

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

Date: 7 March 2011

**Public Authority:** Chief Constable of Gwent Police  
**Address:** Gwent Police Headquarters  
Croesyceiliog  
Cwmbrân  
NP44 2XJ

### Summary

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The complainant asked Gwent Police to confirm whether vehicles involved in an incident near his home were in compliance with "Road Traffic regulations". Due to the conflicting information disclosed by Gwent Police in response to the request, the Commissioner was unable to determine whether the handling of the request was in compliance with the Act. Accordingly, the Commissioner has ordered Gwent Police to reconsider the request.

### The Commissioner's Role

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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.

### Background

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2. In the summer of 2009 a traveller encampment was set up near to the complainant's home. The complainant believes that the actions of individuals who set up that encampment contributed to the death of a local resident. The complainant also believes that vehicles associated with the encampment were in breach of Road Traffic regulations and Gwent Police therefore had the opportunity to move the encampment on. In the complainant's view the failure of Gwent Police to take such action ultimately resulted in the death of the local resident and he is seeking information that clarifies whether there were breaches of Road Traffic regulations that Gwent Police failed to address.

3. In response to the complainant's previous request for details of registration numbers collected during investigations into the establishment of the encampment, on 1 December 2009 Gwent Police stated that the information was exempt under section 40(2) of the Act. However, in an attempt to provide advice and assistance to the complainant, Gwent Police stated that between "20<sup>th</sup> July and 4<sup>th</sup> August 2009, PNC checks were carried out on 5 vehicles". This response led the complainant to make a further request that is the subject of this notice.

## The Request

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4. On 14 December 2009, the complainant wrote to a Superintendent at Gwent Police with the following request:

"I have received an unsatisfactory reply from your colleague [named individual] to my Freedom of Information enquiry, and now wish to make a further request. As you know your colleague took longer than the statutory period to frame her reply, which when it came hid behind the excuse that the information I sought was protected by the Data Protection Act, and so the actual registration numbers of the vehicles you investigation [sic] could not be disclosed to me.

Accordingly I now ask you and [named employee of Torfaen County Borough Council] to confirm or deny whether these vehicles were in compliance or not with Road Traffic regulations at the time of the incident, namely between July 20 and August 4 2009.

I hope you recognise the seriousness of the incident, where failure to act in the event that regulations were not being complied with and granting permission to these noisome incomers to stay for two weeks in the highway location they occupied has led to the untimely death of a local resident, [named individual].

At worst this could give rise to a charge of negligence leading to manslaughter committed jointly by yourself and [named employee of Torfaen County Borough Council]."

5. On 22 January 2010, Gwent Police responded and stated that there had been "no prosecutions for Road Traffic offences in connection with the vehicles which encamped in your ward".
6. For reasons that are unclear to the Commissioner, the complainant made a complaint about the way his request for information had been handled to the Independent Police Complaints Commission, who informed the complainant on 31 March 2010 that it would not take any action in relation to this matter. The Commissioner notes that Gwent

Police and the Independent Police Complaints Commission are separate public authorities for the purposes of the Act and the complainant may have misunderstood how to complain about the handling of his request.

7. In April 2010 the complainant brought this matter to the Commissioner who advised him in June 2010 that he should ask Gwent Police to conduct an internal review of any response to an information request with which he remained unhappy. The complainant wrote to Gwent Police on 30 June 2010 and asked it to conduct an internal review of its handling of his request of 14 December 2010.

8. Having received no response to his request for an internal review, the complainant contacted the Commissioner again on 3 September 2010 and asked that he take the matter forward. The complainant stated:

"I write to advise you that despite my formal written request on 30 June 2010 for an internal review of my FoI application and subsequent reply from [named police officer] of Gwent Police on 5 July 2010 (copy enclosed) that that [sic] the matter had been handed to their Legal Department. I have received no further communication from any Dept of Gwent [sic] Police. "

The complainant asked that the Commissioner "deal with the matter with due diligence, and oblige".

9. The Commissioner wrote to Gwent Police on 16 September 2010 and reminded it of his expectations in relation to the timeliness of internal reviews, as set out in his guidance on that matter<sup>1</sup>. The Commissioner asked Gwent Police to issue the findings of its internal review to the complainant with 20 working days or, if had already issued a response, to check with the complainant that he had received it.

10. On 21 September 2010, Gwent Police emailed the Commissioner to advise that one of its solicitors had already dealt with the request for an internal review.

11. Following a conversation with the complainant on 22 October 2010 and the absence of the findings of the public authority's internal review, the Commissioner wrote to the complainant and the public authority on 1 November 2010 to advise that the matter had been referred to one of his case resolution teams for investigation.

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<sup>1</sup>[http://www.ico.gov.uk/upload/documents/library/freedom\\_of\\_information/detailed\\_specialist\\_guides/time\\_limits\\_internal\\_reviews.pdf](http://www.ico.gov.uk/upload/documents/library/freedom_of_information/detailed_specialist_guides/time_limits_internal_reviews.pdf)

## The Investigation

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### Scope of the case

12. In view of the delays that the complainant had encountered, the Commissioner decided to progress his complaint without the public authority's response to the request for an internal review.
13. The Commissioner is aware that the complainant has made at least three information requests to the public authority and at least one of those requests is outstanding – i.e. it is awaiting the response of Gwent Police to his request for an internal review. It is also apparent to the Commissioner that the request to which this notice relates had been superseded by the complainant's most recent request but he has been unable to negotiate an informal resolution with the complainant.
14. This notice deals with the request of 14 December 2009, referred to by the complainant in his letter to Gwent Police of 30 June 2010 and his subsequent letter to the Commissioner of 3 September 2010. This notice does not deal with any prior or subsequent requests and does not preclude the complainant from bringing complaints about subsequent requests to the Commissioner. The Commissioner has therefore considered whether Gwent Police handled the request of 14 December 2009 in accordance with the Act.

### Chronology

15. On 1 December 2010, Gwent Police issued the findings of its internal review to the complainant. For reasons that are not clear to the Commissioner, the review focused initially on the complainant's request of 20 October 2009, rather than his request of 14 December 2009. However, it did provide information relevant to his request of 14 December 2009:

"I have reviewed 2 logs in relation to incidents at this location, and can confirm the following:

Log dated 13<sup>th</sup> July 2009, several vehicles checked, One [sic] had no insurance, and another no MOT.

Log dated 19<sup>th</sup> July 2009, 4 vehicles were checked and found to have current insurance and MOT certificates. However, some were not displaying vehicle excise licences.

Due to the nature of the incident, it was not possible for officers to deal with the licensing issues at the time. At this stage we would have only notified DVLA that the vehicle's [sic] were unlicensed by completing a

CLE/26 form, which is submitted to DVLA who are the licensing and prosecuting authority for this type of offence.”

16. On 3 December 2010, the complainant telephoned the Commissioner to express his dissatisfaction with the response of Gwent Police and to express his desire to obtain copies of the 'logs' referred to in the internal review.
17. Following an email exchange with Gwent Police, the Commissioner emailed the complainant on 7 December 2010 to set out his view of his complaint to advise him of the options available. The Commissioner stated that he considered the request of 14 December 2009 to have been very specific and that copies of the logs referred to by Gwent Police in the findings of its internal review of 1 December 2010 did not, in his view, fall within the scope of that request. The Commissioner advised the complainant to make a new request to Gwent Police if he wanted to pursue copies of the logs in question, which he understands has now been submitted and some information disclosed.
18. The complainant remained unhappy with the response of Gwent Police to his request of 14 December 2009. In particular, the complainant highlighted that the information provided by Gwent Police in its response of 1 December 2010 (see paragraph 15, above) did not fall within the scope of his request. The request for information referred to a time period of 20 July and 4 August 2009, whereas the response of Gwent Police of 1 December 2010 refers to logs taken on 13 and 19 July 2009 – i.e. the logs are before the time period referred to in the request.
19. The complainant is also unhappy that he has not been provided with the five logs referred to in the response of Gwent Police to his original request of 20 October 2009.
20. The Commissioner has previously set out his view that copies of the incident logs referred to by the complainant do not fall within the scope of his request of 14 December 2009 and, although he understands that Gwent Police has disclosed redacted copies of the logs, he has not considered in this notice whether that information should have been disclosed.

## **Analysis**

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### **Substantive Procedural Matters**

21. The Commissioner has considered whether Gwent Police has responded to the request of 14 December 2009 in line with the provisions of the Act.

22. The request, as detailed in paragraph 4, above, asked Gwent Police to confirm or deny whether certain vehicles were in compliance with Road Traffic Regulations.
23. It is clear to the Commissioner that the vehicles referred to by the complainant are those that Gwent Police referred to in its response to his previous request of 20 October 2009. In summary, the complainant asked whether the vehicles subject to PNC (Police National Computer) checks, referred to by Gwent Police in its response to him of 1 December 2009, were in breach of Road Traffic regulations. Gwent Police had previously stated that five PNC checks were undertaken in the period relevant to the request of 14 December 2009 – 20 July to 4 August 2009.
24. In response to the request to which this notice relates, Gwent Police stated that there were “no prosecutions for Road Traffic offences in connection with the vehicles which encamped in your ward”. The Commissioner does not consider that this response clarifies whether there were any breaches of Road Traffic regulations, as presumably there may be breaches of such regulations that do not result in prosecution and it is not therefore clear whether any offences or breaches were identified by Gwent Police.
25. The findings of the internal review do not clarify the matter. As set out in paragraph 15, above, Gwent Police stated that it held two relevant incident logs. However, the dates of the logs, 13 and 19 July 2009 do not correspond with the date of the incident referred to by the complaint in his request – 20 July to 4 August 2009.
26. The Commissioner has queried this with Gwent Police and was informed that it was not able to explain the reason for the discrepancy. Gwent Police did suggest that the individual who handled the request of 20 October 2009 may have made an error. Gwent Police maintained that the information it disclosed at the internal review stage (on 1 December 2010) is the most accurate information it holds.
27. In addition to the discrepancy in dates, there is also a discrepancy in the information provided. In setting out the findings its internal review Gwent Police referred to several vehicles being checked on 13 July 2009, one of which had no insurance and another no MOT. At least two vehicles must have therefore been checked. Gwent Police stated that on 19 July 2009 four vehicles were checked. The two incident logs referred to by Gwent Police therefore refer to at least six vehicle checks. This is inconsistent with the information provided in its response to the complainant's previous request where it referred to five PNC checks.

28. The Commissioner accepts that the internal review process affords public authorities the opportunity to reconsider the handling of requests and to address any outstanding issues but he does not consider that the internal review in this case has clarified matters. As the dates of the incident referred to by Gwent Police in the findings of its internal review are before the dates of the incident referred to by the complainant in his request, the results of the internal review in this case suggest that Gwent Police holds no information relevant to the request. Furthermore, if the information that has been disclosed to date is relevant to the request, there are clear inconsistencies that have yet to be explained. The Commissioner has queried this with Gwent Police but he is not content that the issues have been properly explained.
29. In the absence of an explanation of the discrepancy in the information provided to the complainant by Gwent Police, the Commissioner has found it extremely difficult to determine whether the public authority has complied with the provisions of the Act; it is unclear whether Gwent Police holds information that will enable it to answer the request and the Commissioner does not consider that its responses to date have clarified its position.
30. The Commissioner has therefore determined that Gwent Police should reconsider the request and provide a response to the complainant that complies with the Act. Namely, it should clarify whether it holds information of the type requested in the request of 14 December 2009 and either disclose it to the complainant or cite a relevant exemption. It would be helpful in the circumstances if Gwent Police provided the complainant with an explanation of the inconsistent information disclosed to date. The Commissioner acknowledges that this decision does not represent an ideal outcome for the parties concerned but he considers that he has little alternative in this case.

### **Procedural Requirements**

31. Section 1(1)(a) of the Act states that any person making a request to a public authority is entitled to be informed in writing by the public authority whether it holds information of the type requested. By failing to do so Gwent Police breached section 1(1)(a) of the Act.
32. Section 10(1) of the Act states that a public authority must comply with section 1(1) promptly and no later than 20 working days after the date of receipt of a request. By failing to confirm or deny whether it held information of the type requested Gwent Police breached section 10(1) of the Act.

## The Decision

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33. The Commissioner's decision is that the public authority did not deal with the request for information in accordance with the Act.

## Steps Required

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34. The Commissioner requires the public authority to take the following steps to ensure compliance with the Act:
- Reconsider the request and deal with it in accordance with the provisions of the Act.
35. The public authority must take the steps required by this notice within 35 calendar days of the date of this notice.

## Failure to comply

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36. 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

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

### Internal review

38. Paragraph 39 of the Code of Practice issued under section 45 of the Act (the 'Code') recommends that complaints procedures should:
- "...provide a fair and thorough review of handling issues and of decisions taken pursuant to the Act, including decisions taken about where the public interest lies in respect of exempt information. It should enable a fresh decision to be taken on a reconsideration of all the factors relevant to the issue.
39. Paragraph 40 of the Code states that in carrying out reviews:



“The public authority should in any event undertake a full re-evaluation of the case, taking into account the matters raised by the investigation of the complaint.”

40. The Commissioner considers that the internal review response in this case was deficient in that it did not provide any explanation of the discrepancies in information previously disclosed to the complainant.
41. As he has made clear in his published guidance on internal reviews, the Commissioner considers that internal reviews should be completed as promptly as possible. While no explicit timescale is laid down by the Act, the Commissioner's view of a reasonable time for completing an internal review is 20 working days from the date of the request for review. In this case the Commissioner notes that there appeared to be no exceptional circumstances, but that the public authority failed to provide the outcome to the review within 20 working days. The findings of the public authority's internal review were communicated to the complainant approximately five months after he had made his request for a review. The public authority should ensure that internal reviews are carried out promptly in future.

### **Responding to requests**

42. Gwent Police did not provide the complainant with an explanation of the apparent discrepancies between the information it disclosed in its initial response to the complainant's request and the information it disclosed following the findings of its internal review. While there is no indication to suggest deliberate intent to mislead the complainant, the Commissioner considers that it would have been good practice to include such an explanation of the discrepancies and this may have avoided the need for this complaint.
43. The Commissioner notes that Gwent Police said that it was unable to provide an explanation of the discrepancies because of reasons such as staff leaving the organisation but he is concerned that the difficulties it experienced in this regard might be indicative of records management problems. The Commissioner has no evidence to support a view that there are records management problems within Gwent Police but, in order to ensure it is following good practice, he would advise it to refer to the code of practice issued under section 46 of the Act<sup>2</sup>.

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<sup>2</sup> <http://www.justice.gov.uk/guidance/docs/foi-section-46-code-of-practice.pdf>

44. The introduction to the code of practice issued under section 45 of the Act (the "Code")<sup>3</sup> states:

"All communications in writing to a public authority, including those transmitted by electronic means, may contain or amount to requests for information within the meaning of the Act, and so must be dealt with in accordance with the provisions of the Act. While in many cases such requests will be dealt with in the course of normal business, it is essential that public authorities dealing with correspondence, or which otherwise may be required to provide information, have in place procedures for taking decisions at appropriate levels, and ensure that sufficient staff are familiar with the requirements of the Act and the Codes of Practice issued under its provisions. Staff dealing with correspondence should also take account of any relevant guidance on good practice issued by the Commissioner. Authorities should ensure that proper training is provided in this regard."

45. Although the introduction does not form part of the Code itself, the Commissioner would echo its recommendations and wishes to note that, in handling this request, Gwent Police appears to have failed to fully understand its obligations under the Act. This raises concerns that staff might not have been provided with proper training in this regard. The Commissioner expects that, in future, Gwent Police will ensure that staff with responsibilities for request handling be provided with adequate training and that future requests will be handled in accordance with the Act and in accordance with the relevant codes of practice.

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<sup>3</sup> <http://www.justice.gov.uk/guidance/docs/foi-section45-code-of-practice.pdf>

## Right of Appeal

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

Tel: 0300 123 4504

Fax: 0116 249 4253

Email: [informationtribunal@tribunals.gsi.gov.uk](mailto:informationtribunal@tribunals.gsi.gov.uk).

Website: [www.informationtribunal.gov.uk](http://www.informationtribunal.gov.uk)

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.

**Dated the 7<sup>th</sup> day of March 2011**

**Signed .....**

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

## Legal Annex

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### 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."