

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 10 July 2012

Public Authority: Lincolnshire Police Authority
Address: Headquarters
Deepdale Lane
Nettleham
Lincoln
LN2 2LT

Decision (including any steps ordered)

1. The complainant requested copies of correspondence between Lincolnshire Police Authority (LPA) and the Independent Police Complaints Commission (IPCC) regarding his complaint about Lincolnshire Police's handling of certain matters. LPA disclosed information to the complainant, but he disputed the amount of information provided because he had received more information from the IPCC than LPA.
2. The Commissioner's decision is that LPA provided the complainant with all the information it held relevant to the request.
3. The Commissioner does not require LPA to take any remedial steps to ensure compliance with the legislation.

Request and response

4. On 25 October 2011, the complainant wrote to LPA and requested information in the following terms:

"Under the Freedom of Information Act 2000 could you please send me

1. *Copies of any communication between Lincolnshire Police Authority and the IPCC regarding a complaint made about Lincolnshire Polices refusal to investigate fully issues of Misuse of Public funds and Racism by LCC.*

2. *Copies of any communication between the Chair of the Authority and Andrews Solicitors re a complaint made about this issue.*
 3. *Copies of any correspondence between the Chair of the Authority and the Leader of the Council.*
 4. *A copy of the letter sent to CC Crompton informing him of a complaint raised about his refusal to answer an FOI request.*
 5. *Any correspondence between Andrews Solicitors and CC Crompton re his refusal to answer an FOI request.*
 6. *Any correspondence between the Authority or its advisors and Peter Hunt of the IPCC between the dates of 1 January 2010 [clarified 2011] and 25 October 2011."*
5. LPA responded on 28 October 2011 and sought clarification from the complainant regarding points three, four and six of the request.
 6. On 4 November 2011 LPA responded to the complainant. It refused point one of the request as a repeat request under section 14(2) of the FOIA; confirmed that no information was held with regard to points two and three; and refused information requested at points four, five and six under section 40(2), as it contained personal data of a third party.
 7. The complainant responded on the same day, 4 November 2011, dissatisfied with the response regarding point one. He stated that he had not requested the information in question one before and again asked for the information to be sent.
 8. Lincolnshire Police Authority acknowledged the request for an internal review on 7 November 2011 and completed the review on 15 November 2011. In accordance with the request for an internal review, it only dealt with the information refused in point one of the request: *"copies of any communication between Lincolnshire Police Authority and the IPCC regarding a complaint made about Lincolnshire Police's refusal to investigate fully issues of misuse of Public funds and Racism by LCC"*.
 9. The internal review overturned the application of section 14(2) and disclosed a letter from the IPCC dated 3 October 2011. LPA confirmed that no additional information concerning communication between itself and the IPCC was held.
 10. The complainant responded on the same day, 15 November 2011, disputing the claim that no further information was held. He argued that he had received confirmation from LPA's legal representative that email contact had been made several times with the IPCC's administrative team and therefore more emails would be held. He restated his request for *"email traffic between the Authority and the IPCC"*.

11. LPA acknowledged the correspondence from the complainant on 17 November 2011. The complainant chased a substantive response on 22 November and 9 December before contacting the Information Commissioner on 13 December.
12. On 15 December 2011 LPA provided its decision to the complainant regarding the email traffic. It decided that a copy of all relevant communications with the IPCC should be disclosed to the complainant; this information was attached to the correspondence. It also confirmed to the Commissioner that this action had been taken.
13. The complainant contacted the Commissioner again on 22 December 2011 to express dissatisfaction with the response. He informed the Commissioner that LPA had provided an incomplete response.
14. The complainant explained that he had submitted requests for information relating to a particular issue to both the IPCC and LPA. He confirmed that LPA had provided him with some information on 15 December 2011 - namely emails between itself and the IPCC - but in answer to his related request the IPCC had disclosed more information. He argued LPA would also hold this and should have provided it to him. He stated, *"I am aware of at least four emails between the parties that he [the Chief Executive] has not included"*.

Scope of the case

15. The complainant contacted the Commissioner to complain about the way his request for information had been handled. The focus of the Commissioner's investigation has been the discrepancy between the information held and provided by LPA and the information provided by the IPCC.

Reasons for decision

16. Section 1 of the FOIA 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."

17. In scenarios where there is some dispute between the amount of information located by a public authority and the amount of information that a complainant believes may be held, the Commissioner, following the lead of a number of Information Tribunal decisions, applies the civil standard of the balance of probabilities.
18. In other words, in order to determine such complaints the 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).
19. In order to determine this, the Commissioner made enquiries to LPA with regard to what information was held, what searches for information it had carried out and what (if any) information had been withheld from the complainant.
20. The Commissioner also obtained background information from the complainant and asked him to provide clarification concerning what information he had received from both public authorities along with copies of the information he had received from the IPCC but not from LPA.
21. LPA provided the Commissioner with details of how it had handled the complainant's request for information. In specific reference to the disputed emails, it explained that certain emails had not been included in the disclosed information because some of them fell outside the scope of the request, and some made reference to legal advice obtained by LPA.
22. Copies of the emails provided by the complainant confirmed what LPA had told the Commissioner, namely that some of the emails fell outside the scope of his request and some made brief reference to legal advice.
23. On further consideration of the disputed emails, the Commissioner has decided that all of the emails that were not provided to the complainant by LPA fall outside the scope of the request. The emails in question do not relate to communication between the IPCC and LPA concerning the complainant's complaint against Lincolnshire Police and issues of misuse of public funds and racism. Therefore, LPA was not obliged to provide them to the complainant in answer to his request for information.

Other matters

24. The Commissioner notes that throughout LPA's correspondence with the complainant and its communication with the Commissioner during this investigation, LPA made several references to 'exercising its discretion'

25. It has become clear to the Commissioner that the request in this case should have been dealt with under the terms and remit of the Data Protection Act 1998 (the DPA). The information request in this case related to the complainant's own complaint dealt with by LPA and the IPCC and therefore the information requested amounted to his own personal data. The appropriate course would have been for LPA to have addressed the freedom of information request by refusing under section 40(5) of the FOIA to confirm or deny having any of the requested information, since that information was the personal data of the complainant, and to have provided relevant information to the complainant under the data access rights provided by the DPA.
26. Although this fact is not an issue now as information has been provided to the complainant, the Commissioner would encourage LPA to be aware of all information access regimes and as a matter of best practice ensure that all information requests are dealt with under the appropriate legislation.

Right of appeal

27. 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

28. 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.
29. 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**