

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 19 December 2019

Public Authority: Hampshire Police and Crime Panel

Address: Elizabeth II Court

The Castle

Winchester

Hampshire

SO23 8UJ

Decision (including any steps ordered)

1. The complainant requested from Hampshire Police and Crime Panel (HPCP) information relating to its organisational matters, expenses, complaints management, budget and terms of reference. HPCP provided the complainant with information in relation to some parts of the request and stated that it did not hold information for the remaining parts of the information request.
2. The Commissioner's decision is that HPCP, on the balance of probabilities, has provided all the information it held within the scope of the remaining part of the request.
3. The Commissioner does not require HPCP to take any steps as a result of this decision notice.

Background information

4. The request for information was submitted to HPCP. Hampshire County Council (the Council) provides certain administrative services to HPCP, which includes responding to requests for information made to HPCP. In this capacity the Council handled the complainant's request. However for the purpose of the FOIA, the responsible public authority in this case is HPCP.
5. According to its website, HPCP is made up of representatives from each of the local authorities in the Hampshire Constabulary area, which includes the cities of Portsmouth and Southampton, the eleven Hampshire Borough and District councils, and the Counties of Hampshire and the Isle of Wight.
6. As HPCP comprises representatives of multiple local authorities, it is a public authority as set out in Schedule 1, Part II, paragraph 25 of the FOIA.

Request and response

7. On 19 November 2018, the complainant wrote to the chairman of HPCP and requested information in the following terms:

"Please provide the following:

- 1) Your name and who appointed you Chairman of HPCP*
- 2) Your Terms of Reference*
- 3) All your affiliations, political, charitable, personal, employer, local government, national government, Hampshire Constabulary, Armed services, Freemasons, and any other relevant affiliations.*
- 4) Who is your employer?*
- 5) The affiliations of the person(s) who appointed you.*

In respect of the other HPCP members and its Sub Committee:

- 6) The names of all members of Hampshire Police and Crime Panel.*
- 7) For each panel member, their affiliations as described above in 3).*
- 8) The name(s) of the persons/affiliations who appointed them*
- 9) The employer of each member*

Expenses

10) Please provide a copy of the expense claims of all above for the past two years

11) The identity of the entity/organization who received and approved those expense claims.

Complaints Sub Committee

12) Please provide the names if the Sub Committee Chair and members

Budget Management

13) Who/what provides the budget/funding for the HPCP and its Sub Committee?

14) Who/what administer the operation of HPCP/Sub Committee?

15) Who/what provides the facilities for the operation of HPCP/Sub Committee?

Terms of reference

16) Please provide a copy of the Terms of Reference for the HPCP

17) Please provide a copy of the Terms of Reference for the HPCP Sub Committee"

8. HPCP responded on 20 December 2018. In this response the HPCP:
 - answered questions: 1, 4, 8, 13, 14 and 15;
 - cited section 21 as its basis for refusal to respond to questions: 2, 3, 5, 6, 10, 11, 12, 16 and 17; and
 - stated that it did not hold information in relation to questions 7 and 9.
9. Remaining dissatisfied with the response, on 6 January 2019 the complainant requested an internal review. Among other things, the complainant stated that he did not have online facilities to access the information contained in the links provided.
10. Following an internal review HPCP wrote to the complainant on 22 March 2019. It provided him with the information previously withheld under section 21 in the form of appendixes and by copying the information contained in the previously provided links into the content of the letter

giving the outcome of its internal review. However, HCPC indicated that it considered this a discretionary disclosure as it maintained that section 21 was engaged in relation to this material, and that it did not hold information in relation to questions 7 and 9.

Scope of the case

11. The complainant contacted the Commissioner on 7 January 2019 to complain about the way his request for information had been handled. He claimed that HPCP had not appropriately addressed the questions included in his request and that HPCP was incorrect to cite section 21 for a number of parts of his request.
12. As noted above questions 1, 4, 8, 13, 14 and 15 were answered by HPCP. Given this, the complainant was asked by the Commissioner to state what his grounds for complaint were in relation to those requests. In response to this, the complainant did not give any clear grounds for complaint. Therefore, the Commissioner considered that there was nothing to be investigated regarding these questions and they are not covered in the analysis below.
13. In addition, as the information withheld under section 21 of the FOIA in the HPCP's initial response was subsequently disclosed to the complainant at the internal review stage, 2, 3, 5, 6, 10, 11, 12, 16 and 17 are also not covered in the analysis below. Under section 50(2)(c), the Commissioner declines to make a decision in relation to those parts of the request.
14. During the course of the Commissioner's investigation, HCPC identified further information held that was within the scope of questions 7 and 9 and provided a redacted copy of that information to the complainant. The information disclosed consisted of notifications by two members of Hampshire County Council of their disclosable pecuniary interests.
15. When asked by the Commissioner to identify what information he believed to be outstanding, the complainant stated that he was not satisfied with the information disclosed. Whilst the complainant did not specify any reasoning for his dissatisfaction, the Commissioner has considered whether the HPCP identified all the information it held within the scope of questions 7 and 9.
16. Therefore, the following analysis considers whether, on the balance of probabilities, HPCP held further information to that which it disclosed within the scope of questions 7 and 9 of the information request.

Reasons for decision

Section 1 – Determining whether further information is held

17. Section 1 of the 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."

18. In this case, HPCP asserted that it does not hold further information in recorded form in relation to questions 7 and 9, to that which was disclosed.

19. As explained above, the complainant stated that he remained dissatisfied but did not specify what information he considered to be outstanding.

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

21. The Commissioner will consider the complainant's evidence and arguments. She will also consider the actions taken by HPCP to check whether the information is held and any other reasons offered by HPCP to explain why the information is not held. In addition, she will consider any reason why it is inherently likely or unlikely that information is not held.

22. 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 proof of the balance of probabilities.

23. As part of her investigation, the Commissioner wrote to HPCP requesting submissions in respect of a number of questions relating to the allegations raised by the complainant. The Commissioner's questions were focused on HPCP's endeavours in providing the requested information to the complainant, its searches conducted in relation to the

complainant's request, and whether any of the information falling within the scope of the requests was deleted or destroyed.

24. In its response to the Commissioner, HPCP explained that it approached relevant Council officers who are responsible for the HPCP administration within the Council's Democratic and Members Services team. This team is "*responsible for collecting this information for Hampshire County Council's Elected Members. They help facilitate multiple panels and other similar services and would be aware of any information relating to the HPCP.*" The responsible officers confirmed that the information specified in question 7 and 9 is not collected by this team "*as it is not a requirement for the Police and Crime Panel to do so as a Statutory Joint Committee*".
25. HPCP asserted that it advised the complainant that where its members are elected within other local authorities, this information may be already public but is not recorded by HPCP. It also confirmed that it does not hold information in recorded form within the scope of questions 7 and 9 for the members of HPCP who are not elected representatives.
26. HPCP explained that during the time it was preparing the response to the Commissioner it conducted a more detailed search in the Council's Democratic and Members Services document management system. These searches identified information held related to two independent members of HPCP.
27. As described above in paragraph 14 of this decision notice, HPCP provided the complainant with a copy of the information subsequently identified.
28. HPCP confirmed that no information held within the scope of the request was deleted or destroyed.
29. HPCP asserted that it maintains a register of its members and co-opted members for the duration of membership to HPCP as required by the Localism Act 2011. It stated that "*the retention of historic records is not required.*" It reiterated that the information requested in questions 7 and 9 for the elected members of the Council who are members of HPCP and the co-opted members were provided to the complainant.
30. HPCP stated that there is no business purpose for which the requested information should be held.
31. Regarding the statutory requirements to hold the information requested, HPCP cited the Localism Act 2011, Chapter 7, section 29 which requires the Council to maintain a register of interests for its elected members and co-opted members. HPCP reiterated that this part of the information requested has now been provided to the complainant.

32. Having considered the HPCP's response, and on the basis of the evidence provided to her, the Commissioner is satisfied that, on the balance of probabilities, HPCP did not hold further information within the scope of the request.
33. The Commissioner, therefore, considers that HPCP complied with its obligations under section 1(1) of the FOIA.

Right of appeal

34. 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@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

35. 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.
36. 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

Ben Tomes
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