

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 16 May 2011

Public Authority: The Chief Constable
Address: Essex Police
Police Head Quarters
PO Box 2
Chelmsford
CM2 6DA

Summary

The complainant requested information relating to Data Protection offences which may have been committed by police officers. Essex Police refused to comply with the request on the grounds that the appropriate costs limit would be exceeded – section 12(1) of the Act. The Commissioner has investigated and finds that Essex Police correctly applied section 12 to the request. However, after further explanation from Essex Police regarding its cost estimate the Commissioner considers that the correct subsection would be section 12(2), as determining whether information was held would exceed the costs limit. He also considers that no further advice and assistance could be given to the complainant and requires no further steps to be taken.

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. On 11 April 2010 the complainant contacted Essex Police to request the following information:

"From the years 2007 to the date of request, the number of Police Officers, Police Staff (including PSCOs) and Police Community Support Officers arrested and/or formally interviewed for Data Protection Act offences split by Disposal – Charged, Caution, No Further Action, Misconduct Proceedings, Local management advice.

Formally interviewed relates to an interview held under the Police and Criminal Evidence Act or formal misconduct regulations or equivalent Police Staff misconduct policies."

3. On 25 May 2010 Essex Police responded to the complainant, refusing to comply with the request and citing section 12(1) – the cost of compliance would exceed the appropriate limit.
4. On 29 June 2010 the complainant requested an internal review of Essex Police's decision.
5. On 27 July 2010 Essex Police completed the internal review and upheld its original decision to withhold the requested information on the grounds of cost.

Scope of the case

6. On 21 September 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 fact that Essex Police had refused to comply with the request on the grounds of cost.

Chronology

7. On 7 February 2011 the Commissioner wrote to Essex Police asking for a detailed breakdown of the estimated time and cost it would take to provide the requested information or determine whether it was held. The Commissioner asked Essex Police to include a description of the type of work involved in complying with the request, to clarify whether a sampling exercise had been undertaken and to confirm that the estimate had been based upon the quickest method of gathering the information. He also put the complainant's point to Essex Police that the requested information may possibly be located and retrieved from the 'ORIGIN' HR system.
8. On 9 March 2011 Essex Police responded to the Commissioner and provided details of the estimate he sought. Essex Police expanded on previous details provided concerning how the information may be held and searched for, along with clarifying whether the HR system could be used. Essex Police concluded that the work involved in determining

whether information was held would take one member of staff approximately 38.5 hours to complete.

9. On 14 April 2011 the Commissioner sought further clarification from Essex Police regarding the use of two computer systems named in its response and whether all information pertaining to the request would be expected to be held there. He also asked general questions about whether information of the type requested would be held.
10. On 20 April 2011 Essex Police responded to the Commissioner. It provided the clarification required.

Analysis

Substantive Procedural Matters

11. Section 12(1) allows a public authority to refuse to comply with a request for information if the authority estimates that the cost of compliance would exceed the 'appropriate limit', as defined by the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the Regulations).
12. Section 12(2) allows a public authority to refuse to confirm or deny whether it holds information of the nature requested if simply to do so would in itself exceed the appropriate limit.
13. In this case the appropriate limit for Essex Police is £450 or 18 hours of one member of staff's time.
14. The Regulations allow a public authority to charge the following activities at a flat rate of £25 per hour of staff time:
 - determining whether the information is held;
 - locating the information, or a document which may contain the information;
 - retrieving the information, or a document which may contain the information; and
 - extracting the information from a document containing it.
15. In investigating this case, the Commissioner has had to decide whether the estimate put forward by Essex Police regarding determining whether the requested information is held is a reasonable one. He is aware that a number of Information Tribunals have made it clear that an estimate for the purposes of section 12 has to be 'reasonable', which means that it is not sufficient for a public authority to simply assert that the appropriate limit has been met. In *Alasdair Roberts and*

the Information Commissioner (EA/2008/0050) the Tribunal ruled that any estimate should be “*sensible, realistic and supported by cogent evidence*”. This point echoed that previously made by the Tribunal in *Randall vs The Information Commissioner* (EA/2007/0004) and forms the basis of the Commissioner’s investigation.

16. In the refusal notice of 25 May 2010, Essex Police explained to the complainant that offences made under section 55 of the Data Protection Act 1998 (DPA) were not generally notifiable or arrestable criminal acts. Therefore, Essex Police was not likely to hold any information relating to arrests or disposals for offences under the DPA; however, to fully determine whether this was the case the manual examination of individual case files would need to be undertaken.
17. Essex Police, after liaising with its Professional Standards Department (PSD), informed the complainant that the detailed information requested was not extractable from a database enquiry. It did provide, however, information it produced relating to the Home Office complaint classification of ‘improper disclosure of information’. This disclosure concerned the number of complaints made against police officers under the Police Reform Act and could easily be searched for as the information had a specific code from which data could be drawn.
18. Essex Police made the point that the basic information provided to the complainant was retrieved on a system “*configured for the management of individual cases rather than the production of statistical data*”. Due to the lack of a business need to produce any statistical information relevant to that of the request, the specific information requested by the complainant concerning the outcomes of cases was not held by Essex Police in a structured or retrievable format. For this reason Essex Police stated that the manual examination of 77 individual case files and connected records would need to be carried out in order to determine whether information was held.
19. The Commissioner required further clarification from Essex Police regarding its estimate provided in the refusal notice. He sought further explanation as to the length of time specific tasks such as locating, retrieving and extracting the information would take and the nature of the work involved. This clarification would enable the Commissioner to determine whether the estimate provided by Essex Police was a reasonable one.
20. Essex Police confirmed to the Commissioner that the relevant files stated in the refusal notice were the 77 records identified by the Centurion case management system used by the PSD. The database

query was carried out by searching the complaint type using a free text field for terms such as 'data protection' and 'breach'. Essex Police drew the Commissioner's attention to the fact that using a free text format to search meant that there would be a degree of inaccuracy around any files located and information extracted from them.

21. Once the files had been extracted, further information would need to be identified, relating to interviews, arrests and any subsequent disposals, from a manual search of each file. Essex Police informed the Commissioner that the files may vary in size and that while no sampling exercise had been carried out, based on the expertise of staff from the PSD a reasonable estimate concerning the average time taken to examine each file would be 30 minutes. Essex Police therefore estimated that the total amount of time it would take to comply with the request would be 38.5 hours.
22. Essex Police went on to explain to the Commissioner that PSD investigation files are originally paper files which are then scanned and stored electronically on to the Cyclops system. They can then be searched for using the Centurion system. The files are largely unstructured and are only searchable by manually viewing the image of each page. Therefore, owing to the fact that more information would also need to be cross-referenced once the files had been searched, the estimate of 30 minutes per file was a reasonable one.
23. With regard to the use of the 'ORIGIN' HR system in order to locate, retrieve and extract the information, Essex Police confirmed to the Commissioner that the system would not hold any relevant information and would not be used in searching for the requested information. Essex Police stated:

"ORIGIN HR was not consulted while researching this request as it would not necessarily contain complete and detailed information relating to the request. It may contain some data created in parallel to the information held on the PSD system. For example, it would be reasonable to assume that if a member of staff was interviewed and no further action taken that no information would appear on ORIGIN HR. Details do not always appear to be entered onto ORIGIN and I understand that there is no procedural requirement to do so..."

The Commissioner accepted this explanation that a system designed for the needs of a human resources department would not provide the tools to complete a comprehensive search for the purposes of complying with the request.

24. Finally, the Commissioner required further brief details regarding what type of information was captured on the Centurion system detailed in the previous responses from Essex Police.
25. Essex Police responded to the Commissioner and confirmed that the system recorded standard complaint data only, for example, the details of the complainant, what the complaint was about and which Home Office category the complaint related to. Essex Police stated that information relating to whether an officer had been arrested would not be recorded on this system and would make further examination of each individual case file necessary. Essex Police restated its reliance on section 12 writing:

"...we [would] have no operational concerns about disclosing this information [if held] other than cost."

26. Due to the nature of the information requested by the complainant and the way in which it would be recorded, if held, the Commissioner considers the costs estimate provided by Essex Police to be reasonable. He has assessed the tasks involved in locating, retrieving and extracting the information described by Essex Police and agrees that this is work which would need to be carried out in order to comply with the request. The calculation of the costs that would be incurred appears reasonable when the tasks involved in compliance are taken into account.

Section 16 – Duty to provide advice and assistance

27. Section 16 of the Act states that public authorities have a duty to provide advice and assistance to applicants making, or proposing to make, requests for information. This advice and assistance, with regard to requests that engage section 12, often relates to how the request could be refined to bring it under the appropriate costs limit.
28. The Commissioner sought examples of any advice and assistance that had been provided to the complainant. Essex Police explained that it had not provided the complainant with any specific advice and assistance regarding refining the request. Essex Police drew the Commissioner's attention to the fact that the duty to provide such advice and assistance under section 16 only extended as far as it would be reasonable for a public authority to do so.
29. Essex Police explained to the Commissioner that added to the fact that the work involved in complying with the request would exceed the costs limit, the information could also *"only be provided by one member of staff who already manages a heavy caseload dealing with*

highly important public complaints against police...particularly in these times of reduced funding and strained resources, we felt the need to apply the section 12 exemption...". Essex Police considered that it would not be reasonable for it to provide advice and assistance to the complainant owing to the fact that it was unlikely that the request could be refined in such a way as to bring it under the appropriate costs limit.

30. The Commissioner is conscious of the fact that throughout the handling of the request and his investigation, Essex Police has provided details as to why information pertaining to the request may not be held. He considers informing the complainant of this to be a form of advice and assistance and is therefore satisfied that Essex Police complied with section 16 to an extent. The Commissioner considers the costs estimate relating to determining whether information is held to be reasonable and agrees that there is no way Essex Police could assist the complainant further to refine his request in order to obtain the information in which he is interested.

Procedural Requirements

31. The Act requires that, on receipt of a request for information, a public authority must respond to the applicant within 20 working days.
32. From the information provided to the Commissioner, it is evident that Essex Police failed to respond within the statutory time limit. The late response was acknowledged by Essex Police in the refusal notice of 25 May 2010, 31 working days after the date of the request. The failure to issue a valid refusal notice within the timescale was a breach of section 17(5).

The Decision

33. The Commissioner's decision is that the public authority dealt with the following elements of the request in accordance with the requirements of the Act:
 - Essex Police refused to comply with the request under section 12(2).
34. However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:
 - Essex Police responded to the request late and therefore breached section 17(5).

Steps Required

35. The Commissioner requires no steps to be taken.

Right of Appeal

36. 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: 0300 1234504

Fax: 0116 249 4253

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

Website: www.informationtribunal.gov.uk

37. 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.
38. 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 May 2011

Signed

**Jon Manners
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Legal Annex

General Right of Access

Section 1(1) provides that -

"Any person making a request for information to a public authority is entitled –

- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
- (b) if that is the case, to have that information communicated to him."

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."

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."