

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 20 December 2017

Public Authority: Chief Constable of Humberside Police
Address: Priory Road
Kingston Upon Hull
HU5 5SF

Decision (including any steps ordered)

1. The complainant has requested information relating to perjury. Humberside Police has explained that it does not hold the requested information.
2. The Commissioner's decision is that Humberside Police is correct to state that it does not hold any further information and has complied with section 1 of the FOIA.
3. However, she considers that Humberside Police has breached section 10(1) of FOIA.
4. The Commissioner does not require Humberside Police to take any further steps as a result of this decision.

Request and response

5. On 12 March 2016, the complainant wrote to Humberside Police (HP) and requested information in the following terms:

"Under subsection (2) of Section 26 of the Criminal Justice and Courts Act 2015 a police officer "is liable, on conviction on indictment, to imprisonment for a term not exceeding 14 years or a fine (or both)" if he fails under subsections (5) and (6) of the 2015 Act to exercise a power for the purpose of achieving the detriment of another person. Within the last few months Humberside police has, to my knowledge, stated the following in relation to two separately reported incidents of perjury; - one committed by North East Lincolnshire Council, and the other by two members of the public in their

witness statements which were outright lies.

"Humberside Police do not investigate allegations of perjury unless a request to do so comes from the court themselves."

Please see the link below which is a letter dated 13 January 2016 containing the above statement.

https://www.whatdotheyknow.com/request/humberside_police_wrongly_classi#comment-65970

There has clearly been a failure in exercising police powers in both cases to the detriment of another person for which the officer who has acted improperly is open to a term of imprisonment or a fine (or both). Please disclose all related material (statutory or policy) which lawfully permits or advises Humberside police that it may refuse to investigate allegations of perjury unless a request to do so comes from the court."

6. HP responded on 9 June 2016. It cited section 8(1)(c) (request for information) of FOIA and explained that it considered that the complainant had not made a valid request. The complainant responded on the same day, explaining that he had asked for: *"all related material (statutory or policy) which lawfully permits or advises Humberside police that it may refuse to investigate allegations of perjury unless a request to do so comes from the court."*
7. Following an internal review HP wrote to the complainant on 10 June 2016. It stated that it did not hold the requested information.

Scope of the case

8. Initially the complainant complained to the Commissioner on 1 June 2016 regarding HP's non-response to his request. The Commissioner contacted HP who responded to the request. There was then some confusion about whether an internal review had been carried out.
9. The complainant contacted the Commissioner again on 16 January 2017 to complain about the way his request for information had been handled. He provided a copy of the internal review.
10. The Commissioner will consider whether HP is correct to state that it does not hold the requested information and the length of time taken to deal with the request.

Reasons for decision

Section 1 – information held/not held

11. Section 1 of FOIA states that any person making a request for information is entitled to be informed by the public authority whether it holds the information and if so, to have the information communicated to him.
12. In cases where a dispute arises over the extent of the recorded information held by a public authority at the time of a request, the Commissioner will consider the complainant's evidence and arguments.
13. She will also consider the actions taken by the public authority to check whether the information is held and any reasons offered by it to explain why the information is not held. In addition, the Commissioner will consider any reason why it is inherently likely or unlikely that the information is not held.
14. The Commissioner is required to make a judgement on whether, on the balance of probabilities, the requested information is held or not.
15. In this case the Commissioner will also consider how HP could have made the following statement to the complainant: "*Humberside Police do not investigate allegations of perjury unless a request to do so comes from the court themselves*" given that it has stated that it does not hold the requested information.
16. The complainant explained to the Commissioner that he does not believe that HP does not hold the requested information stating:

"I'm persuaded that there is either information it does not want to disclose or simply can't be bothered."
17. HP explained that all of its policies and procedures are held electronically on its intranet and are available to all staff. It had searched the intranet using the term 'perjury' and the results were negative. In addition, HP explained that its numerous policies and procedures are reviewed on a regular basis to ensure they are still fit for purpose and are lawful.
18. HP also explained that it had contacted its Professional Standards Branch as this department initially dealt with a related complaint from the complainant about perjury. It had previously explained to the complainant that HP did not investigate allegations of perjury unless the magistrates or judge recommended it.
19. HP explained that its Professional Standards Branch had confirmed that it did not hold the requested information. It had looked back through all

of the complainant's complaints it held on its management system to establish if anything was held in any of the case files that related to not investigating offences of perjury. It confirmed that nothing was held in these files.

20. HP also confirmed that it had contacted its Legal Service department. This department confirmed that it had provided the advice regarding allegations of perjury but that it had not obtained the information from the CPS' website, as it did not hold it in recorded form. HP provided the Commissioner with the appropriate link.¹ The Commissioner notes that this website does deal with cases involving allegations of perjury.
21. Furthermore, HP confirmed that no recorded information was ever held and that the statement had been made based on the specifics of the complainant's related complaint to it and advice from its legal team. It also confirmed that there was no requirement for the requested information to be held as it would be a case by case decision, including taking legal advice.
22. The Commissioner has considered whether HP had any reason or motive to conceal the requested information, but she has not seen any evidence of this.
23. Taking everything into account, the Commissioner does not consider that there is any evidence that show that HP holds recorded information in relation to the request.
24. The Commissioner is therefore satisfied that, on the balance of probabilities, HP does not hold any further recorded information in relation to this request. Accordingly, she does not consider that there is a breach of section 1.
25. The Commissioner is also satisfied that HP has been able to explain how it could make the statement to the complainant about not investigating cases of perjury as set out above, even though it does not hold recorded information about this.

Procedural issues

26. The complainant submitted his request to HP on 12 March 2016. HP responded on 9 June 2016.

¹ http://www.cps.gov.uk/legal/h_to_k/judicial_comments/.

Section 10 – time for compliance

27. Section 10(1) of FOIA provides that a public authority must respond to a request promptly and in any event no later than 20 working days after the date of receipt.
28. The Commissioner considers that HP has breached section 10(1) as it took longer than 20 working days to respond to the request.

Right of appeal

29. 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

30. 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.

31. 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

Andrew White
Group Manager
Information Commissioner's Office
Wycliffe House
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SK9 5AF