

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 26 March 2018

Public Authority: Chief Constable of West Mercia Police

Address: West Mercia Police Headquarters

Hindlip Hall

PO Box 55

Worcester

WR3 8SP

Decision (including any steps ordered)

1. The complainant has requested information from West Mercia Police about the Worcestershire Safety Camera Partnership. West Mercia Police said that it did not hold the requested information.
2. The Commissioner's decision is that, on the balance of probabilities, West Mercia Police did not hold the requested information.

Background

3. Safety Camera Partnerships (also known as Safer Roads Partnerships) are locally organised, multi-agency partnerships aimed at improving road safety through the use of cameras.
4. West Mercia Police's ("WMP") website contains the following statement about the Safer Road Partnership scheme it operates.

"The aim of the Safer Roads Partnership is to reduce the number of people killed and injured on the roads across Herefordshire, Shropshire, Telford & Wrekin, Warwickshire and Worcestershire.

The Safer Roads Partnership is part of Warwickshire Police and West Mercia Police. Alongside operational teams within both forces, the Safer Roads team delivers the Roads Policing and Road Safety Strategy.

Working with our partner agencies across the four counties, the Safer Roads team aims to reduce collisions and casualties on the roads through speed enforcement, engineering, road safety education, training courses and awareness raising campaigns.”¹

Request and response

5. On 11 May 2017, the complainant wrote to WMP and requested information in the following terms:

“1) Who is the CEO of SCP [Safety Camera Partnership] in Worcestershire?

2) Are the regulations that Worcestershire SCP follow different in other parts of the UK or generic?

3) Where does the money go from that is collected in speeding fines in a itemised document visible in this public domain?

3) [sic] Why is their no address details or phone number to contact safer camera partnership for SCP in Worcestershire ? A email address does not suffice requirements of all people who are not computer literate. (Po Box number is not administrable either with lawful documents).

4) What regulations are Worcestershire SCP following and who made these regulations up with contact details visible to the public on this public domain?

5) As West Mercia Police are in partnership with SCP, what part of law/legislation that shows this is not a conflict in law?”

6. WMP responded on 19 May 2017. It addressed each question individually, saying that it did not hold recorded information from which the request could be answered. For questions 2) and 4) (applicable regulations) it also stated that its own Safer Roads Partnership initiative complied with national traffic law legislation and Court procedural legislation in all enforcement activity (although operational guidance also existed). For question 3) (speeding fines) it referred the complainant to a response it had provided to a previous request he had

¹ <https://www.westmercia.police.uk/article/38869/About-Safer-Roads-Partnership>

submitted, which had also confirmed that it did not hold the information. It invited the complainant to request an internal review if he was unhappy with the response.

7. The complainant asked for an internal review on 25 May 2017. However, on 31 May 2017 WMP informed him that it would not be conducting an internal review. There was a further exchange of correspondence, in which WMP maintained this stance.

Scope of the case

8. The complainant contacted the Commissioner on 27 June 2017 to complain about the way his request for information had been handled. He stated that WMP had "*declined to answer*" the questions in his request.
9. The Commissioner contacted WMP on 19 October 2017 and asked it to conduct the internal review that the complainant had requested. However, on 15 November 2017 WMP informed the Commissioner that it would not be conducting an internal review.
10. In the circumstances of this case, the Commissioner has exercised her discretion to accept the complaint without WMP having conducted an internal review.
11. The Commissioner has considered in this decision notice whether WMP complied with section 1 of the FOIA. She has commented on its refusal to conduct an internal review in "Other matters".

Reasons for decision

Section 1 – general right of access

12. Section 1(1) of the 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.
13. The complainant is concerned that WMP has not answered his questions because it says that it does not hold recorded information from which the requests could be answered. In cases where there is some dispute between the amount of information a public authority says it holds and the amount of information that a complainant believes might be held, the Commissioner – following the lead of a number of First-tier Tribunal decisions – applies the civil standard of the balance of probabilities. In

essence, the Commissioner will determine whether it is likely or unlikely that the public authority holds information relevant to the complainant's request.

14. The Commissioner will consider any evidence or arguments supplied by the complainant. She will also consider the actions taken by the public authority to check whether the information is held and any other reasons offered by the public authority to explain why the information is not held. She will also consider any reason why it is inherently likely or unlikely that information is not held. For clarity, the Commissioner is not expected to prove categorically whether the information is held, she is only required to make a judgement on whether the information is held on the civil standard of the balance of probabilities.

The complainant's position

15. The complainant asserted that WMP had not answered the questions in his request but offered no explanation as to why he believed it held the information he has asked for.

WMP's position

16. WMP addressed each of the questions contained in the request, in turn.

1) Who is the CEO of SCP in Worcestershire?

17. WMP explained to the Commissioner that "Worcestershire SCP" is not a distinct legal entity, and that no CEO exists. Thus, it held no recorded information from which the request could be answered.

18. It explained that Worcestershire falls within the scope of the Safer Roads Partnership jointly operated by WMP and Warwickshire Police. Each police force retains line management for any of its officers assigned to the Safer Roads Partnership, and both police forces are headed by a Chief Constable, not a CEO.

19. WMP also said that its website explained the structure and oversight of the Safer Roads Partnership, and that the complainant had already had it explained to him, in its response to a previous FOIA request.

2) Are the regulations that Worcestershire SCP follow different in other parts of the UK or generic

20. WMP said that having made enquiries, it had established that the force only holds information about its own Safer Roads Partnership procedures. It does not hold information relating to the Safer Roads Partnerships operated by other UK police forces. Thus, WMP held no recorded information from which the request could be answered.

21. WMP noted that relevant information held about the WMP's Safer Roads Partnership was provided to assist the applicant.

3) Where does the money go from that is collected in speeding fines in a itemised document visible in this public domain.

22. WMP said that the complainant had previously been provided with this information, when it responded to an earlier FOIA request he had made. In that instance, WMP advised that all fines generated from motoring offences nationally are remitted to the Treasury, and that no fines revenue is retained by WMP. WMP referred the complainant to that response, when responding to this request.

23. Regarding the request to see an "itemised document", WMP was satisfied that it held no specific recorded information from which it could answer this part of the request. It explained that as it does not retain any speeding fines revenue, it does not hold any corresponding itemised document.

3) [sic] Why is their no address details or phone number to contact safer camera partnership for SCP in Worcestershire.

24. WMP referred the Commissioner to its response in respect of question 1), which clarified that "Worcestershire SCP" does not exist. It therefore said it did not hold any recorded information as to its address or phone number.

4) What regulations are Worcestershire SCP following and who made these regulations up with contact details visible to the public on this public domain.

25. Maintaining its position that as "Worcestershire SCP" does not exist, WMP could not hold information on it, WMP nevertheless referred the Commissioner to the response it provided in respect of the question 2), which had been to provide general information about the legal framework within which the Safer Roads Partnership operated.

5) As West Mercia Police are in partnership with SCP, what part of law/legislation that shows this is not a conflict in law

26. Having conducted searches, WMP was satisfied that it held no recorded information as to what legislation brought forth the Safer Roads Partnerships initiative.

The Commissioner's view

27. The Commissioner has considered the explanations provided by WMP, particularly in light of the way the requests were worded.

28. First, she considers that the requests as a whole were largely based around assertions that were demonstrably incorrect (that Worcestershire operated a discrete Safer Roads Partnership scheme, overseen by a CEO; that the Safer Roads Partnerships are governed by regulations). From this, she considers it was not possible for WMP to answer questions 1), 2), 3) (2nd) and 4), as they all asked for information about "Worcestershire SCP" and the regulations governing it.
29. As explained in paragraphs 6, 17 and 18, above, "Worcestershire SCP" does not exist. The county of Worcestershire falls within the scope of the Safer Roads Partnership jointly operated by WMP and Warwickshire Police. Therefore, the Commissioner considers that the correct response in respect of questions 1), 2), 3) (2nd) and 4) was that no information was held.
30. The Commissioner does, however, consider it regrettable that WMP did not clarify the position with regard to "Worcestershire SCP" when responding to the request. She considers that the complainant's understanding of the "not held" response would have been enhanced if the explanation given above had been provided to him. It would have given him the opportunity to reword the requests, if necessary, and it may have managed his perception that WMP was being evasive and uncooperative.
31. Nevertheless, the Commissioner recognises that while the provision of the explanation would have been best practice, WMP's failure to provide it does not constitute a breach of section 16 (advice and assistance) of the FOIA.
32. Turning to question 3), WMP referred the complainant to a previous FOIA response it had sent him. The Commissioner notes that as part of an FOIA request submitted on 25 April 2017, the complainant had asked WMP for:

"...an official document of where all the money from motoring fines goes to in the interests of public interests and safety and this document can be verified with a unaffiliated organisation."
33. In its response on 16 May 2017, WMP told the complainant that it held no recorded information from which the request could be answered as *"...all fines generated from motoring offences nationally are returned to HM Govt Treasury, no fines revenue is retained in force."*

34. The Commissioner understands² that speeding fines are paid by motorists to the National Fixed Penalty Office, remitted to HM Courts and Tribunals Service, and thence passed to the Government's Consolidated Fund. She has also found in other decision notices that such information is not routinely held by police forces³. She is therefore satisfied in this case that, on the balance of probabilities, WMP does not hold the information requested in question 3).
35. With regard to question 5) (and particularly to the wording of the request) the Commissioner is satisfied from the explanation WMP provided that, on the balance of probabilities, it holds no information falling within the scope of the request, and that there is no reason to believe that it would hold such information. She finds it highly unlikely that WMP would record information as to what legislation "shows" that WMP's involvement in the Safety Camera Partnership is "not a conflict in law".

Other matters

Section 45 code - internal review

36. In its response to the request, dated 19 May 2017, WMP invited the complainant to request an internal review. The complainant did so on 25 May 2017, stating,

"Are you saying the Safety Camera Partnership is not regulated by a Chief Executive Officer and that the law does not apply to them?"

37. He also made reference to other matters he had raised with WMP.

38. On 31 May 2017, WMP informed the complainant it would not be conducting an internal review. It said:

"Please be advised that your correspondence below has not be dealt with as an internal review. An internal review provides the opportunity

²

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/648328/FOI2017-13509_-_Revenue_collected_in_fines_and_penalties_from_driving_offences.pdf

³ For example, FS50673865

to have the decision made when processing a FOI request to be reviewed.

In this instance, the information held was provided in response to this request, and therefore the request was answered and there is nothing to review.

Please be advised that this office does not deal with complaints or enter into correspondence regarding complaints or issues that individuals may have with the force or the law. Should you wish to make a complaint about the force please follow the appropriate procedure:

...

Freedom of Information legislation cannot be used to circumvent normal business processes in place to deal with issues or complaints, and this office will not comment or respond to additional enquiries submitted outside of a FOI request. These should be directed as appropriate."

39. Despite the complainant's evident dissatisfaction, WMP continued to maintain that it would not conduct an internal review.
40. The complainant referred the matter to the Commissioner, and in the first instance the Commissioner asked WMP to conduct the internal review that it had initially offered the complainant.
41. WMP asked the Commissioner for advice on how to approach this. The Commissioner explained that an internal review should consider whether the request had been handled correctly. Since each question was refused on the grounds that no specific recorded information was held, the review should consider (amongst other things) the process by which WMP came to hold that view – particularly whether searches were conducted for information, how thorough and extensive they were and whether WMP had any specific reason for believing that no information would be held.
42. Had WMP conducted the internal review, this would have been an opportunity for it to address the shortcomings identified in paragraph 30, above. However, on 15 November 2017 WMP informed the Commissioner that, on reflection, it would not be conducting an internal review:

"...in this instance [we] can not see any useful purpose in conducting an internal review of a request where no information is held, where the force has already provided additional information where it was able to, and where the applicant will still remain dissatisfied."

43. 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 45⁴ of the FOIA sets out, in general terms, the procedure that should be followed.
44. By offering an internal review as part of its standard response to FOIA requests, but declining to conduct one in this particular case, the Commissioner notes that WMP did not act in accordance with the Section 45 code.

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https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/235286/0033.pdf

Right of appeal

45. 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

46. 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.
47. 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
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SK9 5AF