

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 26 March 2019

**Public Authority:** Office of the Police and Crime Commissioner for Hampshire

**Address:** St George's Chambers  
St George's Street  
Winchester  
Hampshire  
SO23 8AJ

**Complainant:**

### Decision (including any steps ordered)

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1. The complainant has requested information about any affiliation the Police and Crime Commissioner for Hampshire may have, or might have had, with Freemasonry.
2. The Commissioner decided that the Office of the Police and Crime Commissioner for Hampshire did not hold relevant information and therefore that it had complied with section 1(1) FOIA.
3. The Commissioner does not require the public authority to take any steps to comply with the legislation.

### Request and response

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4. On 5 October 2018, in a letter addressed by name to the Police and Crime Commissioner for Hampshire ("the PCC"), the complainant made an eight part request for information. In subsequent correspondence,

which included a response of 31 October 2018 and an internal review letter dated 13 November 2018, the Office of the PCC ("OPCC") provided responses to all eight parts.

5. The complainant remained deeply concerned, particularly with the answer he had received to part five of the request, which was:

*"5) In your published statement of interests, you omitted to list your membership of the Freemasons, which is a charity. Please explain this omission and advise the person(s)/ entity to who/ which [sic] your statement was submitted."*

### **Scope of the case**

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6. The complainant contacted the Information Commissioner on 22 and 28 November 2018 to complain about the way his request for information had been handled.
7. He said that the PCC obviously knew if he was a Freemason or not and his information request had been addressed to the PCC personally by name. He asked the Information Commissioner to instruct the PCC to comply with his information request honestly and without wilful evasion.
8. In her investigation, the Commissioner considered what information, if any, OPCC held about any affiliation the PCC might, or might not, have or have had with Freemasonry.

### **Reasons for Decision**

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#### **Section 1 – general right of access**

9. Section 1(1) FOIA states that any person making a request for information is entitled to be informed by the public authority whether it holds that information and, if so, to have that information communicated to him.
10. In this case, the complainant says that the OPCC holds information from which it can answer the request. OPCC's position is that it does not.
11. In cases where there is some dispute about the amount of information located by a public authority 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

determines whether or not it is likely that the public authority holds information within the scope of the complainant's request.

12. The Commissioner considered the complainant's evidence and arguments. She also considered representations from, and the actions taken by, OPCC to check whether the information was held and any other reasons offered by the public authority to explain why the information was not held. She also considered if there were any reasons why it was inherently likely or unlikely that information was, or was not, held. For clarity, the Commissioner makes clear that she 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 proof of the balance of probabilities.

*The complainant's position*

13. The complainant asked the Commissioner to instruct/ direct the PCC to comply honestly with his request and without wilful evasion. He said that the PCC obviously knew if he was a Freemason and the information request had been addressed to him personally. He argued that it was ludicrous for OPCC to say it had no record of any affiliation of the PCC with Freemasonry when it already held a record of his other charitable, and also some political, affiliations. The complainant asked: "*so why would he not declare his Freemason affiliation?*"
14. The complainant said that the OPCC statement, that it did not hold any information from which point 5) of the request could be answered, was "*unacceptable*". He asked how it was possible for OPCC not to hold any information about the PCC and his [alleged] membership of Freemasonry. The PCC was, he said, head of the OPCC – how could he possibly not know if he was a Freemason or not?
15. The complainant told the Information Commissioner that she did not appear to realise her obligation to the public. He recommended to the Commissioner that she should give his concern a considered and cogent response.
16. The complainant said that he had not written to OPCC but to the PCC directly; if OPCC had no record of an affiliation it was because the PCC had failed to declare it. He said that all he wanted to know was whether the PCC was a Freemason or not. He said: "*... a Freemason cannot lie about his membership if asked the question. So ask him – what has he got to hide?*" He added that it was disingenuous for the Information Commissioner to say that the PCC's staff could not walk to his office and ask him directly. It was, in his view, their obligation to support the PCC and remind him of his legal obligations to the public. He added that Freemasonry existed for the benefit of its members – not that of the

general public. Membership of Freemasonry was, he said, a matter for grave public concern when Freemasons entered public service.

17. The complainant did not offer the Information Commissioner any reasons as to why the PCC would be likely to hold the requested information rather than having the ability to create it.

*The OPCC's position*

18. OPCC explained that the post of PCC was an elected position. Any biographical information it held about the PCC would therefore either have been obtained from other public sources before his election or created after it or from any declarations that the PCC had made upon taking office. Such information would be held by the OPCC communications and governance teams.
19. OPCC said that all its business was conducted on networked resources. Use of freestanding computers for official business was strictly forbidden. All information was held electronically. Any manual forms or records were digitised and the originals destroyed at the earliest opportunity, unless there was a statutory reason for keeping them.
20. OPCC conducted searches across its networked systems. The searches did not return any information from which it could ascertain whether the PCC was, or had ever been, a Freemason.
21. OPCC said that the electronic searches carried out by its communications team were for: any profile documents it held about the PCC using the search term "Freemason"; press cuttings in which the PCC might have been quoted as saying the word "Freemason"; and, for any social media postings that might have addressed the question.
22. OPCC's governance team also carried out an electronic search for any official documentation in which the PCC may have declared any current or previous membership of the Freemasons, with particularly focus on the Register of Interests, which he had signed on taking office.
23. OPCC said that the current version of the Register of Interests form was available to members of the public on its website<sup>1</sup>. Current membership of a Freemasons' Lodge would be a disclosable interest under Section 5

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<sup>1</sup> <https://www.hampshire-pcc.gov.uk/wp-content/uploads/2017/08/NOTSETOL-MFP-1ANOTSET.pdf>

of the form. Consequently OPCC told the Information Commissioner that it would expect any current membership held by the PCC to be disclosed there. The Information Commissioner saw that section 5 of the current OPCC Register of Interests form does not contain such a declaration.

24. OPCC said that there was no business purpose for which the requested information would routinely be held. While it was required to maintain the Register of Interests, which would contain details of any current Freemason membership (if held), there was no requirement on OPCC to establish and publish information about the PCC's previous membership status, if any.

*The Commissioner's conclusion*

25. When, as in this case, the Information Commissioner receives a complaint that a public authority has not disclosed some or all of the information that a complainant believes it holds, it is seldom possible to prove with absolute certainty that it holds no relevant information. The Commissioner is therefore required to make a finding on the balance of probabilities.
26. The Information Commissioner is satisfied that OPCC has provided a detailed and cogent explanation for believing that it does not hold the requested information. OPCC has explained how information is held and why the particular searches it had carried out would be expected to return any relevant information held. OPCC has also explained that any current Freemasonry membership would be reflected in the Register of Interests which OPCC publishes. The Information Commissioner also noted that OPCC has no statutory obligation to collect and retain information about any previous Freemasonry membership status.
27. The complainant has expressed disbelief that the PCC does not hold information from which the request can be answered. He has not explained why he believes such information would be held. Instead, he has suggested that OPCC should simply ask the PCC the question and provide the complainant with the response.
28. FOIA gives an individual the right to access recorded information held by public authorities. It does not require public authorities to create new information or to answer questions, provide explanations or give opinions, unless this is recorded information that is already held. Thus, FOIA does not require OPCC to take the complainant's suggested course of action.
29. The Information Commissioner is satisfied that OPCC has demonstrated that it has reasonable grounds for considering that the searches it

conducted would have revealed any relevant information, and that its belief that it does not hold the requested information is reasonable.

30. Taking all of the above into account the Commissioner was satisfied that, on the balance of probabilities, OPCC did not hold any information from which it could have answered part 5) of the request and therefore that it did not breach section 1(1) FOIA.

## Right of appeal

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31. 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)

32. 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.
33. 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 .....**

**Dr R Wernham**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**