

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 16 April 2013

Public Authority: The Chief Constable
Address: Surrey Police Headquarters
PO Box 101
Guildford
GU1 9PE

Decision (including any steps ordered)

1. The complainant has made two information requests in connection with an investigation into her son's death. These were dealt with under the terms of the Data Protection Act (the "DPA") and "business as usual" but no formal response has been provided to either under the terms of the FOIA. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation:
 - provide a formal response, covering both requests, under the terms of the FOIA.
2. The public authority must take these steps 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

3. On 15 November 2012, after making her information request, the complainant raised various issues about how her correspondence had been handled, directly with the public authority. The public authority dealt with these issues internally and provided her with a report detailing its findings. She provided a copy of the relevant report to the Commissioner.

4. Within its findings, in respect of her request made on 19 April 2012, the public authority stated:

"Guidance from the Information Commissioner's Office is that requests for information should be considered under any means available regardless of the form on which the request is made. Although [the complainant] was not entitled to information under the Data Protection Act which allows people to view their own personal information, it is clear from the documentation that the request for information regarding her son's mobile phone records was considered under what is referred to as 'business as usual'. This means that the request for information would be considered under any means including the discretion of the department holding the information."

And, in respect of further correspondence sent by the complainant on 11 October 2012 it found:

"[The complainant] sent in a letter dated 11th October 2012 to the Information Access Team requesting that her application for information concerning the mobile phone records be considered under the Freedom of Information Act. [Name removed] acknowledged that no one from his team appears to have contacted [the complainant] regarding her October correspondence. He stated that there would not be an internal review under the Freedom of Information Act because [the complainant]'s request had already been considered under 'usual business' and there was no further information to which she was entitled. [The complainant] should have been contacted in writing and provided with an explanation."

Request and response

5. On 19 April 2012 the complainant's MP wrote, on her behalf, to the public authority and asked for:

"... a number of reports from Surrey Police relating to mobile phone records, the 2007 Scenes of Crime Office (SOCO) report and the number of forensic photographs that were taken".

It included a copy of an email from the complainant detailing her requirements as follows:

"... we need copies of certain reports, 1) July 2007 mobile phone paper work Received, Missed / Dialed calls. 2) End of August Mobile Phone Lab. Reports. 3) Major Crime Team (Holmes Software Report leaving Orange A/C numbers 450, 453, 123, 07973100123, and our

home phone, [name removed]'s mobile number, and [name removed]'s Mobile number, all other phone numbers can be blacked out by them, 4) Soco 2007 report. 5) Copy of How Many Forensic photo's taken, report..."

6. The public authority replied on 30 April 2012 and sent out a 'subject access request' form for the complainant to complete under the terms of the DPA. It received the completed form on 13 June 2012 which included the following information request:

"Reports of Investigation into my sons death [name redacted]

1)Missing Persons Dept., for the 18th May '07 Report (Regarding items taken from my son's bedroom).

2)Mobile phone cellsite (MAST) Report with Analysis Report for the 18th May 2007, (areas where calls were recieved [sic] etc.,) also same report from the new Investigation (Major Crime Team) Cellsite for 2011, on mobile phone.

3)SOCO 18th May 2007 Report.

4)Report on How many Forensic Photo's were taken at the scene.

5)Mobile phone reports on all call listings, i.e. Missed, Dialled, Recieved [sic] taken in July 2007, also the Forensic Lab. Report end of August 2007, on Mobile Phone.

6)Holmes software report (Done by Major Crime Team), showing Orange Account Numbers i.e. 123, 450 & 453, our families home telephone number, and dad's mobile number, from the report, every other mobile numbers can be blacked out".

7. The public authority responded on 20 July 2012, citing the request was being dealt with under the terms of the DPA. It advised:

"I write in reply to your request for information which may be held in relation to the death of your son [name redacted]. I am aware that you were given the impression that this would be the correct way of obtaining information about the investigation.

As I explained to you on the phone, Section 7 of the Data Protection Act allows individuals to see what information is held about them personally. The information that you were seeking to access does not fall under the Data Protection Act. I told you that I would contact Detective Superintendent [name removed] to see if he was in a position to provide any further information to you,

particularly around the Orange mobile accounts which you explained were important to you.

Unfortunately, there is no further information that he feels he can release to you. I understand that this is not the decision that you were hoping for and I apologise that we are not able to assist you further with your request...

You can make a request to the Information Commissioners Office that they conduct an assessment of how we have dealt with your subject access request..."

8. It made no reference to the FOIA as an alternative access regime and, therefore, no internal review was offered.
9. On 11 October 2012, the complainant again wrote to the public authority as follows:

"I am writing to you, regarding your letter dated 20th July '12 you sent me, regarding certain data / reports I had requested, which is held by your Police Force, on the re-investigation by your Major Crime Team into my sons death.

In the letter you wrote to me, it seems that you only went on (Section 7, Data Protection Act).

I am now asking if you would make an Internal Review under the Freedom of Information Act, to specify which exemptions [sic] you are relying on, to withhold this information.

If there is any problem with this request, please can you inform me a.s.a.p."

10. No response was sent. The internal investigation undertaken by the public authority itself concluded this, as shown above.

Scope of the case

11. The complainant contacted the Commissioner to complain about the way her request for information had been handled. The Commissioner will consider whether or not the public authority should have responded under the terms of the FOIA.

Reasons for decision

12. Section 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 the information and, if so, to have that information communicated to him. Section 10(1) of FOIA provides that this must be done within 20 working days of receiving a request.
13. The Commissioner notes that, in response to her first request, the public authority provided a 'subject access form' for the complainant to complete. Consequently, she submitted her subsequent information request under the terms of the DPA; this is clearly the wrong access regime as the information requested is not the complainant's own 'personal data'. Furthermore, when the complainant asked for the public authority to consider its response again, this time specifically referencing the FOIA, her correspondence was not responded to as the public authority considered that it had already dealt with her request as 'business as usual' and that it was not necessary to provide a formal response.
14. Although the Commissioner accepts that it may at times be appropriate to deal with a request outside the terms of the FOIA, he would generally expect this to be in a situation of disclosure to the requester on a 'one-to-one' basis rather than disclosure to the 'world at large'. Any such disclosure should be made with the stipulation that this is how the request is being dealt with and it would also need to be made with the requester's understanding and approval. In this case, the public authority has clearly not provided the requested information. It is therefore the Commissioner's view that the public authority should have provided the complainant with a formal response under the terms of the FOIA.
15. From the information provided to the Commissioner it is evident that the public authority has not responded to the complainant within the statutory time frame and so it is in breach of section 10(1) of the FOIA.

Right of appeal

16. 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

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

17. 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.
18. 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

Jon Manners
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