

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 30 October 2017

Public Authority: Chief Constable of Greater Manchester Police
Address: Greater Manchester Police
Openshaw Complex
Lawton Street
Openshaw
Manchester
M11 2NS

Decision (including any steps ordered)

1. The complainant has requested copies of any policies or procedures Greater Manchester Police (GMP) follows regarding the entry and search of premises. GMP initially said that it did not hold the information described in the request. Following an exchange of correspondence, in which it said the complainant had submitted a new request, it disclosed information which fell within the scope of the original request.
2. The Commissioner's decision is that in failing to communicate to the complainant information described in the request, within the statutory timescale of 20 working days, GMP breached section 10(1) (time for compliance) of the FOIA. She also found a breach of section 1 (general right of access) of the FOIA.
3. The Commissioner does not require GMP to take any steps.

Request and response

4. On 18 April 2017, the complainant submitted a multi-part request to GMP.
5. On 19 April 2017, GMP and the complainant engaged in email correspondence about the request, the outcome of which was that only

question 3 would be proceeded with, the remaining questions being scoped out of the request.

6. The clarified request was as follows:

"We request provision of the following: -

...

3. Copy of GMP policy in relation to entry and search of premises. Relevant legislation, Police and Criminal Evidence Act 1984.

Under Chief Constables Orders and/or policy and procedure."

7. GMP responded to the request on 18 May 2017. It stated:

"GMP does not have a specific policy in relation to entry and searching of properties as we follow the legislation laid out in the Police and Criminal Evidence (PACE) Act 1984"

8. It said the relevant section of PACE was section 17, which it provided a web link to¹.

9. On 1 August 2017 the complainant wrote to GMP, referring it to information he had discovered, which he considered fell within the scope of his request and should have been disclosed to him.

"Can I point out to you the GMP Notice of Powers and Rights for householders following entry and search. At paragraph 13, (safeguarding conditions in relation to premises search), it refers officers Chief Constables orders. 2009/36.

Also I have discovered the existence of Chief Constables order headed "Property Damage Caused by Entry under Warrant, Section 17, Section 18 or Section 32 of PACE' that replaces information in Chief Constable's Order 2001/09, item 2'."

10. There followed a protracted exchange of correspondence between GMP and the complainant, during which GMP maintained: that the information cited by the complainant had been superseded by PACE and so fell outside of the scope of the request; that GMP derived all guidance on property entry and search directly and solely from PACE; and that no separate guidance or policy was currently in force. GMP also sought to argue that by asking for specific Chief Constable's Orders, the

¹ <http://www.legislation.gov.uk/ukpga/1984/60/section/17>

complainant's request had changed sufficiently to comprise a new request for information, something the complainant disputed. However, GMP said it would consider this new request.

11. On 8 September 2017, GMP issued the outcome of its consideration of the request. It provided the complainant with the text of Chief Constable's Order 2001/09 (which he had referred GMP to in his email of 1 August 2017), which it said was superseded by Chief Constable's Order 2014/35 (the text of which it also provided). GMP stated:

"There is no further information held regarding a policy for entry and search. As previously stated GMP follow PACE for entry and search.

However, in previous responses we have incorrectly stated that PACE "superseded" these Chief Constables Orders. However, that is not the case, as Chief Constables Orders would have to comply with PACE as opposed to being superseded by it. Such orders act as additional guidance for officers in situations where damage has been caused upon entry."

12. GMP subsequently confirmed to the complainant that Chief Constable's Order 2014/35 was still in force.

Scope of the case

13. The complainant contacted the Commissioner on 11 August 2017 to complain about the way his request for information had been handled. At that stage he had not received GMP's final response to the request.
14. GMP provided this on 8 September 2017. The complainant has indicated to the Commissioner that he is satisfied with the content of that response, but considers the time taken to provide it to be excessive. He also asked the Commissioner to examine GMP's decision to treat his request for the Chief Constable's Orders as a new request.
15. The Commissioner has therefore considered GMP's compliance with section 1 and section 10(1) of the FOIA.

Reasons for decision

Section 1 – general right of access

Section 10 – time for compliance

16. Section 1(1) of the FOIA states:

"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."

17. Section 10(1) of FOIA states 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".

18. GMP received the request on 18 April 2017. However, it immediately identified that it was necessary to clarify the request.

19. Where a public authority needs to clarify a request and has contacted the requester for further clarification, the date of receipt will be regarded as being the day it receives the information it requires to comply with the request. The 20 working day clock will start the day after the authority receives the necessary clarification.

20. GMP requested and received clarification of the request on 19 April 2017, and so the 20 working day clock started the following day, on 20 April 2017. GMP provided its response to the request on 18 May 2017, which was 20 working days after the day the request was clarified, and therefore within the time for compliance.

21. However, the response GMP provided on 18 May 2017 stated that it did not hold the requested information. GMP then treated the complainant's specific references to the Chief Constable's Orders as a new request, and it confirmed that it held that information on 8 September 2017, at which point it disclosed the information to the complainant. It also acknowledged that its previous assertion that no guidance or policy was in operation alongside PACE was incorrect.

22. This erroneous assertion was the basis for GMP's claim that it did not hold information in its response to the request submitted on 18 April 2017. The Commissioner considers that the wording of that request

(which included an explicit reference to Chief Constable's Orders) clearly sought the policy and procedures GMP followed with regard to search and entry. Having viewed Chief Constable's Order 2014/35 she is satisfied that it falls within the scope of that request. However, it was only disclosed to the complainant on 8 September 2017, ostensibly in response to his "new" request. The Commissioner considers that this information should instead have been disclosed in response to the request submitted on 18 April 2017 and that GMP should not have dealt with it as a new request for information.

23. The Commissioner's decision is, therefore, that by failing to confirm to the complainant that it held the requested information within the statutory timescale for compliance, GMP breached section 1(1)(a) of the FOIA. By failing to communicate the information to the complainant within the statutory timescale for compliance, GMP breached section 10(1) of the FOIA.
24. As well as issuing this notice, the Commissioner has made a separate record of the failure by GMP to respond to the complainant's request within the statutory timescale. This issue may be revisited should evidence from other cases suggest that this is necessary.

Other matters

Section 45 – internal review

25. There is no obligation under the FOIA for a public authority to provide an internal review process. However, it is good practice to do so, and where an authority chooses to offer one, the code of practice established under section 45 of the FOIA sets out, in general terms, the procedure that should be followed. The code states that reviews should be conducted promptly and within reasonable timescales.
26. The complainant wrote to GMP on 1 August 2017, explaining that he thought the response was incorrect. The Commissioner considers that, in order to comply with the code, GMP should have treated the approach as being a request for an internal review, and should have dealt with it accordingly, rather than interpreting it as a new request.

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

Samantha Bracegirdle
Senior Case Officer
Information Commissioner's Office
Wycliffe House
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Cheshire
SK9 5AF