

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 7 March 2023

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

Decision (including any steps ordered)

1. The complainant requested information about the number of traffic fines and tickets issued to drivers at a named location. West Midlands Police ('WMP') said that no fines or tickets were issued during the specified time period and confirmed that, consequently, no recorded information was held. The complainant disputed WMP's position.
2. The Commissioner's decision is, on the balance of probabilities, that WMP holds no recorded information within the scope of the request.
3. No steps are required as a result of this notice.

Request and response

4. On 3 November 2022, the complainant wrote to WMP and requested information in the following terms:

"The number of fines/tickets issued to drivers making a No Right Turn out of Lower Queen Street into Holland Road for the period 1st April 2022 up to 31st July 2022."
5. WMP responded on 8 November 2022. It said that no fines or tickets were issued during the period 1 April 2022 to 31 July 2022 and therefore, that no recorded information is held.
6. The complainant requested an internal review on 8 November 2022. He said that he had submitted dashcam footage of 24 drivers making the

No Right Turn referred to and he therefore argued that there should have been at least 24 fines/tickets issued.

7. Following its internal review, WMP wrote to the complainant on 18 November 2022. Having re-checked its systems it maintained its position.

Scope of the case

8. The complainant contacted the Commissioner on 8 February 2023 to complain about the way his request for information had been handled. He said that the numbers of fines/tickets are required in order to attempt to get an Automatic Number Plate Recognition ('ANPR') camera sited at the junction.
9. The Commissioner notes that the complainant made the same request for the time period 1 January 2022 to 31 March 2022 which was determined by decision notice.¹ In that case, some recorded information was held and the Commissioner determined, on the balance of probabilities, that WMP had provided all the information held within the scope of that request.
10. In the case under consideration here, the Commissioner has determined whether, again on the balance of probabilities, any recorded information is held relevant to the request set out above.

Reasons for decision

Section 1 – general access to information

11. Section 1 of 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.
12. The Commissioner is mindful that when he 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

¹ <https://ico.org.uk/media/action-weve-taken/decision-notices/2023/4024390/ic-185666-k1w8.pdf>

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.

13. The Commissioner will consider the complainant's evidence and arguments. He 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. Additionally, he will 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, he is only required to make a judgement on whether the information is held on the civil standard of proof of the balance of probabilities.
14. Therefore, the Commissioner has sought to determine whether, on the balance of probabilities, WMP holds any recorded information within the scope of the request. Accordingly, he asked WMP to explain what enquiries it had made in order to reach the view that it did not hold the requested information.
15. WMP explained that information regarding traffic offences is centrally recorded by its Criminal Justice Services ('CJS') department. It said that any tickets issued by the Neighbourhood Policing Team are submitted through WMP's intranet forms app (application) which are then all centrally recorded by CJS department. The Traffic Investigations Unit are also part of CJS and use the same systems.
16. WMP told the Commissioner that it requested the information to respond to the request from the relevant team in the CJS department who have access to the system. No fines/tickets were issued during the period specified in the request.
17. WMP provided some additional information in confidence which the Commissioner has not reproduced here but has taken into account.

Conclusion

18. 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.

19. The complainant is clearly of the belief that footage he has personally submitted should have resulted in a fine or ticket. However, in a case such as this, the Commissioner's role is simply to decide whether or not, on the balance of probabilities, the public authority holds the requested information.
20. Based on the explanation provided by WMP, the Commissioner is satisfied that it approached the appropriate personnel to conduct searches in order to ascertain whether or not any information was held. Accordingly, he is satisfied that, on the civil standard of the balance of probabilities, no recorded information within the scope of the request is held.

Right of appeal

21. 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

22. 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.
23. 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