

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 2 November 2021

Public Authority: Chief Constable of West Midlands Police

Address: Police Headquarters

Lloyd House

Colmore Circus

Birmingham

B4 6NQ

Decision (including any steps ordered)

1. The complainant submitted a multi part request for information about recorded complaints made against West Midlands Police (WMP). WMP responded to each part of the request. The complainant disputed WMP's response to one point, arguing that WMP holds information which it had not disclosed in response to his request.
2. The Commissioner's decision is that WMP complied with the duty under section 1(1) (General right of access) of the FOIA.
3. The Commissioner requires no steps as a result of this decision.

Background

4. The request concerns the formal recording of complaints about the police.

5. The Independent Office for Police Conduct ('IOPC', which oversees the police complaints system in England and Wales), has produced guidance on this area¹:

"The police have a duty to record complaints made by members of the public about the conduct of a person serving with the police and about the direction and control of a police force.

...

A police complaint is an expression of dissatisfaction by a member of the public with the service they have received from a police force. It may be about the conduct of one or more persons serving with the police and/or about the direction and control of a police force."

6. Not all complaints submitted to the police will be formally recorded. The IOPC guidance includes criteria as to whether a complaint is eligible to be 'recorded' and the procedures that should be followed when recording complaints.

Request and response

7. On 21 October 2020, the complainant wrote to WMP and requested information in the following terms:

"All dates between 1 May 2020 to 1 October 2020 inclusively, for police complaints received by the West Midlands Police Professional Standards Department (that must be formally recorded under Schedule 3, Police Reform Act 2002), of those received complaints, specifically;

1. How many complaints were received in total (within the period specified)?

2. What was the shortest length of time (in days) for a complaint to be recorded?

3. What was the average length of time (in days) for a complaint to be recorded?

¹https://policeconduct.gov.uk/sites/default/files/Documents/statutoryguidance/Guidance_on_recording_of_complaints_under_PRA_2002_Dec17update.PDF

- 4. How many complaints that were received on 1 May 2020 are still awaiting to be recorded?*
- 5. How many complaints were received on 1 September 2020?*
- 6. How many complaints that were received on 1 September 2020 are still awaiting to be recorded?"*
8. WMP responded on 4 November 2020, disclosing a number for each point of the request. For point (4), the number was '0'.
9. The complainant requested an internal review on 9 November 2020, clarifying the circumstances in which he believed a complaint should be recorded, and asking WMP to review its response with that in mind.
10. WMP provided an internal review on 24 November 2020, amending the response given to points (3) and (5) of the request. However, its response to point (4) remained unchanged.

Scope of the case

11. The complainant contacted the Commissioner on 24 November 2020 to complain about the way his request for information had been handled. He said that WMP's response to point (4) of the request was incorrect, as he had submitted a complaint to the force on 1 May 2020, which had not been recorded, and which was clearly not reflected in the '0' figure provided to him.
12. The analysis below considers WMP's compliance with the duty under section 1(1) of the FOIA in respect of point (4) of the request.

Reasons for decision

Section 1 – general right of access

13. Section 1(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 that information and, if so, to have that information communicated to him.
14. In this case, the complainant believes that WMP holds information (regarding a complaint he had made) which it has not disclosed in response to his FOIA request. WMP maintained that its response was correct.

15. In such cases, the Commissioner – following the lead of 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 public authority holds further information relevant to the complainant's request.
16. The Commissioner will consider the complainant's evidence and arguments. She will also consider the actions taken by the public authority to check whether further 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.
17. It is worth clarifying that when dealing with a complaint to her under the FOIA, it is not the Commissioner's role to make a ruling on how a public authority chooses to record information. On that point, the Information Tribunal in the case of *Johnson v The Information Commissioner and the Ministry of Defence* (EA2006/0085)² has commented 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".

18. The Commissioner has also had regard to the Tribunal's comments in *Home Office v The Information Commissioner EA/2008/0027*³, that:

"...if the records are faulty or inadequate and the information turns out therefore to be inaccurate that is irrelevant: the right under the Act is to information which is held, not information which is accurate" (paragraph 15).

²<http://informationrights.decisions.tribunals.gov.uk//DBFiles/Decision/i90/Johnson.pdf>

³https://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i203/homeOffice_webDecision_15Aug08.pdf

The complainant's position

19. The complainant says that he submitted a complaint against WMP on 1 May 2020 and on 29 May 2020 he asked that the complaint be 'recorded'. He believed that, under the Police Reform Act 2002 and the Police (Complaints and Misconduct) Regulations 2020, if a complainant asks for their complaint to be recorded, the police force is required to do so. However, he said that WMP had not recorded his complaint by the time he submitted this request (21 October 2020). He therefore expected the response to point (4) of the request to be at least '1' (ie his complaint of 1 May 2020).
20. He provided supporting information that showed that following a complaint he submitted to the IOPC about WMP's handling of his complaint, on 10 November 2020 the IOPC asked WMP to formally record the complaint. Subsequently, WMP did so, although on 21 December 2020, it notified him that no further action would be taken as the complaint was repetitious.
21. The complainant therefore maintained that WMP had been incorrect to respond that no cases received on 1 May 2020 were still waiting to be recorded, because as of the end date specified in his request (1 October 2020) his complaint had not yet been recorded.

WMP's position

22. WMP maintained that it had responded correctly to point (4) of the request, in that no complaints received on 1 May 2020 were still waiting to be 'recorded' on 1 October 2020.
23. It explained that on receipt, the request was allocated to its PSD, which was the department most likely to hold the requested information. PSD had searched their records and the information that was retrieved was provided to the applicant.
24. By way of background, WMP said that the complainant was unhappy about a police investigation some years earlier and he had made a series of complaints to WMP, the Police and Crime Commissioner (PCC) and the IOPC about it. He was not satisfied with the outcome of these complaints and he continued to submit complaints and other correspondence about related matters. Where his complaints attempted to re-open matters which WMP felt had been comprehensively addressed, WMP declined to record them. It said his complaint of 1 May 2020 was one such complaint.
25. The complainant was not happy about this, and he continued to engage with WMP's Professional Standards Department (PSD) and with the IOPC, regarding it.

26. WMP said that it confirmed to the complainant, in an email dated 11 August 2020, that the complaint he had submitted on 1 May 2020 had been logged and that it was, at the time, still under consideration. It said:

"The applicant was further advised on 27th August 2020 that PSD had dealt with the applicant's complaint outside of the formal complaints legislation, as this was an effective, fair and reasonable response to address the issues raised. And that his complaint had been logged on PSD complaints computer system and given the reference number [redacted].

The applicant then contacted the PSD 9 times between 2nd September 2020 and 1st October 2020 to request that his complaint be formally recorded

...

*[the complainant] contacted the IOPC on **4th November 2020** to complain that his complaint to PSD had not been recorded formally".*

27. On 10 November 2020, the IOPC wrote to WMP and, in view of the complainant's evident dissatisfaction with WMP's attempt to informally resolve his complaint, it asked WMP to formally record his complaint. WMP subsequently recorded the complaint. On 21 December 2020, having reviewed the matters covered by the complaint, it advised the complainant that its decision nevertheless remained that no further action was necessary.
28. WMP said that its response to the complainant's request for information was therefore correct. It had taken a decision to not record the complaint it received on 1 May 2020 and so, at the point it responded to the request, there were no complaints received on 1 May 2020 which were still waiting to be 'recorded' on 1 October 2020.

The Commissioner's decision

29. The request asked to know, as of 1 October 2020, how many complaints that were received on 1 May 2020 were still "*awaiting to be recorded*".
30. The Commissioner has considered WMP's explanation for why it did not record the complaint until asked to do so by the IOPC. She notes that essentially, on receipt, the complaint was treated as not eligible to be formally recorded because WMP considered that it attempted to re-visit matters which had already been thoroughly investigated. As set out above, it is not the Commissioner's job to assess whether that decision was a correct, only to establish that that was the decision taken and reflected in the response to the request.

31. On that point, the complainant also submitted several documents in support of his complaint which contained relevant information. One was from the PCC, dated 20 April 2021. It comprised a review of WMP's handling of the complaint of 1 May 2020, including the decisions taken by WMP about whether to record it.
32. The PCC's letter confirms WMP's account that, as a result of the ongoing complaints submitted by the complainant, a decision was made by WMP to *not record* or respond to any more of his complaints, which it was entitled to do. It says the complainant was previously informed of this in a letter, dated 10 September 2017, sent by WMP's PSD. All complaints thereafter were listed as miscellaneous, non-recorded, and not responded to. The PCC observed that this had not deterred the complainant from seeking to have his complaint re-addressed.
33. The complaint which underpins the request in this case was submitted on 1 May 2020. On receipt, WMP logged it, but declined to formally 'record' it, despite the complainant asking it to do so on 27 May 2020. The PCC's letter states that there was instead:

"... an attempt to 'service recover' the complaint outside of the formal complaints regulations as recognised in the letter sent by the department dated 27/08/20. It is standard and accepted practice to try and resolve a complaint before it is formally recorded. The regulations allow for it. Although it is noted that from an early stage the complainant sought to have the complaint recorded, the non-recording measures that had been put in place under the old regulations were still being applied. This was corrected by the IOPC, hence the complainant receiving an outcome letter... This would explain why there was some time before the complaint was recorded.

Another matter that impeded the progress of the complaint was the attempt to have it service recovered – an approach used to resolve a complaint in an expedient and timely manner outside of the schedule 3 recording. This is not unfamiliar practice and is recognised in regulatory terms. The process was concluded in a letter sent to the complainant dated, 27/08/20.

...

The attempt to service recover the complaint did not work as the complainant was unhappy with the explanation provided. The complaint was formally recorded in line with schedule 3 of the Police Reform Act (2002)".

34. The position maintained by WMP, and accepted by the PCC, therefore appears to be that the complaint had not been recorded because WMP

considered it ineligible and it maintained this position until the IOPC wrote to it on 10 November 2020 and asked it to record the complaint.

35. Therefore, with particular reference to whether the complaint of 1 May 2020 was "*awaiting to be recorded*" on 1 October 2020, the Commissioner agrees that the correct answer was that it was not, because a decision to not record this complaint had been taken some considerable time earlier. As far as WMP was concerned, that was the end of the matter until it was approached by the IOPC at a later point and the decision was overturned.
36. The Commissioner is therefore satisfied that WMP was correct to exclude the complaint of 1 May 2020 from the number it supplied in response to point (4) of the request. Her decision is therefore that WMP complied with the duty under section 1(1) of the FOIA.

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,
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

38. 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.
39. 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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