

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 8 May 2017

Public Authority: Chief Constable of Dorset Police
Address: Force Headquarters
Winrith
Dorchester
Dorset
DT2 8DZ

Decision (including any steps ordered)

1. The complainant requested information from Dorset Police about the cost of insurance in relation to the defence of civil litigation claims. Dorset Police said it did not hold the requested information because this is held by the third party insurer.
2. The Commissioner's decision, on the balance of probabilities, is that Dorset Police does not hold the requested information. However, by failing to respond to the request within 20 working days of receipt, Dorset Police breached sections 1(1) and 10(1) of the FOIA (time for compliance).
3. The Commissioner does not require Dorset Police to take any steps as a result of this decision.

Request and response

4. On 31 August 2016 the complainant wrote to Dorset Police and requested information in the following terms:
"What is the financial cost of the annual insurance premium that relates to the insurance policy held by Dorset Police or the PCC that relates to the defence of civil litigation from members of the public against Dorset Police?"
5. Dorset Police responded late on 6 October 2016. It stated that it has a Joint Insurance Policy with Devon and Cornwall Police under which one

premium is paid to insurers for liability. It explained that as the apportionment of that insurance for each liability type is held by the third party insurer, Dorset Police does not hold the requested information.

6. The complainant requested an internal review on 28 October 2016. Following an internal review Dorset Police wrote to the complainant on 8 December 2016. It maintained its position but provided a weblink to its accounts.

Scope of the case

7. The complainant contacted the Commissioner on 9 December 2016 to complain about the way his request for information had been handled.
8. The Commissioner has considered whether, on the balance of probabilities, Dorset Police holds the requested information.

Reasons for decision

9. 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."*
10. The task for the Commissioner here is to determine whether, on the balance of probabilities, Dorset Police holds any information relevant to the request which it has not disclosed to the complainant. Applying the civil test of the balance of probabilities is in line with the approach taken by the First-tier Tribunal when it has considered the issue of whether information is held in past cases.
11. As part of her 'information not held' investigation, the Commissioner asked Dorset Police about the searches it had undertaken in order to respond to the complainant's request.
12. Dorset Police confirmed it had liaised with the office that deals with its insurance matters, which revealed that there is now a joint insurance arrangement with its brokers that also covers Devon and Cornwall Police. This office also confirmed that Dorset Police did not hold the information broken down in the way that the complainant had requested.

13. Dorset Police said that its separation from its insurers *"is deliberate and an established structure"*. It also said there is no business reason for the figures requested to be held or generated, and it confirmed that the figures could not be generated by Dorset Police without direct input from its insurers.
14. Although Dorset Police said the requested information is not held, it advised if it were to exist it would be held electronically. In trying to locate any relevant information, Dorset Police had therefore carried out searches of its IT systems including the intranet, emails and its 'X' drive which is a working drive, using a range of search terms including 'insurance', 'premium' and 'litigation' and combinations of the same. It advised:

"These searches identified general insurance guidance for staff and referred us to the insurance office. There were no details available that directly related to the request".

15. During the Commissioner's investigation, Dorset Police confirmed it had carried out further searches, principally to check whether or not relevant information had been acquired from its insurers to address any short term business need unrelated to the request but which might be relevant. It acknowledged that in the circumstances this scenario was unlikely, but nevertheless worth checking; no such information was identified.
16. In addition, Dorset Police stated that there are no statutory requirements for it to hold the requested information.
17. The complainant had contended that the breakdown of the requested information *"must be available for audit purposes"*. Dorset Police told the Commissioner that it had checked with both its Audit and Insurance officers on this specific question, and confirmed that the requested information is not required for audit purposes.
18. Finally, during the Commissioner's investigation, Dorset Police double-checked its response to the request with the Head of the Alliance Audit, Insurance and Strategic Risk Management Department who responded as follows:

*"The request asks only about civil litigation. In Insurance there is a **one liability policy that covers civil litigation** that covers Employers liability and Public liability as combined cover, and the policy in place covers both Forces and OPCC's [Office of the Police Complaint Commissioner]. The information on how the underwriters calculate the single premium, and any underlying attributions to each Force and sub class of liability insurance cover is held by the insurer. Therefore the answer provided is correct."*

Conclusion

19. From the explanations provided the Commissioner has concluded, on the balance of probabilities, that Dorset Police does not hold the requested information.

Section 1 and section 10 – Time for compliance

20. Section 1(1) of FOIA states that an individual who asks for information is entitled to be informed whether the information is held and, if the information is held, to have that information communicated to them.
21. Section 10(1) of FOIA provides 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. From the information provided to the Commissioner it is evident that Dorset Police did not respond to the complainant within the statutory timeframe in respect of this request.

Other matters

22. As well as finding above that Dorset Police is in breach of the FOIA, the Commissioner has also made a record of the delay in this case. This may form evidence in future enforcement action against Dorset Police should evidence from other cases suggest that there are systemic issues within Dorset Police that are causing delays.
23. Part VI of the section 45 Code of Practice makes it desirable practice that a public authority should have a procedure in place for dealing with complaints about its handling of requests for information, and that the procedure should encourage a prompt determination of the complaint. As she has made clear in her *'Good Practice Guidance No 5'*, the Commissioner considers that these internal reviews should be completed as promptly as possible. While no explicit timescale is laid down by FOIA, the Commissioner has decided that a reasonable time for completing an internal review is 20 working days from the date 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. The Commissioner is concerned that, in this case, it took over 30 working days for an internal review to be completed, despite the publication of her guidance on the matter.

Right of appeal

24. 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

25. 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.
26. 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

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