 providing a more detailed explanation of the circumstances surrounding this request.
 23. Having considered the response, the Commissioner wrote to the Authority further on 13 April 2010 to clarify whether the Authority considered that the meeting it held with the complainant on 30 September 2008 constituted the internal review.
 24. On 29 April 2010, the Authority wrote to the Commissioner confirming that the meeting of 30 September 2008 was not the internal review, but instead an opportunity to relay the outcome of the internal review to the complainant.
 25. On 4 May 2010 the Commissioner wrote to the complainant to update him about his findings following the additional investigation and invited him to withdraw his complaint.

26. On 11 May 2010 the complainant wrote to the Commissioner to affirm that he wished to proceed to a Decision Notice.
27. On 6 September 2010 the Commissioner wrote further to the Authority seeking additional detail about the searches it had undertaken to respond to the request.
28. The Authority responded on 20 September 2010 providing further information about its searches.

Analysis

Substantive Procedural Matters

Section 1 – Is the requested information held?

29. Section 1(1) of the Act states that:

“Any person making a request for information to a public authority is entitled –

- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
- (b) if that is the case, to have that information communicated to him.”

The full text of section 1 can be found in the Legal Annex at the end of this Notice.

30. In this case the Commissioner has had to consider whether, as at the date of the request, the Authority held any recorded information as to why it decided not to publish the particular article in its ‘Dialogue’ publication as initially intended. The Commissioner has then decided whether the Authority complied with section 1(1)(a) of the Act by stating that it does not hold any recorded information as detailed in the complainant’s request.

The Commissioner made some enquiries of the Authority regarding the meeting note of 30 September 2008 and the round robin email of 03 September 2008. Both these records post date the request and as such would not be considered to be information held as at the date of the

request. However, the Commissioner has considered the content of these records to see if they contain any suggestion that, as at the date of the request, recorded information falling within the scope of the request was held. The Commissioner has found nothing within these records to suggest that this was the case.

31. The Commissioner is mindful of the Tribunal's decision in *Bromley v the Information Commissioner and the Environment Agency* (EA/2006/0072) in which it was stated that "there can seldom be absolute certainty that information relevant to a request does not remain undiscovered somewhere within a public authority's records". It was clarified in that case that the test to be applied as to whether or not information is held was not certainty but the balance of probabilities. This is therefore the test the Commissioner will apply in this case.
32. In discussing the application of the balance of probabilities test, the Tribunal in *Bromley v the Information Commissioner and the Environment Agency* (EA/2006/0072) stated that, "We think that its application requires us to consider a number of factors including the quality of the public authority's initial analysis of the request, the scope of the search that it decided to make on the basis of that analysis and the rigour and efficiency with which the search was then conducted. Other matters may affect our assessment at each stage, including for example, the discovery of materials elsewhere whose existence or content point to the existence of further information within the public authority which had not been brought to light. Our task is to decide, on the basis of our review of all of these factors, whether the public authority is likely to be holding relevant information beyond that which has already been disclosed." The Commissioner has therefore taken this into account in determining whether or not the requested information is held on the balance of probabilities.
33. The Commissioner is also mindful of the case of *Ames v the Information Commissioner and the Cabinet Office* (EA/2007/0110). In this case Mr Ames had requested information relating to the September 2002 "Iraq's Weapons of Mass Destruction" dossier. The Tribunal stated that the Iraq dossier was "...on any view an extremely important document and we would have expected, or hoped for, some audit trail revealing who had drafted what..." However, the Tribunal stated that the evidence of the Cabinet Office was such that it could nonetheless conclude that it did not "...think that it is so inherently unlikely that there is no such audit trail that we would be forced to conclude that there is one..." Therefore the Commissioner is mindful that even where the public may reasonably expect that information should be held this does not necessarily mean that information is held.

34. The Authority has explained that the 'Dialogue' publication is an information tool and, as such, provides information on a wide section of policing. It has affirmed that articles are driven by the interaction between the public and the Authority at public meetings and that all articles are subject to the editor's discretion. It has stated that there has been no deliberate omission of the article and advised that it may include articles about Lancashire Constabulary's Professional Standards Department, where relevant, in future issues.
35. At the meeting of 30 September 2008 with the complainant, the newly appointed Chief Executive further explained that the Authority's decision to change its approach was in order that it could cover matters which, in the Authority's professional opinion, warranted coverage. The Authority reiterated this explanation to the Commissioner during the investigation.
36. The Authority explained that, upon receiving the complainant's request, initial enquiries were made of the relevant individuals to ascertain what occurred in respect of the articles about the Professional Standards Department in "Dialogue" which confirmed no information was held. To put this into context, the Authority has clarified that it consists of a small team of 12 officers and that communication tends to be verbal and face-to-face unless key/strategic decisions are to be made via informal and/or formal meetings. The Authority confirmed that it repeatedly searched all its manual and electronic records in response to the complainant's information request. It further confirmed that there are no formal records held in respect of the decision about Dialogue and that it holds no recorded information.
37. The Authority stated that there is no business purpose for which it needs to keep the requested information and that there is no need for it to record any such information. As such, it confirmed that it had at no time held, deleted or destroyed any recorded information. It advised that whilst its records management policy is currently under review, information of this type would not be covered by the policy as the matter the complainant referred to is simply a matter for the editor's/Chief Executive's discretion.
38. The Commissioner has considered the size and working practices of the Authority in relation to its decision making approach in this case. As such, he considers the Authority's explanation as to the search it undertook in response to the request reasonable in the circumstances.
38. In coming to a conclusion upon this case the Commissioner has taken into account the explanation provided by the Authority as well as the

Tribunal decisions highlighted above. The Commissioner considers that on the balance of probabilities the information requested is not held by the Authority.

The Decision

39. The Commissioner's decision is that the public authority dealt with the request for information in accordance with the Act.

Steps Required

40. The Commissioner requires no steps to be taken.

Other matters

41. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern:
42. In the Commissioner's Police Sector Monitoring Report 2010 into publication schemes, it was recommended that Lancashire Police Authority should provide information about how it handles FOI requests and, where necessary, deals with internal reviews. It is against this background that the complainant wished to highlight the Authority's handling of his request for an internal review.
43. The investigation showed that whilst the Authority considered it had reviewed its original decision and took the opportunity to communicate the outcome of that review verbally to the complainant at the meeting of 30 September 2008, it failed to provide a written response until some 12 months later.
44. The Authority has acknowledged it should, as a matter of good practice, have referenced the complainant's entitlement to an internal review in its original response and has confirmed it is now amending its procedures to reflect this practice.
45. The Authority has further acknowledged that it should, as a matter of good practice, have confirmed the outcome of the internal review in writing and is also amending its procedures to reflect this approach.

Right of Appeal

46. 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,
Arnhem House,
31, Waterloo Way,
LEICESTER,
LE1 8DJ

Tel: 0845 600 0877

Fax: 0116 249 4253

Email: informationtribunal@tribunals.gsi.gov.uk.

Website: www.informationtribunal.gov.uk

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.

Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this Decision Notice is sent.

Dated the 22nd day of September 2010

Signed

**Lisa Adshead
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Legal Annex

The Act - General Right of Access

Section 1(1) provides that -

"Any person making a request for information to a public authority is entitled –

- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
- (b) if that is the case, to have that information communicated to him."

Section 1(2) provides that -

"Subsection (1) has the effect subject to the following provisions of this section and to the provisions of sections 2, 9, 12 and 14."

Section 1(3) provides that –

"Where a public authority –

- (a) reasonably requires further information in order to identify and locate the information requested, and
- (b) has informed the applicant of that requirement,

the authority is not obliged to comply with subsection (1) unless it is supplied with that further information."

Section 1(4) provides that –

"The information –

- (a) in respect of which the applicant is to be informed under subsection (1)(a), or
- (b) which is to be communicated under subsection (1)(b),

is the information in question held at the time when the request is received, except that account may be taken of any amendment or deletion made between that time and the time when the information is to be communicated under subsection (1)(b), being an amendment or deletion that would have been made regardless of the receipt of the request."

Section 1(5) provides that –

“A public authority is to be taken to have complied with subsection (1)(a) in relation to any information if it has communicated the information to the applicant in accordance with subsection (1)(b).”

Section 1(6) provides that –

“In this Act, the duty of a public authority to comply with subsection (1)(a) is referred to as “the duty to confirm or deny”.”