

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 16 March 2011

Public Authority: Metropolitan Police Service
Address: New Scotland Yard
Broadway
London
SW1H 0BG

Summary

The complainant made two requests for information to the Metropolitan Police Service (MPS) concerning its staffing arrangements for three separate days, during which the Public and Commercial Services Union (PCS) were taking strike action. The MPS aggregated the two requests and cited section 12(1) of the Act, stating that the cost of compliance with the requests would exceed the appropriate limit under the Act. The Commissioner's decision is that the MPS correctly cited section 12(1) of the Act.

The Commissioner's Role

1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

The Request

2. The complainant made the following request on 22 March 2010:

'I would like to make a Freedom of Information request on the recent PCS industrial action at all three centres of CCC. Please show a breakdown per shift/day/centre as follows:

1. How many Band E members of staff from teams 3 and 2 took part in strike action on March 8 to 9 2010 for the shifts starting at 0700hrs and 1900hrs each day at CCC Lambeth/Bow/Hendon?

2. How many of these Band E members of staff would have been in Despatch and how many were due to be posted in First Contact at CCC Lambeth/Bow/Hendon?
3. How many Band E members of staff are there for teams 3 and 2 at CCC Lambeth/Bow/Hendon?
4. How many of these Band E members of staff are multi-skilled, how many are just First Contact-trained only, or Despatch-trained only?
5. How many Band E members of staff from teams other than teams 3 and 2 from CCC Lambeth/Bow/Hendon turned up to work the four shifts of March 8 to 9 2010 at CCC Lambeth/Bow/Hendon? What teams and centers did they come from?
6. How many police officers that are not members of teams 3 and 2 at CCC Lambeth/Bow/Hendon worked the four shifts of March 8 to 9 2010 at CCC Lambeth/Bow/Hendon?
7. How many of these police officers from the answer to the above question were posted to First Contact and how many were posted to Despatch across the four shifts and three centres?
8. How many Band D members of staff from teams 3 and 2 took part in strike action across the four shifts on March 8 to 9 2010 at CCC Lambeth/Bow/Hendon?
9. How many of these Band D members of staff would have been in Despatch and how many were due to be posted in First Contact at CCC Lambeth/Bow/Hendon across all four shifts?
10. How many Band D members of staff are there for teams 3 and 2 at CCC Lambeth/Bow/Hendon?
11. How many of these Band D members of staff are multi-skilled, how many are just First Contact-trained only, and Despatch-trained only?
12. How many Band D members of staff from teams other than teams 3 and 2 from CCC Lambeth/Bow/Hendon turned up to work the four shifts of March 8 to 9 2010 at CCC Lambeth/Bow/Hendon? What teams and centers did they come from?
13. How many police sergeants that are not members of teams 3 and 2 at CCC Lambeth/Bow/Hendon were required to work the four shifts of March 8 to 9 2010 at CCC Lambeth/Bow/Hendon?

14. How many of these police officers from the answer to the above question were posted to First Contact and how many were posted to Despatch?
 15. How much money was saved by not paying the salaries of striking staff for the four shifts of March 8 to 9 at CCC Lambeth/Bow/Hendon? Please show a breakdown across each shift per center per day.
 16. How much money was spent paying for overtime for staff working on the four shifts of March 8 to 9 at CCC Lambeth/Bow/Hendon? Please show a breakdown across each shift per center per day.
 17. How much money was spent paying for police officers and sergeants not on teams 3 and 2 to work the four shifts of March 8 to 9 at CCC Lambeth/Bow/Hendon? Please show a breakdown across each shift per center per day.
 18. What type of complimentary refreshments and meals was laid on for staff and officers that worked the four shifts of March 8 to 9 at CCC Lambeth/Bow/Hendon? What was the cost of this expenditure? Please show a breakdown across each shift per center per day.
 19. What type of compensation in terms of extra pay and time off in lieu was offered for staff that agreed to work an extra hour beyond their shift for all four shifts of March 8 to 9 at CCC Lambeth/Bow/Hendon? Please show a breakdown across each shift per center per day.'
3. The complainant made a second request on 26 March 2010:
- 'I would like to make a Freedom of Information request on the recent PCS industrial action at all three centres of CCC. Please show a breakdown per shift/day/center as follows:
1. How many Band E members of staff from teams 2 and 1 took part in strike action on March 24 2010 for the shifts starting at 0700hrs and 1900hrs at CCC Lambeth/Bow/Hendon?
 2. How many of these Band E members of staff would have been in Despatch and how many were due to be posted in First Contact at CCC Lambeth/Bow/Hendon?
 3. How many Band E members of staff are there for teams 2 and 1 at CCC Lambeth/Bow/Hendon?
 4. How many of these Band E members of staff are multi-skilled, how many are just First Contact-trained only, or Despatch-trained only?

5. How many Band E members of staff from teams other than teams 2 and 1 from CCC Lambeth/Bow/Hendon turned up to work the two shifts of March 24 2010 at CCC Lambeth/Bow/Hendon? What teams and centers did they come from?

6. How many police officers that are not members of teams 2 and 1 at CCC Lambeth/Bow/Hendon worked the two shifts of March 24 2010 at CCC Lambeth/Bow/Hendon?

7. How many of these police officers from the answer to the above question were posted to First Contact and how many were posted to Despatch across the two shifts and three centres?

8. How many Band D members of staff from teams 2 and 1 took part in strike action across the two shifts on March 24 2010 at CCC Lambeth/Bow/Hendon?

9. How many of these Band D members of staff would have been in Despatch and how many were due to be posted in First Contact at CCC Lambeth/Bow/Hendon across all two shifts?

10. How many Band D members of staff are there for teams 2 and 1 at CCC Lambeth/Bow/Hendon?

11. How many of these Band D members of staff are multi-skilled, how many are just First Contact-trained only, and Despatch-trained only?

12. How many Band D members of staff from teams other than teams 2 and 1 from CCC Lambeth/Bow/Hendon turned up to work the two shifts of March 24 2010 at CCC Lambeth/Bow/Hendon? What teams and centers did they come from?

13. How many police sergeants that are not members of teams 2 and 1 at CCC Lambeth/Bow/Hendon were required to work the two shifts of March 24 2010 at CCC Lambeth/Bow/Hendon?

14. How many of these police officers from the answer to the above question were posted to First Contact and how many were posted to Despatch?

15. How much money was saved by not paying the salaries of striking staff for the two shifts of March 24 at CCC Lambeth/Bow/Hendon? Please show a breakdown across each shift per center.

16. How much money was spent paying for overtime for staff working

on the two shifts of March 24 at CCC Lambeth/Bow/Hendon? Please show a breakdown across each shift per center.

17. How much money was spent paying for police officers and sergeants not on teams 2 and 1 to work the two shifts of March 24 at CCC Lambeth/Bow/Hendon? Please show a breakdown across each shift per center.

18. What type of complimentary refreshments and meals was laid on for staff and officers that worked the two shifts of March 24 at CCC Lambeth/Bow/Hendon? What was the cost of this expenditure? Please show a breakdown across each shift per center.

19. What type of compensation in terms of extra pay and time off in lieu was offered for staff that agreed to work an extra hour beyond their shift for all two shifts of March 24 at CCC Lambeth/Bow/Hendon?

Please show a breakdown across each shift per center.'

4. The MPS responded to both requests on 21 April 2010. It confirmed that it would be aggregating both requests and applying section 12(1) of the Act to the request, stating that the 'appropriate limit' as provided by the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the fees regulations)¹, had been exceeded.
5. The complainant subsequently telephoned the MPS to request an internal review of its decision to apply section 12 of the Act.
6. On 26 May 2010, in response to the complainant's request for an internal review, the MPS upheld its decision. It stated that the requests could be aggregated and that providing a response would exceed the appropriate limit. The MPS provided an explanation of how it determined that responding to the two requests would exceed the appropriate limit. However, the MPS, under its duty to provide advice and assistance under the Act, invited the complainant to submit a narrower request which could be responded to within the appropriate limit.

¹ <http://www.legislation.gov.uk/uksi/2004/3244/contents/made?view=plain>

The Investigation

Scope of the case

7. On 8 June 2010 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider the following points:

'I am appealing the decision of the Metropolitan Police Service's internal review to refuse my aggregated requests for information on staffing levels during three days of industrial action in March 2010. They rejected my request, stating that the information I seek is accessible only by manual intervention and then would require transferring the data onto a spreadsheet. They say it would take too long and cost too much.

It is my understanding that the staffing information I seek is, in fact, easily sought from MPS software called "MyPlanner", a comprehensive employee management system that records and reports on all manner of details concerning staffing strength. I know this both from first hand conversation with staff authorized to use the program...as well as from NICE, the developers themselves, in a private capacity (see emails dated 11-17 May 2010) who market this software under the title "TotalView".

The MPS has not addressed my clear reference to accessing the "MyPlanner" software for this information including taking up my suggestion to putting it to the developers themselves to see whether such information is indeed available.'

8. The complainant also confirmed in his complaint that he had accepted the invitation of the MPS to make a separate, narrowed request, for the information relating to parts 18 and 19 of both requests. However, MPS's handling of this narrowed request was not included in the scope of his complaint to the Commissioner.

Chronology

9. The Commissioner wrote to the MPS on 7 October 2010 to confirm the scope of his investigation. This being whether or not the MPS had correctly cited section 12(1) of the Act to the complainant's request. He also asked the MPS questions concerning how it had reached its

conclusion that section 12(1) of the Act applied to the two aggregated requests.

10. The Commissioner also wrote to the complainant, on 11 October 2010, outlining the scope of his investigation.
11. The Commissioner contacted the complainant on 13 October 2010 to enquire whether he felt his request had been resolved following the provision by the MPS of information relating to his subsequent narrowed request for information relating to parts 18 and 19 of his initial requests.
12. The complainant responded on 18 October 2010. He confirmed that although a response had been provided to parts 18 and 19 of both requests, he was still dissatisfied that the information relating to the other parts of the initial request had not been provided and that he therefore still wished to pursue his complaint. This was confirmed to the MPS on 18 October 2010.
13. The MPS subsequently contacted the complainant in order to clarify some parts of the request. Due to communications difficulties a response was not received from the complainant before the MPS provided its submissions in response to the Commissioner's questions. These were provided on 14 December 2010.
14. The Commissioner contacted the complainant on 14 December 2010 to discuss the submissions provided by the MPS. The Commissioner advised the complainant of his view that the appropriate limit would likely be exceeded and he invited the complainant to consider withdrawing his complaint.
15. There then followed a series of correspondence between the complainant, MPS and the Commissioner, which focussed on the use of computer systems potentially available at the MPS or the contacting of external IT specialists in order to retrieve the information more efficiently than the MPS could do through its explained method and therefore under the costs limit.
16. The Commissioner decided to move to a formal decision when he was content that the MPS and the complainant had exhausted their attempts at informally resolving the case. The Commissioner's decision outlined below is based on all the submissions available to him, which were received during his involvement with this case.

Analysis

Substantive Procedural Matters

17. Section 12(1) of the Act provides that:

“Section 1(1) does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit.”

18. The ‘appropriate limit’ in relation to this case (as set out by the fees regulations) is £450, or 18 hours at £25 per hour. The fees regulations further specify the tasks that can be taken into account when reaching a cost estimate. They are:

- determining whether the information is held;
- locating the information;
- retrieving the information;
- extracting the information.

19. Section 12(1) explicitly states that public authorities are only required to estimate the cost of compliance with a request, not give a precise calculation. Therefore, it is the Commissioner’s task (in this situation) to decide whether or not the estimate provided by the MPS is reasonable in the circumstances.

20. The complainant has made two requests which have been aggregated by the MPS and considered jointly. Regulation 5 of the fees regulations provides that the cost of complying with multiple requests can be aggregated where two or more requests are received within the same 60 working day period and relate to any extent to the same, or similar, information.

21. The MPS has submitted that the two requests in question are related; the overarching subject being that of Central Communications Command (CCC) staffing arrangements in relation to specific PCS strike days. The Commissioner accepts that the requests are related and it was therefore appropriate for the MPS to aggregate them for the purposes of section 12.

22. The MPS provided the Commissioner with two estimates of the costs of complying with the aggregated request. This approach was taken because it was possible to approach the retrieval of the relevant information in different ways, depending on the terms of the various elements of the requests.

23. Since both estimates exceed the costs of complying with the aggregated requests the Commissioner has only considered the lower estimate in making his decision.
24. The lower estimate of the time required to comply with the aggregated requests is 54 hours 23 minutes and 30 seconds. This equates to £1360 on the basis of the £25 per hour rate provided by the fees regulations. It clearly exceeds the 18 hours or £450 appropriate limit relevant to this type of public authority.
25. The Commissioner has carefully examined the estimate provided by the MPS which it considers necessary to perform the 4 tasks listed at paragraph 18 above. He is satisfied that the activities listed in the estimate are restricted to the four permissible activities.
26. The MPS has not denied that this information is held. It has confirmed that it is held on two computer systems which it owns. The Commissioner accepts the MPS's description of the tasks considered necessary to comply with the complainant's requests in terms of all the elements of the requests. He notes that the activities required to perform the necessary location, retrieval and extraction exercises are complex. This is because the terms of the requests require information which is held on a computer system which is not designed to collate such information on a routine or ad hoc basis.
27. The Commissioner has considered whether the MPS's timing estimates are reasonable. The submissions provided by the MPS are detailed and explained in a methodical manner. No part of the various elements which make up the estimate appear exaggerated or unrealistic. It is therefore the Commissioner's opinion that the estimates can be accepted as reasonable and are applicable to the appropriate limit set out in the fees regulations.
28. During the course of the Commissioner's investigation, the complainant raised concerns that the method which the MPS had suggested would be used in performing those activities described in the fees regulations was not the most efficient method possible. He suggested other methods by which the MPS's computer system, TotalView, could be utilised to provide the requested information under the appropriate limit. The Commissioner considers it necessary to discuss these proposed methods as they are indicative as to whether the MPS's submissions can be considered reasonable.
29. The Commissioner contacted the MPS, explaining that the complainant had suggested three other methods which could be utilised to perform the defined activities. The Commissioner asked the MPS to consider

these and explain whether they were applicable. Below are the three suggestions:

'In addition to standardized reports, users of TotalView may use (according to page T6-1 of the TotalView manual) the following options to create **customized** reports:

- The TotalView ODBC workstation driver to pull data from the TotalView database using SQL statements and custom report writing tools such as **Crystal Reports** (my emphasis for reasons shown below). (Suggestion 1)
- The TotalView SmartSync Data Export feature to push data from the TotalView database into ASCII pipe-delimited or XML data files, which can be loaded into a third party data warehouse for custom report writing. (Suggestion 2)
- TotalView Insight Performance Manager to view KPIs and transactional data through standard and customized dashboards, scorecards, and reports.' (Suggestion 3)

Suggestion 1

30. The Commissioner shall consider the merits and applicability of each of the three suggestions above and their application to the appropriate limit. The MPS has pointed out that Suggestion 1 would require it to contact its contractual IT outsourcer, as, following internal consultation, it was made clear that the MPS's staff would not have the expertise to perform such a function and therefore the outsourcer's staff would be needed. Further to this, it has been explained to the Commissioner that this suggestion would require a Change Requirement to be instigated in order to handle the request, suggesting that the MPS's current system is not appropriate to deal with the information request as it stands.
31. This would be going beyond the current process set in place at the MPS. The MPS has pointed out that any work carried out by its outsourcer would be chargeable. The Commissioner is of the view that, under section 12(1) of the Act, the MPS is not obliged to go beyond its current processes in order to comply with a request for information. Specifically in this case, if the query tools for the software available to the MPS at the time of the request do not allow for the requested information to be retrieved within the appropriate limit, there is no obligation under the Act for that information to be retrieved. The Commissioner therefore rejects Suggestion 1, not because the suggestion would not create a more efficient way of obtaining the data if implemented, but because the Act does not require the MPS to undertake it.

Suggestion 2

32. The MPS has explained that Suggestion 2 would require it contacting the TotalView software provider. This suggestion would require the providers to write special formats to extract the data. The MPS has confirmed that this would go beyond its contractual agreement. The Commissioner understands that the cost of the software provider creating such formats can be taken into consideration at its full rate (as opposed to contracting an external specialist to merely run a program, which could only be chargeable at the standard rate of £25 as set out in the fees regulations).
33. The software providers for the MPS were unwilling to give an estimate of how much time/cost this method would involve. The MPS's Directorate of Information Project Manager (DOIPM) provided an estimate based on similar previous changes that have been initiated. He estimated that this suggestion would require 8 'man days' of 7 hours 12 minutes per day. This would equate to 57 hours 36 minutes work or approximately £1440 based on the £25/hour provided by the fees regulations.
34. Given that the above estimate is based on the previous experience of the DOIPM of similar change requirements, the Commissioner accepts this estimate to be reasonable and shows that this suggestion, merely by itself, would exceed the appropriate limit (even before the defined activities began).
35. It should also be noted that the same argument cited in Suggestion 1 above is applicable in this situation. The writing of special formats in order to perform the defined activities would require the MPS to go beyond the current process in place and it is therefore under no obligation to do so.

Suggestion 3

36. The MPS has confirmed, via the DOIPM, that the function in Suggestion 3 is not part of the TotalView Workforce Management product which the MPS purchased. Its product is an 'off the shelf' product and does not always contain every part which the product manual may suggest.
37. Therefore in order to use this method, the MPS would have to purchase a further product. As previously stated, this would be taking the MPS beyond its current process. Furthermore, it is not obliged, under the Act, to purchase further software in order to comply with an information request.
38. The MPS has also pointed out that information regarding employees' pay etc, which is needed to answer parts 15-17 of the requests, is not held

on TotalView. The above suggestions would therefore only be relevant to part of the requests.

39. Following the above, the Commissioner accepts that none of the three suggestions that the complainant made are applicable to the request. He therefore accepts the MPS's estimate to be reasonable and the application of section 12(1) of the Act to be valid.

The Decision

40. The Commissioner's decision is that the public authority dealt with the request for information in accordance with the Act.

Steps Required

41. The Commissioner requires no steps to be taken.

Right of Appeal

42. Either party has the right to appeal against this Decision Notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
Arnhem House,
31, Waterloo Way,
LEICESTER,
LE1 8DJ

Tel: 0845 600 0877

Fax: 0116 249 4253

Email: informationtribunal@tribunals.gsi.gov.uk.

Website: www.informationtribunal.gov.uk

43. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
44. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this Decision Notice is sent.

Dated the 16th day of March 2011

Signed

**Alexander Ganotis
Group Manager – Complaints Resolution
Information Commissioner’s Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Legal Annex

Exemption where cost of compliance exceeds appropriate limit

Section 12(1) provides that –

“Section 1(1) does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit.”

Section 12(2) provides that –

“Subsection (1) does not exempt the public authority from its obligation to comply with paragraph (a) of section 1(1) unless the estimated cost of complying with that paragraph alone would exceed the appropriate limit.”

Duty to provide Advice and Assistance

Section 16(1) provides that -

“It shall be the duty of a public authority to provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made, requests for information to it”.