



Neutral Citation: [2023] UKFTT 949 (GRC)

Case Number: TC\*\*\*\*\*  
Case Reference: EA/2023/0330

**First-tier Tribunal  
General Regulatory Chamber  
Information Rights**

**Heard by: determination on the papers**

**Heard on: 3 November 2023  
Decision given on: 09 November 2023**

**Before**

**TRIBUNAL JUDGE ALEKSANDER**

**Between**

**IAN DUTTON**

**and**

Appellant

**(1) THE INFORMATION COMMISSIONER  
(2) CHIEF CONSTABLE OF LINCOLNSHIRE POLICE**

Respondents

**Decision:** The appeal is struck out

## **REASONS**

### **INTRODUCTION**

1. On 5 March 2023, Mr Dutton wrote to Lincolnshire Police and requested the following information:

1. The “Plan” by which the Chief Constable (CC) put forward to the Police and Crime Commissioner (PCC) that resulted in this January 2023 BBC Look North programme.
2. Any correspondence between the CC and the PCC since the time that the “Plan” was submitted.

3. Any explanation where the CC or the PCC demonstrated that there was 'no other option' than to cut PCSO numbers; whilst at the same time proposing the employment of 41 others.

2. Lincolnshire Police responded on 30 March 2023 confirming that it held the information, but that it was exempt from disclosure under ss 40(2), 31(1), 21, and 22, Freedom of Information Act 2000 ("FOIA"). Following an internal review, Lincolnshire Police maintained its initial response, but disclosed a redacted copy of its Priority Based Budgets ("PBB") document.

3. Mr Dutton complained to the Information Commissioner on 5 May 2023. In the course of the Information Commissioner's investigation, Lincolnshire Police wrote to the Information Commissioner on 1 June 2023 stating that there had been no correspondence between the Chief Constable and the Police and Crime Commissioner within the scope of question 2. On 11 June 2023, Lincolnshire Police wrote to the Information Commissioner stating that the Executive Assistant of the Chief Constable had undertaken a search of relevant folders on hard drives using the search terms "PBB" and "PCSO". The result of these searches was that all communications relating to these matters were "via scheduled meetings" and the relevant documents for these discussions had been shared with the Information Commissioner. The search had been undertaken by the Executive Assistant, as that individual had full knowledge of all correspondence.

4. The Information Commissioner's decision notice is dated 15 June 2023.

5. The Information Commissioner decided that, on the balance of probabilities, Lincolnshire Police did not hold any information within the scope of question 2. But, by failing to notify Mr Dutton that it did not hold such information, it was in breach of s1(1) FOIA.

6. As regards the other requests, sections 31(a) and (b) FOIA allow a public authority to withhold information if its disclosure would, or would be likely to, prejudice the prevention or detection of crime and the apprehension or prosecution of offenders. The Information Commissioner decided that the disclosure of the requested information would be likely to have a prejudicial effect on Lincolnshire Police's law enforcement activities. He also decided that the public interest in maintaining the exemption outweighs the public interest in disclosure, and therefore Lincolnshire Police were entitled to withhold the information requested under questions 1 and 3. As s31(a) and (b) applied to exempt disclosure, the Information Commissioner did not need to consider the application of s40(2).

7. The Information Commissioner decided that s21 was not engaged, as the information is not readily available to Mr Dutton.

8. Mr Dutton appeals against the Information Commissioner's decision on the grounds that the Information Commissioner gave too much credence to the Lincolnshire Police's denial of having documentary evidence. Alternatively, he submits that:

the Lincolnshire Police and Crime Commissioner is allowing the Lincolnshire Chief Constable to run the Lincolnshire Police Force on a whim; and requires no written proof of any Plan that the Chief Constable thinks may improve the Lincolnshire Police.

The removal of 41 PCSO's also goes against the recommendation of the Home Office Select Committee "Policing for the Future" Sections 30 and 31.

9. I note that Mr Dutton's appeal is confined to the Information Commissioner's conclusion that Lincolnshire Police do not hold any correspondence between the Chief Constable and the Police and Crime Commissioner. He does not appeal against the Information Commissioner's

decision that Lincolnshire Police were entitled to withhold requested information within the scope of questions 1 and 3 (other than the redacted PBB) by virtue of s31(a) and(b) FOIA.

10. Mr Dutton referred in his notice of appeal to the public assurance meetings of the Police and Crime Commissioner that are available on YouTube, and provided links to three YouTube videos, for meetings on 5 December 2022, on 8 March 2023, and on 12 June 2023. I note that the last two occurred after the date of Mr Dutton's request. In the 5 December video the Lincolnshire Police and Crime Commissioner states that there is a "plan in place", and Mr Dutton submits "How can there be a plan if there is no record?" In the 8 March video, the Deputy Chief Constable mentions the new PCSO model, which will be in place by May, and that it will show the "best way to use the PCSOs". Mr Dutton submits "how can a 'new PCSO model' be prepared if there is no record of written interaction between the PCC and the CC?". In the 12 June video, there are references to "all recommendations" and the "2023/24 plan".

11. The Information Commissioner applies to strike out Mr Hussain's appeal on the basis that it has no reasonable prospects of success.

12. In his Response, the Information Commissioner submits that where there is a dispute as to whether a public body holds information within the scope of a request, the civil standard of proof applies. In other words, whether the information is held is decided on the balance of probabilities. I was referred to the decision of the Upper Tribunal in *Andrew Preston v Information Commissioner and Chief Constable West Yorkshire Police* [2022] UKUT 344 (AAC), and the decisions of this Tribunal in *Councillor Jeremy Clyne v Information Commissioner and London Borough of Lambeth* [2012] UKFTT EA\_2011\_0190 (GRC), and *Oates v Information Commissioner and Architects Registration Board* [2018] UKFTT 2011\_138 (GRC).

13. The Upper Tribunal in *Preston* at [29] approved the decision of this Tribunal in *Linda Bromley v Information Commissioner and Environment Agency* (EA/2006/0072) at [13]:

There can seldom be absolute certainty that information relevant to a request does not remain undiscovered somewhere within a public authority's records. This is particularly the case with a large national organisation like the Environment Agency, whose records are inevitably spread across a number of departments in different locations. The Environment Agency properly conceded that it could not be certain that it holds no more information. However, it argued (and was supported in the argument by the Information Commissioner) that the test to be applied was not certainty but the balance of probabilities. This is the normal standard of proof and clearly applies to Appeals before this Tribunal in which the Information Commissioner's findings of fact are reviewed. We think that its application requires us to consider a number of factors including the quality of the public authority's initial analysis of the request, the scope of the search that it decided to make on the basis of that analysis and the rigour and efficiency with which the search was then conducted. Other matters may affect our assessment at each stage, including, for example, the discovery of materials elsewhere whose existence or content point to the existence of further information within the public authority which had not been brought to light. Our task is to decide, on the basis of our review of all of these factors, whether the public authority is likely to be holding relevant information beyond that which has already been disclosed.

14. The evidence is that the Executive Assistant to the Chief Constable undertook a search of relevant folders on hard drives, networked resources, and emails, and found no correspondence within the scope of Mr Dutton's question 2. The Information Commissioner submits that he is entitled to accept at face value the response of a public authority (in this case

Lincolnshire Police), where there is no evidence of any attempt to mislead the Information Commissioner nor any motive to withhold information. I was referred to the decision of this Tribunal in *Oates* at [11]:

As a general principle, the IC was, in the Tribunal's view, entitled to accept the word of the public authority and not to investigate further in circumstances, whether there was no evidence as to an inadequate search, any reluctance to carry out a proper search or as to a motive to withhold information actually in its possession. Were this to be otherwise the IC, with its limited resources and its national remit, would be required to carry out a full scale investigation, possibly onsite, in every case in which a public authority is simply not believed by a requester.

15. As regards the evidence of the YouTube videos, the Information Commissioner submits that any references in those videos to "the Plan" is not sufficient to alter the Information Commissioner's conclusion that on the balance of probabilities Lincolnshire Police did not hold the correspondence sought in question 2, at the time of the request.

16. The Information Commissioner submits that the other grounds of appeal raised by Mr Dutton are outside the scope of the Tribunal's jurisdiction.

17. The Chief Constable submits that the Executive Assistant had complete access to the Chief Constable's correspondence, and that a search of document folders using the keywords "PBB" and "PSCO" revealed no documents within the terms of question 2.

18. Mr Dutton submits that the Information Commissioner's submission that this Tribunal has no jurisdiction over the "disposition of policing" is not a "valid response". He submits that this means that "no one has any jurisdiction over the disposition of policing anywhere in the UK". As regards the Chief Constable's submission, Mr Dutton submits that he is not a criminal nor a terrorist, that he is not a lawyer, and that he uses ordinary English when filling in his request. He submits that the Chief Constable's submission is "not a valid response".

19. The decision of the Upper Tribunal in *Preston* is binding upon me, and the normal standard of proof on the balance of probabilities applies to this Tribunal, and to investigations by the Information Commissioner. I agree with this Tribunal's decision in *Oates* and find that the Information Commissioner is entitled to accept the word of a public authority (such as Lincolnshire Police) and not investigate further if there is no evidence of an inadequate search, any reluctance to carry out a proper search, or as to a motive to withhold information. I have reviewed the YouTube videos, and agree with the Information Commissioner and find that there is nothing evident in the videos to suggest that there is undisclosed correspondence between the Chief Constable and the Police and Crime Commissioner.

20. Lincolnshire Police do not deny that there may be documents relevant to Mr Dutton's requests (not being correspondence within question 2), and these were disclosed to the Information Commissioner. However, the Information Commissioner has agreed with Lincolnshire Police that these documents are exempt from disclosure pursuant to s31(a) and (b) FOIA. Mr Dutton does not appeal against that aspect of the Information Commissioner's decision.

21. I find that Mr Dutton has no reasonable prospect of succeeding in his appeal on his ground that the Information Commissioner gave too much credence to the Lincolnshire Police's denial of having correspondence within the scope of his question 2.

22. As regards Mr Dutton's other grounds of appeal and submissions, these are outside the scope of the Tribunal's jurisdiction. The Tribunal's jurisdiction is restricted to issues relating to the disclosure of information under FOIA. It does not have a broad jurisdiction relating to

the conduct of policing generally. Mr Dutton’s statement that “no one has any jurisdiction over the disposition of policing anywhere in the UK” is incorrect – the role of the Police and Crime Commissioner for Lincolnshire is to hold Lincolnshire Police to account. Many of Mr Dutton’s submissions fall into the political arena, and are probably not justiciable before any court or tribunal – but rather are matters that can only be addressed through Parliament or by the Police and Crime Commissioner (an elected post).

23. Rule 8 of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 provides that I must strike out the whole or part of any proceedings where the Tribunal does not have jurisdiction, and that I may strike out the whole or part of any proceedings if I find that there is no reasonable prospect of the appellant’s case succeeding.

24. I have found that there is no reasonable prospect of Mr Dutton’s case succeeding in respect of his appeal on the ground that the Information Commissioner gave too much credence to the denial by Lincolnshire Police of having correspondence within the scope of question 2. I have found that Mr Dutton’s other grounds of appeal and submissions are outside the scope of the Tribunal’s jurisdiction.

25. I therefore strike-out this appeal.

**NICHOLAS ALEKSANDER**  
**TRIBUNAL JUDGE**  
**Promulgated on: 09 November 2023**