

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 19 January 2016

Public Authority: Chief Constable of West Midlands Police

Address: Police Headquarters
Lloyd House
Colmore Circus
Birmingham
B4 6NQ

Decision (including any steps ordered)

1. The complainant requested information about West Midlands Police's procedures for seizing and storing property under the Police and Criminal Evidence Act 1984 ("PACE"). Although the Constabulary disclosed the requested information, it failed to do so within the statutory timeframe of 20 working days from receipt of the request.
2. The Information Commissioner's decision is therefore that the Constabulary has breached section 10(1) of the FOIA. The Commissioner requires no steps to be taken.

Request and response

3. On 12 August 2015, the complainant submitted the following request for information via the What Do they Know ("WDTK") website¹, a website for submitting and archiving FOIA requests:

"Procedures for property seized under S19 of PACE"

¹ <https://www.whatdotheyknow.com/>

Can you please provide me with the information you store, which outlines the procedures in place for handling of property seized under S19 of PACE.

To clarify this request I will put the following example:

A police officer is to seize a mobile telephone from a member of the public, as said device stores a video of an incident.

What procedures for the storage of said device must be taken.

At what point must the device be placed into a sealed evidence bag?

When at a station, where must said evidence be stored? - If this differs between stations, I will further clarify that I am interested to know where the device should be stored in Coventry Little Park Street station.

What authorisation do officers have to destroy video recordings on said device?

If an officer were to delete footage / format a memory card... (perhaps because he was hoping to 'make anything [he] wants to stick')... What repercussions could happen as a result of this?

How many of your staff have been found to have falsified/tampered with evidence within the last five years...? Of these staff, how many faced formal criminal charges (as tampering with evidence is surely a criminal act)?"

4. The Constabulary acknowledged receipt of the request the same day. It issued a response to the request on 17 September 2015. It provided a free text response to each of the questions set out in the request.
5. The complainant asked for an internal review of the request on the 17 September 2015. He pointed out that the Constabulary had failed to respond within the statutory 20 working day time for compliance and he asked for a copy of the overarching operational policy from which he believed the information in the response would have been sourced.
6. The Constabulary responded the same day, apologising for failing to issue its response within 20 working days. However, it stated that it was satisfied that it had dealt with the request correctly. It sent a further response the same day, in which it clarified that it regarded the request for the operational policy as a new request, which it was permitted a further 20 working days to respond to.

7. On 6 October 2015 the Constabulary disclosed to the complainant links to online copies of two extracts from its Policy and Procedure Manual. The documents were each dated 24 April 2012 and set out the procedures to be followed by officers and other police staff when dealing with found or seized property, including property seized under PACE.

Scope of the case

8. The complainant contacted the Commissioner on 17 September 2015 to complain about the handling of his complaint. Specifically, he was concerned that the Constabulary had responded outside of the statutory time for compliance, and that it had not disclosed the overarching operational policy in response to the request.
9. By the time the Commissioner commenced his investigation, the Constabulary had disclosed the links to the extracts from its Policy and Procedure Manual. The Commissioner notes that the complainant has not challenged the substance of that response. However, he notes that the complainant commented, via an annotation on the WDTK website on 13 October 2015, that the Constabulary had breached section 10(1). The Commissioner has therefore considered the time it took for the Constabulary to respond to the request.

Reasons for decision

10. Section 1 of 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."

11. Section 10 of the FOIA states 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."

12. The Constabulary received a valid request for information on 12 August 2015, and it provided a response on 17 September 2015, 25 working days later.

13. Furthermore, the complainant specifically requested "*...the information you store, which outlines the procedures in place for handling of property seized under S19 of PACE*", and he titled his request "*Procedures for property seized under S19 of PACE*".
14. Section 19 of PACE sets out constables' general powers of seizure. The extracts from the Policy and Procedure Manual set out the procedures to be followed when dealing with found or seized property, including property seized under PACE. The Commissioner considers that this constitutes information which was described in the request dated 12 August 2015 and that, as such, the Constabulary should have disclosed it at the time it responded to that request. However, the Constabulary actually disclosed the links to the extracts on 6 October 2015, 38 working days after the request was received.
15. Therefore, by failing to disclose to the complainant all the information it held which was described in his request of 12 August 2015 within 20 working days, the Constabulary breached section 10(1) of the FOIA.

Right of appeal

16. 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: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

17. 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.
18. 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

Samantha Bracegirdle
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF