



**First-tier Tribunal
(General Regulatory Chamber)
Information Rights**

Appeal Reference: EA/2020/0186 (P)

Decided without a hearing on: 10 November and 9 February 2021

Before

**SOPHIE BUCKLEY
ANNE CHAFER
PAUL TAYLOR**

Between

BENJAMIN DEAN

Appellant

and

THE INFORMATION COMMISSIONER

First Respondent

MODE OF HEARING

This hearing was held on the papers which has been consented to by the parties. The form of remote hearing was 'P'. A face to face hearing was not held because it was not practicable and all the issues could be determined in a remote hearing.

DECISION

1. For the reasons set out below the appeal is dismissed.

REASONS

Introduction

1. This is an appeal against the Commissioner's decision notice FS50906906 of 26 May 2020 which held that the Chief Constable of Cheshire Constabulary ('the Constabulary') correctly applied s 12 of the Freedom of Information Act 2000 (FOIA) and that there was no breach of s 16(1) FOIA.
2. The Commissioner required no steps to be taken.
3. The tribunal adjourned the hearing on 11 November to order further information from the Constabulary. That information was received and taken into account along with any further submissions from the parties.
4. We have read and taken account of an open bundle of documents.

Background facts

5. The Cheshire Hounds Hunt engages security officers. Mr. Dean has asked them the name of their employers but they refuse to provide it. He states that Security Industry Authority ('SIA') regulations require members to name their employer so complaints about their conduct can be made. This request is part of his attempt to find out the name of the employer of the security officers so that a complaint or complaints about their conduct can be made.
6. When police officers attend the hunt they wear cameras and can record footage know as BWV (body worn video). The video is turned on at the discretion of the individual officer. Any footage is retained for 30 days unless it is required for evidential purposes.

Request and response

7. On 27 December 2019 Mr. Dean made the request which is the subject of this appeal:

This Hunt [*The Cheshire Hounds Hunt*] is 'employing safety officers' who are assaulting people verbally and violently. It is just a matter of time before there is a serious incident. I have asked them on several occasions, as have others if they are SIA members. They always answer yes, but then refuse to answer as to which company employs them. SIA regulations require them to name their employer so complaints about their conduct can be made.

These 'safety officers' state their SIA numbers have been given to Cheshire Constabulary. Please confirm this is correct. If this is correct please provide the details of the company or companies that all of these SIA/Safety Officers are employed by.

8. The Constabulary replied on 14 January 2020 and stated that the information was not held.
9. Mr. Dean applied for an internal review by letter dated 21 January 2020 relying on a conversation he had recorded on Saturday 19 January 2020 which led him to believe that the Constabulary held the details of the SIA/Safety Officers.
10. On internal review the Constabulary relied on s 12 FOIA. They stated that they did not routinely record in writing SIA numbers or the organisation names of SIA security officers in a central location, but it might be that the information may have been disclosed during an officer's attendance at a hunt. The Constabulary stated that there are on average 10 officers that may attend a hunt, of which there are 2 hunts a week lasting around 4.5 hours, equating to an average of 1620 hours of footage. Accordingly it would take in excess of 1620 hours to establish if the SIA security numbers and/or company worked for had been disclosed which would exceed the appropriate limit.
11. Mr. Dean complained to the Information Commissioner on 30 January 2020. During the course of the investigation Mr. Dean confirmed that his request was for the name of the company that employed the SIA Officers that provided security services to Cheshire Hounds Hunt between November 2019 and February 2020.
12. During the Commissioner's investigation the Constabulary provided further/revised information as follows:

...in order to establish if the information is indeed held by Cheshire Constabulary would require

- a) to recognise and establish which officers were in attendance at the hunts prior to 27th December 2019
- b) establish from each officers Pocket Note book if their camera was active during any part of the hunt
- c) establish if the BWV was uploaded for evidential purposes (where not required for evidential purposes the footage is only kept for 30 days)
- d) on average 10 officers may attend any one hunt, there were 8 hunts during November and December of 2019 however, the requester did not specify which year he was referring to. For 8 hunts which last approximately 4.5 hours, 10 officers equates to 360 hours of BWV that would require watching to establish if the information requested is held in force.

The Decision Notice

13. The Information Commissioner decided that the timeframe of the request was 1 November 2019 until 27 December 2019 (the date of the request). The Commissioner accepted that the Constabulary had identified the likely location of any information within the scope of the request. She accepted that on average 10 officers would have attended each hunt and that there were 8 hunts within the

scope of the request. She considered that it was reasonable to estimate that it would take one hour of staff time per hour of footage to determine if the footage contained the information described in the request.

14. The Commissioner understood the Constabulary to have based its calculation of 360 hours on the basis of each hunt being fully recorded by each officer. The Commissioner took account of the fact that while each hunt lasts on average 4.5 hours, it is the officer who makes the choice as to when the BWV is switched on. The Commissioner considered that, on average, each officer would have to capture 13.5 minutes of BWV footage per hunt for there to be 18 hours of recorded BWV footage. The Commissioner was not satisfied that the estimate of the number of hours of footage was realistic, but she was satisfied that it would exceed the appropriate limit of 18 hours and according s 12(2) applied.
15. The Commissioner found that the Constabulary fulfilled its duty at section 16(1).

The Appeal to the Tribunal

16. The grounds of appeal are, in summary, that the financial cost of watching the footage is not relevant because the information must be readily available to the Constabulary. This is based on footage of an officer stating that the Constabulary are in regular contact with managers of the security company. Mr. Dean states, 'I'm sure the Cheshire Constabulary constables in "regular contact" do not trawl through hundreds of hours of bodycam footage to obtain the telephone number and security company contact details.

The Commissioner's response

17. The Act only provides a right to any recorded information held at the time of the request. It is not for the Commissioner or the Tribunal to consider what information a public authority should record. The issue is whether the requested information was held in a recorded format and not just whether it is known to certain individuals. The Constabulary has confirmed that it does not routinely record SIA numbers or the name of the organisation(s) employing SIA security officers in a central location within its systems.
18. In addition the Constabulary also carried out numerous searches as part of its initial response to Mr. Dean in which it confirmed that the information was not held. The Commissioner had no reason to doubt the Constabulary's explanations.

Mr. Dean's reply

19. Mr. Dean submits that the Commissioner seems to rely entirely on accepting Cheshire Constabulary's response that it holds no information. The video very clearly states that the Constabulary are in "regular contact with the managers of the security company". The fact that the video evidence postdates the request is

irrelevant because of the use of the word “regular”. It can be assumed that this regular contact started at the start of the hunting season at the beginning of November 2019.

Evidence and further submissions

20. We read and took account of an open bundle.
21. Mr. Dean provided the tribunal with video footage of a police officer during a hunt. Mr. Dean asks the police officer to take down the badge numbers of the SIA security officers. The police officer replies, “Believe it or not we’ve got details of everyone that’s involved, we have... that...that goes on in the background. It’s not just we turn up we don’t know who anyone is. So we will have what everyone’s details. We have regular contact with the managers of the security company and both sides.”

Further information from the Constabulary

22. By order dated 10 November 2020, the tribunal ordered the Constabulary to provide further information. The further information provided was as follows.
23. BWV cameras have approximately 3 hours maximum recording time. The footage is retained on an electronic database. Searches can only be made by officer collar number and date.
24. The SIA number is not information that the Constabulary would aim, need or expect to collect. The only way the Constabulary would hold that information would be incidental to an incident if, at a time BWV was active, a member of security staff stated their SIA number at a volume that was captured on the video and the video was still held at the time of the request. The only way to locate and retrieve the information would be to view the BWV of all hunts during the time period.
25. Since the original request the Constabulary have received a subject access request (SAR) from an individual at a hunt requesting all of the personal data contained in BWV and this experience has been used to refine the original estimation.
26. The SAR was made outside of the original 30 day retention period and therefore the only video still held had been marked for retention. Multiple searches located 474 minutes of BWV that had been retained. To establish if there was personal data held on BWV in relation to just one hunt a member of staff had to review all 474 minutes. In the requested time period in the current appeal there were 8 hunts, and if a similar amount of footage was retained, this would equate to 63 hours of video.

27. To establish which officers were in attendance at the hunts would take approximately 4 hours (30 minutes per hunt) if only one reported incident was made per hunt. There are likely to be many more incidents.
28. Identifying whether an officer's camera was active during a hunt by searching the BWV database would take 6.6 hours (5 minutes per officer, 10 officers per hunt). Identifying whether an officer's camera was active by searching the pocket note books (PNB) would take 20 hours (10 officers per hunt x 15 minutes x 8 hunts).

Response from Mr. Dean

29. The request was for details of the company that employs the SIA officers and not their individual SIA numbers. SIA officers are required to display their badge number. The failure of the SIA officers, the Constabulary and the Commissioner to state who employed the officers has breached Mr. Dean's human rights to put in a complaint about their conduct.

Response from the Commissioner

30. The Commissioner noted that the further information provided by the Constabulary refers to the requested information as the SIA numbers whereas Mr. Dean has confirmed that he is requesting the company that employs the SIA officers and not their individual SIA numbers.
31. The response of the Constabulary during the investigation refers to the retrieval of the SIA numbers 'or' and 'and/or' the organisation that employs the SIA officer and therefore it may be shorthand for either or both sets of information. In any event, it appears that the activities required to search for both sets or one set of information would be the same. The revised estimate is still well in excess of the 18 hour limit and the Commissioner maintains that s 12(2) is engaged.

The relevant law

32. Under s 12(1) a public authority is not obliged to comply with a request for information where:
 - ..the authority estimates that the costs of complying with the request would exceed the appropriate limit.
33. The relevant appropriate limit, prescribed by the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ('the Regulations') is £450.
34. In making its estimate, a public authority may only take account the costs it reasonably expects to incur in relation to the request in-
 - (a) determining whether it holds the information,
 - (b) locating it, or a document which may contain the information,

- (c) retrieving it, or a document which may contain the information, and
- (d) extracting it from a document containing it. (See regulation 3).

35. The Regulations specify that where costs are attributable to the time which persons are expected to spend on the above activities the costs are to be estimated at a rate of £25 per person per hour.
36. The estimate must be sensible, realistic and supported by cogent evidence (McInnery v IC and Department for Education [2015] UKUT 0047 (AAT) para 39-41).
37. The test is not a purely objective one of what costs it would be reasonable to incur or reasonable to expect to incur. It is a test that is subjective to the authority but qualified by an objective element. It allows the Commissioner and the tribunal to remove from the estimate any amount that the authority could not reasonably expect to incur either on account of the nature of the activity to which the cost relates or its amount. (see paragraph 20) (**Reuben Kirkham v Information Commissioner** [2018] UKUT 126 (AAC)).

The Task of the Tribunal

38. The tribunal's remit is governed by s.58 FOIA. This requires the tribunal to consider whether the decision made by the Commissioner is in accordance with the law or, where the Commissioner's decision involved exercising discretion, whether she should have exercised it differently. The tribunal may receive evidence that was not before the Commissioner, and may make different findings of fact from the Commissioner.

Discussion and Conclusions

Scope of the request

39. We agree with the Commissioner that the appropriate date range is from 1 November 2019 to the date of the request. Eight hunts took place during this period. The request has been confirmed by Mr Dean to be limited to the name of the security officers' employer.

Do the police hold the requested information otherwise than on the BWV footage?

40. Mr. Dean believes, on the basis of what he recorded the police officer stating at one of the hunts, that the Constabulary hold records of the SIA officers' employers.
41. The tribunal can understand how Mr. Dean formed that belief. The police officer stated that they would have 'everyone's details'. He also stated that they had regular contact with the managers of the security company. A reasonable interpretation of this statement is that the Constabulary has a written record of the 'details' of the security officers and that they would have a written record of the

contact details of the managers of the security company. It was therefore reasonable of Mr. Dean to conclude, on the basis of this officer's statement that they were likely to have a record of the names of the employers of the security officers.

42. Against the recorded statement of this individual officer, we have the evidence of the Constabulary that they do not routinely record in writing the organisation name of SIA officers in a central location on their recording systems. Officers may be aware of the security company individual's work for, but this would be knowledge in the individual's head and not recorded so as to fall within the FOIA. No information was found after conducting numerous searches.
43. The tribunal has to decide whether information is held on the balance of probabilities. We think it is more likely that the individual officer inadvertently gave incorrect information in the context of an informal conversation with Mr. Dean than that the Constabulary are deliberately misleading the Commissioner in the course of a formal investigation. Further, there is no obvious 'business need' for the Constabulary to record this information.
44. On the balance of probabilities, we accept that this information is not centrally recorded, and we accept that the Constabulary have carried out numerous searches and found no recorded information. Accordingly our conclusion on the balance of probabilities is that the police officer has given Mr. Dean incorrect information and that the name of the employer of the security officers is not held by the Constabulary other than, potentially, on the BWV.

Is the estimate sensible, realistic and supported by cogent evidence?

45. Although the revised estimate provided in response to the tribunal's order is stated to apply to the SIA numbers of the officers rather than the name of their employer, we find that nothing turns on this. It is clear from the Constabulary's earlier responses to Mr. Dean and the Commissioner that the process for finding both types of information on BWV is exactly the same, and therefore the estimate applies equally to both.
46. The further information provided by the Constabulary in response to the order of the tribunal sets out, in our view, a sensible and realistic estimate supported by cogent evidence. The estimate is based on, in effect, a sampling exercise in that it uses the length of time retained from one hunt after 30 days to provide the basis for how much might be retained from 8 hunts. We note that 4 of the hunts were within 30 days of the request which might suggest that this is an underestimate. In our view this is a reasonable approach to adopt. We accept that 63 hours is a reasonable estimate of the amount of time it would take to review the footage from 8 hunts.
47. In addition to this, we accept that the estimate of 4 hours to identify the officers in attendance at the 8 hunts is properly explained and that it would take 6.6 hours (5

minutes per officer, 10 officers per hunt) to identify whether an officer's camera was active during a hunt by searching the BWV database. Our understanding of the information provided is that this is an alternative to searching the pocket note books, and accordingly the 20 hours to search the pocket note books should not be included in the final total.

48. This produces a total estimate of 74.6 hours which we find is reasonable and supported by cogent evidence. This amount of time significantly exceeds the appropriate limit. The Constabulary was therefore entitled to rely on s 12 and the appeal is dismissed.

Signed Sophie Buckley

Judge of the First-tier Tribunal

Date: 2 March 2021

Promulgated: 3 March 2021