

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 18 May 2022

Public Authority: Chief Constable of Humberside Police

Address: Police Headquarters
Police Station
Priory Road
Hull
HU5 5SF

Decision (including any steps ordered)

1. The complainant has requested information about police officers' compliance with the law. Humberside Police refused the request on the grounds that it was not a valid request for recorded information under section 8 of FOIA.
2. The Commissioner's decision is that Humberside Police was entitled to rely on section 8(1)(c) of FOIA to refuse the request.
3. The Commissioner requires no steps.

Request and response

4. On 16 May 2021, the complainant wrote to Humberside Police and requested information in the following terms:

"I refer to this video showing one of your Police Officers, [name and police number redacted] of Beverley Station blocking the road to prevent hunt saboteurs going about their lawful business and exercising their democratic right to protest.

[YouTube link redacted]

Under the Freedom of information Act, (2000), therefore, I request the following information.

- 1) What law allows Humberside Police Officers to block animal right protesters (or any other protesters) from attending a lawful protest. simply because he or she disagrees with that protest. Please provide just one document to show such a law exists.
- 2) What law exempts a Police Officer from not being charged with obstruction of the public highway, if that officer, without lawful authority or excuse, in any way constructs the free passage of a highway? Again, just one document will do to show such a law exists."
5. Humberside Police responded on 24 May 2021. It stated that the request was not a valid request within the meaning at section 8 of FOIA. It also said that all legislation was in the public domain and therefore that the information was exempt from disclosure under section 21 (Information accessible to applicant by other means).
6. The complainant requested an internal review on 2 June 2021, stating:

"I am not asking you to cite 'specific laws' I am asking you to provide evidence that officers can behave in the manner outlined without legal authority."
7. Following an internal review, Humberside Police wrote to the complainant on 30 June 2021. It confirmed that it had viewed the video cited in the request to inform its response. It withdrew reliance on section 21 of FOIA as the complainant had advised that he did not want information on 'specific laws'. It maintained that the request was not for recorded information already held by it and therefore that it was entitled to refuse the request under section 8 of FOIA.

Scope of the case

8. The complainant contacted the Commissioner on 7 July 2021 to complain about the way his request for information had been handled. He disagreed with the decision to refuse his request.
9. The analysis below considers whether Humberside Police was entitled to rely on section 8 of FOIA to refuse the request.
10. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of FOIA. FOIA is concerned with transparency and provides for the disclosure of information held by public authorities. It gives an individual the right to access recorded information (other than their own personal data) held by public authorities. FOIA does not require public authorities to generate information or to answer

questions, provide explanations or give opinions, unless this is recorded information that they already hold.

Reasons for decision

Section 8 – request for information

11. Section 8(1) of FOIA defines a valid request for information under FOIA as a request which:
 - (a) is in writing,
 - (b) states the name of the applicant and an address for correspondence, and
 - (c) describes the information requested.
12. Section 84 (Interpretation) of FOIA defines “information” as:

“...information recorded in any form”.
13. Therefore, in order to constitute a valid request for information under FOIA, not only must the complainant’s request satisfy the criteria in section 8 of FOIA, but it must also be a request for recorded information.
14. Furthermore, FOIA only provides a right of access to information that is ‘held’ by public authorities. A public authority is not required to create new information in order to comply with a request for information under FOIA. It only needs to consider recorded information already in existence at the time a request is received.
15. The request in this case was made in writing and the complainant provided an address for correspondence. It follows that the only issue remaining for the Commissioner to consider is its validity in respect of whether it describes recorded information.
16. The Commissioner considers that a request will meet the requirements of section 8(1)(c) if it contains a sufficient description of the recorded information required. Each request has to be judged on its individual merits as to whether there were sufficient indicators provided to enable the information requested to be adequately described for the purposes of section 8. If a request is a genuine attempt to describe information which may be held, it is likely to meet the requirements of section 8(1)(c). Furthermore, it is always open to the public authority to seek further clarification to identify information.

17. Having specific regard to the wording of the complainant's request, the Commissioner is not satisfied that it is a valid request for information. This is because it does not adequately set out a description of any recorded information which Humberside Police could reasonably be believed to hold at the time of the request.
18. In the Commissioner's view, the request appears to be composed of two rhetorical questions, which have primarily been posed for dramatic effect or to make a point, rather than to obtain information, because the complainant disagrees with the action taken by the officer.
19. This point is borne out by the remarks made by the complainant when requesting an internal review, which contradict what he had asked for in the request.
20. Read objectively, the request asks Humberside Police to cite the legal basis on which an officer is permitted to break the law if "he or she disagrees with [a] protest", and the legal basis for them not being prosecuted when doing so.
21. This is not information which Humberside Police could realistically be expected to already hold in recorded form. In order to respond to the request, it would clearly necessitate Humberside Police creating new information. (That Humberside Police said in its internal review response that it has been necessary to view the footage in order to formulate its response further indicates that this was not a request for 'stand alone' documents which already existed and could be provided.)
22. In view of this, and having had regard to the complainant's remarks when requesting an internal review, which directly contradict what was described in the request, the Commissioner is not satisfied that the complainant has asked for anything which could be considered to already exist in the form of recorded information.
23. Since the Commissioner is satisfied that, for the above stated reasons, this was not a request for recorded information, it was not a valid request under section 8(1)(c) of the FOIA, and Humberside Police was under no obligation to respond to it under FOIA.

Section 16 – Duty to provide advice and assistance

24. Section 16(1) of FOIA states that it shall be the duty of a public authority to provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who proposed to make, or who have made, requests for information to it.
25. Where a request lacks a serious or clear purpose, or if it is not focused on acquiring information, then the FOIA is probably not an appropriate means through which to pursue an issue of concern.

26. The Commissioner notes in this case that when responding to the request, Humberside Police has twice suggested to the complainant that he submit a complaint to its Professional Standards Department if he has concerns about the conduct of the officer shown in the video.
27. The Commissioner considers that this is the appropriate avenue for the complainant to pursue the central concern he appears to be alluding to in his request, namely Humberside Police's own compliance with the law.
28. By providing this information, the Commissioner considers that Humberside Police went some way towards satisfying the duty to provide advice and assistance under section 16 of FOIA.
29. The Commissioner considers that Humberside Police could also have asked the complainant if he wanted to re-focus his request to ask about the formal powers officers have to take the sort of action shown in the video. However, as he has stated that he does not want the force to cite specific legislation it is unlikely that this would satisfy his requirements.
30. The Commissioner has published advice on how to make effective requests for information under FOIA¹.

¹ <https://ico.org.uk/your-data-matters/official-information/#information>

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: grc@justice.gov.uk
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

Samantha Bracegirdle
Senior Case Officer
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Wycliffe House
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Wilmslow
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