

Freedom of Information Act 2000 (Section 48 (1))

Practice Recommendation

Date 31 March 2009

Public Authority: Greater Manchester Police

Address: Police Headquarters
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In accordance with his Enforcement Strategy, the Commissioner is of the view that the Greater Manchester Police's internal review procedures do not conform to the following Code of Practice issued by the Secretary of State for Constitutional Affairs in November 2004:

- Discharge of Public Authorities' Functions under Part 1 of the Freedom of Information Act 2000 issued under section 45 of the Act (the 'Code')

A full copy of the Code can be found at:

<http://www.dca.gov.uk/foi/reference/impref/codepafunc.htm>

Summary

In late 2007, it appeared to the Commissioner that Greater Manchester Police (GMP) may not be conducting internal reviews in accordance with the recommendations of part VI of the section 45 Code.

The Commissioner was particularly concerned that the authority was failing to conduct reviews promptly and that in so doing was failing to adhere to his [published guidance](#) in this respect.

The guidance, published in February 2007, sets out the Commissioner's expectations on the length of time in which public authorities should complete internal reviews. It echoes the Code's focus on promptness and explains that:

- a reasonable time for completing an internal review is considered to be 20 working days from the date of receipt;
- there may be a small number of exceptional cases in which it may be reasonable to take longer, but;
- in no case should the time taken exceed 40 working days;

Practice Recommendations are issued pursuant to section 48(1) of the Freedom of Information Act 2000. Regulation 16(5) of the Environmental Information Regulations 2004 provides that section 48(1) applies to environmental information.

- in cases in which more than 20 working days are required, the authority should be able to demonstrate that it had commenced the review procedure promptly, and that it has actively worked on the review throughout the total period of time required.

In keeping with his [FOI Enforcement Strategy](#), the [FOI Practice Recommendations Policy Statement](#) and the [Better Regulation Task Force Principles](#), the Commissioner, via his FOI Good Practice and Enforcement Team, initially sought to address matters informally. This was in recognition of Greater Manchester Police's commitment to improvement and in light of the relatively low number of section 50 (1) complaints he had received about the authority.

However, over time it became clear that GMP was not in a position to actively respond to the Commissioner's concerns in a timely manner, or to provide substantive evidence of improvement.

Evidence of non-conformity collated by his FOI Good Practice Team, a lack of meaningful engagement, and the continued delays experienced in obtaining timely responses from Greater Manchester Police, led the Commissioner to issue this practice recommendation which finds that the authority has failed to conform to the following parts of the Code:

- **Part VI – Complaints procedures**

The Commissioner's Role

1. The Commissioner's duty is to promote observance of the Code of Practice under section 45 as a means of encouraging good practice by public authorities in carrying out their obligations under the Freedom of Information Act (the 'Act').
2. Section 48 (1) of the Act empowers the Commissioner to issue a practice recommendation, where it appears to him that the practice of a public authority does not conform to the Code. Such a recommendation will identify the provisions of the Code with which, in the Commissioner's opinion, the authority's practice does not conform and will specify the steps which he considers are necessary to promote conformity.
3. Section 47 (2) of the Act allows for the Commissioner to disseminate, in such form and manner as he considers appropriate, information that appears expedient to him to provide to the public on:
 - the operation of the Act
 - good practice
 - other matters within the scope of his functions under the Act

Chronology

4. In November 2007, and as a result of a section 50 (1) complaint to his office, the Commissioner was alerted to the possibility that GMP were experiencing difficulties in completing internal reviews.
5. On the 3 December 2007, his FOI Good Practice and Enforcement Team telephoned GMP to enquire into the matter further and to determine whether the authority was able to carry out internal reviews in accordance with the expected timescales. In response, the authority verbally explained that limited staff resources were having a detrimental effect upon its ability to conduct reviews in a timely manner.
6. At this stage, both the authority and the Commissioner envisaged that the delays would be alleviated once the staffing issues were resolved.
7. On the 6 December 2007, the Commissioner received a letter from GMP which confirmed in writing the matters discussed over the phone and provided assurances that the delays were temporary.
8. The Commissioner responded to the authority's letter on the 17 December 2007, enclosing a copy of his guidance on the timescales for internal review and emphasising its importance by setting out the main points within the correspondence itself. The Commissioner explained that in order to further assess the situation, he wished to be provided with the following information:
 - copies of any current or planned internal policies or procedures which document the authority's approach to internal reviews;
 - the number of FOI requests received by the authority between January 2007 and December 2007 (*to date, which at the time of writing was 17 December 2007*);
 - the number of internal reviews conducted by the authority between January 2007 and December 2007 (*to date, which at the time of writing was 17 December 2007*);
 - the existing staff structure at the authority;
 - any information (either recorded or provided by way of explanation) which demonstrated that the authority has considered steps to alleviate the internal review delays.
9. The Commissioner also asked the authority to provide further context as to the reasons for the apparent delays in the conduct of internal reviews.
10. The Commissioner did not receive a response to his letter, and on the 31 January 2008, he wrote to GMP seeking a reply.
11. On the 23 February 2008, the authority contacted the Commissioner to advise that it would be unable to respond until the 6 March 2008 on account of staff absence and office relocation. The Commissioner agreed to the revised deadline.
12. The authority provided a reply some weeks later on the 22 March 2008. The response contained the following:

- copies of the authority's FOI procedures;
 - details of the current staff structure;
 - outline details of the collective responsibilities of staff within the current structure
13. The response also contained statistical information similar to that requested by the Commissioner, but did not contain the exact details in all respects. For example, rather than providing details on the number of requests and subsequent internal review applications from January to December 2007 as required, the authority provided the total number received from January 2005 onwards (747 and 9 respectively).
 14. Although he did not explore this matter further at the time, the Commissioner was surprised to note the low proportion of internal review requests, which appeared to him to amount to just over 1% of the total number of requests received.
 15. The authority's response concluded by explaining that the Freedom of Information section of the authority was undergoing a restructure and provided details of some recent small-scale staff training.
 16. The Commissioner responded to GMP on 9 April 2008, advising that whilst he was encouraged by various aspects of the authority's documented procedures, he remained concerned about the authority's timescales for the completion of internal reviews. He explained that internal reviews were expected to be completed in accordance with his guidance and asked the authority to confirm whether it would be willing to amend its procedure to reflect his expectations in this regard. The Commissioner advised that the matter would be kept under review and asked the authority to provide an update, with specific reference to staff resource and the timeliness of reviews, by the 13 June 2008.
 17. When no response was forthcoming, the Commissioner wrote to the authority on 30 June 2008 to remind it that a reply was expected.
 18. On the 30 July 2008, GMP responded. The reply explained that the restructure had been concluded and that various additional posts had been created. The authority advised that it hoped to be in a position to adopt the timescales for review set out in the Commissioner's guidance by early December of that year.
 19. In view of the time that had elapsed since the Commissioner first corresponded with the authority about this issue, the Commissioner did not consider a further delay in the adoption of the recommended timescales to be acceptable and wrote to the authority on the 14 August 2008 to advise as such.
 20. When no response was received, the Commissioner sent a reminder to the authority on the 1 October 2008.
 21. The Commissioner's reminder appeared to cross in the post with the authority's response of the same date. In this response, the authority advised that whilst progress had been made, a backlog of approximately six months had built up in relation to pre-existing work. The

Commissioner understood the pre-existing work to consist, at least partially, of internal review requests, although this was not explicitly stated in the authority's letter.

22. On the 8 October 2008, the Commissioner advised the authority that he remained concerned about the issue of internal review delays and would continue to monitor the situation. At this stage, he wished to review the situation on a monthly basis and asked to be provided with the following data:

- number of outstanding reviews and the length of the delays as at the time of writing;
- number of new internal review requests received from October 2008;
- the timescales the new internal review requests were dealt with

The anticipated deadline for providing this information was 7 November 2008, with follow up information for the months of November, December and January expected on 8 December 2008, 9 January and 9 February 2009 respectively.

23. In the absence of a response, the Commissioner issued a reminder to the authority on the 14 November and again on the 16 December 2008. The latter correspondence advised that he expected a response to his enquiries no later than the 12 January 2009, which allowed for the Christmas and New Year breaks. By this time, the authority had missed the deadlines for the provision of statistics from October, November and December.

24. On 16 January 2009 and in view of the fact that no response had been received, the Commissioner wrote to the authority to advise that unless he received a reply within 10 working days, an Information Notice would be issued, in accordance with section 51 (1) of the Act.

25. GMP responded on 29 January 2009.

26. The authority's response contained a table which showed various statistics, including the length of time taken to complete internal reviews submitted to the authority. The information contained in the table was not limited to data from the latter months of 2008, or the start of 2009 as originally sought by the Commissioner. Rather it contained information for all internal review requests received by the authority, including those received and completed in 2005, 2006, and 2007.

27. On analysing the information, the Commissioner was concerned to note that two internal review requests, which he was aware of as a result of complaints to his own office, had not been included in the table provided by the authority. This suggested that the list was incomplete. On the 31 March 2009, and just before this recommendation was due to be signed, GMP confirmed that one of the internal reviews had not been recorded on the authority's system, and as the staff member who had undertaken the work had now left, it was not possible to ascertain the reason. The authority also explained that the non-inclusion of the second internal review appeared to have been an oversight.



28. The Commissioner carried out further analysis of the information contained within the table and discovered a number of additional discrepancies. In particular, he was concerned to note that Greater Manchester Police's calculations did not always tally with his own, with some delays appearing more serious than those calculated by the authority. More details on these discrepancies can be found in paragraphs 38 to 49 of this recommendation.
29. In light of his concerns about the accuracy of the information he had been provided with, the Commissioner emailed the authority on the 4 March 2009 to request clarification. In addition to his requests for specific explanations of the way in which the data had been calculated, he asked the authority to confirm whether it agreed with his interpretation of the figures, and if not why. This was to ensure that the Commissioner's understanding of the situation was based on reliable data, the accuracy of which could be agreed by both parties.
30. In light of the previous delays he had experienced, the Commissioner asked the authority to respond within 10 working days.
31. No response was received, and on the 23 March 2009, after considering the opportunity for informal resolution to be exhausted, the Commissioner wrote to the authority to advise that he was preparing to issue this practice recommendation.
32. On the morning of 30 March 2009, the Commissioner received an email from the authority which explained that a response to his earlier enquires (4 March 2009) had not yet been dealt with on account of staff illness. The authority explained that it hoped to put a response together by the end of the following day. Whilst the Commissioner is sympathetic to the difficulties caused by staff absence, he considers that the delays he has experienced in this particular case are so severe that he is dissuaded from postponing the publication of this recommendation any further. He did however agree to incorporate appropriate clarification or similar supplied by the authority, provided it was received before 12 pm on the 31 March 2009.
33. The authority provided clarification on the morning of the 31 March 2009, and where relevant, it has been incorporated into this recommendation. The authority has confirmed that it is happy to accept the Commissioner's interpretation of the data, subject to the clarification it has provided on a number of points.

Nature of non-conformity

34. The Commissioner considers that the practice of GMP in relation to the exercise of its functions under the Act does not conform to the following provision of the section 45 Code:

Part VI – Complaints procedure

35. Part VI, paragraph 38 of the section 45 Code states that any written reply from an applicant which expresses dissatisfaction with an authority's response to a request for information should be treated as a complaint (request for internal review).

36. In the Commissioner's opinion, a reasonable time for completing an internal review is 20 working days from the date of the request for review. In a small number of cases which involve exceptional circumstances it may be reasonable to take longer, however in no circumstances should the total time taken exceed 40 working days. The Commissioner's view is set out in his Freedom of Information Good Practice Guidance No. 5, published in February 2007. A copy of this guidance is available at:
- http://www.ico.gov.uk/upload/documents/library/freedom_of_information/detailed_specialist_guides/foi_good_practice_guidance_5.pdf
37. In one complaint received by the Commissioner, an internal review request submitted to the authority after the publication of his guidance did not receive an appropriate response for over 150 working days, and only then following intervention by the Commissioner's staff.
38. In addition, and perhaps more significantly, the authority's own figures, provided to the Commissioner by way of a scanned copy of a spreadsheet, suggest that a number of internal reviews have been subject to significant delay.
39. Originally it appeared to the Commissioner, based on his own interpretation of the data supplied by the authority, that the most serious delays amounted to 76, 80, 109, 149, 230, 254, 309, and 503 working days. However, following clarification provided by GMP on the morning of the 31 March 2009, he now understands that two of the more serious delays (503 and 254 working days respectively) were in fact dealt with in the appropriate timescales. The authority has apologised for the confusion and inconvenience caused in respect of these particular examples, which resulted from data input errors.
40. The Commissioner carried out further detailed analysis of the information contained in the spreadsheet provided to him. In order to illustrate some of the differences between the figures calculated by GMP and his own conclusions, the Commissioner has produced the table overleaf. The table contains some examples of data provided by the authority, which in the Commissioner's opinion; appear to show both internal review delays and a number of errors. Despite requests to do so, GMP did not explain the data itself or the apparent errors within it until the morning on which this practice recommendation was due to be signed.
41. In viewing this table, it should be noted that the information originally provided by GMP contained a column titled '*length of delay – working days*'. This column appeared to show the length of time taken to respond to reviews above and beyond the recommended 20 working days. For example, an internal review request received on the 3 May 2006 was shown to be subject to a delay of zero in the '*length of delay – working days*' column as a response was provided on the 31 May 2006 (i.e. within 20 working days).
42. Based on the above, the Commissioner initially worked on the principle that in order to calculate the total number of working days elapsed, each of the '*length of delay – working days*' figures in this column would need to be increased by twenty. However in other

examples, the length of the delay appeared to have been miscalculated and it quickly became apparent that such an approach would only serve to exaggerate some existing errors.

43. By way of example, one internal review request dated 10 December 2007, with a response date of 7 March 2008, was erroneously shown to be subject to a delay of 25 working days. If the Commissioner was to assume that this figure did not include the 'recommended' 20 working days and add this to the stated total, the length of time taken to respond to the request would be 45 working days. However, a straightforward calculation of the working days between these two dates results in a total time of 61 working days.
44. In order calculate the full extent of the delays, it was therefore necessary for the Commissioner to look at each individual entry within the table and calculate the total number of working days taken to respond to each internal review request. Essentially, the Commissioner wished to calculate the total amount of time taken to respond to each internal review request from start to finish. Examples of his calculations are shown in the column marked with an asterisk*. The final column then shows the difference between GMP's calculations of delay and the Commissioner's (i.e. total working days minus 20)

Date Request for Review received	Response Date	Length of delay (working days)	Total Working Days – as calculated by the Commissioner*	Differential
17/11/2005	23/01/2006	22	45	+3
04/05/2006	06/07/2006	2	45	+23
27/06/2007	19/10/2007	42	80	+18
14/01/2008	18/08/2008	130	149	-1

45. In the Commissioner's opinion the discrepancies he encountered when making his calculations suggest that the authority has made a number of mistakes when either inputting or extrapolating the data. This is something the authority itself has since accepted.
46. The errors appeared endemic, and are particularly prolific in a column entitled '*due date*', which the Commissioner understands to be the anticipated response date for each internal review request. By way of illustration, the Commissioner has replicated four examples of the due dates calculated by the authority in the table overleaf:

Date Request for Review received	Due Date
11/01/2005	16/01/2006 (254 working days later)
10/08/2006	10/10/2008 (541 working days later)
10/02/2007	09/04/2007 (38 working days later)
14/01/2008	13/02/2008 (23 working days later)

47. As the table above demonstrates one request, received on the 11 January 2005, was appointed a due date of 16 January 2006, over 250 working days later. Similarly, a request dated the 10 August 2006 appeared to be assigned a due date of 10 October 2008, over 500 working days later. The assigned due dates are significantly beyond what could be considered reasonable and appear to have been calculated erroneously, most probably due to mistakes made during input. Immediately prior to the finalisation of this recommendation, the authority explained that erroneous data entry was indeed responsible for the excessive due dates outlined in this paragraph.
48. Conversely, it appeared to the Commissioner that some 'due dates' pre-dated the receipt of the actual request for review and would clearly be impossible to achieve. The authority has since apologised for the mistakes made in this regard, which resulted from errors in data entry.
49. It also appeared to the Commissioner that there had been a lack of consistency in the way the dates themselves were arrived at, suggesting that the authority was not using a standardised method of calculation. The authority has explained that the system currently in use does not have the ability to calculate dates automatically and admitted that the manual calculations have not always been accurate.
50. At the time of drafting this recommendation it appeared to the Commissioner that three internal reviews remained outstanding with delays of 287, 64 and 51 working days respectively. Whilst the Commissioner accepts that the authority may have completed these reviews in the interim, such action would not detract from the seriousness of the delays that have already occurred.
51. Throughout the course of correspondence the authority has appeared reluctant to implement the Commissioner's recommended timescales for internal reviews. The Commissioner considers that GMP's hesitancy in this regard is reflected in the authority's figures, which show that a number of requests for review received after his initial intervention (December 2007) were dealt with outside of the recommended timescales. By way of example, one internal review request received in May 2008, took over 70 working days to resolve. The Commissioner is however pleased to note that GMP's most recent correspondence to his office, dated the 31 March 2009, explains that the authority will soon be on track to complete all internal reviews within the recommended 20 working days.

52. The Commissioner recognises that staff resource; in particular the difficulty in recruiting staff and completing the necessary preparations for their employment may have adversely affected the authority's ability to address the Commissioner's concerns swiftly. Whilst he appreciates the authority's assertion that staff are doing all they can in difficult circumstances, he would like to make clear to all public authorities that they cannot rely on such assurances indefinitely and that more formal action will be taken where there is no tangible improvement over time.

Action Recommended

53. The Commissioner is concerned that information management, particularly in relation to freedom of information requests made to the authority, may not be adequately resourced or given appropriate priority.

54. The authority itself has explained that keeping pace with initial requests for information, including those made under the Freedom of Information and Data Protection Acts, and the Environmental Information Regulations, has come at a cost as far as the prompt completion of internal reviews is concerned.

55. The authority has also been faced with staff shortages, particularly in respect of senior staff needed to complete reviews.

56. In addition, GMP has explained that difficulties with the authority's computer system have served to frustrate its ability to complete reviews quickly.

57. The authority has reassured the Commissioner that it is keen to address the problems it faces, which it considers to stem from genuine operational and staffing difficulties rather than a lack of purpose or commitment.

58. The Commissioner recognises that GMP has acknowledged some of its shortcomings and has already taken steps to try to address the issue of internal review delays. He understands these steps to include:

- Restructuring and re-titling of the FOI section to form an 'Information Governance Unit', which is part of a newly-created 'Information Management Branch'
- Staff training, including attendance of two staff members at an ISEB FOIA certificated course
- Creation (and recruitment of staff to) additional posts, including two and a half Audit & Compliance Officers, 1 permanent Information Access Assistant and 1 temporary Information Access Assistant, all of whom were expected to have responsibilities in respect of access to information

59. In addition to the above, the authority has advised that it is doing all it can to rectify the situation and that ultimately, it aims to conform to the Commissioner's guidance on the timescales for review.

60. The Commissioner welcomes the commitments GMP has already made, and offers his continued support in assisting the authority to make further changes. However he considers that the authority has simply taken too long to implement, and act upon, his previous informal approaches and recommendations. He also considers that the authority has failed to demonstrate an appropriate level of improvement within a suitable period of time.

Part VI – complaints procedure

61. Any written reply from an applicant which expresses dissatisfaction with the handling of a request should automatically trigger the internal review process. The Commissioner recommends that GMP review its procedures in this regard to ensure that the current provision for handling internal reviews is adequate.
62. GMP should ensure that there are procedures in place to expedite internal reviews and conduct them within the recommended timeframe of 20 working days (40 working days in exceptional circumstances). If it has not already done so, the authority should consider assigning temporary resource to tackle any internal reviews which are already over 20 working days old.
63. In the event of an application to his office under section 50 (1) of the Act, and on those occasions where the 20 working day timeframe is exceeded, GMP, and indeed all public authorities, must be prepared to demonstrate that any additional time to consider a review was genuinely required, and that the authority has actively worked on the review throughout that time.
64. As GMP has readily accepted, there are a number of errors in the information on internal reviews supplied to the Commissioner. The Commissioner is concerned that such errors will fundamentally undermine the authority's ability to monitor its performance in respect of internal reviews. The Commissioner therefore recommends that the authority consider its current processes for recording and extrapolating such data to ensure that the potential for error is minimised. This would assist the authority in conforming to paragraphs 42 and 43 of the Code as follows:
- Public authorities should publish their target times for dealing with internal reviews and information as to how successful they are in meeting those targets. When dealing with reviews, they should inform the complainant of the target date, including if necessary estimates on those occasions where the review will take longer to resolve;
 - Records should be kept of all internal reviews and their outcomes. Public authorities should review these records for repeated reversals of initial decisions and if necessary amend their request handling procedures or publication scheme.
65. Finally, part VI of the Code makes one other suggestion in relation to internal review procedures which the Commissioner believes it would be beneficial to remind GMP of:
- Where the outcome of the complaint is the procedures within an authority have not been properly followed by the authority's staff, the authority should apologise to the applicant.

- The authority should also take appropriate steps to prevent similar errors occurring in future.
66. If the authority has not already done so, the Commissioner would urge the GMP to contact those individuals whose internal reviews remain outstanding to apologise for the delays and indicate when a response can be expected.
67. The Commissioner considers that these steps are necessary to ensure the timeliness of internal reviews, and to promote conformity with his guidance on the matter.
68. GMP should refer to the resources available on the Commissioner's website (www.ico.gov.uk) or contact the ICO directly should it require any further guidance or assistance when implementing these recommendations.
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Failure to comply

69. A practice recommendation cannot be directly enforced by the Commissioner. However, a failure to comply with a practice recommendation may lead to a failure to comply with the Act which in turn may result in the issuing of an Enforcement Notice. Further, a failure to take account of a Practice Recommendation may lead in some circumstances to an adverse comment in a report to Parliament by the Commissioner under section 49 (1) or (2) of the Act.

Other matters

70. The Commissioner recognises that he has received relatively few section 50 (1) complaints about the authority. Although this initially suggested that the authority was performing well, analysis of the information provided by the authority showed that this was not the case. On this occasion, the Commissioner has therefore based a significant proportion of his recommendations on information sourced outside of section 50 (1) complaints made to his office.
71. The Commissioner has a number of concerns about GMP's engagement with his office. The authority's repeated and prolonged delays in responding to his enquiries have significantly contributed to the need for this practice recommendation. He would like to make clear to GMP and to other public authorities reading this recommendation that informal resolution of compliance or conformity issues cannot be pursued indefinitely and that more formal action will be taken where there is evidence of a lack of progress, commitment, a failure to engage or any combination of these.

Dated the 31 March 2009

Signed.....

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