

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 13 June 2013

**Public Authority:** The Chief Constable of Surrey Police

**Address:** Surrey Police HQ

PO Box 101

Guildford

GU1 9PE

#### **Decision (including any steps ordered)**

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1. The complainants requested information about the cost of a specific police operation. Regarding the information that was held, Surrey Police said that it could not be provided without exceeding the costs limit under section 12(1) of the Freedom of Information Act 2000 (FOIA). The Commissioner considers that section 12 of FOIA was applied correctly in this case. The Commissioner requires no steps to be taken.

#### **Request and response**

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2. The complainants wrote to Surrey Police on 18 May 2012 and requested information in the following terms:

*"Under the Freedom of Information Act we would like to know how much Operation Georgia has cost the Surrey taxpayer to date".*

3. Surrey Police responded on 15 June 2012. It confirmed holding "some" of the requested information but refused to provide it citing section 12 of FOIA (cost of compliance exceeds appropriate limit).

4. Although citing section 12 in relation to their request for information, Surrey Police told the complainants:

*"It is anticipated that at the conclusion of the investigation, a final cost figure will be available for disclosure".*

5. Surrey Police provided an internal review on 18 July 2012 in which it maintained its original position. With reference to the availability of relevant information at the conclusion of the investigation, Surrey Police told the complainants:

*"It is not known when this will be".*

## **Scope of the case**

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6. The complainants first contacted the Commissioner on 25 July 2012 to complain about the way their request for information had been handled. They provided the Commissioner with the correspondence necessary to progress the complaint on 8 November 2012.

7. The complainants told the Commissioner:

*"Surrey Police contend that they cannot answer our question because to do so would involve in excess of 18 hours of Police time. In these days of computerised information we find it extremely hard, if not impossible, to accept this statement..."*

8. The Commissioner considers the scope of his investigation to be Surrey Police's application of the section 12 exemption (cost of compliance exceeds appropriate limit).

9. With respect to the expectation that a final cost figure would be available at the conclusion of the investigation, the Commissioner acknowledges that the complainants, understandably, may have anticipated that that information would ultimately be provided by Surrey Police.

10. However, during the course of the Commissioner's investigation Surrey Police confirmed that:

*"despite the opinion ... in the early responses, that there would likely to be a final cost that would be available at the conclusion of the investigation, this is not the case".*

11. It apologised if its earlier statement to the complainants was misleading.

## **Reasons for decision**

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

12. Section 12 (1) of FOIA states:

*"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".*

13. In other words, section 12 of FOIA provides an exemption from a public authority's obligation to comply with a request for information where the cost of compliance is estimated to exceed the appropriate limit.
14. This limit is set in the fees regulations at £600 for central government departments and £450 for all other public authorities. The fees regulations also specify that the cost of complying with a request must be calculated at the rate of £25 per hour, meaning that section 12(1) effectively imposes a time limit of 18 hours in this case.
15. In estimating whether complying with a request would exceed the appropriate limit, Regulation 4(3) states that an authority can only take into account the costs it reasonably expects to incur in:
  - determining whether it holds the information;
  - locating the information, or a document containing it;
  - retrieving the information, or a document containing it; and
  - extracting the information from a document containing it.
16. The four activities are sequential, covering the retrieval process of the information from the public authority's information store.
17. In correspondence with Surrey Police, the complainants said that it considered its response to their request for information "very *unsatisfactory*", one reason being that:

*"We understand that all costs involved in the case are collated on one computer spreadsheet. Surely it would take a lot less than 18 hours to compute the total to date?"*

18. In response to that point, Surrey Police told the complainants:

*"This is not the case - the information is not on one spreadsheet".*

19. The Commissioner, while appreciating the complainants' frustration in this regard, is mindful of the comments made by the Information Tribunal in the case of *Johnson / MoJ* (EA2006/0085) that FOIA:

*"does not extend to what information the public authority should be collecting nor how they should be using the technical tools at their disposal, but rather it is concerned with the disclosure of the information they do hold".*

*Would compliance exceed the appropriate limit?*

20. Section 12 explicitly states that public authorities are only required to estimate the cost of compliance with a request, not give a precise calculation. 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 simply to assert that the appropriate costs limit has been met.
21. In this case, the Commissioner notes that Surrey Police told the complainants:
- "Calculating the cost of an ongoing investigation will invariably exceed the FOI costs threshold. This is because there can be many disparate departments involved in the process. In most cases the staff working on an investigation will be doing so as part of their normal working day and so no additional cost will be incurred. Some investigations will require ongoing external expertise such as forensic analysis, expert witnesses and so on, the cost of which is not usually known until the investigation is finalised".*
22. In the Commissioner's view, although explaining in general terms why it considered that complying with the request would exceed the cost limit, Surrey Police failed to provide an estimate of the actual work involved in complying with the request.
23. Furthermore, from the evidence he has seen, Surrey Police failed to explain how such an estimate of the time/cost taken to provide the information falling within the scope of the request would have been calculated. For example, it did not quantify the scale of the investigation nor explain to the complainants which, if any, files or records needed to be searched nor how many files/boxes/documents/records etc needed to be reviewed.
24. In the absence of the required estimate, the Commissioner considers it understandable that the complainants consider it to be an unsatisfactory situation that it was not a simple task for Surrey Police to supply the requested information.
25. As is the practice in a case such as this, during the course of his investigation Surrey Police was asked to provide the Commissioner with:
- "a detailed estimate of the time/cost taken to provide the information falling within the scope of this request".*
26. In response, Surrey Police explained the nature of the investigation which is the subject matter of this request. It also provided the Commissioner with arguments in support of its citing of section 12. For

example, it provided him with details of the approach it took in this case and of the departments and external agencies involved in the operation.

27. With respect to the various departments involved, Surrey Police provided the Commissioner with an explanation of their involvement in terms of cost. Those illustrations include:

*"day to day business except any overtime. For officers this may be coded ... but for staff this would be on paper and would require a manual trawl to see if any was coded to Georgia";*

*"only OT would be cost rest was day to day business but again you would need to find it";*

and

*"Many of the officers and staff involved in the investigation will be carrying out their normal duties and as such will not be logging the hours. They may be working on more than one investigation at a time and so their time will not be attributable to one investigation".*

28. Surrey Police advised that the majority of the work carried out by staff members, as opposed to police officers, *"would have been absorbed into their normal annual budget"*. However, with regard to overtime costs, it advised that the work involved in *"trawling through"* manual overtime forms for staff members:

*"would require two agency staff for a minimum of two weeks"*.

29. Surrey Police summarised its submissions by telling the Commissioner that it considers that:

*"a reasonable estimate that the request will exceed costs has been made by senior and experienced staff with a good working knowledge of the investigation"*.

### *Conclusion*

30. The Commissioner is disappointed that Surrey Police failed to provide the complainants with an estimate of the work involved in complying with their request. In his view, having failed to provide that estimate initially, the internal review provided the opportunity for Surrey Police to reconsider its handling of the request when the complainants expressed their dissatisfaction with the authority's response.
31. In reaching a conclusion in this case the Commissioner has taken into account the intention of Parliament in relation to section 12(1) - that a

public authority is not obliged to comply with a request if to do so would exceed the appropriate cost limit.

32. In this case, he is satisfied that, as a result of his intervention, the public authority has provided adequate explanations to demonstrate that it would exceed the appropriate limit to locate and retrieve the requested information. Section 12(1) does therefore apply and Surrey Police is not required to comply with the request.

## Right of appeal

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33. 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)

34. 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.
35. 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 .....**

**Jon Manners**  
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