

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 5 August 2015

Public Authority: Chief Constable of Avon and Somerset
Constabulary

Address: Force Headquarters
PO Box 37
Valley Road
Portishead
Bristol
BS20 8QJ

Decision (including any steps ordered)

1. The complainant has requested information about a legal declaration on a questionnaire. Avon and Somerset Constabulary ("the Constabulary") refused the request, relying on section 21 of the FOIA (information accessible to the applicant by other means). The Information Commissioner's decision is that the Constabulary has incorrectly applied section 21 of the FOIA and that the correct response would have been to state that it did not hold the requested information.
2. The Commissioner requires no steps to be taken.

Request and response

3. On 1 April 2015, the complainant wrote to the Constabulary. Referring to a questionnaire issued to former officers undergoing its injury on duty award review, he made the following request for information:

"That questionnaire contained the following:

'I . . . (print full name) declare that the information I have provided is correct to the best of my knowledge and belief and I understand that I may be liable to prosecution and/or payment of my injury award may be reduced or suspended if I

have provided any information which is either misleading or inaccurate.'

There then follows space for the recipient to sign and date the completed questionnaire.

Please provide me with this information in regard to the above declaration -

1) Under what legislation might a prosecution be made of any person who provided information which was misleading or inaccurate? Please quote Act and Section.

2) Under what legislation might an injury award, which comprises a one-off gratuity and a pension payable for life, be reduced or suspended if any person provided information which was misleading or inaccurate? Please quote Act and Section, or any subsidiary legislation such as Regulations."

4. The Constabulary responded on 7 April 2015. It stated that the requested information was exempt under section 21 of the FOIA (information accessible to the applicant by other means). It said that the same request had been submitted by another requester and that the Constabulary had answered it. It provided the complainant with a link to its correspondence with the other requester on the What Do They Know website (a website for submitting and archiving requests for information). It told the complainant that it held no further information concerning the request.
5. The response to the earlier request, to which it directed the complainant, was as follows:

"The statement has been on the questionnaire relating to injury awards since 2003 (arising from a meeting of the Attendance Management Group held on 9 October 2002). The statement reflects the details included in the questionnaires provided by Essex and Sussex Police at that time and agreed with the Federation in January 2003. The statement is intended to clarify that there are possible consequences should a former officer either omit information which is relevant to the consideration of the injury award and/or purposely provides misleading information which could possibly be fraudulent. If the statement is not signed, it does not halt the review process, but if the details were found to be fraudulent due consideration would be given to the next appropriate steps. It may be helpful to note that this statement has never needed to be actioned to date."

6. Following an internal review the Constabulary wrote to the complainant on 20 April 2015. It upheld its application of section 21 and reiterated that it did not hold any further recorded information in relation to the request.

Scope of the case

7. The complainant contacted the Commissioner on 27 April 2015 to complain about the way his request for information had been handled. He said that whilst the request that the Constabulary referred him to was very similar to his own, the Constabulary had failed to answer the specific question asked in it. Therefore, he argued, the Constabulary had not answered his request.
8. The Information Commissioner considers the scope of this case to be the determination of whether the Constabulary has correctly applied section 21(1).

Reasons for decision

Section 21 – Information accessible to the applicant by other means

9. Section 21 provides an exemption for information that is already reasonably accessible to the applicant. The purpose of the exemption is to ensure that there is no right of access to information via FOIA if it is available to the applicant by another route. It is an absolute exemption and as such no public interest test needs to be applied. It is one of only two FOIA exemptions where there is no exclusion from the duty to confirm or deny whether information is held.
10. The Constabulary explained that it had provided the complainant with a link to the answer it gave to a substantially similar request, and believed that this satisfied the criteria for applying section 21. That response attempted to explain the provenance of the questionnaire declaration. The Constabulary did not provide the precise legislative information requested because it said that it did not hold that information.
11. It explained that the wording for the declaration was taken from questionnaires provided by other police forces, had been used since 2003 and that it did not hold a record of the legal basis under which punitive action may be taken. In the unlikely event that a former officer provided the Constabulary with misleading information, it would have to seek legal advice as to whether to take the matter further. It may be that the Constabulary would pursue civil action, or if it thought the

offence was serious enough to warrant a criminal prosecution, it would consult with the Crown Prosecution Service regarding an appropriate charge. Any action taken would be decided on a case by case basis.

12. It considered that it had conveyed the fact that it did not hold any recorded information about the legal basis under which action may be taken, in both the refusal notice and the internal review. The refusal notice stated that section 21 applied, referred the complainant to its response to the similar request and stated "*No further information is held concerning this request*". The internal review upheld the application of section 21 and stated "*The Constabulary does not hold any further recorded information in relation to your request*".
13. The Commissioner considers that the complainant's request is clear and unambiguous – he wishes to know the precise legislative basis under which the Constabulary could prosecute or withdraw the award of anyone who provides misleading information on the questionnaire. The Constabulary has admitted that it does not hold that information. Its application of section 21 implies that it does hold the information and that it can be found by viewing its response to a separate request. Clearly, this is not the case.
14. The wider information provided to the complainant, while enlightening, is not what he asked to know. The Commissioner considers the correct response would have been that the Constabulary did not hold the requested information. The further information it referred him to should then have been provided to contextualise that response, and would have satisfied the requirement to consider section 16, (duty to provide advice and assistance) when communicating a "not held" response.
15. The Commissioner's decision is therefore that the Constabulary has incorrectly applied section 21. However, since it does not hold the information described in the request, the Commissioner requires no steps to be taken.

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: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

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
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF