

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 1 April 2020

Public Authority: Chief Constable of Staffordshire Police
Address: Police Headquarters
Weston Road
Stafford
ST18 0YY

Decision (including any steps ordered)

1. The complainant requested information from Staffordshire Police relating to a circular he believed had been sent in 2008.
2. Staffordshire Police denied holding the requested information.
3. The Commissioner's decision is that, on the balance of probabilities, Staffordshire Police does not hold the requested information.
4. The Commissioner requires no steps to be taken as a result of this decision.

Request and response

5. On 29 October 2019, the complainant wrote to Staffordshire Police and requested information in the following terms:

"In an interview on Radio 4 on 19/10/2018 ex Chief Prosecutor Nazir Afzal stated that:

"You may not know this, but back in 2008 the Home office sent a circular to all police forces in the country saying: 'As far as these girls being exploited in towns and cities, we believe that they have made an informed choice about their sexual behaviour and therefore it is not for you police officers to get involved in.'"
I would like to know if you Staffordshire Police received such a

circular and if so what actions were taken to implement the instructions given in the circular. Can I have a copy of the circular?"

6. Staffordshire Police responded on 1 November 2019. It denied holding the requested information.
7. Following an internal review, Staffordshire Police wrote to the complainant on 8 November 2019, upholding its original position.

Scope of the case

8. The complainant contacted the Commissioner on 18 January 2020 to complain about the way his request for information had been handled.
9. He considered that, given the subject matter of his request, it was likely that Staffordshire Police would hold some information within the scope of his request.
10. He told the Commissioner:

"I believe I and indeed most people living here have a right to know if our police received instructions from the government in 2008 to allow the illegal abuse of children to take place and if Staffordshire Police complied".
11. The analysis below considers whether, on the civil standard of the balance of probabilities, Staffordshire Police held information within the scope of the request.

Reasons for decision

Section 1 general right of access

12. 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."

13. 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.

14. 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.
15. In this case, the Commissioner has sought to determine whether, on the balance of probabilities, Staffordshire Police held the requested circular, or instructions arising from it.
16. 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.

The complainant's view

17. In correspondence with Staffordshire Police, the complainant acknowledged that several years had passed since the circular was purportedly sent. However, he said:

"...I cannot believe that any officer viewing such a circular would not remember doing so, even many years afterwards, and police officers would not forget if they were ordered to follow such instructions".

18. Similarly, he told the Commissioner:

"I believed that it was unlikely that a copy would still be on record but thought that there would be some record of officers being instructed not to take action in cases of children as young as 11 consenting to sexual behaviour that was illegal".

Staffordshire Police's view

19. In confirming that it did not hold the requested information, Staffordshire Police told the complainant:

"A search was completed and no information relating to your request was found to be held".

20. Acknowledging the complainant's interest in knowing "... whether it was acted on even if a copy of that circular no longer exists", Staffordshire Police subsequently explained:

"However, in order to clarify, the Freedom of Information provision exists to provide recorded information held by a public body and cannot be relied upon to provide supposition or conjecture".

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

22. In its submission to the Commissioner, Staffordshire Police advised:

"Our email archive system only retains 7 years' worth of emails so no searches have been conducted in that archive..."

23. It also explained that it had contacted:

"... our Corporate Planning & Business change team who generally receive outside notifications and they have advised that had we of [sic] received it that it would not be stored anywhere only circulated to interested parties by email, therefore based upon the email system retention it would be no longer held."

24. Regarding her question about what its formal records management policy says about the retention and deletion of records of this type, Staffordshire Police told the Commissioner:

"There is no specific guidance with regards to Home Office circulars the closest would be; 'correspondence from organisations – 2 years from final communication on the topic' or 'publications – printed - 6 years'".

25. With regard to whether or not it held information in scope of that part of the request relating to *"what actions were taken to implement the instructions given in the circular"*, Staffordshire Police told the Commissioner:

"If we had received the circular and if we had taken any action it would have been in the form of a procedure, the retention for procedures is '1 year after subsequent revision'".

26. It confirmed that *"there is no trace of any procedure"*.

The Commissioner's view

27. The Commissioner recognises that the requested information is clearly of interest to the complainant. She acknowledges that the complainant provided her with evidence of the considerable correspondence between the two parties on this subject.

28. However, while appreciating the complainant's frustration that Staffordshire Police did not hold information within the scope of his request, the Commissioner is mindful of the comments made by the Information Tribunal in the case of *Johnson / MoJ (EA2006/0085)*¹ 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".

29. She has also taken into account her guidance '*How to access information from a public body*'² where she says:

"Your request can be in the form of a question, rather than a request for specific documents, but the authority does not have to answer your question if this would mean creating new information or giving an opinion or judgment that is not already recorded".

30. 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 the requested information.
31. The Commissioner therefore considers that the Staffordshire Police complied with its obligations under section 1(1) of the FOIA.

¹

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

² <https://ico.org.uk/your-data-matters/official-information/>

Right of appeal

32. 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

33. 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.
34. 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
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Wycliffe House
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