

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 28 July 2020

**Public Authority:** Chief Constable of Leicestershire Police  
**Address:** Police Headquarters  
Enderby  
Leicester  
LE19 2BX

#### Decision (including any steps ordered)

---

1. The complainant requested information from Leicestershire Police relating to tribunal decisions arising from penalty charge notices issued by local authorities in relation to police vehicles.
2. Leicestershire Police denied holding the requested information.
3. The Commissioner's decision is that, on the balance of probabilities, Leicestershire Police does not hold the requested information.
4. The Commissioner requires no steps to be taken as a result of this decision.

#### Request and response

---

5. On 24 November 2019, the complainant wrote to Leicestershire Police and requested information in the following terms:

*"When a penalty charge notice is issued by a local authority in relation to a police vehicle, the police may make representations to the local authority and, ultimately, appeal to either the Traffic Penalty Tribunal, the London Tribunals, the Parking and Bus Lane Tribunal for Scotland or the Northern Ireland Traffic Penalty Tribunal, depending on where the contravention occurred (I bear in mind that on occasion officers will travel on police business in police vehicles significantly outside their force area). In all such instances the relevant tribunal will issue a written decision and serve a copy*

*to both the local authority and the Chief Constable in his capacity as the appellant.*

*I hereby request copies of the following:*

- 1) Copies of the last 10 tribunal decisions issued by the Traffic Penalty Tribunal for parking cases in which the Chief Constable lost the appeal.*
  - 2) Copies of the last 10 tribunal decisions issued by the Traffic Penalty Tribunal for bus lane cases in which the Chief Constable lost the appeal.*
  - 3) Copies of the last 10 tribunal decisions issued by the Traffic Penalty Tribunal for moving traffic cases in which the Chief Constable lost the appeal.*
  - 4) Copies of the last 10 tribunal decisions issued by the London Tribunals for parking cases in which the Chief Constable lost the appeal.*
  - 5) Copies of the last 10 tribunal decisions issued by the London Tribunals for bus lane cases in which the Chief Constable lost the appeal.*
  - 6) Copies of the last 10 tribunal decisions issued by the London Tribunals for moving traffic cases in which the Chief Constable lost the appeal.*
  - 7) Copies of the last 10 tribunal decisions issued by the Parking and Bus Lane Tribunal for Scotland for parking cases in which the Chief Constable lost the appeal.*
  - 8) Copies of the last 10 tribunal decisions issued by the Parking and Bus Lane Tribunal for Scotland for bus lane cases in which the Chief Constable lost the appeal.*
  - 9) Copies of the last 10 tribunal decisions issued by the Northern Ireland Traffic Penalty Tribunal for parking cases in which the Chief Constable lost the appeal.*
  - 10) Copies of the last 10 tribunal decisions issued by the Northern Ireland Traffic Penalty Tribunal for bus lane cases in which the Chief Constable lost the appeal”.*
6. Leicestershire Police responded on 25 November 2019. It denied holding information within the scope of the request.

7. Following an internal review, Leicestershire Police wrote to the complainant on 18 February 2020. It maintained its view that the information he had requested is not held.

## Scope of the case

---

8. The complainant contacted the Commissioner on 18 February 2020 to complain about the way his request for information had been handled.
9. He considered Leicestershire Police had misunderstood his request. In that respect he told the Commissioner:

*"Once more the force seems to be conflating civil Penalty Charge Notices, issued by local councils, with Notices of Intended prosecution issued by the force itself under the criminal law.*

*The force also seems to be confusing notices issued **by** the force with notices issued **to** the force, ...".*

10. The analysis below considers whether, on the civil standard of the balance of probabilities, Leicestershire Police held information within the scope of the request.

## Reasons for decision

---

### *Section 1 general right of access*

11. Section 1 of the FOIA states that:

*"Any person making a request for information to a public authority is entitled –*

*(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and*

*(b) if that is the case, to have that information communicated to him."*

12. In scenarios such as this one, where there is some dispute between the public authority and the complainant about the amount of information that may be held, the Commissioner, following the lead of a number of First-tier Tribunal decisions, applies the civil standard of the balance of probabilities.
13. For clarity, the Commissioner is not expected to prove categorically whether the information is held, she is only required to make a

judgement on whether the information is held on the civil standard of the balance of probabilities.

14. In this case, the Commissioner has sought to determine whether, on the balance of probabilities, Leicestershire Police held the requested tribunal decisions.
15. In deciding where the balance of probabilities lies, the Commissioner will consider the complainant's evidence and arguments. She will also consider the searches carried out by the public authority, in terms of the extent of the searches, the quality of the searches, their thoroughness and the results the searches yielded. In addition, she will consider any other information or explanation offered by the public authority which is relevant to her determination.

#### *The complainant's view*

16. In correspondence with Leicestershire Police, the complainant said:

*"... if a Penalty Charge Notice has been issued in respect of a Leicestershire Police vehicle, it is fanciful to suggest that Leicestershire Police would not hold data about this".*

17. While he recognised that there could be a situation where an officer had received and paid for a penalty charge notice [PCN] personally, he told Leicestershire Police:

*"...in all other cases, either a Notice to Owner or a postal PCN would eventually be issued by the local authority and served on the registered keeper of the vehicle. I assume for present purposes that the Chief Constable of Leicestershire Police is the registered keeper of his own vehicles".*

18. In support of his view that Leicestershire Police would hold information within the scope of his request, the complainant explained to the Commissioner:

*"If a PCN is issued to a police force, legally liability cannot be transferred to the driver, because the regulations do not allow for such a transfer of liability. There is an exception for car hire companies, but as Leicestershire Police is not a hire company that exception cannot possibly be relevant".*

#### *Leicestershire Police's view*

19. Leicestershire Police initially simply told the complainant:

*"Leicestershire Police do not hold the information you have requested".*

20. In subsequent correspondence, it explained about the further searches that it had conducted, but confirmed that it did not hold the requested information.
21. In light of the complainant's concerns about its understanding of his request, during the course of her investigation the Commissioner asked Leicestershire Police about its interpretation of the request. She also asked questions, as is her usual practice, relating to how Leicestershire Police established whether or not it held information within the scope of the request.
22. With respect to the complainant's view that it had misunderstood the nature of his request, Leicestershire Police told the Commissioner:

*"... this is not the case, we are aware he is looking for detail relating to notices issued to Leicestershire Police, and not by the Force".*
23. In its submission to the Commissioner, Leicestershire Police provided her with details of the various areas within the Force where enquiries had been made for the requested information. Those areas included Fleet, Professional Standards, Road Safety Unit and Legal Services. Leicestershire Police explained to the Commissioner why each of those areas would be the ones to hold relevant information, if held.
24. For example, with regard to Fleet, it told the Commissioner:

*"Enquiries were made in this area of the Force as any postal issued notices would be delivered here in the first instance".*
25. With respect to Professional Standards, it explained that would be the department to hold details if an Officer had gone to Tribunal for a notice issued to Leicestershire Police for a vehicle they were driving at the time of offence.
26. Leicestershire Police also confirmed that, following the Commissioner's intervention, it had further reviewed the complainant's request. It told the Commissioner that following further checks, each of those Force departments had confirmed that no information is held.

#### *The Commissioner's view*

27. The Commissioner acknowledges that the complainant explained why he considers that Leicestershire Police would hold the requested information.
28. However, while appreciating the complainant's frustration that Leicestershire Police did not hold information within the scope of his request, the Commissioner is mindful of the comments made by the

Information Tribunal in the case of *Johnson / MoJ* (EA2006/0085)<sup>1</sup> which explained that the 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".*

29. Having considered Leicestershire Police's response, and on the basis of the evidence provided to her, the Commissioner is satisfied that, on the civil standard of the balance of probabilities, Leicestershire Police did not hold the requested information.
30. The Commissioner therefore considers that Leicestershire Police complied with its obligations under section 1(1) of the FOIA.

---

1

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

## Right of appeal

---

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

32. 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.

33. 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 .....**

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