

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 15 September 2021

Public Authority: Chief Constable of West Midlands Police
Address: Police Headquarters
Lloyd House
Colmore Circus
Birmingham
B4 6NQ

Decision (including any steps ordered)

1. The complainant has requested from West Midlands Police (WMP) information about its procedures for investigating complaints made against it. WMP initially refused the request, citing section 21 (information accessible to applicant by other means) of the FOIA. It disclosed weblinks to relevant information and also directed the complainant to its publication scheme. At internal review, the complainant clarified his request, and WMP disclosed more weblinks and externally produced guidance and procedures on the police complaints system. The complainant believed that more information was held. Specifically, he believed WMP held an internally produced complaints manual which it had not disclosed.
2. The Commissioner's decision is that, on the balance of probabilities, WMP does not hold an internal complaints manual and that WMP's handling of the request complied with the requirements of section 1(1) of the FOIA.

Request and response

3. On 29 November 2020, the complainant wrote to WMP and requested information in the following terms:

"Please supply your complaints manual or procedures."

4. WMP responded on 10 December 2020. It refused the request, citing section 21 (Information accessible by other means) of the FOIA, and provided a weblink to a page for members of the public wishing to submit a complaint about WMP, and a link to the website of the Independent Office for Police Conduct (IOPC). It also advised the complainant to refer to its publication scheme and disclosure log for more information.
5. The complainant requested an internal review on 10 December 2020, stating that he required a copy of WMP's "... *internal manual for the steps a police officer investigating a complaint must follow*".
6. WMP responded on 21 December 2020. It acknowledged that it had misinterpreted the request. It disclosed three documents which it said contained the procedures that it must follow when investigating complaints:
 - Home Office Statutory Guidance on Professional Standards, Performance and Integrity in Policing;
 - The Police Appeals Tribunals Rules 2020; and
 - The Police (Complaints and Misconduct) Regulations 2020.
7. It also provided a weblink to police misconduct guidance on the GOV.UK website and it again referred the complainant to information about the police complaints system on the IOPC website.

Scope of the case

8. The complainant contacted the Commissioner on 21 December 2020 to complain about the way his request for information had been handled. He believed that WMP held an internally produced complaints manual which it had not disclosed in response to the request.
9. The analysis below considers whether, on the balance of probabilities, WMP holds an internally produced complaints manual or set of procedures.

Reasons for decision

Section 1 – General right of access

10. Section 1(1) of the 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.
11. In this case, WMP said that it had provided all the information it held falling within the scope of the request, either by directly disclosing internal documents to the complainant or by providing him with weblinks to information. The complainant maintained that his request had not been fully responded to, as he believed that an internal complaints manual exists.
12. 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.
13. The Commissioner will consider the complainant's evidence and arguments. She will also consider the actions taken by the public authority to check whether the information is held and any other reasons offered by the public authority to explain why the information is not held. She will also consider any reason why it is inherently likely or unlikely that information is not held. 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.

The complainant's position

14. The complainant disagreed with WMP's disclosure of the externally produced standards and procedures in response to his request. He opined that WMP must hold its own internally produced complaints manual or set of procedures. He believed WMP had a statutory duty to have in place a complaints procedure which set out the approach that its Professional Standards Department (PSD) should follow when dealing with complaints against WMP. He cited the requirements of the Police Reform and Social Responsibility Act 2011 when corresponding with WMP:

"The Police Reform and Social Responsibility Act 2011. section 95, Schedule 14.

The Police Reform and Social Responsibility Act 2011: changes to the police complaints system

1.16 The policing landscape and the police complaints system underwent major change in 2012. Amendments made to the police complaints system by the Government in the Police Reform and Social Responsibility Act 2011 were designed to streamline and remove unnecessary bureaucracy from the system, ensure that complaints are handled at the lowest appropriate level, and focus more on putting right the complaint made by a member of the public.

Police accountability

1.17 Local policing bodies (for most areas of the country Police and Crime Commissioners) are responsible for holding to account the chief officer of their force for how policing services are delivered in their force area. They should ensure that the chief officer has appropriate processes in place for dealing with complaints, conduct matters and DSI [death or serious injury] matters.

Notice that you have said that your Chief Officer has no processes in place, and that you haven't supplied them.

Of course, they may exist and you've just decided not to supply them, or that he's in real trouble."

15. The complainant also said:

"Your professional standards department have stated that you aren't telling the truth and that the manual exists."

WMP's position

16. The Commissioner asked WMP a series of detailed questions about its reasons for believing that it did not hold an internal complaints manual or set of procedures. She also asked it to respond to the complainant's specific claims.

17. WMP said that it initially understood the request to be asking for information for the general public on making a complaint about the force. It said that the complainant's internal review request clarified that he actually wanted "... *an internal set of procedures for the steps that the professional standards department/police officers must follow when investigating complaints*". Consequently, it said it disclosed to the complainant the externally produced procedures that its PSD follows when investigating complaints against the force.

18. WMP said that it does not have an internally produced complaints manual or set of procedures that its PSD (or anyone else) must follow when investigating complaints against WMP. It said that the externally produced procedures it had shared with the complainant were sufficiently comprehensive to render an internally produced equivalent unnecessary. This was its established position and it provided the Commissioner with a link to its disclosure log¹, where its response to a similar request for information from another requester provided the same information.
19. WMP said that the complainant's claim, that the Police Reform and Social Responsibility Act 2011 effectively created a requirement for police forces to have an internal complaints manual, was incorrect:

"Our Professional Standards Department (PSD) have advised that the reference to S1.17 The Police Reform and Social Responsibility Act 2011 appears incorrect. The actual wording provided is taken from S1.17 of the IPCC [Independent Police Complaints Commission] Statutory Guidance 2015 (please see below), which is an overview/description of the 2011 Act.

...

The 2015 IPCC Guidance has been superseded by the IOPC Statutory Guidance 2020, following the introduction of the Police Complaints Regulations 2020.

There is only one reference to The Police Reform and Social Responsibility Act 2011 in the 2020 IOPC Guidance, which is in relation to a different matter (Acting Chief Officers).

In direct response to 1.17 IPCC Guidance, our interpretation of this is that it is a strategic responsibility to ensure processes are in place. Where legislation, regulations and statutory guidance is available, West Midlands Police does not look to reproduce this internally or create separate guidance, unless it is required.

The Police Regulations (and guidance) are sufficiently detailed to provide the process of dealing with complaints, conduct and DSI matters. All police forces are required to follow the regulations, to provide a consistent approach across England and Wales.

¹ <https://foi.west-midlands.police.uk/professional-standards-policies-2020-1229a-20-1230a-20/>

West Midlands Police has a Professional Standards Department (PSD) which consists of all the functions required to meet the requirements of the Police Regulations.

West Midlands Police do not have an additional/internal manual/set of procedures for the steps that the PSD must follow when investigating complaints or an internal manual/set of procedures for the steps a police officer investigating a complaint must follow."

20. Responding to the complainant's claim that he had been told by PSD staff that the FOI response had not 'told the truth' about the existence of an internal complaints manual, WMP said that the PSD Inspector had conducted a search for contact records relating to the complainant and had not found any which noted comments to that effect. The members of staff named by the complainant had also been consulted and they said that they had not told him that an internal complaints manual exists; one was a member of PSD staff and had spoken with the complainant on 2 August 2021. Their recollection was that they had advised him that an internal manual did not exist. Another, the force's FOI Manager, categorically told the Commissioner, "...I have not at any point advised [the complainant] that a manual exists".

The Commissioner's decision

21. 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 paragraphs 12 and 13, above, the Commissioner is required to make a finding on the balance of probabilities.
22. The Commissioner would also wish to make it clear that when dealing with a complaint of this nature, it is not her role to make a ruling on how a public authority deploys its resources, on how it chooses to hold its information, or the strength of its business reasons for holding, or not holding, certain information. Her remit concerns only the disclosure of recorded information, not what a public authority chooses to record for its own business purposes.
23. Having considered WMP's response, and on the evidence provided to her, including WMP's knowledge of its own complaints procedures, she is satisfied that, on the balance of probabilities, WMP does not hold an internally produced complaints manual or similar set of procedures. Contrary to the complainant's assertion, the Commissioner has seen no evidence that WMP is under a statutory obligation to have an internal complaints manual, and the external procedures WMP refers to are sufficiently detailed to guide its complaints process. She recognises the need for consistency of approach across police forces, and referring to a

centrally compiled set of guidance and procedures would facilitate this. She conducted a brief sample search of police force publication schemes and was unable to locate internal complaints manuals for other UK police forces. Whilst that is not to say that no force has produced its own internal manual, her finding suggests that they are by no means routinely created and held by all UK police forces.

24. As to the complainant's claim to have been told that an internal complaints manual does exist, both the persons he named have denied that they said this. One of the named parties was a senior member of the FOI team. If the complainant's recollection was accurate, this would place her in the position of having accused her own department of lying, which the Commissioner considers an unlikely scenario. Furthermore, the Commissioner has been unable to identify any benefit to WMP of it denying that an internal complaints manual exists, if one does. The Commissioner can only conclude on this point that there may have been a misunderstanding of what was said.
25. Since the Commissioner has decided that, on the balance of probabilities, WMP does not hold an internal complaints manual, she is satisfied that WMP's handling of the request complied with the requirements of section 1(1) of the FOIA.

Right of appeal

26. 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: 0203 936 8963
Fax: 0870 739 5836
Email: grc@justice.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

27. 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.
28. 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

Samantha Bracegirdle
Senior Case Officer
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