

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 19 March 2012

**Public Authority:** The Chief Constable of Thames Valley Police  
**Address:** Thames Valley Police Headquarters  
Oxford Road  
Kidlington  
Oxon  
OX5 2NX

### Decision (including any steps ordered)

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1. The complainant requested a copy of correspondence about a specific issue between Thames Valley Police and a supplier of a computer forensics tool. Thames Valley Police initially refused to confirm or deny holding any information within the scope of the request. During the course of the Information Commissioner's investigation, Thames Valley Police disclosed some information to the complainant. The complainant alleged that further information was held. However, the Information Commissioner is satisfied that, on the balance of probabilities, no further relevant information is held. The Information Commissioner requires no steps to be taken.

### Request and response

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2. The complainant wrote to Thames Valley Police on 14 October 2011 and requested information in the following terms:  
  
*"Please provide a copy of the correspondence between Thames Valley Police and Guidance Software (supplier of computer forensics tool EnCase) regarding TVP's use of EnCase and Guidance Software representative confirming an error in a version or versions of EnCase concerning time adjustments".*
3. Thames Valley Police responded on 27 October 2011. It cited section 31(3) (law enforcement) as its reason for neither confirming nor denying

whether it held information within the scope of the request. It cited section 17(4) (refusal of request) as its reason for not providing any explanation regarding that decision.

4. Following an internal review Thames Valley Police wrote to the complainant on 30 October 2011 upholding its position.

### Scope of the case

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5. The complainant contacted the Information Commissioner to complain about the way his request for information had been handled. He argued that EnCase's reliability is *"paramount to both law enforcement and the human rights of an accused"*.

6. During the course of the Information Commissioner's investigation, Thames Valley Police varied its response, confirming that it held information within the scope of the request, namely a document from Guidance Software. It provided the complainant with a copy of that document.

7. The complainant contacted the Information Commissioner following the disclosure:

*"I'm still not entirely satisfied with the information that was provided by Thames Valley Police....I do not feel that they have disclosed the full correspondence between themselves and Guidance Software..."*

8. He explained why he did not consider that the information disclosed by Thames Valley Police represented the full set of communications within the scope of his request.

9. He also complained to the Information Commissioner about the late disclosure of the information:

*"I do not consider that Thames Valley Police reversed their decision and provided the information freely. The very fact that I had to come to you for assistance demonstrates that Thames Valley Police had not provided the information either in response to my initial request or in response to my appeal"*.

10. The Information Commissioner has published guidance for public authorities in which he explains the way in which complaints made to him under section 50 of the FOIA are addressed. That guidance *"How we deal with complaints - A guide for public authorities"* states:

*"The case officer will ask you to reconsider the case and provide a submission to us in response to the issues raised. .... If you realise that you could resolve the case by full or partial disclosure of the information then you should do so..."*

11. Whilst acknowledging that it did not confirm that it held information until after his investigation was underway, the Information Commissioner notes that Thames Valley Police did reconsider its position promptly as a result of his intervention. He considers that some credit should be given to Thames Valley Police for having recognised, albeit belatedly, that its response to the request was incorrect.
12. The Information Commissioner considers the scope of his investigation to be with respect to whether or not Thames Valley Police holds further information within the scope of the request.

### **Reasons for decision**

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13. Section 1(1) of FOIA creates a general right of access to information held by public authorities. It 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."*

14. In scenarios where there is some dispute about the amount of information which a public authority confirms holding 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.
15. Accordingly, in order to determine the complaint in this case, the Information Commissioner must decide on the balance of probabilities, whether, at the time of the request, Thames Valley Police held any further correspondence falling within the scope of the request.
16. In deciding where the balance lies, the Information Commissioner will consider the searches carried out by the public authority as well as considering, where appropriate, any other reasons offered by the public authority to explain why the information is not held. The Information Commissioner will also consider any evidence that further information is

held, including whether it is inherently unlikely that the information so far located represents the total information held

17. During the course of the Information Commissioner's investigation, Thames Valley Police confirmed that the correspondence it provided to the complainant represented all the information it held within the scope of the request. In doing so, it provided the Information Commissioner with details of the searches it had carried out.
18. The Information Commissioner notes the complainant's comments as to why he believes that further information in relation to his request is held. However, despite the complainant's obvious belief that further relevant information is held, the Information Commissioner is satisfied that, on the balance of probabilities, no further information falling within the scope of the request is held. In reaching this conclusion, the Information Commissioner accepts that Thames Valley Police has undertaken reasonable searches to check for further relevant information. He also notes that the FOIA provides an access regime to information held on record by a public authority; it does not require public authorities to keep records or create information.

## Right of appeal

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19. 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](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

20. 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.
21. 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**