Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 17 June 2019

Public Authority: Chief Constable of Sussex Police
Address: Sussex Police Headquarters
Malling House
Lewes
Sussex
BN7 2DZ

Decision (including any steps ordered)

1. The complainant has requested correspondence and information about any related investigations connected to a deceased person, from Sussex Police ("SP"). SP advised the complainant that it does not hold the requested information.

2. The Commissioner's decision is that, on the civil standard of the balance of probabilities, SP does not hold the requested information. No steps are required.

Request and response

3. On 20 December 2018, the complainant wrote to SP and requested information in the following terms:

> *"… any correspondence held from or to Robin Bryans, also known as Robert Harbinson, most especially for the period 1978 to 1990 and to the Chief Constable. Also any internal investigations or correspondence relating to his letters"*.

4. On the same day, SP wrote to the complainant advising that it did not have to provide him with third party personal data and suggested that he obtain a court order to obtain it. The complainant wrote back clarifying that he was making a request under the FOIA as the party is deceased. SP maintained that it was not a valid request under the FOIA.

5. Following further correspondence, on 27 December 2018 the complainant wrote to the Commissioner to complain about how his request was being handled.

6. The Commissioner wrote to SP on 21 January 2019 and advised it that its response had not been handled appropriately within the terms of the FOIA. She asked SP to treat an email of 21 December 2018 as a request for an internal review and to respond accordingly.

7. SP provided an internal review on 23 January 2019. It explained that the request had been incorrectly identified and logged as a request for personal information and apologised for the error; it advised that no information was held. (The Commissioner has further commented on this in 'Other matters' at the end of this notice).

Scope of the case

8. The complainant contacted the Commissioner on 22 February 2019 to complain about the way his request for information had been handled. He did not accept that no information was held, advising the Commissioner that he understood Robin Bryans had had extensive correspondence with SP's Chief Constable George Terry and other named parties. He advised her that:

> "*His complaints were investigated and there was coordination with the Metropolitan Police. There must be something in their files as I very much doubt the files would have been destroyed*".

9. The Commissioner will consider below whether SP was correct in stating that it does not hold the requested information.

Reasons for decision

Section 1 – general right of access

10. Section 1 of the FOIA states that anyone making a request for information to a public authority is entitled to be informed whether the public authority holds the information, and if so, to have that information communicated to them.

11. In this case, the complainant believes that SP would still hold the information he has requested. SP's position is that it does not.

12. In cases where there is some dispute about the amount of information located by a public authority and the amount of information that a complainant believes might be held, the Commissioner – following the

lead of a number of First-tier Tribunal decisions – applies the civil standard of the balance of probabilities. In essence, the Commissioner will determine whether it is likely, or unlikely, that the public authority holds information relevant to the complainant's request.

13. The Commissioner will consider the complainant's evidence and arguments. She will also consider the actions taken by the public authority to check whether the information is held and any other reasons offered by the public authority to explain why the information is not held. She will also consider any reason why it is inherently likely or unlikely that information is not held. For clarity, the Commissioner is not expected to prove categorically whether the information is held, she is only required to make a judgement on whether the information is held on the civil standard of proof of the balance of probabilities.

14. In responding to the Commissioner's enquiries, SP explained that, because the complainant had made reference to Chief Constable George Terry, it had expanded the scope of the searches required outside the 1978 to 1990 time period stated in the request. This was because:

> *"George Terry was Chief Constable of East Sussex Constabulary between 1965 -1968 and Deputy Chief from 1968 to 1969 of the merged Sussex Police, returning in 1973 to 1983 as Chief Constable of Sussex Police".*

15. The Commissioner also provided SP with details of named officers the complainant had provided to assist with searching for any information held, namely the surnames of a Detective Superintendent, two Detective Sergeants and two Detective Constables who he believed may have been involved with the internal investigations sought. The Commissioner provided these details to SP to assist with any additional searches that may be possible.

16. In responding about these officers, SP advised that it had:

> *"… consulted with our HR Performance Unit Manager who has confirmed that there are no current officers with the rank and surname still in service with Sussex police which is again consistent with our previous response. A facility exists within our HR systems to search for officers and staff who have left the force since 1970 and includes officers who were warranted officers in the old East Sussex Constabulary and West Sussex Police prior to the merger of forces in 1968. A search of these systems by that Unit has been unable to locate the officers named … I am advised that identification could not be confirmed without a first name and the rank they had achieved at the time of the retirement, resignation or death as appropriate".*

17. SP clarified its position, explaining that its Human Resources staff had searched the names and although the surnames exist within its system, it could not accurately identify those mentioned by the complainant without knowing further detail, ie their first name and end rank.

18. The Chief Constable named retired in 1983. Clearly the officers named are therefore no longer serving in the force 36 years later so cannot be contacted for any further information. Whilst the complainant may have been able to provide additional details if asked, such as first names, it is highly unlikely that he will know any further details to verify what is needed to accurately identify the staff on SP's systems. Furthermore, it must be understood this part of the search was only undertaken at the Commissioner's request in an effort to ascertain a more accurate time frame and narrow down the search.

19. SP explained that it had searched all relevant systems to try to locate information, but there was no trace. When doing so, it had searched using both the names of the deceased party provided by the complainant, and it had transposed them, to be doubly sure. These searches included its:

> *"Call log system, Niche Crime system (old and new – some crime records go back to 1991), emails sent to Chief Constable Registry and Professional Standards Department – no trace".*

20. Regarding retention of the types of record requested, it explained:

> *"Below is the link to the Sussex & Surrey Police retention schedule that is a guide as to how long both forces retain all the different kind of information we deal with.*
>
> *http://informationhub.shdc.police.uk/_layouts/15/WopiFrame2.aspx?sourcedoc=/Documents/Surrey%20and%20Sussex%20Police%20Retention%20Schedule.xlsx&action=default&DefaultItemOpen=1*
>
> *The corporate tab gives information on complaints against the police … Row 21 shows Conduct Records - PSD - Records relating to the investigation of personnel who may have committed a criminal offence or behaved in a manner which would justify disciplinary proceedings retained for Minimum of 6 years and review in line with MoPI* [Management of Police Information] *1, 2, 3 Retained longer at PSD Discretion.*
>
> *Rows 24 – 27 give details about Complaints Records – PSD - Records relating to an expression of dissatisfaction by a member of the public about the conduct of a serving member of the police retained for 6 years from end of sanction/closure of investigation (whichever is longest) Retained Longer at PSD Discretion.*

Row 49 shows Grievances – 6 years

As far as correspondence to police goes, it really depends on the nature of the correspondence, in the Operational and Evidential records tab of the retention schedule, Row 11 shows 'Calls to Police' retained for 6 years. If the correspondence contained useable police information (anonymous tip-offs etc), an intelligence log would be submitted in NICHE and the intelligence graded and assigned the appropriate MoPI grade 2-4 and retained accordingly (6 or 10 years with review).

As for the original correspondence itself, MoPI allows original copies to be destroyed once the information is recorded electronically to avoid duplication and overburdening physical storage (see below).

Section 7.7.2 of the NPIA guidance on MoPI 2010 states that 'Information that is duplicated across force systems should also be minimised…. It may also be more practical to retain electronic records than paper ones and, providing that the reviewing officer is satisfied that the relevant information contained in paper records is also held electronically in a searchable format, the paper records can be destroyed.'"

21. In respect of the IT systems used, SP provided the Commissioner with the following dates regarding their commencement, to evidence the time periods concerned:

    - 1989 - OIS (Storm) /CIS (Crime/Intel)
    - 2003-2009 CASPER/CHS
    - 2009-2013 – NSPIS CASE AND CUSTODY
    - August 2013– Niche

    It is therefore apparent that its IT systems hold data which post-dates all the time period provided by the complainant (other than for 1989/90), including all dates when George Terry was Chief Constable, and that any information which may have been held prior to this is highly likely to have been held in a manual format only.

22. Regarding any manual records which might be held, the Commissioner notes that, according to its retention schedule entries cited above, this type of data, namely internal investigations or related correspondence, would have been destroyed many years ago.

The Commissioner's conclusion

23. When, as in this case, the Commissioner receives a complaint that a public authority has not disclosed some or all of the information that a complainant believes it holds, it is seldom possible to prove with absolute certainty that it holds no relevant information. However, as set

out in the paragraphs, above, the Commissioner is required to make a finding on the balance of probabilities.

24. The Commissioner considers that SP has conducted appropriate searches to try to ascertain whether or not any information is held in respect of the request. Based on the information provided above, she is satisfied that, on the balance of probabilities, no recorded information within the scope of the request is held. The Commissioner is therefore satisfied that SP has complied with the requirements of section 1 of the FOIA in this case.

Other matters

25. Although they do not form part of this notice the Commissioner wishes to highlight the following matters of concern.

Incorrect Access regime

26. The Commissioner would like to remind SP of the importance of recognising and handling requests under the FOIA appropriately. Had she not written to SP requiring it to undertake an internal review then this would have created further delays for the complainant. She does, however, note that in subsequently responding, SP advised the complainant that staff within the Unit which had incorrectly identified his request had been given words of advice and reminded of their obligations under the FOI Act 2000 to correctly identify the correct processing protocol on receipt of requests.

27. She considers this action to have been appropriate on this occasion.

28. The Commissioner will use intelligence gathered from individual cases to inform her insight and compliance function. This will align with the goal in the Commissioner's draft "Openness by design"[1] strategy to improve standards of accountability, openness and transparency in a digital age. The Commissioner aims to increase the impact of FOIA enforcement activity through targeting of systemic non-compliance, consistent with the approaches set out in her "Regulatory Action Policy"[2].

[1] https://ico.org.uk/media/about-the-ico/consultations/2614120/foi-strategy-document.pdf

[2] https://ico.org.uk/media/about-the-ico/documents/2259467/regulatory-action-policy.pdf

Right of appeal

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

30. 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.

31. 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 .....

Carolyn Howes
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