

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 30 November 2010

Public Authority: Chief Constable of Lancashire Constabulary
Address: Lancashire Constabulary Headquarters
PO Box 77
Hutton
Preston
Lancashire
PR4 5SB

Summary

The complainant requested various information relating to the sharing of personal data between the public authority and other organisations. The public authority disclosed some information (but the complainant did not accept that all relevant information had been disclosed), stated that some information was not held and refused some requests on the basis that to comply with these would exceed the cost limit. The Commissioner finds that, where the public authority disclosed information, no relevant information was withheld from the complainant, that the public authority stated correctly that no information was held that would fall within the scope of some parts of the requests and that it was reasonable for the public authority to estimate that the cost of compliance with some requests would exceed the appropriate limit. However, the Commissioner also finds that the public authority failed to comply with section 16(1) of the Act in that it did not provide advice and assistance to the complainant as to how those parts of his request refused on cost grounds might be refined to fall within the cost limit. It also failed to comply with sections 10(1) and 17(5) in its handling of the request.

The Commissioner's Role

1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

The Request

2. The complainant made the following information requests on 23 July 2008:

"(1) Can you please identify the controls and the clear lines of accountability in place in order to safeguard the personal information that the Lancashire Constabulary holds and shares.

(2) Can the Lancashire Constabulary please supply all information that demonstrates that they act in line with the principle of minimising the amount of data collected and used and how it collects and shares only as much personal information as is essential and stores it only for as long as is necessary.

(3) Can you please supply information as to how the Lancashire Constabulary train their staff to understand the risks of handling personal information and to meet the reasonable expectations of those whose data they hold, and of the regulator.

(4) Can you please supply all official information as to how the Lancashire Constabulary decides whether or not personal information should be shared?

(5) Can the Lancashire Constabulary provide all official information that shows that the sharing of personal information is adequately documented and subject, for example, to privacy impact assessments.

(6) Can the Lancashire Constabulary also provide all official information that shows that when they share personal information they ensure that they pay particular attention to inherent risks such as: perpetuating or exaggerating inaccurate or outdated data; mismatching data; losing data; and intruding excessively into private lives."

3. The response to this request was dated 29 August 2008, outside 20 working days from receipt of the request. This stated that request (1) was not a request for recorded information. In response to requests (2) and (3), some information was disclosed to the complainant. In response to requests (4), (5) and (6), it was suggested that these were also not requests for recorded information, but reference was also made to the cost of compliance with these requests and to section 12 of the Act.

4. The complainant responded on 3 September 2008 and requested an internal review of the handling of requests (1), (3) and (4) to (6). Following the intervention of the Commissioner, an internal review was carried out and the response providing the outcome of the review was dated 27 August 2009. In relation to request (1) it was stated that no relevant information was held and in relation to request (3) reference was made to online training in addition to the information that was previously disclosed. In response to requests (4), (5) and (6), reference was again made to section 12, but the response went on to deal with each request separately. In response to requests (4) and (5), some information was disclosed to the complainant and, in response to request (6), it was stated that no relevant information was held.

The Investigation

Scope of the case

5. The complainant contacted the Commissioner's office on 17 October 2009. At this stage the complainant stated that he was particularly concerned with requests (4), (5) and (6) and with the references to the cost limit made by the public authority. During an exchange of correspondence between the Commissioner's office and the complainant, it was established that the complainant wished this case to cover requests (1), (3) and (4) to (6). The complainant had not requested an internal review in respect of request (2) and so this request was not within the scope of this case. In relation to requests (1) and (6) the complainant did not accept that the public authority was correct in stating that no relevant information was held, and in relation to requests (3), (4) and (5) the complainant did not accept that all relevant information had been disclosed to him.

Chronology

6. The Commissioner contacted the public authority initially on 8 February 2010 and an exchange of correspondence between the Commissioner's office and the public authority about this case followed. At the end of this exchange, the stance of the public authority in relation to each part of the request within the scope of this case was as follows.
 - Request (1)
7. At internal review stage the public authority stated that it held no information falling within the scope of this request. However, during the Commissioner's investigation the public authority altered its stance

and now stated that it did hold information falling within the scope of this request, but that this had all been disclosed to the complainant at various stages (which are identified in the Analysis section below).

- Request (3)
8. The public authority maintained that it had disclosed all information it held that fell within the scope of this request.
- Requests (4) and (5)
9. The refusal notice and the internal review response had suggested that the position of the public authority was that compliance with these requests would exceed the cost limit and so section 12(1) provided that it was not obliged to comply with these requests. During the correspondence with the Commissioner's office, the public authority confirmed that its stance was that section 12(1) applied and it provided a breakdown of its cost estimate.
- Request (6)
10. The public authority maintained that it held no information falling within the scope of this request and provided a description of the steps that it had taken to identify whether it did hold relevant information.

Analysis

Substantive Procedural Matters

Section 1

11. The stance of the public authority in relation to requests (1) and (3) is that it has disclosed all information falling within the scope of these requests. The task for the Commissioner here is to reach a conclusion as to whether the public authority is accurate in stating this, or whether it holds additional information falling within the scope of the request. If this is an accurate statement, the public authority will be in compliance with section 1(1)(b). This section is set out in full in the attached legal annex, as are all other sections of the Act referred to in this Notice.
12. In relation to request (6), the stance of the public authority is that it holds no information falling within the scope of this request. The task for the Commissioner in relation to this request is to reach a conclusion

as to whether this statement by the public authority is accurate. If this is an accurate statement, the public authority will be in compliance with section 1(1)(a).

13. The question for the Commissioner to consider in relation to all three requests is whether the public authority holds further information to that it has identified previously. The test that the Commissioner has applied in this case is the civil standard of the balance of probabilities. If the Commissioner concludes that, on the balance of probabilities, the public authority is correct in stating that it holds no further information to that identified previously, he will conclude that the public authority is in compliance with the Act. This is in line with the approach taken by the Information Tribunal in the case *Linda Bromley & others and the Environment Agency (EA)* (EA/2006/0072):

"...we must consider whether the IC's decision that the EA did not hold any information covered by the original request, beyond that already provided, was correct. In the process, we may review any finding of fact on which his decision is based. The standard of proof to be applied in that process is the normal civil standard, namely, the balance of probabilities..." (paragraph 10) because *"...there can seldom be absolute certainty that information relevant to a request does not remain undiscovered somewhere within a public authority's records..."* (paragraph 13).

14. Turning first to request (1), the public authority has listed the titles of documents it holds and confirmed the date on which each of these were disclosed to the complainant as follows:

The Information Management Strategy and Policy (29/08/08)
Safe and Sound Data Protection Guidance booklet (29/08/08)
Particulars of Employment (29/08/08)
MOPI Compliance procedures and guidance (29/08/08)
DP1 (section 29 form) (29/08/08)

Crime and Disorder Protocol (27/08/09)

Constabulary's Information Security Policy (10/05/10)

15. The complainant remains dissatisfied with the information that has been disclosed to him and the Commissioner notes that the subsequently rescinded internal review response, which was that no information falling within the scope of this request was held, suggests uncertainty on the part of the public authority in relation to this request. The public authority carried out a further search for information falling within the scope of the complainant's request during

- the Commissioner's investigation, which led to the location of the information disclosed on 10 May 2010. It has also now stated that some of the information disclosed in response to requests (2) and (3) was also within the scope of request (1), hence the inclusion above of information disclosed on the date of the refusal notice and internal review response.
16. The conclusion of the Commissioner is that the public authority failed to comply with section 1(1)(a) in relation to request (1) in that it did not confirm that it held information falling within the scope of this request at either the refusal notice or internal review stage. However, he now concludes that, on the balance of probabilities, the public authority has since disclosed to the complainant all information it holds that is relevant to the request and so is now in compliance with sections 1(1)(a) and 1(1)(b).
 17. Turning to request (3), the public authority disclosed information falling within the scope of this request at the refusal notice stage, which consists of the information listed above that was disclosed on 29 August 2008. The complainant believes that the public authority has failed to disclose to him all information that it holds that is relevant to his request, but the Commissioner is aware of no evidence that this is the case. If the public authority had stated that it held no information that fell within the scope of the request, the Commissioner would have investigated whether this was an accurate statement. In the event, the public authority has confirmed that it does hold information that falls within the scope of the request and has disclosed this information to the complainant. On the basis that information was disclosed to the complainant, and that no evidence has been presented to the Commissioner to suggest that there is further information held, the decision of the Commissioner is that the public authority complied with section 1(1)(b) in relation to request (3).
 18. The stance of the public authority in relation to request (6) was that it held no information falling within the scope of this request. The public authority has provided to the Commissioner a description of the steps that it undertook in order to establish whether it held information falling within the scope of the request.
 19. As part of this description the data protection officer of the public authority has stated that he would be aware of any information that was held that fell within the scope of the request. This individual has stated that, to his knowledge, no information relevant to the request was held and has also stated that he liaised with the Head of Information Assurance Services, who also confirmed that no relevant information was held. In addition, the public authority has stated that

searches were carried out of the public authority's intranet for relevant information and that *"a review of policy documents"* was carried out. On the basis of this description given by the public authority of the steps undertaken to locate information falling within the scope of this request, the Commissioner finds that, on the balance of probabilities, the public authority does not hold information falling within the scope of this request and that it therefore complied with section 1(1)(a) in relation to request (6).

Section 12

20. The public authority has cited section 12(1) in relation to requests (4) and (5). This section provides that a public authority is not obliged to comply with an information request where it estimates that the cost of doing so would exceed the appropriate cost limit. The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the "fees regulations") provide that the appropriate limit for non central government public authorities is £450. The fees regulations also provide that the cost estimate must be calculated at the rate of £25 per hour, providing an effective time limit of 18 hours, and specifies the following tasks that may be taken into account when forming a cost estimate:
 - determining whether the information is held.
 - locating the information.
 - retrieving the information.
 - extracting the information.
21. The task for the Commissioner when considering section 12(1) is to reach a conclusion as to whether the cost estimate made by the public authority is reasonable. In reaching a conclusion on this point, the Commissioner has taken into account the description provided by the public authority of the reasoning for its cost estimate.
22. Section 12 can be cited in relation to either the duty imposed by section 1(1)(a) to confirm or deny whether it holds information falling within the scope of the request if the cost of confirmation or denial alone would exceed the appropriate limit, or the duty imposed by section 1(1)(b) to disclose information. In this case the public authority has cited section 12(1) in relation to the duty imposed by section 1(1)(b).
23. The public authority has stated that it receives approximately 7,000 requests to disclose personal data annually and believes that it would be necessary to retrieve and extract information relating to each of these in order to comply with requests (4) and (5). The public

authority has stated that this information is held in both electronic and manual form and that it would be possible to retrieve and extract information relating to 90 requests for disclosure per hour. This gives a total cost estimate of approximately £1,945. As covered above at paragraph 4, the public authority disclosed to the complainant some of the information falling within the scope of requests (4) and (5). Given the fact of this previous disclosure, the Commissioner has taken it that the public authority has not taken into account the information that was disclosed when forming its cost estimate.

24. The public authority has provided little detail about its cost estimate. The only task that it described specifically is that it would be necessary to read through each hard copy record. No time estimate was given in relation to this task, however, with the public authority stating only that this would take *"considerably longer than 30 seconds"*.
25. In general the Commissioner would expect a public authority to provide a description of each task that it would be necessary to undertake in order to comply with a request and to estimate the time that would be taken in each of these tasks. The public authority has provided no such detail in this case. However, the Commissioner notes that the wording of the request is broad; he accepts that it is realistic that the public authority would receive approximately 7,000 requests for disclosure of personal data annually. He also accepts that it would be necessary to consider the record of each of these in order to respond to the complainant's request due to the way that this request is worded.
26. Given the broad scope of the complainant's request it is clear from the wording of this that it is likely that the public authority would hold a very considerable volume of information falling within the scope of this given the likelihood that a police force would receive very frequent requests to disclose personal data. As a result, the Commissioner accepts that it was reasonable for the public authority to estimate that the cost of compliance with these requests would exceed the appropriate limit. Section 12(1) provides, therefore, that the public authority was not obliged to comply with section 1(1)(b) in relation to these requests.

Section 16

27. The public authority failed, at either the refusal notice or internal review stage, to provide advice and assistance to the complainant as to how his request could be refined to bring the cost of compliance within the appropriate limit. In so doing, the public authority failed to comply with its duty under section 16(1) to provide advice and assistance.

28. The Commissioner considers this issue of particular importance in this case given that it is evident that it was the broad scope of the request as worded that led to this being refused under section 12(1). Had the public authority advised the complainant to restrict the period covered in his request to specific dates, for example, it may have been possible to provide to the complainant part of the information falling within the scope of his original request without exceeding the cost limit.

Procedural Requirements

Section 1 and 10

29. In failing to respond to the requests within 20 working days of receipt, the public authority did not comply with the requirement of section 10(1).
30. In relation to request (1), the public authority did not comply with the requirement of section 10(1) by not providing confirmation or denial of whether information falling within the scope of this request was held within 20 working days of receipt of the request.

Section 17

31. In failing to clearly confirm that section 12(1) was believed to apply in relation to requests (4) to (6) within 20 working days of receipt of the request, the public authority did not comply with the requirement of section 17(5).

The Decision

32. The Commissioner's decision is that the public authority dealt with the requests for information in accordance with the Act in that it complied with section 1(1)(b) in relation to requests (1) and (3) and section 1(1)(a) in relation to request (6), and that it applied section 12(1) correctly in relation to requests (4) and (5). However, the Commissioner also finds that the public authority failed to comply with section 16(1) in not providing advice and assistance as to how requests (4) and (5) could be refined in order to bring the cost of these within the appropriate limit, and sections 10(1) and 17(5) in its handling of the requests.

Steps Required

33. The Commissioner requires the public authority to take the following steps to ensure compliance with the Act:
- provide to the complainant advice and assistance in order that it may be possible to refine requests (4) and (5) to bring them within the appropriate limit.
34. The public authority must take the steps required by this notice within 35 calendar days of the date of this notice.

Failure to comply

35. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Other matters

36. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern:

The Commissioner's published guidance on internal reviews states that a review should be conducted within 20 working days, unless there are exceptional circumstances, in which case the review period may be extended to 40 working days. In this case the Commissioner notes that there appeared to be no exceptional circumstances, but that the internal review was severely delayed. The public authority should ensure that internal reviews are carried out promptly in future.

Right of Appeal

37. 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,
Arnhem House,
31, Waterloo Way,
LEICESTER,
LE1 8DJ

Tel: 0845 600 0877

Fax: 0116 249 4253

Email: informationtribunal@tribunals.gsi.gov.uk

Website: www.informationtribunal.gov.uk

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.

38. Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is sent.

Dated the 30th day of November 2010

Signed

**Gerrard Tracey
Principal Policy Adviser**

**Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Legal Annex

Section 1

Section 1(1) provides 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."

Section 10

Section 10(1) provides that –

"Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt."

Section 12

Section 12(1) provides that –

"Section 1(1) does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit."

Section 16

Section 16(1) provides that -

"It shall be the duty of a public authority to provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made, requests for information to it."

Section 17

Section 17(5) provides that –

"A public authority which, in relation to any request for information, is relying on a claim that section 12 or 14 applies must, within the time for complying with section 1(1), give the applicant a notice stating that fact."