



Home Office

Corporate Services  
Directorate  
2 Marsham Street  
London SW1P 4DF

020 7035 1022 (direct  
line)

[www.gov.uk](http://www.gov.uk)

Mr Pat James

Via e-mail: [request-300092-  
7666470d@whatdotheyknow.com](mailto:request-300092-7666470d@whatdotheyknow.com)

Reference: T1894/16

1 June 2016

Dear Mr James

I am responding to your e-mail of 20 April, in which you ask for an internal review of the Home Office response to your request of 31 October 2015 about police powers in relation to the mental health of a member of the public.

I have considered the way the original request was handled and the Home Office response dated 3 March 2016. I confirm that I was not involved in the handling of your original request, other than to re-send the response on 20 April.

### **Delay in responding**

The original request was received on 31 October 2015. A decision was taken to handle it outside the Freedom of Information Act (FOIA), because it was more in the nature of a general inquiry rather than a request for recorded information which the Home Office would hold. Had the request been handled under FOIA, the strictly correct response might well have been that no information was held. The decision to handle the request outside the FOIA was in my view correct, but a response should still have been sent within 20 working days.

I understand that a response was prepared and ready to send by 3 March 2016, well beyond the 20-day deadline. The delay was then compounded by the fact that, although the response was sent on 3 March, it was not received by 'WhatDoTheyKnow'. This seems to have been because a letter was omitted from the e-mail address, so it did not reach its destination. Following the intervention of the Information Commissioner's Office, the response was re-sent on 20 April.

The Home Office accepts that the delay in responding to the original request of 31 October 2015 was unacceptable and fell short of the standards which the Home Office expects in responding to correspondence from members of the public, whether under the FOIA or not. Once again I apologise on behalf of the Home Office for the delay.

### **The content of the response**

You maintain in your request for an internal review that the response dated 3 March 'in no way satisfies the requirements of my request'. Your request was as follows:

*What qualifies a constable to take decisions regarding the mental health of a member of the public, and how is this not a breach of human rights.*

The response explained the powers provided by section 136 of the Mental Health Act 1983. This was in my view an appropriate way of answering the main question posed in the request. The response also explained about a review of the training and guidance available to police officers on their duties in relation to mental health and about mental health triage schemes.

The letter dated 3 March was a correct and proper response to the request, except to the extent that it did not specifically address your point about human rights. The relevant policy area in the Home Office has provided some additional information on this point, as follows. Article 5 of the European Convention on Human Rights (repeated in Schedule 1 to the Human Rights Act 1998) provides that no one shall be deprived of his or her liberty save in accordance with procedures prescribed in law and in defined circumstances. Such circumstances specifically include the lawful detention of persons of 'unsound mind'.

Section 136 of the Mental Health Act sets out the circumstances in which the police may detain an individual believed to be experiencing mental ill health and the reply dated 3 March described the assistance available to officers in reaching such judgements. Section 136 is an emergency power, providing a mechanism for police officers to take action to make a vulnerable person safe and assist them in accessing emergency assessment. Anyone detained in this way who wishes to challenge that detention or their treatment may make a complaint directly to the police force concerned, contact the Independent Police Complaints Commission or apply to the courts.

We have now provided a full response to your request and this completes the internal review process by the Home Office. If you remain dissatisfied with the response to your request, you have the right of complaint to the Information Commissioner at the following address:

The Information Commissioner  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire SK9 5AF

Yours sincerely

**Adrian Brook**  
**Information Rights Team**