

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 12 March 2013

Public Authority: Chief Constable of Avon and Somerset Constabulary

Address: PO Box 37
Valley Road
Bristol
BS20 8QJ

Decision (including any steps ordered)

1. The complainant requested information from Avon and Somerset Constabulary (ASC) regarding a business system known as SAP (Systems, Applications and Products in Data Processing), including the number of staff with SAP qualifications. ASC stated that this information was not held for the purposes of FOIA under the provision of sections 3(2)(a) and (b).
2. After investigation, the Commissioner has found that the requested information is not held for the purposes of FOIA by virtue of section 3(2)(b).
3. He requires no steps to be taken.

Background

4. Southwest One (SW1) is a joint venture between IBM and three public authorities - Somerset County Council, Taunton Deane Borough Council and Avon and Somerset Constabulary (ASC).

Request and response

5. The complainant wrote to Avon and Somerset Constabulary on 27 June 2012 and requested information in the following terms:

"Dear Avon and Somerset Constabulary,

SAP is a key system for ASP and business continuity is very much in the news following the RBS major IT failure.

SAP skills have three formal levels of certified qualification:

'There are three levels of certification available: Associate, Professional and Master.

Associate level covers the fundamental knowledge requirements for a consultant or project team member;

Professional level requires proven project experience, business knowledge and a more detailed understanding of the SAP solution;

Masters level (in development) involves demonstrating an expert level understanding a specific area of SAP software.'

Q1. By each of above formal SAP certification levels, please detail how many ASP IT staff remaining in SW1 are currently qualified as a SAP "Associate", "Professional" and "Master"?

The recent RBS major IT failure may involve remote support from supplier staff in India, even though the hardware and software installation is based here in the UK.

It is known that IBM have a major division (IGSI) in India and that 2nd and 3rd line global technical support for SAP is based there.

Q2. In the light of the RBS major IT failure, has ASP conducted an independent review of SAP support by IBM, to ensure that business continuity is properly protected; to ensure that major SAP updates, upgrades & fixes conducted remotely by IBM (possibly from IBM's Indian SAP support division IGSI) meet recognised ITIL, CMMI & other relevant international IT standards, so that regression and rollback to a working state after failure can be carried out by UK-based staff in SW1? If a relevant audit or review (internal or external) has been carried out since SW1 was formed, then please disclose details?

Q3. What recognised standards has SW1 IT achieved e.g. ISO/IEC20000-1:2005, CMMI level? Please detail."

6. The Constabulary responded on 25 July 2012. It stated that it did not hold the information requested at parts (1) and (3) of the request. In

relation to part (2) of the request, it advised that Avon and Somerset Police (ASP) had not conducted an independent review.

7. Following an internal review the Constabulary wrote to the complainant on 21 August 2012, upholding its earlier position. Following further correspondence from the complainant, it provided a follow-up to that response on 31 August 2012, again advising that it does not hold the information requested at parts (1) and (3) of the request.

Scope of the case

8. The complainant contacted the Commissioner on 4 September 2012 to complain about the way his request for information had been handled. He brought to the Commissioner's attention a number of arguments in support of his view that information within the scope of part (1) of his request is held by ASC for the purposes of FOIA. He also brought to the Commissioner's attention a recent response by Somerset County Council, another party in the joint venture, to a request for information about SAP qualifications.
9. The Commissioner considers the scope of his investigation in this case to be with respect to whether Avon and Somerset Constabulary holds information in scope of part (1) of the request.
10. The Commissioner notes that a specific element of the complainant's complaint in this case is that another public authority involved in the SW1 joint venture would appear to have complied with a similar request for information.
11. Whilst recognising the complainant's frustration at the way in which his request for information has been handled, in the Commissioner's view each case must be considered on its merits. His duty is to decide, on a case-by-case basis, whether a request for information has been dealt with in accordance with FOIA.

Reasons for decision

Section 1 General right of access

Section 3(2) – information held by a public authority

12. Section 1 of FOIA states that any person making a request for information is entitled to be told whether the public authority holds the information requested and, if held, to be provided with it.
13. Section 3(2) sets out the two legal principles that establish whether information is held for the purposes of FOIA:

"For the purposes of this Act, information is held by a public authority if—

(a) it is held by the authority, otherwise than on behalf of another person, or

(b) it is held by another person on behalf of the authority."

14. In this case, there is clearly some dispute between the public authority and the complainant about who may hold the requested information.
15. The issue for the Commissioner to determine is whether ASC holds the requested information and, if not, whether it is held by another person on its behalf.

Is the information or any part of it held by ASC?

16. Regarding the staff qualifications which are the subject of the request for information in this case, the complainant told ASC:

"The ASC staff seconded into SW1 remain ASC employees, so you should have access to their HR and training records as the data controller. As you have access to SAP and they remain your staff, I simply do not understand how you do not have access to the data on your own staff on your own IT system".

17. Citing a different argument as to why he considered ASC must hold the requested information, the complainant told the Commissioner:

"the retained HR and contract management team in the Police must have been monitoring this information for contract compliance and therefore the Police should have this information and be able to answer the FOI".

18. Regarding the information at issue in this case, ASC told the complainant:

"Avon and Somerset Constabulary have never recorded the information requested, so we do not physically hold it".

19. With respect to the status of the staff, ASC explained to the Commissioner:

"Staff carrying out the back office and customer facing services in the member organisations, which are now provided by Southwest One, were seconded to Southwest One at the start of the partnership. The position is that seconded staff in effect work for Southwest One under their direction and control, but legally remain employees of their respective organisations".

20. On the evidence before him, the Commissioner is satisfied that ASC did not itself record the information at issue in this case. He has therefore gone on to consider whether the requested information is held on behalf of ASC by SW1.

Is the information or any part of it held by another person on behalf of ASC?

21. In order to comply with the requirements of FOIA, public authorities clearly need to know what information they hold for the purposes of FOIA. This means, for example, that they need to be aware of information that is being held on their behalf by other persons.
22. Good records management is important in this context. Public authorities are advised to follow the good practice which is set out in the Lord Chancellor's Code of Practice under section 46 of FOIA. This includes, for example, a section on records that are shared with other bodies or held on their behalf by other bodies.
23. The Commissioner acknowledges that ASC recognises that information is held by a public authority for the purposes of FOIA if it is held by another person on behalf of that authority. In this respect, ASC acknowledged that there are scenarios in which SW1 holds information on its behalf, telling the complainant:

"However, under the Act, even if an organisation does not physically hold the information, it may still be deemed to do so if it is held by another person on their behalf. So, for example, information collected by Southwest One staff performing front enquiry office duties at police stations on behalf of the Constabulary, would be held by the Constabulary even though the Constabulary did not collect it".

24. However it also told him:

"But in the case of SAP, this is a system/service provided by Southwest One. Any information, of the type subject of your request (sic) and recorded by Southwest One, would be for Southwest One purposes in connection with the delivery of their services and not recorded for or on behalf of the Constabulary. They would hold the information: Avon and Somerset Constabulary do not".

25. In subsequent correspondence, it told the complainant:

"SAP was implemented by SW1 and by IBM in particular, as part of their service provision. If any information was recorded by SW1 of the type subject of your request, it would be solely for SW1 purposes and not created for or on behalf of the Constabulary. Even if such information existed it would not necessarily be recorded on SAP.....To summarise, ASC do not believe that they hold the information requested....".

26. Similarly, ASC told the Commissioner:

"We believe that training records held by Southwest One in relation to seconded Constabulary IT staff, are held for their purposes, namely the delivery of contracted services, and not on behalf of the Constabulary".

27. Where it is necessary for the Commissioner to determine whether information is held on behalf of a public authority he will usually need to refer to the terms of any relevant contractual provisions between the parties. Although he was not provided with a copy of the entire contract between ASC and SW1 – which he understands to be lengthy – the Commissioner was provided with a schedule and extracts for his consideration.

28. The Commissioner accepts that the focus of the contract is the provision of services and the mechanisms to ensure the contracted services are delivered to the agreed standard. He agrees with the comments made by ASC in paragraph 23, that information generated by contracted staff carrying out duties for the public authority will be held on its behalf. However he also wishes to clarify that further information may also be held on behalf of a public authority. As mentioned above, this will often depend upon the terms of the contract and what specific information any such agreement requires the contractor to share with the public authority or allow it to access.

29. During the course of his investigation, ASC also provided the Commissioner with further details of how contracted services are

provided to the partnership by SW1. That included an explanation of the training associated with the IT service it provides. In that respect, ASC told the Commissioner:

"Any such training or certification involved is under the direction and control of Southwest One and undertaken for their purposes and not on behalf of ASC. ASC has no involvement in determining, recording or tracking the IT training or certification of seconded ASC IT staff".

30. Specifically with respect to the information at issue in this case ASC explained how SW1 records the training and certification of all IT staff, including seconded staff.
31. In reaching his decision in this case the Commissioner has taken into account the nature of the information requested, his consideration of parts of the contract between ASC and SW1 and the explanations provided by ASC. He understands that ASC has no business need to access the qualifications information required by the complainant, despite the fact that legally the seconded staff remain its employees. This is on the basis that any training or certification is the responsibility of SW1 to enable its staff, including seconded staff, to deliver contracted services such as IT to the agreed standard. Nor has he been made aware of any obligation on SW1 - contractual or otherwise - to provide information to ASC to allow it to verify that qualifications have been obtained by staff in order to ensure compliance with the contract.
32. The Commissioner is also satisfied, on the basis of the evidence in front of him, that the contract between ASC and SW1 makes provision for ASC's responsibilities under FOIA. The requested qualification details do not appear to fall within any of the categories of information that SW1 is required to provide to ASC to ensure it is able to comply with its FOIA obligations. In conclusion, having considered all of the points above the Commissioner is satisfied that, in this case, SW1 does not hold the requested information on behalf of ASC. Overall the Commissioner has therefore concluded that ASC does not hold information relevant to part (1) of the request for the purposes of FOIA.

Right of appeal

33. 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: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

34. 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.
35. 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

Jo Pedder
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