

## HAMPSHIRE POLICE AND CRIME PANEL

### Report

<b>Date:</b>	25 April 2022
<b>Title:</b>	Governance Update
<b>Report From:</b>	Monitoring Officer to the Panel

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#### Purpose of this Report

1. The purpose of this report is to propose that the Hampshire Police and Crime Panel (the Panel) formalises the delegation of its functions under the Freedom of Information Act 2000 (FOIA) to the Head of Risk and Information Governance of Hampshire County Council, as Lead Authority.

#### Recommendation(s)

2. **That the Panel confirms that, to the extent that the discharge of any of its functions under the Freedom of Information Act 2000 (FOIA) has not already been delegated to the Head of Risk and Information Governance of Hampshire County Council, as Lead Authority, it shall be so delegated.**
3. **That the Panel notes that any decisions taken under the delegated functions will be made by the Head of Risk and Information Governance of Hampshire County Council, in consultation with the Chairman of the Panel, or in their absence the Vice-Chairman.**
4. **That the Panel's annual complaints monitoring report, in future, contain appropriate monitoring information regarding the discharge of functions under the FOIA in relation to the Panel.**

#### Introduction

5. The Freedom of Information Act 2000 provides public access to information held by public authorities. The Act covers any recorded information that is held by a public authority in England, Wales and Northern Ireland. This includes government departments, local authorities, the NHS, state schools and police forces; and a joint committee of relevant local authorities, such as the Hampshire Police and Crime Panel.
6. The Panel receives very few Freedom of Information (FOI) requests (6 requests in the 2-year period 2020 to 2022). These have tended to be

associated with matters that the Panel has been reviewing in respect of specific complaints that are ongoing and by definition complicated with the added element that the requestors are persistent.

7. FOI requests to the Panel have been handled by the FOI team in Hampshire County Council as part of the administrative arrangements as Lead Authority. This has included cases where the requestor is dissatisfied with their initial response and have asked for that response to be looked at again, known as an “internal review”.
8. Paragraph 18.1 of the Panel Arrangements for the Police and Crime Panel for the Hampshire Police Area entered into by the relevant local authorities in 2012 provides that: “*Requests under the Freedom of Information Act in relation to Panel business shall be received and handled by the Lead Authority in accordance with its usual procedures.*”
9. A number of these requests have been reviewed by the Information Commissioner’s Office (ICO) as regulator, following complaints to them from the requestors. The ICO have reviewed these requests in detail and have endorsed the approach taken on individual requests and have not questioned the use of County Council staff to answer FOI requests, until now.
10. Following a recent specific case, the ICO have re-examined the arrangements that the Panel has for FOIs and have come to a technical conclusion that states that, in its view, whilst the County Council can carry out certain administrative functions, for example receiving, acknowledging, and sending replies to requests, collating information, calculating time for compliance, assessing exemptions, preparing redacted documents, it cannot on behalf of the Panel, decide what searches should be conducted, decide to extend the time for compliance, decide to charge a fee, decide to apply an exemption, decide to disclose information, decide a request is vexatious, or conduct an internal review.
11. In coming to that conclusion, the ICO does not appear to have placed sufficient weight on the power of the Panel to delegate the discharge of functions to Officers, whether those functions originated as functions of the Panel itself or of the relevant local authorities.
12. There are significant practical implications associated with the ICOs conclusion. Although, in law, the Panel may discharge the functions under the FOIA, perhaps by way of establishing a sub-committee, such an arrangement would involve a disproportionate burden, in terms of Member and Officer time and costs, in respect of the training required and other preparation for, and attendance at, meetings of the sub-committee to discharge these functions.
13. The rest of this report outlines a practical and proportionate solution that adds clarity and the avoidance of doubt to the arrangements for handling FOIs.

## Legislative Background

14. The Police Reform and Social Responsibility Act 2011 provides<sup>1</sup> that, in a multi-authority police area such as the Hampshire police area, a Police and Crime Panel is a joint committee of the relevant local authorities.
15. An email was received by the Hampshire County Council, as the lead authority for the Panel, on 28 March 2022 which made reference to the Police and Crime Panels (Application of Local Authority Enactments) Regulations 2012 (the 2012 Regulations). These provide<sup>2</sup> that, to the extent that the Freedom of Information Act 2000 (FOIA) does not already apply, the FOIA applies to the Panel and the members of the Panel. The regulations go on to provide that the FOIA has effect as if:
- the functions of the Panel were functions of the relevant local authorities appointing members to the Panel (the relevant local authorities); and
  - the Panel were a joint committee of the relevant local authorities appointed for the purpose of discharging those functions under section 102(1) of the Local Government Act 1972.
16. Although, in law, the Panel may discharge the functions under the FOIA, perhaps by way of establishing a sub-committee, such an arrangement would involve a disproportionate burden, in terms of Member and Officer time and costs, in respect of the training required and other preparation for, and attendance at, meetings of the sub-committee to discharge these functions. Additionally in terms of risk management the assignment by delegation of the FOIA function (see below) will serve to mitigate the potentiality of claims exposure and insurance cost associated with inappropriate risk management.
17. It is considered that the Panel, as a joint committee of the relevant local authorities, has the power to delegate the discharge of functions to Officers, whether those functions originated as functions of the Panel itself or of the relevant local authorities. The Panel will remain accountable for the discharge of the functions so delegated.
18. It is not considered necessary to determine which of the functions under the FOIA are functions of the relevant local authorities and which are functions of the Panel itself because the 2012 regulations apply the FOIA as if the functions of the Panel were functions of the relevant local authorities.

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<sup>1</sup> Schedule 6, Part 2, paragraph 4(5)

<sup>2</sup> Regulations 3 and 6 and the Schedule, Part 1(5)

19. The clear intention of the relevant local authorities that appointed the Panel was for the Lead Authority, Hampshire County Council, to be responsible for handling any requests under the FOIA in accordance with the County Council's usual procedures. Paragraph 18.1 of the Panel Arrangements for the Police and Crime Panel for the Hampshire Police Area entered into by the relevant local authorities in 2012 provides:

**“18 Legal Requirements**

**18.1 Requests under the Freedom of Information Act in relation to Panel business shall be received and handled by the Lead Authority in accordance with its usual procedures.”**

20. Therefore, for any of the functions under the FOIA that are functions of the relevant local authorities, the discharge of those functions has already been delegated<sup>3</sup> to Hampshire County Council Officers.
21. It is considered that the discharge of the Panel's own functions under the FOIA has also been delegated by the relevant local authorities by virtue of the provision in the 2012 Regulations that states that the FOIA applies as if the functions of the Panel were functions of the relevant local authorities.
22. However, for the avoidance of doubt, it is proposed that the Panel confirms that, to the extent that the discharge of any of its functions under the FOIA has not already been delegated to the Head of Risk and Information Governance of Hampshire County Council, as Lead Authority, it shall be so delegated<sup>4</sup>.
23. It is proposed that any decisions taken under the delegated functions will be made by the Head of Risk and Information Governance of Hampshire County Council in consultation with the Chairman of the Panel, or in their absence the Vice-Chairman.
24. It is further proposed that the Panel's annual complaints monitoring report should, in future, contain appropriate monitoring information regarding the discharge of functions under the FOIA in relation to the Panel. Such information to be provided to the Panel by the Head of Risk and Information Governance of Hampshire County Council upon a yearly basis.

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<sup>3</sup> As permitted by section 101(5)(a) of the Local Government Act 1972

<sup>4</sup> As permitted by section 101(2) and (5)(a) of the Local Government Act 1972

**REQUIRED LEGAL INFORMATION:**

**Significant Links**

<b>Links to previous decisions:</b>	
<u>Title</u>	<u>Date</u>
<b>Direct links to specific legislation or Government Directives</b>	
<u>Title</u>	<u>Date</u>
<a href="#">Local Government Act 1972 (legislation.gov.uk)</a>	
<a href="#">Police Reform and Social Responsibility Act 2011 (legislation.gov.uk)</a>	
<a href="#">The Police and Crime Panels (Application of Local Authority Enactments) Regulations 2012 (legislation.gov.uk)</a>	
<a href="#">Freedom of Information Act 2000 (legislation.gov.uk)</a>	

**Section 100 D - Local Government Act 1972 - background documents**

The following documents discuss facts or matters on which this report, or an important part of it, is based and have been relied upon to a material extent in the preparation of this report. (NB: the list excludes published works and any documents which disclose exempt or confidential information as defined in the Act.)

Document

Location