



Police & Crime Commissioner for Cleveland
Cleveland Police Headquarters
Ladgate Lane
Middlesbrough
TS8 9EH

Email: pcc@cleveland.pnn.police.uk
Website: <http://www.cleveland.pcc.police.uk>

Police and Crime Commissioner:	Barry Coppinger	Tel: 01642 301653
Chief of Staff (Chief Executive & Monitoring Officer):	Simon Dennis BA, Solicitor	Tel: 01642 301653
Chief Constable:	Iain Spittal	Tel: 01642 301217

Neil Wilby request-368604-b55a9ecf@whatdotheyknow.com

Date

Dear Mr Wilby,

I refer to our previous correspondence in connection with your request that the response of 30th November last received from this office to your above application for disclosure under the Freedom of Information Act 2000, be subject to internal review.

Following my having acknowledged your request for review and confirming that I would be dealing with, you subsequently wrote to me on 8 December suggesting that as result of the content of previous correspondence between us (on an unrelated matter) I should recuse myself in the present instance. I have considered your suggestion, and have taken the precaution of discussing the matter with my line manager. I have to say that neither I, nor he, can find any substantive merit in your suggestion. Accordingly I propose to continue to deal with a matter of your application for review and indeed, set out my responses below. If you remain of the view that my involvement undermines the integrity of my response then this is a matter that you may wish, in due course, to take up with the Information Commissioner. In the meantime, it seems appropriate for me to confirm to you that I have had no involvement whatsoever in the process put in place for the recruitment of a Deputy Police and Crime Commissioner for North Yorkshire.

I can confirm that I have now had the opportunity to consider your request for a review of the responses provided to you in relation to your Freedom of Information request dated 2 November 2016, and the specific comments which you have made in relation to such responses.

I propose to respond to your " grounds of complaint" using the numbering contained in your email of the 30th November.

1. You correctly identify the relevant provisions within the Freedom of Information Act 2000 that deal with the timescale for a response to an application for disclosure, and that the overall responsibility upon a public authority is to deal with an application promptly and, in any event, not later than the 20th working day following the date of receipt. As is common with matters of this sort, your request was duly diarised to ensure that you received a response within the statutory time scale. I am satisfied that in view of the number of enquiries that had to be made by the person handling your request, (who appears to have had no prior knowledge of the matter to which your request referred) and other calls upon his time during the period that he was dealing with this matter, the time taken in his responding to you was not



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unreasonable, and in any event, as I think you yourself acknowledge, was within the relevant statutory deadline.

2. I am satisfied that your being referred to the material published by the Police and Crime Commissioner for North Yorkshire in relation to the appointment of Mr Naylor as her Deputy was simply an attempt to assist you in obtaining the widest possible range of information concerning the recruitment process. The relevant webpage posted by the Commissioner for North Yorkshire contains a comprehensive account of both the process whereby she sought to recruit her Deputy, and the terms upon which Mr Naylor has been appointed. It may well be that you were already aware of the existence of this page on the Commissioner's website, but I do not think that the Office of the Commissioner in Cleveland in answering your FOIA request can be criticised for seeking to point you in this direction. In so doing, the decision-maker did not suggest that this was an alternative to his addressing your specific questions, which of course he went on to do. In other words, the reference to this material was intended to point you in the direction of an additional resource of information rather than to be a response of an in itself. Indeed it is arguable that technically, this part of the response was otiose to the specific questions raised by you.

I find that certain of the information that you had requested was referred to within the information posted by the Commissioner for North Yorkshire. So for example, reference is made to the advertisement placed in the Guardian newspaper and to the total expenditure on advertising, together with the reasons given by two of the four candidates who withdrew from interview, and also an explanation that Mr Naylor, the successful applicant, would be giving up his post with the Office of the Police and Crime Commissioner for North Yorkshire prior to taking up his post as Deputy Police and Crime Commissioner thereby ensuring that his appointment was lawful. Indeed, you subsequently withdrew two of your requests because you had been able to obtain the relevant information elsewhere. Naturally, I accept that it is important that the language used in responses to Freedom of Information requests is accurate, and I note that you have taken exception to the suggestion that "the majority" of information requested by you was on the Commissioner's website. I accept that the use of an alternative phrase in this context such as "certain" or "some" might have been preferred but the fact remains that there was material on the web page relevant to your requests, and furthermore, as indicated above, this information was offered by way of preamble, and was not an attempt to avoid providing substantive answers to your questions. I find therefore that your characterisation of the use of this phrase as a lie (which suggests a deliberate attempt to mislead) is entirely misconceived.

3. I note all you say in point 3 of your email of 30 November. However, I am entirely satisfied that the information provided at paragraph 2 of Mr Bage's response of 30 November last is an accurate answer to the question posed by you. Cleveland Police and North Yorkshire Police, and their respective Commissioners are part of a group of forces which seek to find means of collaborating both operationally and administratively. As the North Yorkshire Commissioner's webpage makes clear, she had sought the assistance of another force in managing the process of recruitment of a Deputy Commissioner "at arms length". The assistance given by the Office of the Police and Crime Commissioner for Cleveland and HR colleagues working within Cleveland Police was provided without financial consideration, as part of the wider collaborative relationship that exists between these organisations. It was plainly thought unnecessary in view of the nature of the arrangement, and the fact that it was not being undertaken on a commercial basis, to reduce the agreement to writing.
4. I can add nothing to what is set out in paragraph 3 above.
5. You will of course be aware of the protection afforded to those in employment, or seeking employment by way of the safeguards contained in the Equalities Act 2010. Among the "protected characteristics" which the legislation seeks to protect is age. It is unlawful for an

employer to discriminate against prospective employees on the grounds of age. It is my belief that many employers now omit from their forms of application for employment any question about an applicant's age so as to ensure that there can be no suggestion that this protected characteristic has played any part in the determination of the application. This is the background to the omission of any request for details as to age or date of birth in the application forms for the post of Deputy Police and Crime Commissioner for North Yorkshire. The answer provided to you in Mr Bage's original responses therefore entirely accurate.

6. I note the points you make in relation to the response given to original Question 4. The decision as to whether or not the exemption in section 40 (2) of the 2000 Act applies is based on an assessment as to whether or not what is sought amounts to personal data, the disclosure of which would be unfair to the data subject. As the Information Commissioner has suggested in the published guidance on this matter, "fairness can be a difficult concept to define".

I note your contention that a job title alone would not be sufficient to allow jigsaw identification.

However, I cannot support your argument that the decision maker has misdirected himself for the following reasons.

There is, I think, no suggestion that the information you have sought with regard to the job titles of those who were shortlisted for the post of Deputy Police and Crime Commissioner is already in the public domain. I consider that those who applied for the post will have had a legitimate expectation that details relating to their application should remain discreet. Whilst it is true that you have not sought details of their identities, nevertheless you have received information relating to areas in which they reside, and the type and class of degree held by them. Given the nature of the post, I am of the view that there would have been a reasonably limited range of individuals who might have considered themselves eligible for the post, thus bringing into play the situation contemplated within section 62 of the Information Commissions Guidance on this area of law which suggests that:

"There may be situations in which some individuals, or a small group of people, may be able to identify data subject even from redacted information because of their personal knowledge of that person, but an average member of the public could not identify them".

Even if you yourself might not be able to make an identification, the fact of the matter is that disclosure of the information which you seek, would effectively be made to the world at large, and in such circumstances, I cannot be satisfied that identification could not be made.

The Guidance goes on to suggest that an important factor in this area will be whether or not disclosure of the information would enable people to "learn anything new that they did not already know". It could be most unwelcome to those who have applied for this post but have not advised their current employer, should the latter be made aware the situation through an FOI disclosure.

However, in addition to all these points, and critically, I can confirm that having examined the nature of the roles concerned, which are in the main of a highly specific nature, it would be impossible to provide you with the recorded information which you seek (especially when taken with other information made available), without greatly assisting you, or others, in identification.

I am therefore content that the exemption contained in section 40(2) of the 2000 Act has been correctly applied in this instance.

7. I can confirm that there is no recorded information relating to the matter you specify deriving from any stage of the process.
8. I can so confirm.

If you are dissatisfied with the decisions contained in this letter, then you may make application to the Information Commissioner for a decision on whether or not your request for information has been dealt with in accordance with the requirements of the Freedom of Information Act 2000.

For information on how to make an application to the Information Commissioner please visit their website at www.ico.org.uk.

Alternatively you may telephone or write to :

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

Telephone: 01625 545700

Yours Sincerely,

A handwritten signature in blue ink, appearing to read 'Stephen Hodgson', with a stylized, cursive script.

Stephen Hodgson
Solicitor
OPCC Cleveland