

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 14 December 2017

Public Authority: Independent Police Complaints Commission
Address: 90 High Holborn
London
WC1V 6BH

Decision (including any steps ordered)

1. The complainant has requested from the Independent Police Complaints Commission (IPCC) information broadly relating to the Mental Capacity Act 2005 and also for information relating to the care of his late father.
2. The Commissioner's decision is that the IPCC has correctly applied section 21 of the FOIA to the requested information. Therefore, the Commissioner does not require any further steps to be taken.

Request and response

3. On 20 March 2017 the complainant wrote to the IPCC and requested information in the following terms:

"I would like to make a subject access and also freedom of information request for information.

1. *I have enclosed some information that I have researched from the police reform act 2002, and the police and criminal evidence act 1984.*
2. *Can you tell me if someone under the mental capacity act 2005, and the person they look after lacks mental capacity and there is no one suitable to look after the person and there are conflicts within the family, should an independent mental Capacity Advocate be appointed, which I believe complies with section 44 of the mental capacity act.*

3. *When the person who has been arrested for wilful neglect of the person they care for under the mental capacity act and then later the person that has been removed from their home has been left to die, am I correct in thinking that the matters should be referred to the IPCC? And then the IPCC refer the matter over to the CPS?*
4. *The reason for my arrest under the mental capacity act 2005 was so the Police could search my property for medications which had been presented to the Police, when they had made a visit on 3 weeks earlier.*
5. *And given my father was neglected by a care agency, his own Doctor and a Care Home, which I took the blame for, the Police then refuse to investigate this matter, then can you tell me how the Police can arrest me for what I have not done, and at the same time refused to investigate the people who created the neglect of my father and leave me to suffer.*
6. *Please could you answer all of the above questions?"*

4. On 18 April 2017 the IPCC responded. It said that points 1, 4, 5 and 6 are not requesting information but that these points are the complainant's descriptions and comments on matters which he is or has been involved with.
5. The IPCC added that apart from points 2 and 3, the requests revolve around the interpretation of the Mental Capacity Act 2005 and to seek advice or opinion on the action that should/should not be taken by the police and other agencies in the described circumstances.
6. The IPCC applied section 21 (information reasonably accessible by other means) to the parts of the request relating to the legal rules that may be relevant in these matters.
7. On 22 April 2017 the complainant asked for an internal review.
8. On 24 May 2017 the IPCC wrote to the complainant with its internal review outcome. It upheld its decision that information in relation to parts 2 and 3 of the request is reasonably accessible and that the IPCC is not obliged under the FOIA to provide any information it holds.

Scope of the case

9. The complainant contacted the Commissioner on 26 May 2017 to complain about the way his request for information had been handled.

10. During the investigation, the case was discussed with the complainant and he confirmed the parts of his request that he required investigating are questions 2 and 3.
11. The Commissioner considers the scope of the case is to determine whether the IPCC was correct to apply section 21 to questions 2 and 3 of the request.

Reasons for decision

Section 21 - Information accessible to the applicant by other means

12. Section 21 of the FOIA provides an exemption to information which is reasonably accessible to the applicant otherwise than under section 1 of the FOIA. The purpose of the section 21 exemption is to ensure that there is no right of access to information via FOIA if it is available to the applicant by another route. Therefore, unlike most exemptions, the circumstances of the applicant may be taken into consideration.
13. Although the information may be available elsewhere, a public authority will need to consider whether it is actually 'reasonably accessible' to the applicant before it can apply section 21. Defining 'reasonably accessible' is open to interpretation, however where there is another existing, clear mechanism by which the particular applicant can reasonably access the requested information outside of the FOIA, it will be reasonably accessible to them.
14. In this case, the IPCC explained to the Commissioner that information to questions 2 and 3 of the request is reasonably accessible by other means.
15. Question 2 of the request

The IPCC said that question 2 is seeking advice on the interpretation of legislation and that the complainant is appealing against a decision which the IPCC had made. It is of the view that the complainant is using the FOIA to obtain a form of legal advice in which to make this challenge. The IPCC added that the complainant is not asking for information it holds on these pieces of legislation but it is asking for the interpretation of the legislation in regards to action that should or should not be taken by the police and other agencies in the circumstances described.

16. The IPCC reported that it had applied section 21 to question 2 and that the Mental Capacity Act 2005 and the explanatory notes on this is a piece of legislation which is in the public domain. It provided the Commissioner with links to websites detailing information that may answer the complainant's question.
17. The IPCC said it is extremely unlikely that it holds information that consists of an accurate, direct and comprehensive response to the set of circumstances described in the request. It explained that to the extent that it does hold relevant information, it exists in the form of the legal rules that would have to be applied in order to provide a solution to the complainant's question. The IPCC said that this information is available to the complainant and to other members of the public who wish to clarify, assert or defend their legal rights.

18. Question 3 of the request

The IPCC recommended that the complainant seek independent advice if he believes that the police have not complied with the law in this case. It said that it is unlikely to hold any directly relevant recorded information because of the specific information he has asked for and that this is not available under the FOIA as it relates to a unique set of circumstances. However, the IPCC considers that to the extent it does hold information from which it may be possible to formulate an answer to this specific question, it said that this is reasonably accessible to the complainant and that the exemption at section 21 is engaged.

19. The IPCC explained that it had not attempted to advise and assist the complainant by providing a speculative answer because it believes that such a response (even if it addressed a range of possible scenarios) would be likely to create false expectations as to the genuine legal position. It added that this could place the IPCC in a difficult situation should it be required to make a formal determination on this particular matter.
20. The IPCC explained that it would not help the complainant if a 'yes' or 'no' answer were to be provided and that doing so would be treated as providing legal advice.
21. Following receipt of the information provided by the IPCC relating to questions 2 and 3, the complainant was asked by the Commissioner to consider this information contained within the links and the recommended information held within the stated section of the IPCC statutory guidance - which the IPCC considered relevant to the request. The complainant responded and expressed his dissatisfaction with the information, he is of the view that it does not answer his questions.

The Commissioner's position

22. The Commissioner considered the information provided by the IPCC in regards to the Mental Capacity Act 2005. She notes that the paragraphs within the paper explains the definition of mental capacity and is therefore helpful in assisting the complainant's question 2. However, it is clear to the Commissioner that the question relates to advice on the interpretation of legislation and is not a question which asks for recorded information the IPCC holds on these pieces of legislation.
23. In regards to question 3 of the request, the Commissioner considered the information which the IPCC provided. She notes that the information at sections 7 and 8 of the statutory guidance provided, relates to the provisions determining which matters should be mandatorily referred to the IPCC and the conditions in which it may refer a matter to the CPS investigation.
24. The Commissioner acknowledges that the IPCC had, in addition, recommended to the complainant that he seeks independent advice concerning his beliefs and compliance with the law in this case. The Commissioner understands that it could place the IPCC in a difficult situation if it was required to make a formal determination on this particular matter.
25. She also accepts that false expectations to the legal position are likely to be created if the IPCC provided a speculative answer. More pertinently, the Commissioner considers that there would be limited recorded information held by the IPCC in relation to the specifics that the request seeks, and to that end, the statutory guidance previously referenced represents the framework against which any decision of this nature would be made.
26. In conclusion, the Commissioner is satisfied that information relevant to the request is available on the website within the explanatory notes (Mental Capacity Act 2005) as well as in certain sections of the IPCC's statutory guidance on their website. Therefore, the Commissioner considers that the IPCC correctly applied the exemption under section 21 of the FOIA to the information that is reasonably accessible by other means.

Right of appeal

27. 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

28. 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.
29. 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

Alun Johnson
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