

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 14 March 2012

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

Decision (including any steps ordered)

1. The complainant made a request for information about the Constabulary's response to a spate of thefts of cabling in his local area. He was particularly interested in the investigations it conducted and the extent to which it had publicised the thefts. The Constabulary addressed the complainant's general concerns in its response, but failed to respond to his specific request for information. After the Information Commissioner's intervention the Constabulary disclosed the information it held which was relevant to the request. The Information Commissioner's decision is that Lancashire Constabulary holds information which it failed to confirm it holds and failed to disclose to the complainant by the completion of the internal review or the time for statutory compliance. This is a breach of sections 1(1)(a), 1(1)(b) and 10(1) of FOIA. Since this information was supplied during the investigation the Information Commissioner does not require the public authority to take any steps to ensure compliance with the legislation.

Request and response

2. On 18 May 2011, the complainant wrote to Lancashire Constabulary about a series of cable thefts in his local area and requested information in the following terms:

"Please supply information about the police response to these alleged thefts bearing in mind their repeated nature,

the size of the thefts and the total alleged loss to the public purse.

Please also produce to me all press releases or notifications in the press or anywhere else from Lancashire Constabulary that raised awareness of these thefts to the public and requested that the public be vigilant in relation to these thefts. Please supply any notifications of phone numbers or contacts released by the police in order that the public could call in with information."

3. The complainant's letter also contained a series of specific questions about the police response to the thefts which solicited explanations and opinions. The Information Commissioner judged these to be "course of business" questions rather than requests for recorded information, and the Constabulary addressed each of them in its subsequent response. The Information Commissioner therefore excluded them from the scope of his investigation.
4. The Constabulary responded on 17 June 2011. It stated that it had not issued press releases about the thefts, as it lacked the victims' consent to do so. It advised the complainant to approach either Blackpool Council or Blackpool Transport, which had issued press releases, to which police officers had contributed. It provided links to three online press reports which featured officers' comments. It made no reference to the first part of the complainant's request.
5. On 23 June 2011 the complainant asked for an internal review, expressing surprise that the Constabulary had not issued press releases in respect of the thefts and asking about its policy on publicising crime. The Constabulary responded on 6 August 2011. It stated that it held no formal policy or procedure on publicising crime, its practice being that its press office advises individual officers on an ad hoc basis. It considered that it had supplied all the information it held which was pertinent to the request.

Scope of the case

6. The complainant contacted the Information Commissioner to complain about the way his request for information had been handled.
7. He expressed concerns at what he saw as the Constabulary's failure to respond proactively to a series of major thefts which had happened over a period of time. He considered he was entitled to receive documentary evidence of the victims' refusal to give consent and of the Constabulary's decision not to seek publicity. He also believed he was

entitled to information about the Constabulary's response to the crimes, including briefing notes, records of calls, minutes and memos.

8. The Information Commissioner considered that the complainant was extending the scope of his request beyond what he had originally asked the Constabulary to provide. He considered it appropriate to take forward the Constabulary's apparent lack of response to the first part of the request, and to ascertain whether it had indeed supplied all the information it held in relation to the second part of the request.
9. The complainant's request also asked a series of specific questions about the police response to the thefts which solicited explanations and opinions. The Information Commissioner judged these to be "course of business" questions rather than requests for recorded information, and the Constabulary addressed each of them in its response. The Information Commissioner therefore excluded them from the scope of his investigation.

Reasons for decision

Information about the police response

10. During the course of the investigation the Constabulary confirmed that it held incident reports relating to the thefts which it had not supplied to the complainant. It said that the complainant's original request made it clear that he had had sight of copies of the reports held by his brother, who had also requested information about the thefts. The Constabulary believed that the complainant was liaising with his brother on the matter and therefore took the decision not to "resend" separate copies to the complainant himself.
11. The Information Commissioner accepts that a public authority may, with the agreement of the applicant and at the outset of its handling of the request, modify the scope of an information request so as to exclude certain information from what is to be provided. He considers that in such cases the public authority will explain its reasons for wanting to vary the terms of the request and verify that its proposed approach is acceptable to the applicant.
12. In this case, the Information Commissioner notes that the Constabulary did not confirm to the complainant that it held the information when it responded to his request or verify whether he was amenable to viewing his brother's copy instead of receiving a copy for himself.
13. Section 1(1) of the Act 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."

14. The Constabulary has not argued that the information is exempt, and when directed by the Information Commissioner to provide a copy to the complainant it has done so. The Information Commissioner has therefore concluded that the Constabulary breached section 1(1)(a) by failing to confirm that it held the information by the completion of the internal review or the time for statutory compliance. By failing to provide a copy by the completion of the internal review or the time for statutory compliance it breached section 1(1)(b).

15. Section 10(1) of the Act provides that:

"...a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt."

16. The Constabulary received the request on 19 May 2011 and only disclosed the information it held when instructed to by the Information Commissioner, which was some time after the permitted twenty working day time limit. Therefore, by failing to comply with section 1(1) within twenty working days, the Constabulary breached section 10(1).

Meeting information

17. During the latter stages of the Information Commissioner's investigation the complainant stated that he had become aware of a meeting between the Constabulary and the local council in which the cable thefts were discussed. He queried why no information about this had been included in the response to his request.

18. The Constabulary investigated and confirmed that, while a meeting had taken place with the council at a local police station, its purpose was to consider future security requirements for any new cabling. It said the meeting was not a formal meeting and accordingly no formal record was created. The only information it retained was an entry in an Inspector's daybook. The entry confirmed the date of the meeting and a few scribbled notes which appeared to be an aide-memoire. At the Information Commissioner's request the daybook entry was provided to the complainant.

19. The Information Commissioner concluded that the daybook entry, although it contained very little intelligible information, nevertheless fell within the scope of the complainant's request, in that it constituted information about the Constabulary's response to the thefts. He concluded that the Constabulary breached section 1(1)(a) by failing to confirm, by the completion of the internal review or the time for statutory compliance, that it held the information. By failing to provide a copy by the completion of the internal review or the time for statutory compliance it breached section 1(1)(b).

Press releases or notifications

20. The Constabulary responded to this part of the request by stating that it did not hold the information since it had not made any media appeals in relation to the thefts. The complainant challenged the Constabulary's claim, arguing that given the value, frequency and timescale of the thefts, publicising them would have been a priority.
21. In scenarios where there is some dispute between the amount of information a public authority claims to hold and the amount of information that a complainant believes may be held, the Information Commissioner, following the lead of a number of Information Tribunal decisions, applies the civil standard of the balance of probabilities.
22. In other words, in order to determine such complaints the Information Commissioner must decide whether on the balance of probabilities a public authority holds any information which falls within the scope of the request (or was held at the time of the request).
23. The Information Commissioner asked the Constabulary to confirm whether it held any press release covered by the request, and to see a copy of any policy covering how it publicises crimes. The Constabulary produced a copy of its draft media policy, and also an extract from a procedural document, referred to in the policy. The policy makes the following statement on the publicising of burglaries:

"7.4 Burglary

Offences of burglary can be released to the media alongside warnings and crime prevention advice, although names of victims must not be released without their consent. (See the Media Procedures document.) In cases where relatively small amounts of money or property are stolen, this information can be released routinely at local level. Cases involving large sums of money or property, or those likely to attract more than divisional interest, should be referred to Corporate

Communications for wider release. High profile or sensitive cases – for instance where the victim is well-known or the items stolen are unusual – should be referred to Corporate Communications.”

24. While the complainant has voiced the belief that publicising crime is a routine priority for the Constabulary, the Information Commissioner considers that this extract clarifies that decisions as to whether to publicise large thefts are made on a case-by-case basis. It is his view that it is by no means a foregone conclusion that the Constabulary would intend to publicise the incidents.
25. A search of the press release section of the Constabulary's website does not reveal any relevant press releases. The Information Commissioner is mindful of the fact that other authorities did issue press releases on the incidents, that police officers supplied comments in connection with them, and that the Constabulary directed the complainant to them.
26. The complainant has produced no evidence to counter the Constabulary's claim that it did not issue any press releases about the thefts. He has even appeared to accept the claim, commenting that it is evidence of the Constabulary failing to act appropriately to apprehend the offenders or prevent further thefts.
27. Having considered all these factors, the Information Commissioner therefore considers that on the balance of probabilities the Constabulary does not hold the information requested in the second part of the request.

Right of appeal

28. 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: 0300 1234504

Fax: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

29. 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.
30. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

Jon Manners
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF