

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 1 July 2020

Public Authority: National Police Chiefs' Council

Address: 1st Floor
10 Victoria Street
London
SW1H 0NN

Decision (including any steps ordered)

1. The complainant has requested information about the field of forensics known as 'hand identification' from the National Police Chiefs' Council ("NPCC"). The NPCC initially withheld all the information held, citing sections 31(1)(a) and (b) (law enforcement) of the FOIA. During the Commissioner's investigation it disclosed some information, decided that some information previously identified fell outside the scope of the request and advised that no further information was held in respect of one part of the request.
2. The Commissioner's decision is that the NPCC correctly determined that some of the information fell outside the scope of the request and that it was also correct to find that further information was not held. No steps are required.

Background

3. Although not required to do so, the complainant, who works for a law practice, has set out his rationale for making the request as follows:

"In summary, my concern is that there is currently no adequate scientific basis for the assertion that individuals can be reliably identified through a visual examination of photographs or video footage of their hands. Yet expert evidence to this effect appears to have been used in proceedings that have resulted in dozens of individuals' convictions. I am therefore interested in accessing

information that deals with the scientific basis, reliability, efficacy and limitations of hand identification."

Request and response

4. On 1 May 2019, the complainant wrote to the NPCC and requested information in the following terms:

"Any internal documents, including reports or memos, held by the NPCC regarding the emerging field of forensics known as hand identification. To be clear, by hand identification I am not referring to fingerprint analysis".

5. The NPCC responded on 12 June 2019. It refused to provide the requested information citing sections 31(1)(a) and (b) of the FOIA as its basis for doing so.
6. Following an internal review, the NPCC wrote to the complainant on 1 November 2019. It maintained its position.
7. During the Commissioner's investigation, the NPCC clarified that it held the following information:
1. *Centre for Anatomy and Human Identification Statement and Report for Devon & Cornwall Police – Operation Aero*
 2. *Centre for Anatomy and Human Identification Statement and Report for Greater Manchester Police – Operation Chromium (this is a draft of information at 4)*
 3. *Case Study Report (which includes extract of the report at 4)*
 4. *Centre for Anatomy and Human Identification Statement and Report for Greater Manchester Police – Operation Chromium.*
 5. *Centre for Anatomy and Human Identification Standard Operating Procedures for Anatomy Comparison Cases*
 6. *Hand Id – Anatomical Identification of offenders from hand images University of Dundee – Incomplete Copy of Research Grant Application.*
8. The NPCC liaised with the third party and disclosed item (4), with redactions for personal data. It also added reliance on sections 43(2) and 23(1) of the FOIA in respect of item (6).
9. At a late stage in the investigation, the NPCC disclosed a small amount of information from item (3) which did not fall within the section 31 exemption; the complainant was satisfied with this disclosure and accepted that section 31 properly applied to the remainder.

Scope of the case

10. The complainant contacted the Commissioner on 1 November 2019, to complain about the way his request for information had been handled.
11. During the course of the Commissioner's investigation, as some information was disclosed and further explanation provided, the complainant revised the scope of his complaint and the Commissioner was only required to consider the following:

Item (5)

Whether this is a complete Standard Operating Procedures ('SOP') document, as he did not consider it to contain sufficient detail. Also, whether the NPCC holds any fuller, more detailed, SOPs regarding hand identification.

Item (6)

Whether the NPCC is entitled to rely on section 43(2) and 23(1) to withhold this document.

12. At a late stage, an issue was raised as to whether or not the information identified in respect of part (6) of the request actually fell within the scope of the request. This was because the request specifically seeks "*Any internal documents ...*".
13. Having had sight of the document, it is apparent to the Commissioner that this item is not an 'internal' document or report, rather it is an incomplete copy of a research grant application authored by the University of Dundee. Having liaised further with the NPCC, it advised, and the Commissioner agrees, that it falls outside the scope of the request as it is authored externally, without input from the NPCC.
14. The Commissioner also notes that, in any case, one of the partners to the research is the National Crime Agency (by way of the involvement of CEOPS ("Child Exploitation and Online Protection Command")). This means that the absolute exemption at section 23 of the FOIA would be likely to be engaged in respect of this document, the National Crime Agency being a body listed at section 23(3)(n) of the FOIA.
15. In view of her finding that item (6) fell outside of the scope of the request, the Commissioner has not considered it any further in this decision notice.
16. In order to expedite the case, the complainant has not been made aware of the change in position regarding this part of the request. The Commissioner does not consider that he has been disadvantaged as he

is able either to challenge this part of the decision via the First-tier Tribunal, or he can make a fresh request for that specific document (which he would have not known existed had the request been properly scoped by the NPCC on receipt).

17. The Commissioner has viewed all the withheld information.
18. The Commissioner will consider whether any further information is held in respect of part (5).

Reasons for decision

Section 1 - general right of access

19. This is being considered in respect of part (5) of the request.
20. Section 1 of the FOIA states that anyone making a request for information to a public authority is entitled to be informed whether the public authority holds the information, and if so, to have that information communicated to them.
21. The Commissioner is mindful that when she receives a complaint alleging that a public authority has stated incorrectly that it does not hold the requested information, it is seldom possible to prove with absolute certainty whether the requested information is held. In such cases, the Commissioner will apply the normal civil standard of proof in determining the case and will decide on the 'balance of probabilities' whether information is held.
22. Therefore, the Commissioner has sought to determine whether, on the balance of probabilities, the NPCC holds any further recorded information within the scope of the request. Accordingly, she asked it to explain what enquiries it had made in order to reach this position. In response to these enquiries she was provided with the following details.
23. Having viewed it, the Commissioner initially notes that the document which was disclosed was indeed a 'full' document with only minor redactions in respect of personal information. She also notes that, like item (6), it is authored externally but the NPCC has not considered it to fall outside the scope of the request – that said, it has already been disclosed.
24. The complainant has argued:

"I am concerned that the document disclosed is not a complete Standard Operating Procedures (SOP) document, and thus may not constitute the full extent of the information held by the NPCC. This

is because the document provides no detail for how a comparison is undertaken and an evaluation made, nor does it provide the scientific basis for the technique(s) employed”.

25. In respect of the enquiries made to determine whether or not any further information is held, the Commissioner was advised:

“Various searches have been conducted across the NPCC including within the NPCC Forensics Portfolio and the Child Sexual Exploitation Portfolio. I can confirm that the document disclosed ... is the only hand Identification SOP held by the NPCC and the only SOP document sent to the NPCC by Dundee University which [the University] has said 'are now out of date’”.

26. It is further noted that the SOP that has already been disclosed clearly identifies that the work which is undertaken in this field is done by specialist external staff rather than the police themselves. The NPCC advised the Commissioner:

“... the SOP is a University of Dundee authored document, not a police one, that the NPCC would only hold if the university updated it and sent the police a copy. The SOP appears to be an outline of the process and service they offer for an audience that includes the Prosecutor Fiscal and Advocates as well as police”.

27. As the Commissioner understands it, there would be no requirement for the police to actually have any further detailed analysis of the processes undertaken as this is not something which they themselves do.
28. For the avoidance of doubt, the Commissioner has considered in this decision notice whether, on the civil standard of the balance of probabilities, the NPCC holds any further Standard Operating Procedures in respect of hand identification.

The Commissioner’s conclusion

29. When, as in this case, the 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. However, as set out in the paragraphs, above, the Commissioner is required to make a finding on the balance of probabilities.
30. The Commissioner considers that the NPCC conducted relevant searches to ascertain whether or not any further information was held in respect of the request. Based on the information provided she is satisfied that, on the balance of probabilities, no further recorded information within

Reference: FS50887368



the scope of the request is held. She is therefore satisfied that the NPCC has complied with the requirements of section 1 of the FOIA in this case.

Right of appeal

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:

Website: 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

Carolyn Howes
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF