

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 9 May 2024

Public Authority: Chief Constable of Devon and Cornwall Police
Address: Police Headquarters
Middlemoor
Exeter
EX2 7HQ

Decision (including any steps ordered)

1. The complainant has requested a copy of a Data Protection Impact Assessment ('DPIA') covering the use of artificial intelligence ('AI') technology to detect traffic offences. Devon and Cornwall Police ('DCP') said that it did not hold the requested information.
2. The Commissioner's decision is that, on the balance of probabilities, DCP does not hold the requested DPIA. However, by failing to respond to the request within the statutory time for compliance, DCP breached sections 1(1) and 10(1) of FOIA.
3. The Commissioner does not require further steps as a result of this decision.

Request and response

4. On 16 August 2023, the complainant wrote to DCP about the trialling of AI technology to detect road traffic offences on the A30. He asked for a copy of:

"the Data Protection Impact Assessment (DPIA) that you have completed for this processing that highlights the risks and mitigations for such processing".

5. On 18 August 2023, DCP replied, stating:

"...a Data Protection Impact Assessment Screening Tool was completed in October 2022. Do you wish us to pass your request for a copy of the DPIA screening tool to the Freedom of Information (FOI) Team for a FOI request?"

6. On 18 August 2023, the complainant said that he did, stating:

"Yes please...The documents I am after are the DPIA screening tool and the full DPIA itself. Obviously the purpose of this is to see if D&C have complied with the relevant parts of both the Data Protection Act 2018 and the UK GDPR, which states that a DPIA for this type of processing must be completed."

7. DCP responded on 20 October 2023. It disclosed the completed DPIA screening tool in respect of a two month trial of AI camera equipment, to detect mobile phone and seat belt offences. Minor redactions were made under section 40(2) of FOIA, to remove the personal data of police staff.
8. The complainant requested an internal review on 20 October 2023, stating that he also wished to receive the full DPIA. DCP provided the internal review on 20 December 2023. It maintained it had responded correctly to the request of 18 August 2023, stating:

"Your request asked for copies of the DPIA screening tool and DPIA for the AI camera on the A30. You were provided with a redacted copy of the DPIA screening tool which was carried out ahead of the trial of the camera, with information removed by virtue of Section 40 (Personal Information). This has been applied as it relates to the personal information of living individuals, and therefore the Force is entitled to rely on this exemption.

In relation to a full DPIA, this was not carried out ahead of the trial as the DPIA screening tool deemed that this was not necessary, as can be found in Section 5 – DPO Assessment. As such, no DPIA is held. Therefore, all recorded information falling under the scope of your request, apart from that which falls under the Section 40 exemption, has been disclosed."

Scope of the case

9. The complainant contacted the Commissioner on 11 January 2024 to complain about the way his request for information had been handled. He expressed concern about the delays in responding to the request. He

also asked the Commissioner to consider whether DCP disclosed all the information it holds which falls in scope of the request.

10. The complainant did not express dissatisfaction with the application of section 40 to redact police staff information, and so the Commissioner has not considered its application.
11. The Commissioner has considered whether, on the balance of probabilities, DCP has identified and disclosed all the information it holds falling within scope of the request. He has considered DCP's timeliness in responding to the request under sections 1 and 10 of FOIA. He has commented on the delay in conducting the internal review in "Other matters".

Reasons for decision

Section 1 – Information held

12. DCP says that it has disclosed all the information that it holds which falls within scope of the request. The complainant has queried this, because he had expected to receive a copy of the DPIA for the processing in question.
13. Where there is some dispute about the amount of information located by a public authority and the amount of information that a complainant believes may be held, the Commissioner applies the civil standard of 'the balance of probabilities'.
14. This means the Commissioner must decide whether, on the balance of probabilities, a public authority holds any information which falls within the scope of the request. In deciding where the balance of probabilities lies, the Commissioner will consider the evidence and arguments of both parties, as well as any other pertinent information.
15. It is the complainant's understanding that the use of AI for the detection of traffic offences would require that a full DPIA be carried out by DCP.
16. DCP says that it does not hold a DPIA for the processing. It knows this to be the case because it completed a DPIA screening tool in respect of

the processing, and its assessment of the results found that a full DPIA was not necessary¹.

17. Nevertheless, DCP provided the Commissioner with details of searches that it had conducted to ascertain whether any further information was held. It also explained that its Data Protection Team keeps a log of all DPIA screening tools and full DPIAs carried out. The Team's records showed that the only relevant information held was the DPIA screening tool, which it had disclosed.

18. The issue for the Commissioner to consider here is whether the requested information **is** held by DCP. It is not whether it **should be** held by DCP. On this point, the Commissioner is mindful of the comments made by the Information Tribunal in the case of Johnson / MoJ (EA2006/0085)², that 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".

19. Based on DCP's reasons for concluding that it does not hold a full DPIA (and specifically because it made a positive decision not to conduct one), the Commissioner is satisfied that, on the balance of probabilities, DCP has disclosed all the information it holds which falls within scope of the request. He is satisfied that DCP complied with section 1(1) of FOIA in that respect.

1. The Commissioner's Public Advice and Data Protection Complaints Service is currently following up the question of whether a full DPIA is necessary, with DCP.

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

Procedural matters

Section 1 – General right of access

Section 10 - Time for compliance

20. Section 1(1)(a) of FOIA states that a person who asks for information is entitled to be informed whether the information is held. If it is held, section 1(1)(b) states that the person is entitled to have that information communicated to them.
21. Section 10(1) of FOIA states that on receipt of a request for information, a public authority should respond within 20 working days.
22. In this case, DCP took 46 working days to respond to the request. It has explained to the Commissioner that the request was mistakenly forwarded by a member of staff to an unused email inbox, and that it was not discovered and actioned until 10 September 2023, when the complainant asked for an update. It said the subsequent delay in dealing with it was largely due to resourcing issues, which have since been addressed.
23. By failing to respond to the request within the statutory time for compliance, DCP breached sections 1(1) and 10(1) of FOIA.
24. The Commissioner further notes that the complainant's internal review request contained a new and valid request for information under FOIA, and that this was not complied with until 11 January 2024, 56 working days later.
25. The Commissioner has made a note of the breaches in this case, for monitoring purposes.

Other matters

26. Although they do not form part of this notice, the Commissioner wishes to highlight the following matters of concern.

Internal review

27. The Commissioner cannot consider the amount of time it took a public authority to complete an internal review in a decision notice because such matters are not a formal requirement of FOIA. Rather, they are matters of good practice which are addressed in the Code of Practice issued under section 45 of FOIA.

28. The Code states that reviews should be conducted promptly and within reasonable timescales. The Commissioner has interpreted this to mean that internal reviews should take no longer than 20 working days in most cases, or 40 in exceptional circumstances.
29. In this case, DCP took 43 working days to complete the internal review, which exceeds the Commissioner's recommended 40 working day maximum. The request was not complex and the internal review did not result in any change to DCP's stated position.
30. DCP has explained that this delay was largely due to resource issues, which have since been addressed.
31. As above, the Commissioner has made a record of DCP's late provision of the internal review, for monitoring purposes.

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: 0203 936 8963

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.

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