

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 27 August 2013

**Public Authority:** Police and Crime Commissioner for South Wales

**Address:** Ty Morgannwg  
Police Headquarters  
Bridgend  
CF31 3SU

#### **Decision (including any steps ordered)**

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1. The complainant requested information about local protocols in connection with guidance contained within Police Negotiation Board (PNB) Circular 10/4. Despite the intervention of the Commissioner, the South Wales Police Authority (now the Police and Crime Commissioner for South Wales) ("PCC for South Wales") has not responded to the request. The Commissioner's decision is that the PCC for South Wales breached section 10 of the FOIA in that it failed to provide a valid response to the request within 20 working days of receipt.
2. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation:
  - issue a response under the FOIA
3. The public authority must take this step within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

#### **Background**

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4. The original request under consideration in this notice was made to the South Wales Police Authority ('SWPA'). This organisation ceased to exist following local elections for police and crime commissioners on 15 November 2012. The relevant public authority in this case is now the

Police and Crime Commissioner for South Wales.<sup>1</sup> The new role of police and crime commissioner was created as part of recent reforms enacted under the Police Reform and Social Responsibility Act 2011. Each force area in England and Wales (excluding London) now has an elected Police and Crime Commissioner. The Police and Crime Commissioner's role replaces that of the local police authority.

5. Where correspondence refers to the period prior to 15 November 2012, this notice will refer to the SWPA as the relevant public authority because the PCC for South Wales did not exist prior to that date. However, for correspondence from 15 November 2012, this notice will refer to the PCC for South Wales as the relevant public authority.
6. For the avoidance of doubt, the public authority now responsible for the handling of this request is the PCC for South Wales.

## **Request and response**

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7. On 29 September 2012, the complainant wrote to the SWPA and requested information in the following terms:

"In accordance with PNB Circular 10/4 there is a:-

Need for local protocol setting out procedures and levels of delegation

6. The Police Pensions Regulations provide for decisions on the referral of cases to the SMP, and the final decision on whether to grant ill-health retirement in a case, to rest with the police authority. However, each police authority should review any existing delegation framework for the consideration of medical retirement issues and discuss with the chief constable detailed arrangements for the effective management of ill-health retirement with a view to drawing up an agreed protocol.

7. A protocol will provide both authority and force with an agreed statement of the policy framework within which to implement the changes generated by the PNB Agreement and within which local arrangements for delegation should operate. Pension management decisions for the police authority should be clearly distinguished from on-going management actions which are the responsibility of the chief constable. The protocol should set out:

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<sup>1</sup> <http://www.southwalescommissioner.org.uk/en/home.aspx>

- the extent and level of delegation by the authority to officers or force managers for action to be taken in its name on the reference of permanent disablement questions and medical retirement decisions (see H1 & A20 [1987] and 71 & 21 [2006]) in cases which do not involve ACPO ranks;
- the extent and level of delegation by the chief constable to other officers or force managers for action to be taken in his or her name in support of police authority decisions on the reference of permanent disablement questions and medical retirement decisions (see H1 & A20 [1987] and 71 & 21 [2006]) in cases which do not involve ACPO ranks;
- the procedure for officers, force managers and the FMA to adopt when reporting cases for consideration by the police authority;
- the qualifications of the FMA and the SMP and how they are to be selected and trained;
- arrangements for each case involving referral of statutory medical questions (see H1 [1987] and 71 [2006]) to be monitored by a nominated member of the HR department, to help the police authority ensure that it is dealt with expeditiously at all stages, and to provide a point of contact for the police officer whose case is under consideration;
- whether the police authority will conclude agreements with other police authorities for co-operating in the supply of suitable SMPs;
- how the force should report, and the police authority monitor, the force's exercise of powers which have been delegated to it on the reference of permanent disablement questions and medical retirement decisions (see H1 & A20 [1987] and 71 & 21 [2006]).

Can you please provide me with all documents relating to your review of the protocol signed off in March 2005 and any new protocol issued”.

8. As at the date of this notice no response to this request has been issued.

### **Scope of the case**

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9. The complainant contacted the Commissioner on 14 January 2013 to complain that he had not received a response to his request for information.

10. The Commissioner wrote to the PCC for South Wales on 24 January 2013, provided a copy of the request for information and asked whether any response had been issued.
11. On 28 January 2013 the PCC for South Wales responded to the Commissioner advising that it had no record of receiving the request. It advised that the matter would be addressed as soon as possible.
12. The Commissioner wrote to the PCC for South Wales again on 29 January 2013 explaining what actions were required in order to comply with the provisions of the FOIA. He asked the PCC for South Wales to respond to the request within 20 working days.
13. The complainant subsequently informed the Commissioner on the 26 June 2013 that he had still not received any response to his request.
14. The Commissioner contacted the PCC for South Wales on 21 August 2013 who advised that no response to request had been issued.

### **Reasons for decision**

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15. Sections 1 and 10 of the FOIA provide a general right of access to recorded information held by public authorities. These sections provide that when a written request for information is made, the public authority must state whether it holds that recorded information within 20 working days. If it does, it must provide that information within 20 working days unless a valid reason for not doing so exists under the FOIA. If such a reason does exist, a refusal notice should be issued in accordance with section 17 of the FOIA, again within 20 working days.
16. It is clear to the Commissioner that, to date, the PCC for South Wales has failed to provide a substantive response to the request. At paragraph 2 above the PCC for South Wales is required to provide a response to the request that is valid for the purposes of the FOIA.

## Right of appeal

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17. 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: 0116 249 4253

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

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

18. 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.
19. 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 .....**

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