

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 15 November 2012

Public Authority: Association of Chief Police Officers
Address: 1st Floor
10 Victoria Street
London
SW1H 0NN

Decision (including any steps)

1. The complainant has requested copies of the public authority's statement of accounts for the last five years. The public authority has advised that these are available from Companies House so are exempt under section 21(1) (information accessible to the applicant by other means) of the FOIA. The Information Commissioner's (the Commissioner) decision is that the public authority appropriately refused to provide the requested information on the basis that it was exempt under section 21(1) by virtue of subsection (2)(b).

Background

2. The Association of Chief Police Officers became a public authority for the purposes of the FOIA on 1 November 2011. It is also a limited company.
3. According to its website: "*Full accounts are available from Companies House. A summary annual statement of accounts will be published shortly*"¹.
4. The public authority has explained to the complainant that:

¹<http://www.acpo.police.uk/FreedomofInformation/Whatwespandandhowwespandit.aspx>

"... it is particularly important to stress that ACPO is a company limited by guarantee which makes ACPO different to the majority of other public authorities covered by the provisions of the Freedom of Information Act. But because ACPO is a company limited by guarantee, we are required to file our annual financial statements at Companies House [sic].

All limited companies in England, Wales, Northern Ireland and Scotland are registered at Companies House, an Executive Agency of the Department for Business, Innovation and Skills (BIS) as explained on their website, the main functions of Companies House are to:

- Incorporate and dissolve limited companies;*
- Examine and store company information delivered under the Companies Act and related legislation; and*
- Make this information available to the public.*

The Companies Act 2006 provides that all registered limited companies must file annual financial statements in addition to annual company returns.

It is therefore appropriate that the financial information you have requested is passed to Companies House to publish (as it is a legislative requirement for us to do so) and it is a defined business process that this financial information is published by Companies House".

5. The complainant's request can be found on the "what do they know" website².

² http://www.whatdotheyknow.com/request/revenue_from_all_sources_57

Request and response

6. Following on from an earlier request which was refused on the grounds of costs (this can be viewed on "what do they know", as stated above), on 10 May 2012 the complainant wrote to the public authority and requested information in the following terms (her emphasis):

"In response, I would like to suggest that it would be appropriate to provide me with a copy of ACPO'S STATEMENT OF ACCOUNTS for the past five years, as THIS INFORMATION IS ALREADY TO HAND, and will not take eighteen hours.

So, for the sake of goodwill and public relations, will you please attempt to fulfill [sic] FOI obligations by offering me copies of these statements?"

7. The public authority responded on 25 May 2012. It stated that the information was exempt by virtue of section 21(1) and also explained:

"ACPO's accounting year is fiscal rather than calendar. The current accounting year runs from 01 April 2011 to March 2012. ACPO accounts are prepared as at 31 March. The accounts for financial year ending March 2007, March 2008, March 2009, March 2010 and March 2011 are available from Companies House for a payment fee. For your convenience, I have provided a link to Companies House below.

<http://www.duport.co.uk/companies-house.php?gclid=CMWPxdS1m7ACFQ8htAodcky5Xg>

To help you locate our records on their website our company number is 03344583.

For your information, the 2011/12 financial statements are scheduled to be filed at Companies House at the end of the current calendar year".

8. Following an internal review the public authority wrote to the complainant maintaining the same position. It also advised:

"The information you have requested is reasonably accessible to you other than under the provisions of the Freedom of Information Act and is therefore exempt, in full, under the provisions of Section 21(1) of the Act".

Scope of the case

9. On 22 October 2012 the complainant contacted the Commissioner to complain about the way her request for information had been handled. She stated (her emphasis):

*"There would be **no cost and virtually no time** involved for ACPO to provide me with this information, but they are being bloody-minded and trying to force me to go elsewhere to **pay** for it. This is definitely not in the spirit of the Freedom of Information Act and, as I have made a public request, in the public interest, I believe they should provide the information free of charge without wriggling around. They want to make it as difficult as they can for the public to know their financial details.*

They are putting so much effort and expense into denying me this information. It is costing them more money to write overly wordy letters, twisting themselves into a pretzel in order deny this information, than it would to simply provide the information free of charge like they are supposed to.

*They certainly feel uncomfortable about transparency, and this is not good enough. **I SHOULD NOT HAVE TO PAY FOR THIS INFORMATION AT COMPANIES HOUSE, OR BUY BOOKS.** This is wrong. It will cost them nothing to provide it. Therefore, it is not strictly true to say that the information is available elsewhere. **It is not available on the same terms and conditions as it is for other organisations. Therefore, they are not complying with the Act.***

Although ACPO is not a public entity, it receives some 18 million pounds of public money, p.a. and has made a PUBLIC STATEMENT in the past to say that it will abide by the terms of the Freedom of Information Act, as with any public organisation. It is failing to do so, and going to an awful lot of trouble to support this failure.

It is fraudulent to make this public statement and then not stand by it. No other police agency charges for this information. They cannot."

10. The Commissioner has considered whether the public authority appropriately refused to provide the requested information on the basis that it was exempt under section 21(1).

Reasons for decision

Section 21 – information accessible by other means

11. Section 21(1) of the FOIA states that:

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

12. Section 21(2) also states:

*"(2) 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".*

13. This means that where a complainant is reasonably able to obtain the information otherwise than under the FOIA, then the information is exempt from disclosure under the FOIA. It is an absolute exemption so there is no public interest test.
14. The public authority has advised the Commissioner that it believes subsections (2)(a) and (b) are relevant. The Commissioner considers that subsection (2)(b) is the most relevant exemption in this case and therefore he has considered this first. The public authority has explained that copies of its annual accounts must be made available to the public via Companies House as required by sections 1085 and 1086 of the Companies Act 2006.
15. The public authority explained to the complainant that it is a limited company. It has also explained that it submits its statutory accounts to Companies House, as required by law, and it has directed her to the website where she is able to access this information. The complainant is not satisfied with this response as it involves the payment of a fee to

Companies House. In her view, this therefore means that the information is not 'reasonably accessible'.

16. The Commissioner has followed the process for accessing the information via this link provided by the public authority and has found it to be fully functional and simple to use (although he did not actually purchase the accounts). The Commissioner here notes that the complainant has conducted all her correspondence in this case via an email account so he assumes that there is no problem with her communicating in this manner.
17. The Commissioner has also ascertained that Companies House levies a charge of £1.00 for each set of accounts requested, which can then be emailed to a given email address. This charge is not a figure which Companies House has calculated itself; it has been set under The Registrar of Companies (Fees) (Companies, Overseas Companies and Limited Liability Partnerships) Regulations 2012³.
18. For the reasons set out above it is the Commissioner's decision that the public authority has correctly advised the complainant that the information she has requested is exempt by virtue of section 21(2)(b). Although this information is only available on payment of a fee, subsection (2)(b) is specific that this does not prevent information being considered reasonably accessible.
19. Section 21 is not subject to the public interest test. If the information requested is reasonably accessible to the applicant by means other than through section 1 of the FOIA, then it is exempt. The public authority is not, therefore, required to disclose this information under section 1 of the FOIA. As the Commissioner has concluded that the information is exempt under section 21(1) by virtue of (2)(b) it has not been necessary to also consider subsection (2)(a).

³ <http://www.legislation.gov.uk/ukxi/2012/1907/schedule/2/made>

Right of appeal

20. 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

21. 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.
22. 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

Jo Pedder
Group Manager Policy Delivery
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF