

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 19 June 2012

**Public Authority:** Chief Constable of Northumbria Police  
**Address:** Police Headquarters  
North Road  
Ponteland  
Newcastle Upon Tyne  
NE20 0BL

#### Decision (including any steps)

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1. The complainant has requested information relating to the costs of the public authority's investigation into the shootings by Raoul Moat. The public authority provided some information but the complainant asserted that there should be further information available. Some information was withheld on the grounds that to ascertain whether or not it was held would exceed the appropriate limit. The complainant was also directed to further information on the public authority's website but he did not accept that this was sufficient. The Information Commissioner has accepted the public authority's response, but finds that the initial refusal notice was provided outside the statutory time limit; he does not require the public authority to take any steps.

#### Background

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2. The request can be found on the '*What Do They Know*' ("WDTK") website<sup>1</sup>.

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[http://www.whatdotheyknow.com/request/raoul\\_moat\\_investigation\\_operati](http://www.whatdotheyknow.com/request/raoul_moat_investigation_operati)

## Request and response

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3. On 28 July 2011, the complainant wrote to the public authority and requested information in the following terms:

*"In Feb 2011 NP confirmed that; "The total cost from the first shootings on 3 July until the present time is £1,411,354." ; <http://www.northumbria.police.uk/foi/bul...>*

*NP also confirmed following;*

- Costs for Mutual Aid from other forces: £460,062*
- Northumbria Police officer and staff overtime until 11 July: £585,406*
- Northumbria Police officer and staff overtime from 12 July to date: £93,110*
- Miscellaneous\* and non pay costs: £272,776*

*I understand NP only released this information after a complaint was made by Councillor [name removed] after a FOI request by him for all costs of the manhunt for Raoul Moat was refused by NP. I also understand that [name removed] received a phone call from the Deputy Chief Constable Jim Campbell telling him he will have the figures in a 'few days.'*

*In order to be open and transparent can NP please supply me with the following information, as detailed under section 84 of FOIA, as follows;*

- 1. Given that five or six months have now passed since NP released above. Please supply total cost/s from the first shooting on 3<sup>rd</sup> July 2010 and up until the date this request is answered.*
- 2. NP claim that the costs in that case as of Feb 2011 were £1,411,354. Please confirm if this case is the most expensive case that NP have dealt with during the past 15 years. If not, please give details of the most expensive case NP have dealt with during that time, including total costs of such case/s and also a breakdown of same.*
- 3. Please give full details of all other cases that NP have dealt with during the past 15 years where the costs were in excess of £1 million pounds. Please also list name/s of each case and supply full details and background on such case/s, including total*

*cost/s and also breakdown similar to that released by NP in the above case.*

*4. Please supply full details of all/any compensation paid to any person/s, including amounts and legal costs, by NP and or its insurers relating to the Raoul Moat Investigation - Operation Bulwark.*

*5. Have NP requested or received emergency and or additional funding, grants or any other payments or funding from Home Office and or any other Government departments during the past 12/13 months relating to the Raoul Moat Investigation – Operation Bulwark. If so, please supply full details of amount/s involved, details of who paid such amounts and reason/s for same.*

*If one part of this request can be answered sooner than others, please send that information first followed by any subsequent data.*

*[6.] If FOI requests of a similar nature have already been asked could you please include your responses to those requests."*

4. Having acknowledged the request, the public authority responded on 26 August 2011. It stated, in respect of the opening comments of his request:

*"In relation to your comments concerning Councillor [name removed]'s request. As you are aware you have previously been provided with a response in relation to this, advising that [name removed]'s request was refused under Section 22 (1)(a) Information intended for future publication. This information was always going to be released into the public domain, once ratified, via the Publication Strategy which was set up on the Northumbria Police website in September 2010".*

5. It provided responses to parts (1) to (5) of the request, in relation to parts (2) and (3) it confirmed this case was the most expensive in the previous six years and that there were no other cases whose recorded costs exceeded £1 million in the previous six years.
6. In respect of part (6), it advised that this was already available to him and was therefore exempt by virtue of section 21. It clarified:

*"This information is freely available to the public on the Northumbria Police website - Disclosure Log. In order to aid and assist you further I have supplied the relevant link below: -*

[1] <http://www.northumbria.police.uk/foi/dis...>”.

7. On the same date the complainant responded - he stressed that he was not making a request for internal review (his queries can be viewed on the website). The public authority provided further clarification on 30 August 2011.
8. On 31 August 2011 the complainant asked for an internal review; he did not specify the issues with which he was unhappy.
9. On 24 November 2011 the public authority provided an internal review. Unfortunately, this was placed within a different 'WDTK' request made by this complainant<sup>2</sup>. Whilst this is unfortunate, the Information Commissioner notes that the complainant did have sight of it as he acknowledged its receipt, and he did not bring the administrative error to the attention of the public authority at the time.
10. In its internal review the public authority again explained its position. It confirmed that it held no further information in respect of part (1) of the request reiterating that this figure was the total cost of the operation. It stated that it had provided a full response in respect of parts (4) and (5) of the request and had nothing to add as no exemptions had been cited. It varied its position in respect of parts (2) and (3), explaining that it would exceed the appropriate costs limit to ascertain whether or not any further information was held. It again cited section 21 (information already available to the complainant) in respect of part (6) of the request and provided a link to the relevant information.
11. The complainant originally passed this case to the Information Commissioner on 18 November 2011. His complaint was, at that time, that the public authority had not provided an internal review. However, the internal review was subsequently completed, so the Information Commissioner advised the complainant that he was unable to take the case forward unless the complainant supplied his grounds of complaint following this internal review. The complainant initially refused to do so, expecting the Information Commissioner to peruse the lengthy correspondence on this and several other cases in order to identify potential grounds for complaint. The Information Commissioner refused to do so and closed his original complaint.

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<sup>2</sup>[http://www.whatdotheyknow.com/request/complaints\\_against\\_northumbria\\_p#incoming-230201](http://www.whatdotheyknow.com/request/complaints_against_northumbria_p#incoming-230201)

12. There is further correspondence which can be viewed on the WDTK website.

### Scope of the case

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13. Following earlier correspondence, on 22 February 2012 the complainant contacted the Information Commissioner to confirm the outline of his complaint. The Information Commissioner clarified with the complainant that the following were the issues he wished to have addressed:
  - the length of time taken to conduct an internal review;
  - the application of exemptions.
14. The public authority has provided a response in respect of parts (4) and (5) of the request and did not cite any exemptions. The Information Commissioner will therefore not further consider this part of the requested information.
15. The Information Commissioner has referred to the length of time to conduct an internal review in *"Other matters"* at the end of this notice.
16. The complainant also raised other issues which fall outside of the Information Commissioner's remit.

### Reasons for decision

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#### Procedural requirements

##### Section 10(1) - Time for compliance

17. Section 10(1) provides that:

*"Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt."*

18. 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."*

19. The Commissioner finds that the public authority breached section 10(1) by failing to inform the complainant whether or not it held the requested information within 20 working days of the request.

### **Section 17(1) - Refusal of request**

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

*"A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which -*

*(a) states that fact,*

*(b) specifies the exemption in question, and*

*(c) states (if that would not otherwise be apparent) why the exemption applies."*

21. In failing to provide a valid refusal notice within the statutory time limit, the public authority breached section 17(1).

### **Section 1 – general right of access**

#### ***Part (1) of the request***

22. Section 1 of FOIA states 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."*

23. The public authority has stated that it holds no information further to that already provided to the complainant. The task for the Information Commissioner here is to determine whether, on the balance of probabilities, this is the case. Applying the civil test of the balance of probabilities is in line with the past approach taken by the Tribunal when it has considered the issue of whether information is held.

24. The information requested relates to monetary costs. In its original response the public authority advised the complainant that: *“The Operation Bulwark costs as published remains the total additional costs to the Force on this operation”*. At internal review it again clarified:

*“At the time of your request, there was no further recorded information regarding the costs of Operation Bulwark. This was verified with the Finance Department of Northumbria Police. As no further information is held and confirmation was received that the figures on the Northumbria Police web-site remained applicable, there is nothing further to review on this point”*.

25. As can be seen the public authority has therefore undertaken its enquiries in its finance section; the Information Commissioner considers this to be the logical enquiry point for financial enquiries.
26. The Information Commissioner is therefore of the opinion that the public authority’s actions to locate any further information were reasonable and he accepts that, on the balance of probability, nothing else is held.

## **Section 12 – cost of compliance exceeds appropriate limit**

### ***Parts (2) and (3) of the request***

27. 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”).
28. 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.
29. The appropriate limit for this public authority is £450 or 18 hours of one member of staff’s time. 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.



30. Section 12 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 Information Commissioner's task in investigating this case to decide whether the estimate put forward by the public authority is a reasonable one.
31. A number of Information Tribunals have made it clear that an estimate for the purposes of section 12 has to be 'reasonable', which means it is not sufficient for a public authority to simply assert that the appropriate costs 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 v Information Commissioner* (EA/2007/0004) and forms the basis of the Information Commissioner's investigation.
32. At the time of the internal review, the public authority explained to the complainant that:

*"Information Commissioners Office (ICO) guidelines state that:*

*A public authority must confirm or deny whether it holds the information requested unless the cost of this alone would exceed the appropriate limit. I can neither confirm nor deny than the information you require is held by Northumbria Police as to actually determine if it is held would exceed the permitted 18 hours therefore Section 12 of the Freedom of Information Act would apply. This section does not oblige a public authority to comply with a request for information if the authority estimated that the cost of complying with the request would exceed the appropriate limit of 18 hours, equating to £450.00*

*We have estimated that to attempt to locate and extract the information that is held would take over prescribed 18 hours, therefore Section 12 of the Freedom of Information Act would apply. As records are not held in an easily retrievable format (if at all) going back 15 years it is difficult to estimate how long such a procedure would take. However we have been informed that such an investigation would involve the re-boot of old accounting systems and the engagement of the IT team with appropriate expertise to verify what (if any) information is held regarding your request. This process would exceed the limits as set by the Act. This section does not oblige a public authority to comply with a request for information if the authority estimated*



*that the cost of complying with the request would exceed the appropriate limit of 18 hours, equating to £450.00”.*

33. The public authority had initially explained to the complainant that it only ‘reasonably’ maintained financial records for six years, plus the current financial year, and it was therefore unable to provide information from as far back as 15 years. Accordingly it advised that Operation Bulwark was the most expensive case dealt with in the last 6 years and that no other case exceeded £1 million in costs.

34. In correspondence to the Information Commissioner the public authority further advised:

*“It was not possible to break down the information as requested by [the complainant] and in the same manner in which Operation Bulwark is recorded. This is due to the fact that a large investigation is not always given a single or set of cost codes, the same way as Operation Bulwark was in which to charge expenses incurred to. For example, overtime incurred by Officers working on an investigation is not always costed to a specific investigation. This applies to associated costs such as travel and expenses, stationary and accommodation. In order to provide the information requested would have required a manual search of all overtime submissions, by each individual Officer who had worked for the Force for the past 6 years to determine if any overtime they had worked was directly attributable to a specific investigation. With in excess of 4,000 employees, this initial part of the scoping in determining costs associated to a particular investigation would exceed the cost threshold given that it is reasonable to expect that any overtime submission would take approximately 10 minutes to interrogate to ascertain what it was associated with. Furthermore, specific accommodation, stationery and travel expenses would need to be interrogated”.*

35. The Information Commissioner has considered the estimate put forward by the public authority. He understands that it holds a vast amount of material in which the requested information may be contained. The tasks involved in determining this and then locating, retrieving and extracting the information demonstrate that compliance would be a costly exercise. The Information Commissioner accepts the estimate provided by the public authority as reasonable and, therefore, holds that it was correct to refuse both the requests under section 12(2) of the Act.

## **Section 16 – duty to provide advice and assistance**

36. Section 16(1) of the Act places a duty on public authorities to provide advice and assistance to applicants who have made or are planning to make requests for information. Where a request engages the costs limit, the advice and assistance usually involves the public authority opening a dialogue with the applicant to try to find ways to refine the request in order to bring it under the appropriate costs limit.
37. The public authority initially advised the complainant that its records were only reasonably available for the last 6 years and that the operation which the requests concern was the most costly one within that timeframe. It advised that anything outside that timeframe was not readily available as it was no longer held on its current IT systems. As such, a search for any financial information outside this timeframe would mean that the cost limit would be exceeded, as explained above.
38. The Commissioner is satisfied that the public authority has discharged its duties under section 16(1) and, owing to the costs explanation provided, he can see no further advice and assistance that it could provide to the complainant in this case.

## **Section 21 – information accessible to applicant by other means**

### ***Part (6) of the request***

39. Section 21(1) of FOIA can be applied when all the relevant requested information is reasonably accessible to the applicant. It is an absolute exemption and so there is no public interest test.
40. The public authority has directed the complainant to where he can search for the information he requires via its disclosure log which forms part of its online publication scheme. The complainant does not believe that this meets his request as he wants to be directed to each relevant request within that scheme. Having provided the complainant with a direct link to its disclosure log, the public authority has further explained that:

*“Please note, where information is reasonably accessible to the applicant it is exempt from disclosure. Our original response supplied you with a link to where similar requests can be found. You may enter your own search criteria (e.g. “Moat”, “investigations”, “costs”) to see what you may feel could be classed as a similar request”.*

41. In its internal review the public authority has further advised:

*"I have examined the Disclosure Log that you were referred to and have verified that the search facility is fully operational. As disclosures made by the Force are routinely placed on the Northumbria Police web-site, there is no requirement to provide a response to this part of your request. Indeed, what you may class as "similar requests" may not be determined as "similar" by the Force. It was therefore entirely appropriate to provide you with a means to make this assessment yourself".*

The Information Commissioner has accessed the information via this link and has found this search facility to be fully functional and simple to use.

42. The issue that the Commissioner has to consider is therefore whether the information the complainant has requested was reasonably accessible to him via the public authority's website or whether the public authority should have searched through its own disclosure log and directed the complainant to any request which it thought might have fallen within the scope of this request.
43. The wording of the request asks for "*FOI requests of a similar nature*" and a copy of the public authority's responses to these. The public authority has confirmed that any such requests will be included in its online disclosure log and it has provided the complainant with a link to this area of its website. It has advised him how to look for any items which may satisfy his request.
44. Having considered the matter and having had sight of the information accessible to the complainant, the Commissioner is satisfied that section 21(1) of the Act is engaged.
45. Section 21 is not subject to the public interest test: if, as a matter of fact, the information requested is reasonably accessible to the applicant by other means, then it is exempt.

## **Other matters**

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46. Although they do not form part of this decision notice the Information Commissioner wishes to highlight the following matters.

*Internal review*

47. Part VI of the section 45 Code of Practice makes it desirable practice that a public authority should have a procedure in place for dealing with complaints about its handling of requests for information, and that the procedure should encourage a prompt determination of the complaint. As he has made clear in his *'Good Practice Guidance No 5'*, the Information Commissioner considers that these internal reviews should be completed as promptly as possible. While no explicit timescale is laid down by the Act, the Information Commissioner has decided that a reasonable time for completing an internal review is 20 working days from the date of the request for review. In exceptional circumstances it may be reasonable to take longer but in no case should the time taken exceed 40 working days.
48. The Information Commissioner does not consider this case to be 'exceptional', so is concerned that it took over 20 working days for an internal review to be completed.

## Right of appeal

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49. 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,  
LEICESTER,  
LE1 8DJ

Tel: 0300 1234504  
Fax: 0116 249 4253  
Email: [informationtribunal@hmcts.gsi.gov.uk](mailto:informationtribunal@hmcts.gsi.gov.uk)  
Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

50. 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.
51. Any notice of appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Signed** .....

**Gerrard Tracey**  
**Principal Adviser**  
**Information Commissioner's Office**  
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**Wilmslow**  
**Cheshire**  
**SK9 5AF**