

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 9 January 2020

**Public Authority:** Chief Constable of Staffordshire Police

**Address:** Weston Road

Stafford

ST18 0YY

#### **Decision (including any steps ordered)**

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1. The complainant requested information relating to material referred to in a published report.
2. During the course of the Commissioner's investigation, Staffordshire Police revisited its handling of parts (1) and (2) of the request. It confirmed it held information within the scope of part (1) of the request but denied holding information within the scope of part (2) of the request.
3. The Commissioner investigated whether Staffordshire Police held information within the scope of part (2) of the request.
4. The Commissioner's decision is that, on the balance of probabilities, Staffordshire Police did not hold information within the scope of that part of the request.
5. However, the Commissioner finds that Staffordshire Police breached sections 1(1)(a) and 10(1) of the FOIA by not confirming whether it held the requested information within the statutory time limit.
6. The Commissioner requires no steps to be taken as a result of this decision.

## Request and response

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7. On 14 March 2019, the complainant wrote to Staffordshire Police and requested information in the following terms:

*"Operation Purple was a GMP [Greater Manchester Police] lead review into the circumstances leading up to ...*

*...*

*Under the provisions of the Freedom of Information Act, I would like to request the following information:-*

*1. A copy of the information listing the "implied threat" to the officer.*

*2. A copy of the Risk Assessment conducted into the "implied threat" and referred to in Opeartion [sic] Purple report.*

*3. Details of any steps taken to mitigate the risk posed to the officer or any other officers covered by the "implied threat".*

8. The request was made using the 'whatdotheyknow' website.
9. Staffordshire Police sought clarification from the complainant, which he provided on 18 March 2019:

*"To clarify the point you raise, within the Operation Purple final report there are references to an "implied threat" to the deceased officer, I am requesting the information that relates to that "implied threat".*

*To avoid any confusion I am seeking the information detailing any such threat, and NOT the source of such information, therefore I am not seeking to identify any informant or confidential source, whether human or technical".*

10. Having received that clarification regarding the request, Staffordshire Police responded on 28 March 2019. It refused to confirm or deny that it held the requested information. It cited the following exemptions as its basis for doing so:

- section 31(3) Law Enforcement;
- section 38(2) Health and Safety;
- section 40(5) Personal Information.

11. Following an internal review, Staffordshire Police wrote to the complainant on 10 April 2019 maintaining its original position.

## Scope of the case

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12. The complainant contacted the Commissioner on 23 April 2019 to complain about the way his request for information had been handled. He told her:

*"I do not wish to continue with point 3 of my request and I ask that the Information Commissioner consider only points 1 and 2".*

13. During the course of the Commissioner's investigation, Staffordshire Police revisited its handling of parts (1) and (2) of the request. It confirmed that it held information within the scope of part (1) of the request and provided that information to the complainant. It denied holding information within the scope of part (2) of the request.
14. Where possible, the Commissioner prefers complaints to be resolved informally and asks both parties to be open to compromise. In this case, however, the complainant requested that the matter was concluded formally, by way of a decision notice.
15. In light of Staffordshire Police changing its position during the course of her investigation, the complainant told the Commissioner:

*"... I feel that this matter should be formally dealt with by the issue of a Decision Notice so that this matter is recorded on the official records".*

16. Furthermore, he advised the Commissioner:

*"... in respect of Point 2, Staffordshire Police have stated DNH [do not hold], however that responses [sic] contradicts the previously released Operation Purple Report, where at paragraph 15 reference is made to the risk assessment and Staffordshire Police is commended for having completed it".*

17. The analysis below considers whether, on the civil standard of the balance of probabilities, Staffordshire Police held information within the scope of part (2) of the request.

## Reasons for decision

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### *Section 1 general right of access to information*

18. Section 1(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".*

19. Section 10(1) of the FOIA provides:

*"...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."*

20. In scenarios such as this one, where there is some dispute between the public authority and the complainant about the amount of information that may be held, the Commissioner, following the lead of a number of First-tier Tribunal decisions, applies the civil standard of the balance of probabilities.

21. 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.

22. In this case, the Commissioner has sought to determine whether, on the balance of probabilities, Staffordshire Police held the information requested at part (2) of the request.

23. In deciding where the balance of probabilities lies, the Commissioner will consider the complainant's evidence and arguments. She will also consider the searches carried out by the public authority, in terms of the extent of the searches, the quality of the searches, their thoroughness and the results the searches yielded. In addition, she will consider any other information or explanation offered by the public authority which is relevant to her determination.

24. In support of his view that Staffordshire Police should hold the requested information, the complainant told the Commissioner:

*"My experience of such investigations is that all supporting documentation would be retained along with the final report".*

25. During the course of her investigation, as is her usual practice, the Commissioner asked Staffordshire Police questions relating to how it established whether or not it held information within the scope of the request.

26. In correspondence with the Commissioner, Staffordshire Police confirmed that relevant electronic and paper files had been examined. Staffordshire Police also confirmed that requests had been made:

*"... to those departments that also may hold this type of data".*

27. Staffordshire Police told the Commissioner there was "no trace" of the risk assessment.

28. With respect to extent of the electronic searches conducted for the requested information, Staffordshire Police told the Commissioner:

*"All devices are networked and the retention for emails is 7 years so there would be no data held from 2006. However, a search of the archive email system has been done anyway and no data has been retrieved".*

29. With regard to the search terms used, Staffordshire Police told the Commissioner:

*"For all searches Operation Purple, the individuals name and risk assessment have been used both individually & in combination".*

30. The Commissioner asked Staffordshire Police to respond in light of the complainant's observation that:

*"Within the redacted Operation Purple document ... there is clear reference to the information sought [at part (2) of the request]..."*

31. In that respect, Staffordshire Police told the Commissioner:

*"The Operation Purple report was conducted by Greater Manchester Police and it is not denied that they have made reference to the risk assessment in that report, it does not state that they had sight of or were provided with a copy of the risk assessment".*

32. With regard to its own records management policy, Staffordshire Police provided the Commissioner with a copy of its retention schedule for her to consider. Referring her to the relevant part of its schedule, it told her:

*"The retention for risk assessments is 10 years".*

33. Staffordshire Police advised that there were no statutory requirements for it to retain the requested information.

*The Commissioner's view*

34. While appreciating the complainant's frustration that Staffordshire Police did not hold the information within the scope of part (2) of his request, the Commissioner is mindful of the comments made by the Information Tribunal in the case of *Johnson / MoJ (EA2006/0085)*<sup>1</sup> which explained that the FOIA:

*"... does not extend to what information the public authority should be collecting nor how they should be using the technical tools at their disposal, but rather it is concerned with the disclosure of the information they do hold".*

35. Having considered Staffordshire Police's response, and on the basis of the evidence provided to her, the Commissioner is satisfied that, at the time of the request and on the civil standard of the balance of probabilities, Staffordshire Police did not hold information within the scope of part (2) of the request.

36. However, in failing to comply with the duty to confirm whether it held the requested information within the statutory time, the Commissioner finds Staffordshire Police in breach of section 1(1)(a) of the FOIA.

37. The Commissioner also finds that Staffordshire Police breached section 10(1) of the FOIA by not complying with section 1(1)(a) within the statutory timeframe of 20 working days.

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<http://informationrights.decisions.tribunals.gov.uk//DBFiles/Decision/i90/Johnson.pdf>

## Right of appeal

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38. 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](mailto:grc@justice.gov.uk)  
Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

39. 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.
40. 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 .....**

**Gerrard Tracey**  
**Principal Adviser**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**