

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 16 October 2017

Public Authority: Chief Constable of North Yorkshire Police

Address: North Yorkshire Police
Newby Wiske Hall
Northallerton
North Yorkshire
DL7 9HA

Decision (including any steps ordered)

1. The complainant has requested information regarding deeds of delegation. North Yorkshire Police explained that it did not hold the requested information.
2. The Commissioner's decision is that North Yorkshire Police was correct to state that it did not hold the requested information. However, she considers that North Yorkshire Police has breached section 10(1) (time for compliance) of FOIA.
3. The Commissioner does not require North Yorkshire Police to take any steps as a result of this decision notice.

Background

4. The North Yorkshire Police Civil Disclosure Unit (CDU) deals with its own requests for information and internal reviews and requests received by the Police and Crime Commissioner for North Yorkshire.
5. The complainant brought a case against the Office of the Police and Crime Commissioner for North Yorkshire (OPCC) regarding its compliance with requests under the FOIA and Data Protection Act 1998 and has referred to issues relating to this in his request for an internal review and complaint to the Commissioner, in relation to the present case.

6. The complainant also submitted a request for the same information on the same date to the OPCC and complained to the Commissioner about the way in which this was handled. This was dealt with in a separate decision notice.¹

Request and response

7. On 1 July 2016 the complainant wrote to North Yorkshire Police (NYP) and requested information in the following terms:

"Copies of all Deeds of Delegation concerning the transfer of Appropriate Authority responsibilities of the Chief Constable to any other member of his police force in respect of recording and investigating complaints against police officers.

Broken down by financial year:

2012/13

2013/14

2014/15

2015/16."

8. On 2 August 2016 the complainant requested an internal review on the following grounds:

"I am writing to request an internal review of North Yorkshire Police's handling of my FOI request 'Delegation of Appropriate Authority powers under the Police Reform Act 2002'.

The grounds for review are:

1. The request was not finalised within the statutory 20 working day period.

2. The manner in which this information request has been dealt with is outside College of Policing's Authorised Professional Practice in respect of FOIA requests.

¹ <https://ico.org.uk/media/action-weve-taken/decision-notice/2017/2014767/fs50646842.pdf>.

3. *It is claimed, in open letter to me, by solicitors acting for the Chief Constable of North Yorkshire Police that my nineteen previous FOIA requests to NYP have all been 'vexatious'. Please provide ALL the documentary evidence that supports these assertions. Emails, meeting notes, briefing notes, logs, pocket books and the like. For the avoidance of doubt the question of ANY of my requests being 'vexatious', let alone all, has never once been raised with me by the Chief Constable of North Yorkshire Police, or by any of his Civil Disclosure Unit or Legal Services staff with whom I correspond frequently.*
4. *Please state in open correspondence, on this website, whether this particular FOIA request is classified as 'vexatious'. If so, please state the reasons and reference your answer to Dransfield (Upper Tribunal before Judge Wikely) which is now the leading legal authority on the topic.*
5. *It is further claimed by the same solicitors (Weightmans) that in each and every case - not limited to my own FOIA requests - all information requests finalised on behalf of the Chief Constable of North Yorkshire Police have been, and are, compliant with FOIA. Please provide ALL documentary evidence that supports that assertion. Date request received, URN, date finalised, date review requested (if any), date review finalised, for the past three complete financial years.*
6. *Failure to comply with statute and authorised professional practice constitutes, in the case of this and all other non-compliant FOIA's, a breach of the College of Policing's Code of Ethics. All complaint rights against the Head of Joint Corporate Services are reserved, pending receipt of the above review.*
7. *You are reminded that the review is required to be delivered within 20 working days. I accept that you may wish to treat the requested information at paras 3, 4 and 5 as new requests. The period for finalisation is the same: 20 working days."*
9. On the same day, the complainant also added the following to his request for an internal review:
- "I write further to my request for an internal review sent earlier today. It has been brought to my attention that at least two other FOIA requests to NYP (via WhatDoTheyKnow), which were received well beyond the date mine was submitted, have either been finalised or part-finalised.*

<https://www.whatdotheyknow.com/request/l...>

<https://www.whatdotheyknow.com/request/a...>

On the face of these (and other) occurrences, [sic] an unethical prejudicial, discriminatory approach to requests that I make is (again) disclosed. Accordingly, I would be grateful [sic] please insert the following as point 1(a) in the internal review and provide the following information and explanation:

(i) How many other FOIA requests were dealt with out of turn and ahead of mine?

(ii) Please identify by URN

(iii) Why are my FOIA requests systematically delayed, sometimes weeks, other times months and in one case for over a year."

10. On 5 August 2016 NYP responded. It explained that it did not hold any information in relation to his request. On the same day, the complainant requested that the following be added to point 2 of his request for an internal review of 2 August 2016:

2(b) The information provided by the Civil Disclosure Unit does not, on the face of what is disclosed behind the hyperlinks, satisfy the request, or even go close to it. It is implicit in the request that I have made that the information sought is documentary evidence of transfer of statutory powers of the Commissioner within the legislative framework applicable to police complaints. If no such information or documents exist then you are invited to state that plainly when finalising this review.

2 (c) The manner of the finalisation of this request and the unexplained delay in providing it, is, taken together with the history of other non compliant requests, in my submission, calculated to vex, harass and annoy, obstruct my work as an investigative journalist and put me to needless expense in dealing with reviews such as this."

11. Following an internal review NYP wrote to the complainant on 16 September 2016. It apologised for the length of time taken to provide the outcome of the internal review.
12. In relation to point 1: NYP apologised for the delay in responding to his request initially. It explained that the CDU strives to meet the 20 working day deadline, however with a pressured workload of differing disclosure activities and the steep rise particularly in FOIA requests, as well as the increase in complexity of the requests received, a backlog has been created and therefore it is not always possible to respond within the time limit given under FOIA.
13. In relation to points 1(i), (ii) and (iii) NYP explained that its CDU does not use any prejudice when responding to requests. It also explained that it did not consider that it needed to respond to these points; it

considered they were “futile” and that any response would not benefit the public interest.

14. In relation to point 2: NYP accepted the point. In relation to point 2(b): NYP explained that it had already accepted that a response had not been sent to him within the statutory timescale. It also reiterated that it did not hold any information regarding his request for information. In relation to point 2(c) NYP stated that as explained to the complainant previously, there was no intention to vex, annoy or harass him. In addition NYP explained that its CDU processes high volumes of disclosure requests, with variable priorities and complexities, and it is therefore not always practical to respond to every email and referred him to the explanation and figures it had provided in relation to the delay.
15. In relation to point 3: NYP referred the complainant to a letter he had received from solicitors dated 4 August 2016.
16. In relation to point 4: NYP confirmed that it did not consider the complainant’s present request to be vexatious for the purposes of section 14 of FOIA (vexatious and repeated requests) but that it would apply section 14 to any other request received from him on the same or similar topics.
17. In relation to point 5: NYP explained that it had not made any assertion that it was always 100% compliant with the statutory time period allowed under the FOIA.
18. In relation to point 6: NYP acknowledged the point the complainant was making.
19. In relation to point 7: NYP explained that it had already responded to points 4 and 5 but was not treating point 3 as an FOIA request as it related to his personal data.

Scope of the case

20. The complainant contacted the Commissioner on 2 November 2016 to complain about the way his request for information had been handled.
21. The complainant explained that he would be using the same numbering as the internal review.
22. In relation to point 1: the complainant explained that he considers that NYP’s response to him was “*largely false and intended not only to deceive me, but the wider public.*” The Commissioner notes that this point relates to the late response of NYP’s response to the complainant’s

original request. She will deal with this separately. In relation to points 1(i), (ii) and (iii) the Commissioner considers that these points fall outside the scope of the request, therefore she will not consider them any further.

23. In relation to point 2: this relates to the lateness of NYP's response to the complainant and will be dealt with in relation to point 1. Therefore the Commissioner will not consider this point any further. In relation to point 2(b) the Commissioner notes that the complainant has stated that he considers that the information in the links provided does not answer his request and that the Deeds of Delegation he sought had either not been properly executed, or did not exist at all. The Commissioner notes that NYP did not provide the complainant with any links to information. Therefore, she considers this falls outside the scope of the present request and will not consider it any further. In relation to point 2(c) the Commissioner notes that NYP stated that, as explained to the complainant previously, there was no intention to vex, annoy or harass him. The Commissioner considers that this point falls outside the scope of the present request and therefore she will not consider it any further.
24. In relation to point 3: the Commissioner notes that the complainant refers to a letter from solicitors. The Commissioner considers that this falls outside the scope of the present request and therefore she will not consider it any further.
25. In relation to point 4: the Commissioner notes that in his request for an internal review the complainant asked NYP to:

" ... state, in open correspondence, on this website, whether this particular FOIA request is classified as 'vexatious'. If so, please state that reasons and reference your answer to Dransfield (Upper Tribunal before Judge Wikley [sic]) which is now the leading legal authority on the topic."
26. However, the Commissioner notes that in his complaint to her in relation to point 4, the complainant states that NYP had claimed that he had asked for personal information. He also invited the Commissioner to make a finding on this. The Commissioner notes that NYP explained to the complainant that it did not consider the present request to be vexatious for the purposes of section 14(1) (vexatious requests) of FOIA. Therefore she will not consider this point any further.
27. In relation to point 5: the complainant claimed that NYP's response was a deliberate and calculated falsehood. He explained that it was a verbatim extract from paragraph 3 of the Defence filed in the county court, which is a public document available to anyone on paying a copying fee at the court. He invited the Commissioner to make findings in light of the OPCC's response and pleadings at court. However, the

Commissioner considers that this falls outside of the scope of the present request and therefore she will not consider it any further.

28. In relation to point 6: the complainant explained that the data controller had misdirected herself under the FOIA by relying on the section 42 exemption. However, the Commissioner notes that NYP did not cite section 42 (legal professional privilege) of FOIA in the present case. She therefore considers that this point falls outside the scope of the present request and she will not consider it any further.
29. In relation to point 7: the complainant confirmed that this does not form part of his request therefore the Commissioner will not consider it any further.
30. The complainant also explained to the Commissioner that this complaint was the second (the first concerned an NYP data access outcome) in what was likely to be a lengthy series. He alleged that there was an established pattern of not only non-compliance with the FOIA and the College of Policing's authorised professional practice revealed in his extended dealings with the OPCC's and NYP's CDU, but a level of deceit and subterfuge that was entirely unacceptable in any public authority, let alone, as in this case, a policing body. He also explained that the Commissioner for her part, had been approached a number of times via social media in recent months to highlight deep concerns over persistent and long standing non-compliance by both data controllers. Her response had been weak to non-existent.
31. Furthermore, the complainant explained that his complaint assumed greater significance than would ordinarily be the case in that it takes on the status of "bellweather" as to her effectiveness as a watchdog. He finished by asking the following:

"It is requested that CDU disclose all their working papers, including internal/external emails, letter correspondence, briefing notes, meeting notes, PNB entries, day book entries and the like related to both the instant request and the subsequent internal review to both the ICO (unredacted) and myself (redacted only where necessary)."

32. The Commissioner will consider the following parts of the request: point 1 and whether NYP is correct to state that it does not hold the requested information. She will also consider the complainant's new request for information to her.

Section 10 – time for compliance

33. The complainant submitted a request on 1 July 2016 and NYP responded on 5 August 2016.

34. Section 10(1) of FOIA provides that a public authority has to respond to a request promptly and no later than the twentieth working day following the date of receipt.

35. The Commissioner considers that NYP has breached section 10(1).

Section 1 – information held/not held

36. 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.

37. 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.

38. 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.

39. The Commissioner is required to make a judgement on whether, on the balance of probabilities, the requested information is held or not.

40. NYP explained that it had searched the following departments: Professional Statistics, Human Resources, Joint Corporate Legal Services and the office of the Chief Constable. It also explained that these departments would have held the information as it relates to the exercise of powers and responsibilities at work.

41. With regard to electronic searches, NYP explained that it had searched its Human Resources file on its Q drive using the search terms "deeds" and "delegation" with no results. NYP also explained that it had conducted a search in the electronic folders on its Q drive in its staff office using the following search terms:

- Deeds of Delegation
- Deeds
- Deed
- Delegation
- Transfer of Appropriate Authority
- Appropriate Authority
- Recording and investigation complaints
- Police officer complaints
- Police officer investigations
- Chief Constable delegation of authority
- Chief Constable delegation of Appropriate Authority

- Chief Constable Transfer of Authority
 - Chief Constable deed of delegation
 - Chief constable deed of delegation
42. NYP also explained that its Human Resources departments had confirmed that it was not a subject matter that would fall under its responsibility. NYP also checked the job description of the Head of its Professional Standards Department and there was nothing in the job description to assist. Furthermore, NYP also confirmed that this was not a document that would be held in a personnel file.
43. In addition, NYP also explained that if it had held the requested information, it would have been held in both electronic and manual form. It also confirmed that it as it had never held the requested information it had not been deleted or destroyed.
44. NYP also explained that it had adhered to the principles of the Management of Police Information (MOPI) regarding information it holds. MOPI provides a way of balancing proportionality and necessity that are at the heart of effective police information management; it also highlights the issues that need to be considered in order to comply with the law and manage risk associated with police information.
45. The Commissioner enquired whether there was any business purpose for which the requested information should be held. NYP explained the some forces may hold the requested information for the purposes of showing that they were complying with the statutory framework for delegated powers as set out in the Police Reform Act 2002, the Police Complaints and Misconduct Regulations 2012, the Police Conduct Regulations 2012, the Police Performance Regulations 2012 and the Independent Police Complaints and Misconduct Contractors Regulations 2012.
46. The Commissioner also asked NYP whether there was any statutory obligation for it to hold the requested information. NYP confirmed that there was no known legal obligation for it to hold the requested information.
47. Furthermore, the Commissioner considered whether NYP had any reason or motive to conceal the requested information, but she has not seen any evidence of this.
48. Taking everything into account, the Commissioner does not consider that there is any evidence that show that NYP holds any recorded information in relation to this request.
49. The Commissioner is therefore satisfied that, on the balance of probabilities, NYP 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 of the FOIA.

New request

50. The Commissioner notes that the complainant has included the following request to her:

"It is requested that CDU disclose all their working papers, including internal/external emails, letter correspondence, briefing notes, meeting notes, PNB entries, day book entries and the like related to both the instant request and the subsequent internal review to both the ICO (unredacted) and myself (redacted only where necessary)."

51. The Commissioner considers that this is a new request which the complainant will need to submit to NYP. The Commissioner will not therefore consider this any further.

Other matters

52. The complainant requested an internal review on 2 August 2016 and added further points both on 5 August 2016. NYP responded on 16 September 2016. As part of his complaint to the Commissioner, the complainant stated that a public authority must deal with a request for an internal review within 20 working days from the date of receipt.

53. Part VI of the section 45 Code of Practice (the code) makes it good practice for a public authority to have a procedure in place for dealing with complaints about its handling of requests for information.

54. While no explicit timescale is laid down in the code, the Commissioner has decided that a reasonable time for completing an internal review is 20 working days from the date of receipt of the request for review. In exceptional circumstances it may be reasonable to take longer but in no case should the time taken exceed 40 working days.

55. The Commissioner is concerned that it took over 20 working days for the internal review to be completed.

56. The complainant has stated that an internal review should be carried out by a senior member of staff. The code states the following:

"Where the complaint concerns a request for information under the general rights of access, the review should be undertaken by someone senior to the person who took the original decision, where this is reasonably practicable. The public authority should in any event

undertake a full re-evaluation of the case, taking into account the matters raised by the investigation of the complaint”.

57. The Commissioner notes that the code states that an internal review should be carried out by someone senior to the person who took the original review, where it is “reasonably practicable”. However, she accepts that this might not always be possible. She is therefore satisfied that in circumstances where it is not practicable for someone senior to the original decision-maker to carry out an internal review, it can still be carried out, provided it is not done by the original decision-maker.

Right of appeal

58. 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

59. 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.

60. 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
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