

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 1 December 2015

Public Authority: Chief Constable of Avon and Somerset Constabulary

Address: Force Headquarters
PO Box 37
Valley Road
Portishead
Bristol
BS20 8QJ

Decision (including any steps ordered)

1. The complainant has requested copies of any submissions made by Avon and Somerset Constabulary ("the Constabulary") to a Police Medical Appeal Boards review conducted by the College of Policing. The Constabulary stated that it did not hold any information which fell within the scope of the request.
2. The Commissioner's decision is that at the time of the request the Constabulary did hold information which fell within the scope of the request. It therefore failed to comply with the requirements of section 1(1) in respect of that information. Since the complainant already has a copy of the information in question, the Commissioner does not require the Constabulary to disclose a copy. The Commissioner is satisfied that, on the balance of probabilities, the Constabulary does not hold any further, relevant information.

Request and response

3. On 7 June 2015, the complainant wrote to the Constabulary and requested information in the following terms:

"Temporary Deputy Chief Constable Gareth Morgan acted as Senior Officer Responsible for a review commissioned by the College of

Policing of force management of ill health retirements, injury on duty awards and police medical appeal boards. This commenced in 2013, and the report of the review is due to be published shortly. A draft version has been released by the College and is in the public domain.

Forces were asked to present various information and documents to The Review Steering Group, which was chaired by T/DCC Morgan. Avon and Somerset Constabulary provided information and documents.

I would like a copy of all information submitted by Avon and Somerset Constabulary in relation to this Review.

The information may include statistical data, completed questionnaires, policy documents, transcripts of interviews, emails, letters, memoranda reports, etc."

4. There followed an exchange of correspondence during which the Constabulary asked whether the complainant could provide the names and locations of any particular documents he was interested in, and why he wanted the information. Then, on 1 July 2015, it issued a refusal notice, stating that the request fell within the meaning of "vexatious", at section 14 of the FOIA.
5. Following an internal review, the Constabulary wrote to the complainant on 21 July 2015. It upheld its decision to apply section 14.
6. During the Commissioner's investigation the Constabulary withdrew its reliance on section 14. On 7 September 2015 it issued a revised response to the complainant, stating that it did not hold the information described in the request.

Scope of the case

7. The complainant contacted the Commissioner on 26 July 2015 to complain about the way his request for information had been handled. At the time of his complaint the Constabulary had refused the request under section 14. However, as noted in paragraph 6, above, it subsequently withdrew its reliance on section 14 and stated instead that it did not hold the requested information. The complainant then asked the Commissioner to consider whether this position was credible.
8. Following the combined cases of the Home Office v Information Commissioner (GIA/2098/2010) and DEFRA v Information Commissioner (GIA/1694/2010) in the Upper Tribunal, a public authority is able to claim a new exemption or exception either before the Commissioner or

the First-tier Tribunal and both must consider any such new claims. The Commissioner accepts that this includes new claims that no information is held.

9. The Commissioner has therefore considered in this decision notice the Constabulary's assertion that it did not hold information described in the complainant's request.

Reasons for decision

10. At the start of the Commissioner's investigation, the Commissioner invited the Constabulary to reconsider its decision to apply section 14.
11. In response to this the Constabulary withdrew its reliance on section 14 and on 7 September 2015 it wrote to the complainant, informing him that it was satisfied that it held no information which was relevant to the request. It said that it was possible that information might have been held and subsequently deleted, and advised the complainant to approach the College of Policing to check whether it held a record of any submissions made by the Constabulary to it.
12. It appears the complainant had already done this and he was able to produce to the Commissioner a very brief email from the Constabulary to the College of Policing, dated 21 October 2014, which detailed the number of people in receipt of Injury on Duty ("IoD") related pensions and their projected costs for 2014/15.
13. The Commissioner has examined the Constabulary's claim that it did not hold any information described in the request in light of this email.

Section 1

14. Section 1 of the FOIA states that any person making a request for information is entitled to be informed by the public authority whether it holds the information and if so, to have that information communicated to him.
15. In cases where there is some dispute about the amount of information located by a public authority and the amount of information that a complainant believes might be held, the Commissioner (in accordance with a number of First-tier Tribunal decisions) applies the civil standard of the balance of probabilities. In essence, the Commissioner will determine whether it is likely or unlikely that the Constabulary holds information relevant to the complainant's request.

16. The Commissioner will consider the complainant's evidence and arguments. He will also consider the actions taken by the public authority to check that the information is not held and any other reasons offered by the public authority to explain why the information is not held. He will also 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 was held, he is only required to make a judgement on whether the information was held on the civil standard of the balance of probabilities.
17. The complainant clearly believes that the Constabulary submitted information to the College of Policing to be considered in the review which it has not disclosed to him. He has shown the Commissioner an email sent by the Constabulary to the College of Policing which contains information relevant to his request. He also considers that the Temporary Chief Constable's involvement in the review means that the Constabulary's claims that it holds no relevant information are not credible.
18. The Commissioner asked the Constabulary whether it held a copy of the email produced by the complainant. He also enquired as to the scope, quality, thoroughness and results of the Constabulary's searches, whether more information was held, whether information had ever been held but deleted and whether copies of information may have been made and held in other locations.

The email

19. After conducting further checks, the Constabulary conceded that at the time of the request it did hold a copy of the email in question and that it had not located it in response to the searches it initially conducted.
20. The Constabulary explained that its head of finance sent the email and subsequently deleted it from his mail box, in line with his practice of reviewing and weeding his emails every three months. It stated that there was no business need for him to retain the email, since the figures contained in it had been extracted from source data and could easily be recreated if required again.
21. The Constabulary said that the email was copied to two colleagues in the Finance and Human Resources departments, one of whom retained a copy in his inbox, which is where the copy it still held was eventually located.
22. The Constabulary admitted that when conducting the search it had erroneously believed that the window for submissions to the College of Policing was between November 2013 and July 2014, and it had

restricted its search terms accordingly. It later discovered that the window for submissions extended until the beginning of 2015. The email in question was sent in October 2014 and so it fell outside of the dates specified in its original search. This accounted for its failure to locate the copy in the colleague's inbox during the search.

Searches for further information

23. Having conducted a further search using the correct search window dates, the Constabulary stated that it was confident that it did not hold any further, relevant information within the scope of the request. It had formed this view based on the searches it had conducted and the checks it had carried out with key members of staff and other stakeholders.
24. Searches had been conducted of Human Resources, Occupational Health and Finance department records, as these were the departments with responsibility for administering the various aspects of the Constabulary's IoD pensions. The Constabulary stated that any communication about its IoD arrangements to any external body would have come from one of these departments. It stated that only six individuals would be likely to have handled information relevant to the request. It was their understanding of the information the Constabulary held on the matter, and its record keeping practices, which directed the search.
25. The Constabulary tries, as far as possible, to operate a paperless system, storing and communicating information in electronic form rather than on paper. Where it is necessary to create a hard copy of a letter or report for a particular purpose, an electronic copy will always be held on the computer system. Information received from external sources in manual format is scanned and stored electronically and communication with such bodies is, as far as possible, via electronic means. Desk top computers are connected to a central network server, and all information (including email inboxes) is stored on that server, rather than locally, on individual computers. The Constabulary confirmed that thorough searches were made of its server's networked resources and emails.
26. The Constabulary could not provide a list of the search terms used to search electronically held information, as no record of them had been kept. To the best of their recollection, searchers had used subject-relevant terms such as "injury on duty pensions" and "College of Policing". The searches were based on the searchers' knowledge and understanding of the broad information types held, the organisation of that information in respect of folders and sub folders and any document naming conventions in use.

27. The Constabulary stated that it was confident that the searches would have recovered any top level, policy documents and responses it had submitted to the College of Policing. However, it had not been able to identify any recorded information relevant to the request, except the email supplied by the complainant.
28. The Constabulary stated that it could find no record of any further, relevant information ever having been held and deleted.
29. The Constabulary explained that in addition to the searches, it had approached its Temporary Chief Constable and its Force Medical Advisor, to establish whether they held any records or knew of any submissions made by the Constabulary to the College of Policing.
30. Referring to the complainant's comments about the Temporary Chief Constable's role in the College of Policing review, the Constabulary explained that at the time of the review he was employed as the Assistant Chief Constable for another police force; it was mere coincidence that he was now employed by the Constabulary. He acted as the senior risk owner for the College of Policing's review. His position as senior risk owner was high level, and it was not relevant to the role to know which individual forces had made submissions.
31. The Temporary Chief Constable has confirmed that he has no knowledge of any submissions made to the College of Policing's review by the Constabulary.
32. The Constabulary's Force Medical Advisor attended the steering group for the College of Policing review. However, the Constabulary says that he did so purely in a professional capacity, as the elected police representative of the Association of Local Authority Medical Advisors, and not as a representative of the Constabulary's interests. He too has confirmed that he has no knowledge of any submissions made by the Constabulary to the College of Policing review.
33. Finally, the Constabulary contacted the College of Policing, to ask whether it held a record of any further submissions made to it by the Constabulary in relation to the review. The College of Policing confirmed that it did not.
34. The Constabulary has explained that there was no formal requirement to respond to the College of Policing's request for submissions. Information supplied by the College of Policing indicates that only 11 police forces (out of a potential total of 46 across England and Wales) actually submitted a copy of their IoD policy and so there would have been nothing unusual in the Constabulary's failure to provide a more detailed response than the data in the email.

The Commissioner's decision

35. The Constabulary accepts that it held information (the email) which it did not disclose to the complainant. The main deficiency in its approach to the request appears to have been the limiting of the search window to between November 2013 and July 2014, with the effect that the email dated October 2014 was excluded from the scope of the search.
36. The email was eventually located in the email account of an individual who worked in one of the departments upon which the search was focussed, but its send date fell outside of the search window applied and so it was not identified. Had the correct search window been applied, it seems likely that the email would have been located.
37. This erroneous assumption about the dates between which submissions would have been made to the College of Policing appears to have shaped the search for any relevant information and resulted in the email not being located. With regard to the question of the dates the Commissioner considers that the Constabulary should have exercised more care to ascertain the dates which went on to shape its search. However, he accepts that it was a genuine error on the part of the Constabulary and he acknowledges that when presented with further information about the possible existence of the email, it was able to locate it.
38. With regard to the question of whether the Constabulary holds further, relevant information, the Commissioner is satisfied that it has provided him with a detailed and cogent explanation as to the scope, quality, thoroughness and results of its searches, the specialist knowledge of those conducting the searches and its other reasons for believing it holds no further information.
39. Of these other reasons, the Commissioner considers the College of Policing's confirmation to the Constabulary that it does not hold a record of any further submissions from it to be particularly persuasive. The College of Policing, as the body responsible for conducting the review, would almost certainly have retained submissions made to it by contributing police forces. If it has been unable to locate anything other than the email, this seems to be a reliable indicator that that no other submissions were made by the Constabulary.
40. The complainant appears convinced that further information must be held by the Constabulary, but the nationwide response rate to the call for submissions, noted in paragraph 34 shows the Constabulary's failure to provide a detailed submission was not unusual or out of step with other constabularies.

41. With regard to the Temporary Chief Constable's involvement, the Commissioner is satisfied that he only came into the employment of the Constabulary in October 2014, which was towards the latter stage of the call for submissions (early 2015). In view of this, and the senior matters with which the role was concerned, the Commissioner accepts that it is unlikely that the Temporary Chief Constable would have had a particular interest in any submissions made by the Constabulary (or indeed, in making sure that it made a submission).
42. Taking all the above into account, while the Commissioner considers that the Constabulary did not act in accordance with section 1(1) with regard to the email, he is satisfied that on the balance of probabilities the Constabulary does not hold any further information which falls within the scope of the request.

Right of appeal

43. 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@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

44. 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.
45. 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
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