

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 5 June 2014

**Public Authority:** Chief Constable of Lancashire Constabulary  
**Address:** Police Headquarters  
Saunders Lane  
Hutton  
Preston  
PR4 5SB

### Decision (including any steps ordered)

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1. The complainant requested information about the number of concerns raised under the Public Interest Disclosure Act 1998 during a specified period. Lancashire Constabulary provided some information within the scope of the request, but said that determining whether any further information was held would exceed the cost limit (section 12(2)) of the FOIA.
2. The Commissioner's decision is that Lancashire Constabulary has properly applied the cost exclusion. However, by responding outside the 20 working days' time limit, Lancashire Constabulary breached section 10(1) of the FOIA. He does not require the public authority to take any remedial steps.

### Request and response

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3. On 21 November 2013 the complainant wrote to Lancashire Constabulary and requested information in the following terms:

*"Can you tell me how many civil servants/Police officers/staff have raised concerns under the Public Interest Disclosure Act 1998, between 2007 and 2013?"*

*What concerns did they raise?*

*What department did they work under when they raised them?*

*How many faced disciplinary procedures for doing so?"*

4. Lancashire Constabulary responded late on 9 January 2014. It provided some information within the scope of the request, based on the number of submissions. It explained that it is not possible to give the actual number of individuals who had made submissions because some are submitted anonymously and those individuals may have made more than one submission.
5. The complainant requested an internal review on 11 January 2014. Lancashire Constabulary sent him the outcome of its internal review on 14 February 2014 upholding its original position.

### **Scope of the case**

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6. The complainant contacted the Commissioner on 7 March 2014 to complain about the way his request for information had been handled.
7. During the Commissioner's investigation, Lancashire Constabulary changed its position and said that, in reviewing the request, it had established that some further information might potentially be held relevant to the request. It said, however, that to determine whether the information was held and to extract the details the complainant has requested would exceed the cost limit (section 12(2)).
8. The Commissioner has therefore considered whether Lancashire Constabulary properly applied the cost exclusion to the request.
9. Following his investigation the Commissioner wrote to the complainant on 7 May 2014 setting out his preliminary view of the case and asked him to consider whether he would withdraw his complaint so it could be resolved informally. The complainant declined and therefore the Commissioner has issued a decision notice in this case.

## Reasons for decision

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10. During the investigation, Lancashire Constabulary wrote to the Commissioner and said that if it were to consider the initial request literally, then Lancashire Constabulary would not hold any information. It explained that its understanding is that no information is recorded about "*concerns raised under the Public Interest Disclosure Act 1998*". However, in accordance with its duty to assist, Lancashire Constabulary provided the complainant with the information it was able to and which it believed he was seeking.
11. By way of background, Lancashire Constabulary explained that the submission of information in relation to suspected misconduct or criminal activity within the organisation has long been recognised as one of the highly valued sources of information in support of the Force Counter Corruption Strategy. In response to this information requirement, the Professional Standards Department (PSD) Anti-Corruption Team set up and actively promoted the following facilities to accommodate the submission of such information.
  - Anti-Corruption training packages embedded into key training packages.
  - Regular Force Intranet bulletins.
  - Publication of the PSD Anti-Corruption Control Strategy.
  - Re-promotion of the existing telephone based confidential reporting facility.
  - Creation of a new computer based anonymous reporting facility.
  - Allocation of dedicated telephone advice lines for staff who wish to speak with PSD.
12. Lancashire Constabulary stated that the data that had been provided to the complainant is based on information that has come to the attention of the PSD Anti-Corruption Team, adding that it is well-accepted practice within the organisation for such information to be referred to that team at the earliest opportunity. This team deals with matters of the nature described in the complainant's request, ie disclosures that would qualify as being those which are set out within the Public Interest Disclosure Act, and which were assessed as follows on receipt.
  - Disclosures made by employees only, either directly or indirectly.

- Disclosures in relation to alleged criminal offences, miscarriages of justice, health and safety breaches and damage to the environment.
  - Disclosure that any of the above is or has been concealed.
13. However, as highlighted above, Lancashire Constabulary said that the original request presumes a requirement for information to be submitted under the specific authority of the Public Interest Disclosure Act, which is not the case. The Anti-Corruption Team encourages the submission of information in any and every format, from any source and by any means. Lancashire Constabulary advised that the data provided in response to this FOIA request included all data irrespective of its veracity or the method in which it was received.
14. In reviewing the request once again during the Commissioner's investigation, Lancashire Constabulary said that it had established that some further information might potentially be held relevant to the request. However, having now considered the requirements of the requestor (ie the complainant), and following liaison with the information owning department in order to establish what further information could be provided, Lancashire Constabulary considered that provision of any further information would engage section 12 of the FOIA – excess cost. It explained that to determine whether the information was held and extract such details as the complainant is seeking would take more than 18 hours.

### **Section 12 – the cost limit**

15. Section 12(1) states that a public authority is not obliged to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit.
16. Section 12(2) states that subsection (1) does not exempt the public authority from its obligation to comply with paragraph (a) of section 1(1) unless the estimated cost of complying with that paragraph alone would exceed the appropriate limit.
17. In this case, the public authority estimates that it would exceed the appropriate limit to confirm whether or not the requested information is held. In other words, it is citing section 12(2).
18. The appropriate limit in this case is £450, as laid out in section 3(2) of the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ("the Fees Regulations"). This must be calculated at the rate of £25 per hour, providing an effective time limit of 18 hours' work.

19. When estimating whether confirming or denying whether it holds the requested information would exceed the appropriate limit, a public authority may take into account the costs it reasonably expects to incur in determining whether it holds the information. The estimate must be reasonable in the circumstances of the case. It is not necessary to provide a precise calculation.
20. Lancashire Constabulary confirmed that, even where provided, no name would be recorded within the database if the person making a disclosure was not a police officer or member of police staff, and that the origin would just be recorded as 'Other'. It said that to ascertain further information relating to the employment of the non-police person who had made the disclosure would require a search through each and all of the manual files held in order to see if such information was provided. Lancashire Constabulary told the Commissioner that in many if not most disclosures, such information is unlikely to have been provided. Lancashire Constabulary estimated that to locate, review and read each manual file would take at least 10 minutes. It confirmed that there are 202 files, and therefore the sum total would clearly be in excess of 18 hours.
21. The Commissioner asked Lancashire Constabulary a number of questions which included requesting a brief explanation of the process which is followed from receipt of a submission under the Public Interest Disclosure Act to the recording of it on the system. In reply, Lancashire Constabulary said that, other than the routine assessment of the reliability of the information and the source, in accordance with the National Intelligence Model (NIM), the information is processed in exactly the same way as it is provided.
22. It added that all information, irrespective of its assessed reliability or means of receipt, is recorded on a dedicated Anti-Corruption Database where each submission can be fully cross-referenced and linked to other existing data. All intelligence is subject to initial processing and evaluation during which the various elements of the information provided are assessed. This process includes the research of existing PSD data sources as well as other force information and intelligence systems with the intention of providing some level of corroboration. This electronic database was implemented in 2010.
23. Lancashire Constabulary also explained that when the research has been completed, the information is submitted to the Anti-Corruption Team tasking process where specific investigative measures are decided and allocated. The progress and development of the investigation is reviewed on a weekly basis until the point where the investigative opportunities have been exhausted or there is sufficient information to submit for an independent severity assessment to decide on whether the

enquiry should be escalated to misconduct or criminal status. From this point onwards the investigation is governed by either the Police Conduct Regulations or any relevant criminal proceedings. If it is decided that it does not meet the threshold for misconduct or criminal proceedings the enquiry is closed but remains on file for future reference.

24. The Commissioner asked Lancashire Constabulary to explain why there is a difference in recording the source of submissions. When a name is provided this is recorded, yet when submissions are made anonymously, they do not appear to be recorded as 'anonymous'.
25. In response, Lancashire Constabulary advised that an originator's details are recorded in those instances where it is provided and, where appropriate, it also records if that person is a police officer or a member of police staff. It also advised that it had no requirement to record a submission as 'anonymous', it just recorded the submission as necessary without including any actual source. It also advised that in most cases information is submitted anonymously, ie 123 out of 202 submissions (61%) originated from anonymous sources. Of the remaining 39% some made the submission on the understanding that their submission would be treated in confidence.
26. Lancashire Constabulary explained that the categorisation of the originating source is based on national anti-corruption categories used by all police forces. It confirmed that it had therefore provided the complainant with information relating to the number of disclosures that had been assessed as disclosures which would be categorised as falling under the Public Interest Disclosure Act 1998, broken down into the national anti-corruption categories used by all forces for recording such information. The information held and provided illustrates where the disclosure has been made by a police officer, police staff or other party.
27. Lancashire Constabulary advised there is no requirement or necessity to record additional information. It said it is likely that some further information may be held in relation to the department of the individual who made the disclosure in a number of those cases – but not all. Again, it confirmed that the task to extract and collate this information would be time consuming, and would require a review of manual files.
28. To further determine whether the detailed information which the complainant is seeking is held, and to locate, retrieve and extract such information would, in Lancashire Constabulary's view, engage section 12 of FOIA.
29. Based on the above submissions, the Commissioner accepts that to ascertain whether or not the information is held would in itself exceed the appropriate limit.

### **Section 16 – advice and assistance**

30. Section 16(1) of the FOIA provides that a public authority is required to provide advice and assistance to any individual making an information request.
31. In this case Lancashire Constabulary sought to provide the complainant with relevant information in relation to the request. The Commissioner therefore considers that the public authority has met its duty to provide relevant advice and assistance.

### **Section 10 – time for compliance**

32. Section 10 of FOIA allows a public authority 20 working days from receipt of the request to respond. In this case, however, Lancashire Constabulary failed to respond to the complainant's request within 20 working days breaching section 10(1) of FOIA. The Commissioner would remind Lancashire Constabulary of the requirement to respond to requests within this time frame.

### **Other matters**

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33. The Commissioner has made a record of the delay in this case. This may form evidence in future enforcement action against Lancashire Constabulary should other cases suggest that there are systemic issues within Lancashire Constabulary that are causing delays.

## Right of appeal

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34. 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: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

35. 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.
36. 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 .....**

**Jon Manners**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**