

Our Ref: IR 475.2016-17

Your Ref:

Date: 6 October 2016

Neil Wilby:

request-353604-479ad2a5@whatdotheyknow.com



Police and Crime
Commissioner
North Yorkshire



Dear Mr Wilby,

FREEDOM OF INFORMATION REQUEST REF NO: Internal Review Request 475.2016-17

I write in connection with your request for an internal review which was received by North Yorkshire Police on 9 September 2016. I note you seek access to the following information:

I am writing to request an internal review of North Yorkshire Police's handling of my FOI request 'Details of instructing solicitor in John O'Neill sexual risk order case'.

The grounds are as follows. The paragraph numbers correspond to those in the request and the response to it:

- 1. The data controller has misdirected himself in relying on a S40(2) exemption.*
 - a. The data subject(s) can have no realistic expectation of anonymity when they are a solicitor acting on instructions for a chief constable.*
 - b. Furthermore, this is a matter that has attracted huge media attention and the public interest in the disclosure of such detail is very strong.*
 - c. Finally, the John O'Neill matter has been heard in open court twice. The solicitor concerned will, presumably, have appeared behind Oliver Thorne in those hearings and will be on record as solicitor for the chief constable at the court.*
 - 2. The question as framed was not answered. However, in the interests of proportionality, I do not intend to pursue the matter. The inference is clear from your response: there was no competitive process entered into.*
 - 3. I rely on the same arguments rehearsed at 1a, b and c.*

Additionally, I make the point that there is a potential conflict of interest here as the Force Solicitor, Jane Wintermeyer, also heads up the Civil Disclosure Unit.
 - 4 a. The S12 exemption is challenged on the basis that any capably managed organisation with normal, functional, costing and auditing systems must know what component parts of its business cost.*
 - b. Alternatively, even starting from scratch it cannot take a properly briefed accounts team analyst more than 18 hours to collect such information. It is far-fetched to suggest otherwise.*
 - 5. Information provided - accepted at face value for the moment.*
- A full history of my FOI request and all correspondence is available on the Internet at this address: https://www.whatdotheyknow.com/request/details_of_instructing_solicitor*

Further Email

Thank you for the acknowledgement of the internal review.

Having checked on the status of other internal reviews I find the following:

- 1. They are rarely finalised within the required 20 working day period.*
- 2. When eventually finalised they are not, as required, undertaken by a supervisor.*

When I get time I will update this piece that I published last Friday:

<https://neilwilby.com/2016/09/09/police-refuse-to-come-clean-over-sexual-risk-order/>

Decision

Following a review of your request and after careful consideration, I have concluded that the decision taken on 9 September 2016 to exempt responses to questions 1 and 3 of your request under Section 40 of the Freedom of Information Act 2000 (The Act) is correct.

In relation to question 4, under the Act, authorities are obliged to provide information (following assessment) that is 'held'. It is correct to say that costs specifically related to this matter are not recorded and therefore are not held. Providing such costs would require in depth analysis of documents and individuals time spent across different departments, thereby engaging Section 12 of the Act.

In response to your further points, as previously communicated to you on a number of occasions, the Civil Disclosure Unit does strive to meet the 20 working day deadline, however with a pressured workload of differing disclosure activities, and steep rise particularly in Freedom of Information requests, as well as the increase in complexity of the requests received, a backlog has been created and therefore it is not always possible to respond within the time limit given under the Act.

The Information Commissioner's guidance on managing internal reviews states that the authority should 'ensure the review is done by someone who did not deal with the request, where possible, and preferably by a more senior member of staff'. Therefore it is not a requirement that the review is undertaken by a supervisor, but a preference.

If you are still dissatisfied with the decision you may make application to the Information Commissioner for a decision on whether the request for information has been dealt with in accordance with the requirements of the Act.

Complaint Rights

Your attention is drawn to the attached sheet which details your right of complaint.

If you have any queries concerning this request, please contact me quoting the reference number above.

Yours sincerely

Ashley Malone
Police Lawyer (Civil Disclosure)

COMPLAINT RIGHTS

Are you unhappy with how your request has been handled or do you think the decision is incorrect?

You have the right to require the North Yorkshire Police to review their decision.

Prior to lodging a formal complaint you are welcome and encouraged to discuss the decision with the case officer that dealt with your request.

Ask to have the decision looked at again –

The quickest and easiest way to have the decision looked at again is to telephone the case officer that is nominated at the end of your decision letter.

That person will be able to discuss the decision, explain any issues and assist with any problems.

Complaint

If you are dissatisfied with the handling procedures or the decision of the North Yorkshire Police made under the Freedom of Information Act 2000 (the Act) regarding access to information you can lodge a complaint with the North Yorkshire Police to have the decision reviewed. North Yorkshire Police must be notified of your intention to complain within 2 months of the date of its response to your Freedom of Information request. Complaints should be made in writing and addressed to:

Force Solicitor and Head of Legal Services
North Yorkshire Police
Newby Wiske Hall
Northallerton
North Yorkshire
DL7 9HA

In all possible circumstances the North Yorkshire Police will aim to respond to your complaint as soon as practicable but within 20 working days.

The Information Commissioner

After lodging a complaint with the North Yorkshire Police if you are still dissatisfied with the decision you may make application to the Information Commissioner for a decision on whether the request for information has been dealt with in accordance with the requirements of the Act.

For information on how to make application to the Information Commissioner please visit their website at www.informationcommissioner.gov.uk. Alternatively, phone or write to:

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire SK9 5AF
Phone: 01625 545 700