

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 23 June 2022

Public Authority: Chief Constable of Avon & Somerset Constabulary

Address: Force Headquarters
PO BOX 37
Portishead
Bristol
BS20 8QC

Decision (including any steps ordered)

1. The complainant has requested various emails, minutes, agendas and briefing notes from Avon & Somerset Constabulary ("A&S"). A&S advised that some of the information was not held and that the remainder of the request was exempt by virtue of section 14(1) (Vexatious requests) of FOIA.
2. The complainant asked the Commissioner to consider the citing of section 14(1) to withhold information. During the Commissioner's investigation, A&S advised that it had changed its position and that it no longer wished to rely on section 14(1). It advised the Commissioner that it now intended to disclose the requested information. To date, that disclosure has not been made.
3. The Commissioner's decision is that A&S has breached section 1 and section 10 of FOIA by failing to disclose the requested information within the statutory time for compliance.
4. The Commissioner requires A&S to take the following steps to ensure compliance with the legislation:
 - disclose the information at part (1) of the request, making appropriate redactions to withhold any personal information.
5. A&S must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner

making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

6. On 5 April 2021, the complainant wrote to A&S and requested information in the following terms:

“1) I wish to see full copies of all emails between the press team and senior staff with employees of the BBC dated 20/03/2021 through to 05/04/2021.

Where an email has been identified please disclose the full thread for context. Please also search draft and (where possible) deleted email folders.

Please also include any attachments.

2) Full copies of all minutes, agendas and briefing notes of meetings held with employees of the BBC dated 20/03/2021 through to 05/04/2021”.

7. On 21 April 2021, A&S sought the following clarification from the complainant:

“Please can you clarify what you mean by ‘senior staff’ and/or which titles you would like included within the scope of your requests”.

8. On the same day, the complainant replied and provided details of five members of staff.
9. On 4 May 2021, A&S responded. In respect of part (2) of the request, it said no meetings had taken place, so no information was held. In respect of part (1), it advised that it considered this part of the request to be vexatious, citing section 14(1) of FOIA.
10. The complainant requested an internal review on 7 May 2021, saying that he did not consider part (1) of the request to be vexatious. He advised that he was interested in finding out how A&S has interacted with the media during and after the 'Kill the Bill' disorder. No reference was made to part (2) of the request, so this will not be further considered.
11. A&S provided an internal review on 10 June 2021. It maintained its position.

Scope of the case

12. The complainant contacted the Commissioner, on 1 July 2021, to complain about the way his request for information had been handled.
13. The complainant did not provide any specific grounds of complaint. The Commissioner therefore determined to consider the citing of section 14(1) of FOIA, as this was the subject of his complaint when asking for an internal review. The Commissioner notified the complainant accordingly and the complainant has not indicated any disagreement with this interpretation of his complaint.
14. On 4 April 2022, the Commissioner commenced his investigation, raising various enquiries with A&S regarding its citing of section 14(1) of FOIA to part (1) of the request.
15. On 4 May 2022, A&S wrote to the Commissioner advising that it needed more time to prepare its response. It said:

“We need some additional time to ensure our response is accurate and as through [sic] as possible.

I anticipate a full response will be with you by the 20th May, if not before”.
16. On 9 May 2022, the Commissioner replied. He said that he would allow the additional time but would issue an Information Notice formally requiring a response to his investigation enquiries, were a response not received within that time frame.
17. On 11 May 2022, A&S advised the Commissioner it had “now had an opportunity to review this request” and that it had “taken the decision that we should disclose the information in relation to Question 1”. It said that staff had been instructed to prepare a response and it would ensure that this was provided as soon as possible, directly to the requestor.
18. On 12 May 2022, the Commissioner acknowledged this revised position. He asked A&S to copy him in to its revised disclosure so he could then contact the complainant and ensure that he was satisfied with the revised response.
19. On 24 May 2022, the Commissioner asked A&S for an update. In response, A&S advised that it would chase matters up that day as a response hadn’t yet been sent out. A&S confirmed that the Commissioner would be sent a copy of what it sent to the complainant.

20. Having heard nothing further, on 13 June 2022, the Commissioner again requested a further update on the matter from A&S. At the time of writing no response has been received in respect of that enquiry.

Reasons for decision

Section 1 – general right of access **Section 10 - time for compliance**

21. Section 1(1) of FOIA states that an individual who asks for information is entitled to be informed whether the information is held and, if the information is held, to have that information communicated to them.
22. Section 10(1) of FOIA states that on receipt of a request for information, a public authority should respond to the applicant within 20 working days.
23. The complainant submitted his request on 5 April 2021. A&S has confirmed that it holds information falling within the scope of the request that it does not consider to be covered by a non-disclosure exemption. However, it has failed to disclose this information to the complainant.
24. A&S has therefore breached section 1(1)(b) and section 10(1) of FOIA.
25. The Commissioner now requires A&S to take the action specified in paragraph (4), above. When doing so it should consider any potential disclosure of personal information that may be held within the requested information and deal with this in line with the Commissioner's guidance¹.

Other matters

26. Although they do not form part of this notice the Commissioner wishes to highlight the following matters of concern.
27. The Commissioner is disappointed with the lack of engagement in this case. The delay, and lack of input from A&S has necessitated this decision notice being issued. Were the disclosure made as indicated, or

¹ <https://ico.org.uk/media/for-organisations/documents/2619056/s40-personal-information-section-40-regulation-13.pdf>

a clear time frame presented to the Commissioner then there may have been no need for the notice.

28. The Commissioner will use intelligence gathered from individual cases to inform our insight and compliance function. This will align with the goal in our draft Openness by Design strategy² to improve standards of accountability, openness and transparency in a digital age. The Commissioner aims to increase the impact of FOIA enforcement activity through targeting of systemic non-compliance, consistent with the approaches set out in our Regulatory Action Policy³.

² <https://ico.org.uk/media/about-the-ico/consultations/2614120/foi-strategy-document.pdf>

³ <https://ico.org.uk/media/about-the-ico/documents/2259467/regulatory-action-policy.pdf>

Right of appeal

29. 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

30. 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.
31. 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

Carolyn Howes
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF