

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 4 July 2013

**Public Authority:** Chief Constable of South Wales Police

**Address:** South Wales Police Headquarters  
Cowbridge Road  
Bridgend  
CF31 3SU

#### Decision (including any steps ordered)

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1. The complainant requested information relating to title disputes in relation to property believed to be stolen or acquired by fraud. South Wales Police initially stated it did not hold information relevant to the request but later confirmed that relevant information was held, but considered exempt under section 21 of the FOIA. The Commissioner's decision is that South Wales Police has correctly applied section 21(1) of the FOIA. The Commissioner also finds that South Wales Police breached sections 10(1) and 17(1) in failing to identify relevant recorded information or issuing a refusal notice within the time for compliance, but requires no steps to be taken in this case.

#### Request and response

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2. On 22 November 2012, the complainant wrote to South Wales Police and requested information in the following terms:

"I understand that title in STOLEN property cannot pass; that the original victim remains the party having best title (demo dat principle). I ask to be provided:

1. Your Service's policy with regard to the title disputes arising in respect of property believed to be **stolen**. The policy I am seeking is with regard to detention, retention and disposal. This information will include, but not be restricted to:
  - a. when seizure should occur (*sic*)
  - b. the powers,
  - c. issuing of receipts,

- d. use of PACE – often referred to as '6.6' – leaving a vehicle with an innocent purchaser on the understanding they will not dispose of or alter it.
- e. Making decisions with regard to best title i.e. restoration
- f. When Police Property Act proceedings should be engaged.

Similarly, I ask to be provided:

- 2. Your Service's policy with regard to the title disputes arising in respect of property believed to have been acquired by FRAUD (deception).. The policy I am seeking is with regard to detention, retention and disposal. This information will include, but not be restricted to:
  - a. when seizure should occur (*sic*)
  - b. the powers,
  - c. issuing of receipts,
  - d. use of PACE – often referred to as '6.6' – leaving a vehicle with an innocent purchaser on the understanding they will not dispose of or alter it.
  - e. Making decisions with regard to best title i.e. restoration
  - f. When Police Property Act proceedings should be engaged.

With regard to '1' and '2' above, I anticipate the information including reference to the legislation / precedents upon which your constabulary relies when making decisions in each circumstances (theft & fraud).

It may assist (to restrict the request) to be aware that my interest is principally with regard to vehicles (which may assist to though I appreciate you may have a general policy in respect of property).

The above should be considered an application in accordance with the **Freedom of Information Act 2000**. Please note that the requests are NOT specific to this case / vehicle but generic".

- 3. South Wales Police responded on 18 December 2012 and stated that it did not hold any information relevant to the request. However, it confirmed that it complied with the relevant legislation – the Police Property Act and Pace and provided links to these pieces of legislation.
- 4. On 20 December 2012 the complainant wrote to South Wales Police again in the following terms:

"Further to your email and the attachments, whilst the links direct me to the legislation that pertains to seizure (which I have found useful – thank you), this does not:

1. Direct me to a specific section of the Acts you have identified as being pertinent. With regard to pace it is unclear which section i am being directed to.
2. Explain how your constabulary interprets and applies the law. For example, some constabularies elect not to seize a stolen vehicle, other will only do so if it is recorded as stolen from a constabulary other than their own. What I am seeking is the S Wales police approach, the process you adopt, the rules you follow.
3. Provide the process for handling a vehicle (property) once it is seized i.e. return to original victim, instigating a Police Property Act hearing etc.
4. Address the legislation that is considered with regard to determining title; what Acts (sections) are considered and precedents referred to
5. Any standard correspondence that is used either upon receipt of property ( a vehicle) or when dealing with those claiming title (party to the ownership dispute)

I would appreciate any further assistance you could provide in respect of the above any further information that is available”.

5. South Wales Police responded on 22 January 2013 and stated that some of the information requested was not held. It confirmed that, in relation to question 2, it held a Vehicle Recovery Policy and in relation to question 3 it held a Property Subject to Charge Procedure. As both the documents were published on its website, South Wales Police stated it was relying on section 21 of the FOIA as the information was reasonably accessible by other means. It provided a link to the policies and procedures page of its website from which the documents could be accessed.
6. On 18 February 2013 the complainant requested an internal review of South Wales Police’s handling of his request of 22 November 2012. He stated that he had “specifically asked for ‘your service’s policy’ and asked to be provided this. In the alternative I ask to be provided clarification that you have no such procedures/policies with regard to sections I have raised under ‘1’ (a to f) and ‘2’ (a to f)”. He also expressed concern that his communication of 20 December 2012 appeared to have been considered in isolation, and not in relation to his original request.
7. South Wales Police provided the outcome of its internal review on 18 March 2013. It confirmed that the communication of 20 December 2012 was treated as a new request for information and that the internal

review related to the original request of 22 November 2012. South Wales Police confirmed that, in relation to the request of 22 November 2012, it did not hold any further policies or procedures other than those referred to in its response (22 January 2013) to the request dated 20 December 2012. It maintained that as the policies were published on its website, section 21 of the FOIA applied as the information was reasonably accessible by other means. In relation to the "Property Subject to Charge and Enquiry Procedures", it referred the complainant to particular sections of this document and provided a link to the actual document.

8. The complainant wrote a further letter to South Wales Police on 18 March 2013 expressing concern at the amount of time it had taken for him to receive the information he had originally requested on 22 November 2012. He stated he was seeking an appeal of the internal review response as he considered that South Wales Police were "in breach of the Act" and "Misrepresenting the exemption".
9. South Wales Police responded on 26 March 2013 confirming that, as it had already conducted an internal review into the handling of the request in question, there was no further opportunity for an appeal and suggested that, if the complainant remained dissatisfied with the internal review response, he should refer the matter to the Information Commissioner's Office.

### **Scope of the case**

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10. The complainant contacted the Commissioner on 26 March 2013 to complain about the way his request for information had been handled. He said that he felt there had been a concerted effort to obstruct him from obtaining the information requested and it was linked to the complainant he had made against South Wales Police.
11. The Commissioner considers this complaint to relate to procedural matters associated with South Wales' Police's handling of the request for information of 22 November 2012, and whether section 21 of the FOIA has been applied appropriately.

### **Reasons for decision**

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#### **Section 21 - Information accessible to the applicant by other means**

12. Section 21(1) provides that information which is reasonably accessible to the applicant otherwise than under section 1 is exempt information.

13. The Commissioner accepts that information is reasonably accessible if the public authority:
  - Knows that the applicant has already found the information; or
  - Is able to precisely direct the applicant to the information. In this case the public authority has to be reasonably specific to ensure it is found without difficulty and not hidden within a mass of other information.
14. In this case, South Wales Police initially stated that it did not hold any information relevant to the request of 22 November 2012 and simply stated that it complied with national legislation. On 22 January 2013 South Wales Police responded to further correspondence from the complainant dated 20 December 2012, treating it as a separate though linked request, and it provided details of two policies - a Property Subject to Charge and Enquiry and Vehicle Recovery Policy. It stated that these policies were published on its website and therefore exempt under section 21 of the FOIA and it provided a link to the policies and procedures section of its website.
15. In its internal review into the handling of the request of 22 November 2012, South Wales Police confirmed that no additional information was held other than the two policies referred to in its response to the request of 20 December 2012. As the policies were publicly available on its website, South Wales Police maintained that section 21 applied. However, it provided more specific information about the parts of the policies considered to be relevant and provided a link to the Property Subject to Charge and Enquiry policy.
16. The complainant appears to be satisfied that the information he requested on 22 November 2012 is available in the publicly available policies referred to by South Wales Police, however he is concerned at the delay in the information being 'provided'.
17. Whilst the Commissioner notes that the initial response from South Wales Police was that it did not hold any information relevant to the request, in its internal review response, it confirmed that section 21 applied as the information was published on its website and details of how to access it had been provided to the complainant in response to a separate request. In its internal review, South Wales Police also provided a link to one of the policies in question and indicated the sections most relevant to the request.
18. Based on the information available, the Commissioner is satisfied that the information held by South Wales Police is reasonably accessible via its website and has therefore determined that section 21(1) is engaged.

## **Procedural Requirements**

### **Sections 1 and 10 – the provision of information**

19. Section 1(1)(a) of the FOIA requires, in most cases, a public authority to confirm or deny whether it holds information of the description specified in the request. Section 10(1) provides that section 1(1) of the Act should be complied with promptly by a public authority and, in any event, within 20 working days following the date of receipt of the request.
20. By failing to confirm that it held information covered by the scope of the request within the statutory time-limit, the Commissioner finds that South Wales Police breached section 10.

### **Section 17 – the refusal of a request**

21. Where a public authority is to any extent seeking to rely on an exemption contained in Part II of the FOIA, section 17(1) requires a public authority to issue a notice within 20 working days which –
  - (a) states the fact,
  - (b) specifies the exemption in question, and
  - (c) states (if that would not otherwise be apparent) why the exemption applies.
22. In this case South Wales Police did not provide the complainant with a notice informing him of its reliance on section 21 within the statutory time-limit. The Commissioner has therefore determined that it breached sections 17(1)(a), (b) and (c) in its initial handling of the request.

## Right of appeal

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23. 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)

24. 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.
25. 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 .....**

**Anne Jones**  
**Assistant Commissioner**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**