

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 25 October 2017

**Public Authority:** Chief Constable of West Mercia Police  
**Address:** PO Box 55  
Hindlip  
Worcester  
WR3 8SP

### Decision (including any steps ordered)

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1. The complainant has requested information relating to the county of Worcestershire. West Mercia Police answered the request, but provided some information outside the 20 working day limit.
2. The Commissioner's decision is that West Mercia Police has breached sections 1(3) (clarification of a request) and 10(1) (time for compliance) of FOIA.
3. The Commissioner does not require West Mercia Police to take any steps as a result of this decision.

### Request and response

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4. On 6 July 2016 the complainant wrote to West Mercia Police (WMP) and requested information in the following terms:

*"My new requests are as follows:*

*In numerous responses to FOI requests such as [redacted - WMP reference number] you confirm that West Mercia Police hold and maintain premises search record folders which store a premises search record for all premises searched, subject to Officer completion, but this includes all searches under a warrant and also all PACE searches.*

*I assume these are the registers West Mercia Police are required to keep pursuant to The Police and Criminal Evidence Act 1984 (PACE)*

*CODE B Revised Code of Practice for Searches of Premises By Police Officers and the Seizure of Property Found by Police Officers on Persons or Premises. See*

*[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/306655/2013\\_PACE\\_Code\\_B.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/306655/2013_PACE_Code_B.pdf)*

*1. Please confirm the address of each sub-divisional or equivalent police station at which search registers maintained pursuant to the above paragraph 9.1 and/or referred to in your response to [redacted – WMP reference number] ["Search Registers"] are maintained within the county of Worcestershire. If none are maintained within Worcestershire please confirm where the Search Registers relating to searches within Worcestershire are held.*

*2. For each Search Register (that includes records relating to searches conducted within 2016) held within Worcestershire or held elsewhere in relation to searches carried out in Worcestershire please provide the following information:*

*2.1 The station at which such search register is held;*

*2.2 The number of search records contained within such register relating to the period 1 January to 30 June 2016,*

*3. In relation to each Search Register as defined in paragraph 2 above, please provide the following information in relation to the first five records held within the register relating to the said period of 1 January to 30 June 2016 (starting on 1 January 2016 and working forwards unless some other methodology for selecting five records is easier for you given the order in which search records are maintained or in order to ensure confidentiality):*

*3.1 the "time" of each search recorded (under paragraph 8.1 (ii) of the PACE code) in relation to each search but not the date or the duration.*

*3.2 the number of searches (being a number between 0 and 5 given the selection is being restricted to five search records) for which no list has been provided or referred to in accordance with paragraph 8.1 (vii) of the PACE code ie the number of searches which resulted in no items being found.*

*4. Please confirm the methodology used when replying to the request made by paragraph 3 above.*

*For avoidance of doubt this request relates to all types of searches recorded within the Search Registers. I understand from your response to FOI6597 that these include all searches under a warrant and also all PACE searches."*

5. WMP responded on 8 July 2016, noting that the complainant had submitted 3 requests about the same subject matter in a short space of time. It explained that in order to assist him and provide him with relevant information, it would need further information. WMP noted that the complainant had already requested information on search warrants in relation to firearms for the whole force area in 2015 and that it had advised him that the information was not held in a readily retrievable format, due to manual record keeping. It went on to explain to the complainant that he had then submitted a further request for a one month period in 2016 for the Droitwich area and it had explained that it did not hold that information.
6. WMP also noted that the complainant had intimated that the succession of requests being submitted were in order to reduce the request to a manageable level. It explained that the purpose of the present request was not clear ie the specific information that he was trying to obtain and the aim of requesting the information. WMP explained that in order for it to try and assist him further, he would need to advise specifically what he was trying to obtain, the reason the information was required and what it would subsequently be used for.
7. WMP also explained to the complainant that once the clarification had been provided, his request would then be considered and he would receive the requested information within the statutory timescale of 20 working days, subject to any exemptions.
8. Furthermore, WMP also warned the complaint that if he submitted any more requests on this subject matter, it would consider applying section 14(1) to it. The complainant responded on the same day, providing clarification but explaining that he did not think it was necessary and therefore the 20 working day limit stated from when it had received his request originally, on 6 July 2016.
9. On 15 July 2016 the complainant wrote to WMP asking for an acknowledgment and confirmation that it was dealing with his request within the 20 working day limit, starting on the date of his original request of 6 July 2016. The complainant also expanded on point 3 of his original request. He also explained that he did not believe that the whole county of Worcestershire comprised one "sub-divisional" area. He explained that he understood that "North Worcestershire" and "South Worcestershire" were separate divisions.
10. On 29 July 2016 WMP responded to the present request. It explained that although FOIA was applicant-blind, public authorities could ask questions about why the requested information is needed, in order to answer the request appropriately. It answered the request. WMP also explained that as the amendment regarding question 3 had been received after it had carried out the searches, it had not been included.

It informed the complainant of his right to submit a request in relation to the amended question 3.

11. The complainant requested an internal review on 15 August 2016 and complained about the following issues:
  - Alleged allegations made by WMP to him in its email of 8 July 2016.
  - WMP should not have demanded further information regarding clarification and its statement that it would calculate the 20 working day limit for receipt of the original request.
  - Failure by WMP to acknowledge receipt of his request until 29 July 2016.
  - Alleged repetition of allegations in its response of 29 July 2016.
  - WMP's refusal to provide details of more than 5 searches.
  - Stating that any other request for information from him would be refused, quoting grounds that did not apply to his case.
  - The complainant explained that he considered that point 6 meant that WMP was not applying FOIA rules and guidance correctly and that he would complain to the Commissioner.
  - WMP should have included information for both the South and North Worcestershire, not just the South.
  - WMP's insistence that any application for review must be sent by post and WMP's implied refusal to allow such applications made by emails.
12. Following an internal review WMP wrote to the complainant on 30 August 2016. It upheld its original position and also reiterated that as his amendment regarding the parameters of question 3 was received after the searches had been carried out, it had not considered the amendment. WMP also explained that it had asked for further information regarding the purpose of the request in order to assist with the provision of useful information. It acknowledged that FOIA was applicant-blind and that a public authority could not insist on knowing why applicants wanted information for, before dealing with a request. Additionally, WMP explained that it could take in the wider context in which the request was made and any evidence an applicant was willing to volunteer about the purpose behind the request.
13. WMP also confirmed that it had amended its policy and requests for internal review could be made by post or email.
14. On 15 September 2016 the complainant contacted WMP and asked why it considered that Kidderminster was not in Worcestershire.
15. On 3 October 2016 WMP responded. It accepted that information had only been provided in relation to the South Worcestershire area and information for the North Worcestershire area was omitted in error. It

apologised for this and any inconvenience caused by this oversight and provided the outstanding information for the North Worcestershire area.

## Scope of the case

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16. The complainant contacted the Commissioner on 30 November 2016 to complain about the way his request for information had been handled. He explained that:

- He did not need to clarify his original request of 6 July 2016.
- He had requested information relating to the county of Worcestershire and that information regarding the northern half of that county had not been supplied until 3 October 2016, 63 working days after he had submitted his request.
- The omission initially of information regarding North Worcestershire was not an innocent error or oversight on the part of WMP.
- WMP had failed to provide information relating to more than 5 entries; he had expected that there would be at least six separate sets of registers held at various locations across Worcestershire.
- WMP had been both aggressive and had made allegations in their communications with him.

17. The Commissioner will consider the way WMP handled the request, including the length of time taken to provide some of the requested information.

## Reasons for decision

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18. The complainant submitted a request on 6 July 2016. WMP asked for clarification of the request, which, although the complainant did not agree that it was needed, provided it on 8 July 2016.

## Section 1 – right of access to information

19. Section 1 of the FOIA states:

*“(1) 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.”*

20. With regard to the clarification of a request, section 1(3) states:

*“(3) Where a public authority –*

*(a) reasonably requires further information in order to identify and locate the information requested, and*

*(b) has informed the applicant of that requirement,*

*The authority is not obliged to comply with section (1) unless it is supplied with that further information.”*

21. The section 45 Code of Practice (the code)<sup>1</sup> provides guidance to public authorities on how to fulfil their obligations under the FOIA. Paragraph 8 of the code deals with clarifying a request. The Commissioner has also provided guidance (the guidance) on this.<sup>2</sup>
22. When a public authority receives a request which it considers needs clarification, it triggers the duty to provide advice and assistance<sup>3</sup>. The public authority must contact the requester within 20 working days, to ask for the clarification.
23. The code also explains that if a request makes specific reference to, or is clearly linked with, other correspondence between the authority and the requester, then the authority will need to read the request in that context. The Commissioner is satisfied that this is the case in this instance as the complainant makes references to other related requests he has made.
24. When seeking clarification the authority should ensure that:
  - its only purpose is to make sure that it understands what information the requester wants;
  - it does not give the impression that the requester is obliged to explain their reasons for making the request; and,
  - the individual's interest in the information is only taken into account if it helps to determine the scope of the request; it should not have any bearing on the authority's response.

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<sup>1</sup>[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/235286/0033.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/235286/0033.pdf)

<sup>2</sup> <https://ico.org.uk/media/for-organisations/documents/1162/interpreting-and-clarifying-a-request-foia-eir-guidance.pdf>

<sup>3</sup> Section 16 of FOIA.

25. Following the provision of reasonable advice and assistance, if the requester is still unable to supply the required clarification, the authority will not be expected to offer advice and assistance a second time.
26. When responding to a clarified request, the 20 working day limit starts the working day after the requested clarification has been received by the public authority.
27. In this case, the complainant submitted his request on 6 July 2016 and was asked to provide clarification on the same day. The complainant responded on 8 July 2016, providing the requested clarification although he explained that he did not consider that clarification was necessary. He also explained that he considered that the 20 working day time limit should start from the date of his original request ie 6 July 2017.
28. The Commissioner notes that in its response to the complainant of 8 July 2016, WMP explained that it considered that it needed extra information in order to comply with his request. It explained that in order to help, it needed him to advise what specific information he wanted, the reason that the information was required and what it would be subsequently used for. The Commissioner also notes WMP contacted the complainant for the clarification within the 20 working day time limit.
29. The Commissioner notes that in the complainant's response to WMP, he explained that he was interested in searches of premises carried out by it. He confirmed that his interest was in an overview rather than in any particular search. In addition, the complainant explained that he still had no idea what sort of number of searches were carried out by WMP. The complainant pointed out that WMP's response to his first request explained the way in which information was held by it and he therefore framed his second request so as to enable WMP to provide full answers. The complainant explained that in response to his second request, WMP stated that it held no search records. The complainant explained that in the present request, he had therefore expanded the search so as to ensure that it was able to provide relevant information to him.
30. The Commissioner considers that, given that the complainant referred to other related requests in his original request for information, WMP was entitled to ask further questions in order to clarify the request and notes that the complainant did provide further clarification.
31. However, the Commissioner also notes that WMP asked the complainant what he wanted the information for. A complainant does not have to specify why they want the information or what it will be used for, and the code explains that in cases where a public receives an unclear

request, public authorities should take care not to give the impression that the requester is obliged to explain their reasons for making the request. She considers that in this case, WMP appears to have made it a condition of answering his request, rather than asking the complainant if he would mind explaining why he wanted the information.

32. The Commissioner therefore considers that WMP has breached section 1(3).
33. However, she notes that in its internal review, WMP acknowledged that although a requester does not have to state why they want the information, they may choose to volunteer such information.

### **Section 10 – time for compliance**

34. Although WMP provide some information within the statutory time limit of 20 working days, it did not provide all of the requested information until 3 October 2016.
35. Section 10 of the FOIA states that:

*“(1) 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.”*
36. The Commissioner considers that WMP has breached section 10(1) as it did not provide all of the requested information to the complainant within the 20 working day timescale.
37. The Commissioner also notes that the complainant has complained about the number of searches being considered was only 5. However, she notes that in part 3 of his request, the complainant refers to five searches. She therefore considers that WMP was correct to refer to 5 searches.
38. The Commissioner notes that the complainant considers that the omission of information about North Worcestershire was not “an innocent error or oversight”. She notes that WMP apologised to the complainant for the oversight. She has not been provided with any evidence to support the complainant’s allegation that the omission was not an innocent error or oversight.
39. Furthermore, the complainant has not provided any evidence to support his allegation that WMP have been both aggressive and had made allegations in their communications with him.



## Other matters

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40. The complainant complained about the way in which WMP carried out internal reviews. He explained that he considered that the internal review in this case had not been carried out in a reasonable way.
41. The complainant explained that WMP does not have a process or procedure for reviewing its decisions in breach of the requirement imposed by the FOIA. He explained that although the FOIA may not specify the details of the procedure to be followed, it does require there to be a procedure. He argued that the person who had carried out the internal review had no authority to conduct such reviews and therefore it could not be right for her to be able to just make the rules up as she saw fit without even committing such "rules" and procedure made up by her in written form. Furthermore, the complainant argued that it was dishonest on the part of both the member of staff involved and WMP generally, for her to hold herself out as an appeals panel when in reality it was just her. He also argued that this appeared to be designed to deliberately mislead the public.
42. The Commissioner notes that the complainant has stated that FOIA requires there to be an internal review. This is not a statutory obligation under the FOIA. However, 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. The Commissioner notes that WMP does carry out internal reviews. She has considered the way in which the internal review carried out and considers that it has been done in a reasonable manner.
43. The Commissioner also notes that the code does not state how many people have to be present to carry out an internal review.

## Right of appeal

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44. 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](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

45. 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.
46. 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**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
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