

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 28 September 2020

Public Authority: Chief Constable of Cheshire Constabulary
Address: Police Headquarters
Clemonds Hey
Winsford
Cheshire
CW7 2UA

Decision (including any steps ordered)

1. The complainant requested information about a proposed 'Band D Council tax percentage increase'. Cheshire Constabulary advised the complainant that it did not hold the requested information.
2. The Commissioner's decision is that, on the civil standard of the balance of probabilities, Cheshire Constabulary does not hold the information.
3. The Commissioner does not require any steps to be taken as a result of this notice.

Request and response

4. On 15 January 2020, the complainant wrote to Cheshire Constabulary and requested information in the following terms:

"What is the proposed % increase in the Band D Police Council Tax for 2020/2021?"

Why is the % figure not included in the consultation?"

5. Cheshire Constabulary responded on 12 February 2020. It denied holding the requested information, stating:

"Please note that the Freedom of Information Act relates to recorded information held by the public authority at the time of

the request. The Act does not cover information that is in someone [sic] information or find the answer to a question from staff who may happen to know it.

However to assist I have provided links¹ to the website of the Police and Crime Commissioner for Cheshire that may assist ”.

6. Following an internal review Cheshire Constabulary wrote to the complainant on 28 February 2020. It maintained that it did not hold the requested information.

Scope of the case

7. The complainant contacted the Commissioner on 28 February 2020 to complain about the way his request for information had been handled. He submitted the following grounds:

“The police must know how much their Council tax is going up in a few weeks or they would not be able to plan ahead, so they must know what the % increase is. It is wrong for them not to supply that info [sic] to me.”

8. Cheshire Constabulary provided its investigation response to the Commissioner on 1 June 2020 stating that it had not carried out the council tax consultation process. Having considered its explanation (further details in the 'Reasons for decision' section below), the Commissioner formed a preliminary view, on the balance of probabilities, that Cheshire Constabulary did not hold the requested information.
9. She wrote to the complainant on 2 June 2020 setting out her preliminary view and cited the explanations provided by Cheshire Constabulary. She also set out its view that the Police and Crime Commissioner for Cheshire (the 'PCC') is the organisation responsible for the information he had requested, as had already been explained in Cheshire Constabulary's initial response to him.

¹ <https://www.cheshire-pcc.gov.uk/SysSiteAssets/media/images/who-i-am/commissioner-to-police--crime-panel.pdf> and <https://www.cheshire-pcc.gov.uk/SysSiteAssets/media/images/who-i-am/commissioner-responses/police--crime-panel-letter-to-the-police--crime-commissioner>

10. The Commissioner suggested the complainant might want to submit a new request to the PCC; she also said that, if his view remained that the requested information was held by Cheshire Constabulary, he should provide evidence as to why he believed this to be the case.
11. On 17 June 2020, the complainant responded, disagreeing with the Commissioner's preliminary view. He contended that Cheshire Constabulary had answered the "*wrong question*" in that he had not asked what the "*actual increase*" was, as he realised this would not have been known at that stage, but for the proposed percentage increase. He did not provide any actual evidence to support his view but his comments included a statement that the PCC "*must*" have consulted Cheshire Constabulary and that they therefore "*must*" have known what the proposed percentage increase was.
12. The Commissioner asked for, and obtained, the complainant's consent to relay his further views to Cheshire Constabulary for its comments.
13. On 30 June 2020, the Commissioner wrote to the complainant again relaying Cheshire Constabulary's response. It said:

"Our response of "no information held" is based on the applicant's question, we are aware he is asking for the "proposed" increase not the actual increase. The information we provided on the "actual" increase was provided as part of our duty to assist.

As advised in my previous email in this context "proposed" means the figure the PCC proposes to the Police and Crime Panel. As I detailed in my previous email at the time of the applicant's request central government had not announced the Police Settlement Funding (this includes the maximum amount a PCC can increase the council tax precept by) and the PCC (a separate data controller to Cheshire Constabulary) were still consulting regarding a range of options as such the proposal was not recorded by the Constabulary.

As advised in my previous email I would like to reiterate that the consultation is not carried out by Cheshire Constabulary, it is carried out by the PCC for Cheshire who are a separate data controller/origination [sic] to Constabulary. Cheshire Constabulary are not the data controller or decision maker for this consultation. However as detailed in my previous response at the time of the applicant's request the PCC's public consultation was still ongoing.

The Police Funding Settlement was particularly late this financial year due to the late general election. In relation to forward

planning as is the case for many organisations when forward planning the Constabulary worked on a range of options in terms of budget ensuring flexibility. I have sought the views of the Head of Finance who has confirmed this advising, that until the formal increase was confirmed there were several options worked on. The Constabulary undertook planning and ensured the plans could flex to accommodate the final level permitted.

The information above relates to the budget planning for the upcoming year only, this was not what the applicant asked for in his original request. However [sic] has been provided to assist with understanding of how the Constabulary budget planning works.

In relation to the applicant's original questions our response remains that there was no information held."

14. The Commissioner asked the complainant to confirm whether he now considered his complaint to be resolved.
15. On 6 July 2020, the complainant asked the Commissioner to defer her investigation of this complaint whilst he submitted a request to the PCC for related information. Although the request to the PCC is not under consideration here, the Commissioner has set out the request below for completeness:

"Please inform me when you first consulted Cheshire Police about your 2020/21 Council tax proposals and if possible send me the consultation you sent them."

16. The Commissioner twice highlighted to the complainant that the investigation of this case was effectively 'on hold' at his own request. The complainant advised each time that he would like the case to be 'paused' until the PCC had responded.
17. On 24 August 2020, the complainant provided a copy of the PCC's response by way of an update; it also denied holding the requested information. The complainant said he had sought clarification of the PCC's response (specifically *"Please this time please furnish me with all the communications between the Police Commissioner and Cheshire Police about the 2020/21 precept"*), and that he had been advised this would be treated as a new request with a response expected around 10 September 2020.
18. On 15 September 2020, the Commissioner wrote to ask the complainant whether he had received a response to his 'clarification' request to the PCC.

19. That same day, the complainant provided details of the PCC's response which maintained that no information was held. He asked the Commissioner whether he could "*appeal this or is my only option to request an internal review?*".
20. The Commissioner explained that, in relation to his request with the PCC, the next step would be to request an internal review. She said that, should he remain dissatisfied post internal review, he could then submit a new complaint to her about the PCC and ultimately request a decision notice which could then be appealed to the First Tier Tribunal.
21. The Commissioner also set out her view that progression of the current Cheshire Constabulary complaint was not contingent on the outcome of any internal review request the complainant may choose to make to the PCC, particularly given that it had also said it did not hold the requested information. She explained that any recorded information that one public authority may, or may not, hold is not contingent on what another may hold.
22. Following further clarification to the complainant, he requested a decision notice be issued in this case as he stated he would like to have the right of appeal.
23. The Commissioner has, therefore, considered whether, on the balance of probabilities, Cheshire Constabulary holds the requested information.
24. 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 FOIA. The FOIA is concerned with transparency of information held by public authorities. It gives an individual the right to access recorded information (other than their own personal data) held by public authorities. The FOIA does not require public authorities to generate information or to answer questions, provide explanations or give opinions, unless this is recorded information that they already hold.

Reasons for decision

Section 1 – general access to information

25. Section 1 of FOIA states that anyone making a request for information to a public authority is entitled to be informed whether the public authority holds the information, and, if so, to have that information communicated to them.
26. The Commissioner is mindful that when she receives a complaint alleging that a public authority has stated incorrectly that it does not

hold the requested information, it is seldom possible to prove with absolute certainty whether the requested information is held. In such cases, the Commissioner will apply the normal civil standard of proof in determining the case and will decide on the 'balance of probabilities' whether information is held.

27. The Commissioner will consider the complainant's evidence and arguments. She will also consider the actions taken by the public authority to check whether the information is held and any other reasons offered by the public authority to explain why the information is not held. She 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 is held, she is only required to make a judgement on whether the information is held on the civil standard of proof of the balance of probabilities.
28. Therefore, the Commissioner has sought to determine whether, on the balance of probabilities, Cheshire Constabulary holds any recorded information within the scope of the request. Accordingly, she asked Cheshire Constabulary to explain what enquiries it had made in order to reach the view that it did not hold the information.
29. Cheshire Constabulary maintained that no information is held; it advised: *"I have answered the questions to the best of our ability, quite a few of these were difficult to answer as the consultation was not carried out by Cheshire Constabulary. However wherever possible I have tried to provide information to assist in your understanding of this process."*
30. Cheshire Constabulary explained the following in relation to the searches carried out for information falling within the scope of this request:

"Email sent to Head of Finance, Cheshire Constabulary if this information was held by Cheshire Constabulary it would be held by this department and the Head of Finance would be able to assist in advising of further searches to conduct.

Confirmation received from Head of Finance that information would not be held. Context provided re the process as to why it would not be held. (I have explained the process below, however if you require further information please let me know. However essentially it was advised that the Provisional Police Funding Settlement had not been announced yet and the PCC [Police and Crime Commissioner] were carrying out consultation at the moment.)

Searches made on the website of the PCC which confirmed that the consultation was being completed by the PCC, not Cheshire Constabulary. This also confirmed that consultation was still ongoing.

Before a response was sent I had a conversation with member of staff from OPCC [Office of the Police and Crime Commissioner] who confirmed that between the applicant's request being made the proposal had been made by the PCC to the Police and Crime Panel, therefore under out [sic] Section 16 duty to assist the applicant links to the PCC website were provided.

These links provided the information to answer his question ie the amount the PCC were proposing to increase the council tax by. This also included the response from the Police and Crime Panel. Both events happened after his request was received."

31. Cheshire Constabulary explained that it had not carried out any electronic searches because its Head of Finance confirmed that this information was not held by Cheshire Constabulary. It said this was verified by open source searches and a conversation with the OPCC and that searches of electronic data would not be applicable.

32. Cheshire Constabulary advised that information would not be held as:

"Cheshire Constabulary do not carry out the consultation nor do Cheshire Constabulary make the proposal to the Police and Crime Panel, this is a legal obligation of the PCC for Cheshire.

Open sources searches on the internet confirm the proposal and consultation is made by the PCC."

33. Cheshire Constabulary said that no recorded information was ever held relevant to the scope of the request that had been deleted or destroyed. Its formal records management policy does not say anything about the retention and deletion of records of this type as it did not hold the data at the time of the request.

34. Cheshire Constabulary also confirmed that there are no business or statutory purposes for which the requested information should be held, explaining that: *"the consultation is carried out by a separate organisation (PCC) as such there would be no requirement for Cheshire Constabulary to hold this information at the time of the request."*

35. The Commissioner also asked Cheshire Constabulary how the council tax process works in relation to police forces, ie at what point the police are consulted/informed about the forthcoming year's bandings/changes. In reply, Cheshire Constabulary said:

"Initially I would like to reiterate that the consultation is not carried out by Cheshire Constabulary, it is carried out by the PCC for Cheshire who are a separate data controller/origination to Constabulary. Cheshire Constabulary are not the data controller or decision maker for this consultation.

However to assist I can provide you with details of how the process work:

'In the context of this process the use of the word "proposal" has a definitive meaning i.e the PCC formally "proposing" their increase to the Police and Crime Panel.

The Government's Provisional Police Funding Settlement is usually received in December together with the referendum principles for the increases to council tax (i.e the amount any Commissioner can increase their council tax by before they are obliged to have a referendum). Due to the late General Election in 2019, at the time of the request (15/01/2020) this information had not been provided by central government.

Central government confirmed the Police Funding Settlement on 22nd January 2020 (source² -)

This was sent to the PCC and the Chief Constable via email on the 22nd January 2020 at 15:42. I have had sight of this email from Central Government and can provide this to you if necessary, however the link above confirms that this was not confirmed until 22nd January.

So at this point Cheshire Constabulary were aware of the maximum the amount that a PCC could increase the council tax precept by.

However at this stage Cheshire Constabulary would still not have know [sic] the proposal that the PCC for Cheshire was going to make and at this point the PCC consultations were still ongoing and no "proposal" had been made.

The PCC's public consultation was open until 26th January 2020. At the time of the applicant's request public consultation was

² <https://homeofficemedia.blog.gov.uk/2020/01/22/factsheet-police-funding-settlement-2020-21/>

ongoing, for example roadshows were taking place, held by the PCC, again Cheshire Constabulary are not the data controller for this nor did we carry out this consultation. I am providing this information to assist in your understanding of the process.

The proposed increase was shared with the Constabulary at Joint Management Board on 31st January 2020. This is evidenced here.³

At the time of the applicant's request there was no information held by the Constabulary.

This is supported by the fact that central government had not informed the PCC of the amount they could increase the council tax by. Therefore as the PCC had not been advised on the amount they could increase the council tax by and consultation was ongoing it wouldn't be possible for the Constabulary to have held this information at the time of the request.

However by the time a response was due to be sent to the applicant the proposal had been made by the PCC to the Police and Crime Panel (31st January 2020) and shared with the Constabulary at Joint Management Board the same day. The proposal was agreed (7th February). Copies of the correspondence confirming this (published by the PCC) were provided to the applicant."

36. Although it said it was not involved in the consultation, Cheshire Constabulary provided the following link to the Commissioner by way of assistance⁴. Page 23 of the minutes of the Joint Management Board confirms that the consultation included roadshows and an online and paper survey, with roadshows taking place until 24 January 2020 and the survey closing 26 January 2020 (both post-dating the request).

³ <https://www.cheshire-pcc.gov.uk/SysSiteAssets/media/downloads/what-i-do/making-key-decisions/management-board/from-1920/20200131-management-board-report-pack-website.pdf>

⁴ <https://www.cheshire-pcc.gov.uk/SysSiteAssets/media/downloads/what-i-do/making-key-decisions/management-board/from-1920/20200131-management-board-report-pack-website.pdf>

37. The Commissioner also asked whether the increase would be broken down by percentage as has been requested. In reply, Cheshire Constabulary said:

"Unfortunately this is not a question I can answer as it would need to be directed to the organisation who carried out the consultation (PCC)."

38. The Commissioner had asked whether Cheshire Constabulary could provide any more detail about why the percentage figure was not included in the consultation; it replied:

"Unfortunately this is not a question I can answer as this consultation was [sic] completed by the Constabulary, it is completed by the PCC who would decide what format to use for their consultation."

In addition in the internal review it was noted that this question appears to be asking for an opinion and it was suggested that it is not a valid FOI request. Regardless of this the information is not held."

39. Finally the Commissioner asked whether Cheshire Constabulary had any further points it would like to submit; it replied with:

"As described above the consultation was not carried out by the Constabulary and at the time of the applicant's request (15/01/2020) there was no information held by the Constabulary."

This is support [sic] by the fact that Central Government did not announce the Police Funding Settlement until 22nd January 2020.

This is further support [sic] by the fact the data controller for the survey the PCC were still consulting at the time the request was made.

As such without details of the amount that council tax could be increase by (Police Funding Settlements) and without the results of the consultation (which was still ongoing) all completed by the PCC I would suggest there is no way that Cheshire Constabulary (a separate organisation) would hold this information.

Between the applicant's request being made (15th January) and a response being made the Police Funding Settlement had been announced (22nd January) and the consultation being completed by the PCC had been completed (26th January) and the PCC also made the "proposal" to the Police and Crime Panel (31st January).

The applicant's request was ultimately made to the wrong organisation, however as describe [sic] above I would suggest that even had it been made to the correct data controller at the time of the request the information would not have been held.

I have sought the view of the Office of the PCC who have also confirmed that they are in agreement that at the time of the request Cheshire Constabulary would not have held the information requested.

As part of our duty to assist we provided the applicant a link to PCC website which answered his question in relation to the proposal."

40. All of the above (from paragraph 30 of this notice) was set out in the Commissioner's preliminary view letter of 2 June 2020 to the complainant. Based on the foregoing rationale, the Commissioner had formed the view, on the balance of probabilities, that the requested information was not held by Cheshire Constabulary.
41. Following her further enquiries to Cheshire Constabulary, the Commissioner's view has not changed.

Conclusion

42. When, as in this case, the Commissioner receives a complaint that a public authority has not disclosed some or all of the information that a complainant believes it holds, it is seldom possible to prove with absolute certainty that it holds no relevant information. However, as set out in the paragraphs above, the Commissioner is required to make a finding on the balance of probabilities.
43. Based on the explanation provided by Cheshire Constabulary, the Commissioner is satisfied, on the balance of probabilities, that no recorded information within the scope of the request is held. It is noted that Cheshire Constabulary has tried to assist the complainant by suggesting where to direct his enquiries. However, Cheshire Constabulary is not required to make any enquiries on his behalf.
44. The Commissioner is therefore satisfied that, on the civil standard of the balance of probabilities, that Cheshire Constabulary does not hold the requested information.

Other matters

45. The Commissioner has attempted to resolve this case informally once she received Cheshire Constabulary's investigation response at the beginning of June. The delay in concluding this case has resulted from the complainant's insistence that it be put 'on hold' pending the outcome of his new request to the OPCC.

Right of appeal

46. 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

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

47. 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.
48. 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
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