

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

Date: 7 March 2011

**Public Authority:** Lancashire Constabulary  
**Address:** Police Headquarters  
Saunders Lane  
Hutton  
Preston  
PR4 5SB

### Summary

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The complainant requested information about the issue of 'disquiet' caused within the Professional Standards Department ('PSD') of Lancashire Constabulary ('the Constabulary'). The Constabulary responded and advised the complainant that it did not hold information in respect of his request. The Commissioner investigated and has concluded that on the balance of probabilities the requested information is not held by the Constabulary and therefore the Constabulary complied with section 1(1)(a) in stating that the information was not held.

### The Commissioner's Role

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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

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2. A disclosure of information made to the complainant referred to 'disquiet' within the Constabulary's Professional Standards Department (PSD). The 'disquiet' concerned a disclosure made by the Independent Police Complaints Commission (IPCC) to the complainant about another matter. The complainant has focussed on this reference and pursued the matter with the Constabulary in the request below. The complainant has expressed his concern that the discussion of the PSD's 'disquiet' with the Lancashire Police Authority (LPA) and the IPCC

indicates an inappropriate relationship between the three organisations. The complainant provided the following statement:

"In short there was clearly dialogue, correspondence and probably more between the IPCC, LPA and force in relation to 'disquiet' about the IPCC disclosures. This extended to the meeting of 13 May 2009 as proven by the single disclosure made on 26 October 2009. I am entitled, in the public interest, to know the true extent of this dialogue in view of the supposed independence of these bodies from each other."

## The Request

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3. On 1 September 2009 the complainant made the following request for information:

"Please indicate precisely which disclosure from the IPCC 'caused some disquiet with the PSD staff'. Please also indicate precisely why the relevant disclosure 'caused some disquiet with PSD staff'. Also please indicate via which formal and official process this 'disquiet' was raised with the LPA. Clearly to an independent bystander and member of the public it seems very strange that the statutory standards body of Lancashire Constabulary would run to the LPA about disclosures that may have caused worry, anxiety or disquiet in order to ask them to complain to the disclosing body. Please also indicate precisely who raised this with the LPA from Lancashire Constabulary and who it was raised with at the LPA. Please also indicate any precise assurances that the Lancashire Constabulary were provided with by the Authority in terms of this matter and the disquiet raised.

Please include in the response to this request all internal correspondence or external correspondence used or produced during the exchanges with the LPA and / or IPCC as mentioned in the letter. Please also supply all correspondence or internal information generated by the Lancashire Constabulary in relation to this matter as raised with the LPA. Please include all internal and external emails, faxes, file notes, letters, scribbled notes, requests for information from other public authorities in relation to this matter and the disquiet caused, please also provide all internal information as regards the concerns that caused the disquiet. Please also supply all internal notes and memos, transcriptions of telephone conversations, records of meetings or discussions generated internally as a result of or due to this matter and the concerns behind it. Please also include all other internal information that the Lancashire Constabulary knows about or discovers during their consideration of this request. Please also include all

correspondence sent to any other persons/organisations due to this matter or in the aftermath of this matter arising be it via email, letter, phone transcript or via any other medium. In particular I refer to correspondence to and between the Lancashire Police Authority and / or the IPCC.

I find it very worrying that the Lancashire Constabulary can raise a disclosure with the LPA about the IPCC's disclosures purely because the same disclosures 'caused some disquiet with the PSD staff'. The Lancashire Constabulary and the Authority should actually be concerned as to why such disclosures had caused 'disquiet' because disquiet equates to worry, anxiety, uneasiness, restlessness or alarm. Clearly if the disclosures worried the PSD staff then they must be worried about something and, possibly, future developments because of the disclosures. I also find it quite worrying that the Authority knows full well that their disclosures caused 'disquiet' in the PSD staff and that it was these disclosures that the Authority has flatly refused to secure as evidence in my recent complaint in breach of the Police Reform Act. I am making this request purely in the public interest."

4. A response was made on behalf of the Constabulary on 10 September 2009 following consultation with the Constabulary's Professional Standards Department. The Constabulary informed the complainant that it did not hold any information relevant to his request.
5. The Constabulary went on to suggest that the complainant redirect his request to the Lancashire Police Authority ('LPA') and the Independent Police Complaints Commission ('IPCC').
6. On 18 September 2009 the complainant requested an internal review of the decision.
7. On 26 October 2009 the Constabulary provided a review of its decision. Some information was provided to the complainant as a result of a reference to a meeting on 13 May 2009 in his request for an internal review. This reference was not mentioned in the initial request. However the information sent to the complainant on 26 October 2009 was provided under the terms of the Data Protection Act 1998 (DPA) as the information refers solely to the complainant and is likely to be his personal data. Furthermore this information did not fall within the scope of the complainant's request of 1 September 2009.

## The Investigation

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### Scope of the case

8. On 21 December 2009 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider the following points:
  - “I made the request dated 01 September 2009 to Lancashire Constabulary (LC) based on the two items of correspondence dated 04 December 2008 and 15 December 2008. ... Can the ICO please look at this apparently secretive and completely closed dialogue between these public authorities [LPA and IPCC] that are supposedly entirely independent of each other?”
  - The time taken to provide an internal review.
  - An anomaly in the published complaints procedure.
9. The complainant also raised other issues that are not addressed in this Notice because they are not requirements of Part 1 of the Act.
10. However, as the complaint also related to issues regarding the Constabulary's compliance with the complainant's right of access to his personal information, the Commissioner firstly undertook an assessment under the DPA before considering the Constabulary's compliance with the Freedom of Information Act. This assessment was issued to the complainant on 31 August 2010 and the Commissioner then proceeded to investigate the Constabulary's compliance with the FOI Act.
11. On 8 December 2010 the Commissioner wrote to the complainant to clarify the individual requests contained in the broadly scoped text of his request. The Commissioner isolated the requests as follows:
  - Which disclosure caused disquiet with PSD staff?
  - Why did the disclosure cause disquiet?
  - Which formal and official process was used to raise the disquiet with the Lancashire Police Authority?
  - Who from the Lancashire Constabulary raised the matter of disquiet with the LPA?
  - To whom was it raised?

- What assurances were given to the Lancashire Constabulary from the LPA in terms of the disquiet caused?
  - All the correspondence sent to any person or organisation due to this matter or in the resultant aftermath.
12. The Commissioner subsequently informed the Constabulary that the scope of his investigation is focussed on the Constabulary's handling of the request as detailed in the bullet points above. The Commissioner also requested clarification from the Constabulary of the complainant's statement that he considered there to be 'an anomaly in the Constabulary's published Complaints Procedure' in respect of requests to conduct reviews of its decisions under the section 45 Code of Practice.

### **Chronology**

13. On 8 December 2010 the complainant replied to the Commissioner explaining his reasoning of why he believes an anomaly exists in the Constabulary's Complaints Procedure.
14. On 9 December 2010 the Commissioner wrote to the Constabulary highlighting his own clarification of the request and requesting further details of the searches undertaken to locate any information within the scope of the request.
15. On 22 and 24 December 2010 the Constabulary contacted the Commissioner and provided background information and details of the searches undertaken confirming that it did not hold any other information in the scope of the request.
16. On 6 January 2011 the Commissioner requested further information from the Constabulary.
17. On 12 January 2011 the Constabulary wrote again to the Commissioner in response to his queries.

### **Analysis**

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#### **Substantive Procedural Matters**

##### **Section 1 – Is the requested information held?**

18. 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."
- 19. In this case the Commissioner has considered whether, at the time of the request, the Constabulary held any recorded information concerning the points shown in paragraph 11.
- 20. The Commissioner is mindful of the Tribunal's decision in *Bromley v the Information Commissioner and the Environment Agency* (EA/2006/0072). The Commissioner appreciates that the complainant is familiar with this decision, as it is referred to in a Decision Notice concerning one of the complainant's other complaints. The Commissioner reiterates the statement from the Tribunal's decision that "there can seldom be absolute certainty that information relevant to a request does not remain undiscovered somewhere within a public authority's records".
- 21. The Commissioner will follow his guidance in applying the civil standard of the balance of probabilities in determining whether the Constabulary does hold any recorded information within the scope of the request.
- 22. The Constabulary explained to the Commissioner that, on receiving the complainant's request, it identified the same questions in consideration of the initial request as highlighted by the Commissioner in paragraph 11, it went on to liaise with the PSD to ascertain what information was held.
- 23. The Constabulary explained that no recorded information was held at the time of the request and therefore the Constabulary was unable to provide information on the questions identified. The Commissioner asked the Constabulary to explain the nature of its investigation and provided a series of questions to assist with its searching.
- 24. The Commissioner acknowledges that the Constabulary is aware of details applicable to the request and could answer some of the questions posed in paragraph 11. However the Commissioner notes the Constabulary's assertion that this knowledge is not recorded information within the scope of the Act; instead it would be information based on the recollection of those staff involved.
- 25. The Constabulary described to the Commissioner the informal situation regarding the discussion of 'disquiet amongst PSD staff' which went on to be the subject of correspondence between the LPA and the IPCC.

With respect to this correspondence the complainant explained to the Commissioner his belief that:

"There is all sorts of information as indicated in the letters dated 4 and 15 December 2008."

26. However, on this point the Commissioner notes that these letters (which are in the complainant's position) were not written or received by the Constabulary and the content of those letters does not refer to any recorded information held by the Constabulary. The Constabulary has advised the complainant to seek further clarification from the IPCC and the LPA.
27. The Commissioner understands that the complainant draws conclusions from information he has received from other sources and assumes that relevant recorded information is held by the Constabulary. One example of this has resulted from the disclosure of information made by the Constabulary at the time of the review but which was not within the scope of the complainant's original request.
28. In his request for a review the complainant provides a narrative regarding various members of staff of the Constabulary and the LPA and refers to a meeting on 13 May 2009 held with the subject as "Meeting to discuss [the complainant]". He goes on to state:  
  
"Clearly somebody in the force or PSD must have raised the 'disquiet' with the Authority/CEO or the CEO wouldn't have raised it with the IPCC. [A named person] must know the identity of this public servant in the PSD and precisely what the 'disquiet' involved. She must also know precisely when the issue was raised with the Authority and therefore this information should be disclosed. This is further evidence of a secret and unhealthy unholy alliance between the Authority and the Constabulary which the Authority is supposed to bring to account."
29. The Constabulary in its review provided information in the form of a very short note taken from the notebook of the Chief Superintendent of the PSD at the meeting on 13 May 2009 which does not refer to 'disquiet'. The Commissioner questioned the Constabulary regarding why this information had been provided. He understands that in the absence of any information pertinent to the original request and because the complainant had raised the meeting in his narrative the Constabulary provided the only information it held. It appears that this disclosure led the complainant to conclude that the 'disquiet' had been discussed and that further information may have been documented.
30. The Commissioner does not agree with the complainant that the disclosure is evidence that the matter of 'disquiet' was discussed at the meeting on 13 May 2009 or that the Constabulary holds recorded



information which it is refusing to provide. The Commissioner considers that it is reasonable to assume that the meeting of 13 May 2009 was held to consider issues generally raised by the complainant which may or may not have included discussion of the 'disquiet' issue five months earlier. The Constabulary has stated that no agenda or notes were retained by the Constabulary attendees at the meeting other than the brief note disclosed which did not refer to the issue. The Commissioner must determine what information exists within the scope of the request not what should exist and he is satisfied that on the balance of probabilities there is no basis for disputing the Constabulary's statement.

31. Nevertheless, in considering the specific scope of the request, the Commissioner requested further explanation regarding the thoroughness of the Constabulary's searches.
32. The Constabulary explained that because the request related to 'disclosure which caused disquiet' and the source of this 'disquiet' had originated from the PSD, the Resources Directorate judged that the PSD would be the most likely source of any recorded information and could provide guidance where information, if held, was located.
33. The Constabulary explained that its electronic 'crime systems' did not hold information in relation to the request as the subject matter was not related to a criminal matter. The Constabulary determined that any information held would be in a case file identifiable to the complainant within the PSD or held within emails or manual notes held by individuals within the PSD. The Constabulary searched the emails of the relevant individuals and the case files holding all the complainant's complaints and resulting correspondence. No information relating to the request was found.
34. The Constabulary informed the complainant that information may be held by either of the corresponding parties to the letter of 4 December 2008 from where the 'disquiet' reference originated. The Constabulary provided the contact addresses for the LPA and the IPCC.
35. The Commissioner's decision as to what would represent an appropriate search or search strategy is dependent on the circumstances of the each case. In this case the Commissioner is satisfied that the thoroughness and quality of the searches were appropriate. There is no basis to dispute that the raising of 'disquiet' was a verbal matter which became the subject of correspondence between the LPA and the IPCC. There is no evidence that the answers to the questions forming the scope of the request would be held in a recorded form by the Constabulary. Therefore the Commissioner considers that on the balance of probabilities no information is held by



the Constabulary and it would seem more likely that any relevant information concerning this issue may be held by the LPA or the IPCC.

## **The Decision**

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

## **Steps Required**

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37. The Commissioner requires no steps to be taken.

## **Other matters**

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38. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters:

### **Section 45 Code of Practice**

39. The complainant asked the Commissioner to consider the time taken to provide an internal review of its response. The Commissioner considers it important that internal reviews are completed as promptly as possible and has determined that a reasonable time for completing an internal review is 20 working days from the date of the request for review. In this case the Commissioner notes that the request for review was dated 18 September 2009. In providing its response the Constabulary acknowledges that its response was outside the 20 working day guideline and states that the request was not received until 29 September 2009. The Constabulary cannot provide an explanation for this delay in receipt and therefore the Commissioner notes that the Constabulary has not adhered to the Code of Practice.
40. The complainant explained to the Commissioner that he believed there to be 'an anomaly' in the Constabulary's published complaints procedure. The complainant stated that the review was not:
- "undertaken by two of the persons as indicated [in the Constabulary's published procedure]".
41. The Commissioner investigated and has determined that the procedure at the time stated that at least two of the following individuals would consider the review, with at least one not having been party to the original decision:

Data Protection and information Manager

Information Compliance Manager

Head of Corporate and Support Services

42. The Constabulary explained that the review was conducted by the Data Protection and Information Manager and the Information Compliance Manager. However, the complainant considers that: "the actual reviewer was none of these". His consideration is founded on the use of the sentence: "I have reviewed the way in which your request was handled" and the title used in the sign off of the review, that being, "Data Protection and Information Officer".
43. The Commissioner understands the complainant's initial confusion. However, the Commissioner notes that the complainant discussed this matter in a series of emails exchanged with the Constabulary on 3 November 2009. The content of those emails provides a full explanation which nevertheless has not satisfied the complainant. This is illustrated by the complainant's comments in correspondence to the Constabulary dated 20 December 2009:

"Further, on the letter, you are still named as Data and Information officer. You told me on 03/11/09 that you were going to address this anomaly. Why has this not been done? Are you a manager or an officer for God's sake. You should be aware that I don't want this to transform into a major mislead."
44. The Commissioner in his guidance on using the procedural Codes of Practice makes clear the practical benefits of conforming to the Codes. A request for review should be handled in accordance with a public authority's own complaints procedure. The procedure should provide a fair and thorough review of handling issues and of decisions taken pursuant to the Act. It should enable a fresh decision to be taken on a reconsideration of all the factors relevant to the issue. It is recommended that the review is undertaken by someone more senior than the original respondent where this is practicable.
45. The Commissioner has concluded that the Constabulary complied with his guidance in having a more senior member of staff (Information Compliance Manager) conducting the review. It is the Constabulary's own procedure to involve more than one member of staff which in this case was the Data Protection and Information Officer/Manager. The Commissioner accepts that for the sake of clarity a single correct job title appearing on correspondence is necessary to provide a clear and simple procedure. However, the Constabulary has fully explained to the Commissioner the circumstances regarding this matter and clarified that the role of the individual concerned has always been recorded on

the Constabulary systems as Data Protection and Information Manager. The Commissioner notes that in correspondence from the middle of 2009 the individual concerned has the title of Data Protection and Information Manager consistently. He is therefore satisfied that, with regards to the personnel who handled the internal review, it was conducted appropriately.

## Right of Appeal

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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](mailto:informationtribunal@tribunals.gsi.gov.uk).

Website: [www.informationtribunal.gov.uk](http://www.informationtribunal.gov.uk)

47. 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.

48. 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 7<sup>th</sup> 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

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### 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”.

**Issue of code of practice by Secretary of State**

**Section 45(1) provides that –**

“The Secretary of State shall issue, and may from time to time revise, a code of practice providing guidance to public authorities as to the practice which it would, in his opinion, be desirable for them to follow in connection with the discharge of the authorities’ functions under Part I.”

**Section 45(2) provides that –**

“The code of practice must, in particular, include provision relating to –

- (c) the provision of advice and assistance by public authorities to persons who propose to make, or have made, requests for information to them,
- (d) the transfer of requests by one public authority to another public authority by which the information requested is or may be held,
- (e) consultation with persons to whom the information requested relates or persons whose interests are likely to be affected by the disclosure of information,
- (f) the inclusion in contracts entered into by public authorities of terms relating to the disclosure of information, and
- (g) the provision by public authorities of procedures for dealing with complaints about the handling by them of requests for information.”

**Section 45(3) provides that –**

“The code may make different provision for different public authorities.”

**Section 45(4) provides that –**

"Before issuing or revising any code under this section, the Secretary of State shall consult the Commissioner."

**Section 45(5) provides that –**

"The Secretary of State shall lay before each House of Parliament any code or revised code made under this section."