

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 13 September 2010

Public Authority: Hertfordshire Constabulary
Address: Police Headquarters
Stanborough Road
Welwyn Garden City
Hertfordshire
AL8 6XF

Summary

The complainant submitted a request to Hertfordshire Constabulary (the public authority) for five elements of workforce data relating to internal promotions. The public authority supplied information but the complainant remained dissatisfied, requesting an internal review. Further information was given to explain the figures already released but the complainant remained dissatisfied, and raised the matter with the Commissioner. The Commissioner has decided that, on the balance of probabilities, the public authority has released all the information it holds in relation to the request and has therefore complied with section 1(1) of the Freedom of Information Act (FOIA).

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. On 7 August 2009 the complainant requested the following:
"The number of Police officers by ethnicity who:

1. Applied for each position
2. Were successful at each stage in the selection process
3. Were unsuccessful and the reasons for rejection at each stage
4. Received promotion.

The information requested corresponds with the Hertfordshire Constabulary promotion exercises in each published RES (Race Equality Scheme) Report from April 2005-March 2006, April 2006-March 2007 and April 2007-March 2008".

3. On 4 September 2009 the public authority replied, giving numbers for each of the three annual periods of figures engaged in promotions and applications for sergeants and inspectors' ranks. These were subdivided into racial classifications for each of the applicants' classes. However, the reasons for rejection of any particular candidates were not detailed.
4. On 8 October 2009 the complainant replied to the public authority, stating he was dissatisfied with the information provided and that he wanted the public authority to review the information provided. On 6 November 2009 the authority emailed the complainant, seeking clarification of what information he sought. On 16 November 2009 the complainant supplied three questions detailing what he believed to be still outstanding in his request:

"1. The PDR process supports the police officer selection process by requiring that all application forms contain a confirmation from the Senior Management Team that the individual has a current PDR that shows them as at least 'competent' in their current role. This is the sifting process. The information released does not show applicants who 'Applied for each position' and subsequently 'Were unsuccessful and the reasons for rejection at each stage', e.g. not confirmed as competent.

2. Information pertaining to the promotion of Chief Inspectors and Chief Superintendents was released. No reasons for rejection were released.

3. 'All candidates were white' falls terribly short of the Home Office system of 16+1 ethnic classifications. What is the 16+1 ethnic classification".

5. On 8 December 2009 the public authority replied to the complainant, stating that its review panel had met on 9 November 2009 to review its original decision. This letter refers to an email sent by the complainant to the authority on 16 November 2009 which gives clarifications to the authority of what the complainant is seeking. This December letter adds some background detail to how the figures in the original reply had been reached and to how long the information is kept on record. This latter point accounts for some of the material

asked for by the complainant as being 'not held' by the authority.

The Investigation

Scope of the case

6. On 4 January 2010 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant asked the Commissioner to consider the gap between the request for an internal review in October and the public authority's reply in December; and to consider that the three points raised in his 16 November 2009 email had not been sufficiently answered in the internal review of December. The Commissioner's scope of this case is determined not to be the content of the information but whether the public authority has satisfied its duties relating to section 1 of the FOIA.

Chronology

7. On 19 January 2010 the Commissioner wrote to the public authority, asking it to address the issue of whether any of the information sought by the complainant was exempt from disclosure.
8. On 1 February 2010 the public authority replied to the Commissioner, enclosing copies of all the correspondence which had passed between the parties. It noted that the internal review was conducted by its Review Panel and that this met to consider the case on two occasions, 9 November and 24 November 2009. The first meeting sought clarifications from the complainant as to what he was dissatisfied with from the original reply. Following the complainant's reply on 16 November came the second meeting, the minutes of which were supplied to the Commissioner. It made enquiries as to whether the methodology for ethnicity for applicants was self-classified. It also made enquiries and received information from within the public authority that the reasons for applicants' rejections are kept for a maximum of three months, and which therefore could not be supplied to the complainant.
9. On 9 December 2009 the public authority replied to the complainant by email and by letter. The email contained attachments which provided breakdowns of racial, religious and gender statistics within various ranks of police officers and staff in the public authority in 2009. It also indicated that three months is the limit for keeping promotion applicants' details as this is the agreed timespan in which applicants

- may make appeals against being refused promotions; the information was therefore not held by the authority. It also stated that ethnicity is self-classified by applicants. This December letter ended with hyperlinks to three of the public authority's documents on personnel information, diversity and the race equality scheme.
10. On 2 March 2010 the Commissioner wrote to the complainant, outlining the further enquiries made to the public authority and the subsequent documentation it provided to show how it had searched for information to meet the complainant's requests. This letter noted the limit of three months on applicants' details and the self-classification of ethnicity which the complainant believed fell short of a legal compliance to record. On the notion of ethnic classifying the letter also noted that any legal compliance that may be required for recording ethnic classification was a legal matter that lies beyond the Commissioner's remit. The letter also noted that 42 days elapsed between the request for an internal review and its supply, a period which was also punctuated by the November emails between the two parties.
 11. On 30 March 2010 the complainant wrote to the Commissioner restating his belief that the authority had failed to answer the questions raised and asked the Commissioner to issue the authority with an Enforcement Notice.
 12. On 1 April 2010 the Commissioner wrote to the complainant restating the matters that lie beyond the remit of the Commissioner and that the section 45 Code of Practice for replying to complainants states what the Commissioner believes to be a reasonable time for compliance with internal reviews, but does not of itself form part of section 50 of the Act. The letter concluded by asking whether the complainant wished the case to close or to move to a Decision Notice.
 13. On 30 April 2010 the complainant replied to the above, reiterating his belief that a code of racial equality incumbent upon the authority is a matter for the Commissioner.
 14. On 4 May 2010 the Commissioner replied to the complainant, informing him that a Decision Notice would now be drafted. This letter also outlined the route the complainant could take to appeal against the decision within it.

Analysis

Substantive Procedural Matters

15. In order to determine whether the Act was correctly applied the Commissioner must consider whether the authority supplied all the information it held to the complainant in a timely fashion and whether it conducted the internal review in a manner in keeping with the Act's Code of Practice.
16. In investigating cases involving a disagreement as to whether or not information is in fact held by a public authority, the Commissioner has been guided by the approach adopted by the Information Tribunal in the case of *Linda Bromley & Others and Information Commissioner v Environment Agency (EA/2006/0072)*. In this case the Tribunal indicated that the test for establishing whether information was held by a public authority was not a certainty, but rather whether on a balance of probabilities, the information is held. In deciding where that balance lies, the Commissioner will normally consider the scope, quality and thoroughness of the searches carried out by the public authority as well as considering any reasons offered by the public authority to explain why the information is not held.
17. The Commissioner made detailed enquiries of the public authority on 19 January 2010. These enquiries were focused on establishing whether there were reasons for believing that the information was held and the process that was undertaken by the public authority to locate the requested information.

Reasons for believing information is held/not held

18. The public authority's FoI Appeal Panel sat twice in November 2009 to consider the complainant's dissatisfaction with its initial reply. One aspect turned on the public authority's inability to give the reasons for the rejection of any candidates in their quest for promotion. The panel sought clarification from its Human Resources Department to enquire as to whether there was any information held in paper or electronic format detailing reasons for such rejections. The Department replied by stating that information on this topic was held only for three months after the applications procedure to facilitate possible appeals.
19. The Commissioner sought evidence concerning the rule that all applications for promotion were destroyed after three months. The public authority forwarded a document entitled "Step 3: Assessment of Suitability for Promotion (Gateways 3 and 4)". This detailed the

regime that the public authority uses to assess promotional aspirants and also states: "all paperwork in respect of promotion processes will be held for a period of three months (in line with all other selection process documentation) after which time it will be destroyed".

20. The public authority answered the Commissioner's enquiries in a letter dated 1 February 2010 in addition to supplying copies of past correspondence between the parties.

Attempts made to locate information

21. Following a clarifying email from the complainant on 16 November 2009 the public authority's Internal Review Board contacted its Human Resources Department to elicit a detailed response as to whether reasons for promotional rejection were kept recorded; and whether this Department could explain why there appeared to be an ethnic description which did not appear to conform with a system of racial classification that the complainant believed was incumbent upon the public authority to hold. This Department confirmed that, in the first case, such records are destroyed after three months; and in the second case, that ethnic records are classified by the applicants themselves.

Balance of probabilities

22. The Commissioner has considered the above information and is content to determine that on the balance of probabilities the public authority holds no recorded information that falls within the scope of the complainant's request.

The Decision

23. The Commissioner's decision is that the public authority dealt with the request for information in accordance with the Act.

Steps Required

24. The Commissioner requires no steps to be taken.

Other matters

25. The complainant made note of the late reply of the public authority to his request for an internal review. The review was supplied to the complainant 42 days after the request; however, the Commissioner notes that after the first meeting of the authority's review board on 9 November 2009 it sought clarifications from the complainant as to what he remained unhappy with following the initial reply, the request for a review merely stipulating that he was dissatisfied with what had been provided. The complainant responded with a breakdown of what he still required on 16 November 2009 which allowed the review board to reconvene on 24 November 2009 to reconsider what had been provided. Although the internal review was supplied to the complainant slightly beyond the 40-day guideline recommended in the section 45 Code of Practice, the public authority did ask for a necessary clarification of what the complainant deemed unsatisfactory with the initial reply. The Commissioner therefore allows the extension and rules that the public authority fulfilled its obligations of an internal review.

Right of Appeal

26. 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.

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 13th day of September 2010

Signed

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

Legal Annex

General Right of Access

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."

Time for Compliance

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 10(6) provides that:

"In this section—(a) the day on which the public authority receives the request for information, or
(b) if later, the day on which it receives the information referred to in section 1(3); "working day" means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the [1971 c. 80.] Banking and Financial Dealings Act 1971 in any part of the United Kingdom."

Enforcement

Section 50(1) provides that:

"Any person (in this section referred to as "the complainant") may apply to the Commissioner for a decision whether, in any specified respect, a request for information made by the complainant to a public authority has been dealt with in accordance with the requirements of Part I."

Section 50(3) provides that:

"Where the Commissioner has received an application under this section, he shall either—

- (a) notify the complainant that he has not made any decision under this section as a result of the application and of his grounds for not doing so, or
- (b) serve notice of his decision (in this Act referred to as a "decision notice") on the complainant and the public authority."