

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 31 March 2011

Public Authority: Chief Constable of Lancashire Constabulary
Address: Police Headquarters
Saunders Lane
Hutton
Preston
PR4 5SB

Summary

The complainant made an information request for "...a list of all crimes in which Lancashire Police determine that drunkenness is a valid defence from prosecution". The public authority relied on section 12 to deny the request (exemption where cost of compliance exceeds appropriate limit). The complainant's complaint to the Commissioner however was limited to whether the public authority had complied with section 16 of the Act (duty to provide advice and assistance). The Commissioner, after investigating and considering the matter, found that section 16 had not been complied with and requires the Constabulary to fulfil the obligations imposed by section 16 in the circumstances of this case.

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.

The Request

2. On 23 February 2010 the complainant requested the following information from the public authority;

"...a list of all crimes in which Lancashire Police determine that drunkenness is a valid defence from prosecution"

3. The public authority provided its reply to the complainant by way of a letter dated 11 March 2010. It first provided the complainant with a simple explanation of the relevant criminal procedure. It then said that to provide the list sought as would entail an exhaustive task requiring research into every criminal offence. This, it explained, could not be completed within the 18 hour appropriate limit and thus section 12 of the Act applied.
4. In a letter dated 11 March 2010 the complainant asked the public authority to review its decision.
5. The public authority conducted the requested review and informed the complainant (in a letter dated 14 April 2010) as follows;

"There are approximately 5000 criminal offences. Without further research, it is not possible to provide a list of offences where there are specific defences. Whilst the Constabulary does hold information in the form of statute, to undertake to retrieve information would be an exhaustive task requiring research into every criminal offence. This cannot be completed within the 18 hour 'Appropriate Limit' (as defined in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004). As a result, Section 12 of the Freedom of Information Act 2000 applies and regrettably this task cannot be undertaken at this stage.

With regards the duties of the Constabulary under Section 16 of the Act, the Panel feels that reasonable and sufficient context was provided in the response and that the nature of the request was such that the applicant would not normally have been asked to refine the request. Should the retrieval, extraction and location of the information not have been outside of the 18 hours, Section 21 of the Act states that information is exempt from disclosure if it is reasonably accessible to the applicant otherwise than under Section the Act. The Panel considers that this would have been a valid exemption in this case."

The Investigation

Scope of the case

6. On 7 June 2010 the complainant contacted the Commissioner to complain about the way in which his request had been handled. He was specifically concerned about the public authority's consideration of section 16 of the Act.
7. On 21 January 2011 the complainant confirmed with the Commissioner that his complaint was whether the public authority has provided him

with the advice and assistance as required by section 16 of the Act and that he was not complaining about its reliance on section 12 not to meet his request.

Chronology

8. On 11 February 2011 the Commissioner wrote to the public authority and informed it that the focus of his investigation will be to determine whether the request had been handled in accordance with section 16 of the Act and the Code of Practice issued pursuant to section 45 of the Act. The Commissioner advised the public authority to inform him of any new relevant factors relating to these matters it wished him to consider.
9. The public authority informed the Commissioner that it would not be able to provide a substantive reply to his letter until 22 March 2011. By the time this Decision Notice was issued the public authority had not provided its substantive reply to the Commissioner's letter of 11 February 2011.

Analysis

Exemption

10. In the outcome of its internal review, the public authority informed the complainant that the exemption under section 21 of the Act applied to his information request. Section 21 provides that information is exempt from disclosure if it is reasonably accessible to the applicant otherwise than under section 1 of the Act.
11. The Commissioner's view is that if section 21 is applicable then the public authority need not comply with section 16 in so far as it would otherwise place an obligation on a public authority to provide some of the information or advise the complainant as to what can reasonably be provided, to give two examples.
12. The task for the Commissioner here is, therefore, to consider whether the information falling within the scope of this request can be fairly characterised as reasonably accessible to the applicant.
13. The complainant seeks "...a list of all crimes in which Lancashire Police determine that drunkenness is a valid defence from prosecution". If there is such a list then it must at least originate from the public authority either directly (i.e. it has compiled the list itself) or indirectly (i.e. the list has been compiled by another). Furthermore, in order to apply section 21 (unless the applicant has already found the information), a public authority must direct the applicant to the

information. In doing so the public authority has to be reasonably specific to ensure it is all found without difficulty and not hidden within a mass of other information.

14. However the Commissioner does not know that such a list exists. If the public authority is asserting that the complainant (or some other member of the public) should compile such a list from reasonably accessible information this is plainly not feasible and not an appropriate ground for applying section 21. This would require a person to have ready access to a complete criminal law library, the technical ability and understanding to utilise it and knowledge of Lancashire Police's own determinations on the subject. The Commissioner therefore concluded that the information requested cannot be deemed reasonably accessible to the complainant otherwise than via section 1 of the Act.
15. The Commissioner therefore next considered whether the public authority had provided the complainant with the requisite advice and assistance as directed by section 16 of the Act.

Substantive Procedural Matters

16. Section 16 provides that -

(1) "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 have made, requests for information to it."

(2) "Any public authority which, in relation to the provision of advice and assistance in any case, conforms with the code of practice under section 45 is to be taken to comply with the duty imposed by subsection (1) in relation to that case."

17. Where a public authority refuses a request because the appropriate limit has been exceeded, paragraph 14 of the Code of Practice¹ recommends that the public authority should consider providing an indication of what, if any, information could be provided within the appropriate limit. It also states that the public authority should consider advising the applicant that a narrowed or refocused version of the request could be handled within the limit.
18. The public authority avers, regarding the advice and assistance provided to the complainant, that "reasonable and sufficient context was provided in the response" and "the nature of the request was such that the

¹ <http://www.justice.gov.uk/guidance/docs/foi-section45-code-of-practice.pdf>

applicant would not normally have been asked to refine the request". The Commissioner must find that he is not persuaded by these assertions. The Commissioner considers that the public authority should have offered advice and assistance to the complainant in order to help reduce the scope of his request. It could have, for example, discussed with the complainant if the requested information could be limited to certain types of offences for example road traffic matters or assaults.

19. In failing to offer such advice or assistance, the Commissioner is of the view that the public authority has breached section 16(1) of the Act.

The Decision

20. The Commissioner's decision is that the public authority cannot rely on the exemption provided at section 21 of the Act to refuse the request for information and that it breached section 16 of the Act .

Steps Required

21. The Commissioner requires the public authority to take the following step to ensure compliance with the Act:

- Contact the complainant and discuss what it can provide within the costs limit, in order for public authority to comply with its obligations under section 16(1) of the Act.

22. The public authority must take the steps required within 35 calendar days of the date of this notice.

Failure to comply

23. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Right of Appeal

24. 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

25. 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.
26. 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 31st day of March 2011

Signed

**Alexander Ganotis
Group Manager – Complaints Resolution
Information Commissioner’s Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Legal Annex

Freedom of Information Act 2000

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."

Duty to provide Advice and Assistance

Section 16(1) provides 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 have made, requests for information to it."

Section 16(2) provides that –

"Any public authority which, in relation to the provision of advice and assistance in any case, conforms with the code of practice under section 45 is to be taken to comply with the duty imposed by subsection (1) in relation to that case."

Information Accessible by other Means

Section 21(1) provides that –

"Information which is reasonably accessible to the applicant otherwise than under section 1 is exempt information."

Section 21(2) provides that –

"For the purposes of subsection (1)-

- (a) information may be reasonably accessible to the applicant even though it is accessible only on payment, and

(b) information is to be taken to be reasonably accessible to the applicant if it is information which the public authority or any other person is obliged by or under any enactment to communicate (otherwise than by making the information available for inspection) to members of the public on request, whether free of charge or on payment."

Section 21(3) provides that –

"For the purposes of subsection (1), information which is held by a public authority and does not fall within subsection (2)(b) is not to be regarded as reasonably accessible to the applicant merely because the information is available from the public authority itself on request, unless the information is made available in accordance with the authority's publication scheme and any payment required is specified in, or determined in accordance with, the scheme."