

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 25 September 2014

Public Authority: Chief Constable of Nottinghamshire Police
Address: Police Headquarters
Sherwood Lodge
Arnold
Nottingham
NG5 8PP

Decision (including any steps ordered)

1. The complainant requested information from Nottinghamshire Police relating to a traffic operation carried out on Sunday 28 April 2013. Nottinghamshire Police provided some relevant information, said that some of the requested information was not held and applied section 12 of FOIA (cost of compliance exceeds the appropriate limit) to the remaining information within the scope of the request.
2. The Commissioner's decision is that Nottinghamshire Police was entitled to apply section 12. He is also satisfied that it does not hold some of the requested information.
3. The Commissioner does not require any steps to be taken as a result of this decision.

Request and response

4. On 27 March 2013 the complainant wrote to Nottinghamshire Police and requesting the following information:

"Please send me the following information relating to an operation carried out on Derby Road (between the Priory and QMC roundabout), Nottingham on the day of Sunday 28 April 2013:

- *1. How many vehicles stopped that day and the reasons why (breakdown by PC officer)*
 - *2. How many vehicles stopped that day that contained only one person ie the occupant driver (breakdown by PC officer)*
 - *3. How many vehicles stopped that day that contained more than one person (breakdown by PC officer)*
 - *4. How many vehicles/driver confirmed/verified using mobile phone whilst driving /physically verified by the police at the time by logging the call data information (breakdown by PC officer)*
 - *5. How many drivers found / proven guilty of such offence (show out of total)*
 - *6. How many successfully prosecuted (show out of total)*
 - *7. Please provide any/all written information referring to this operation, for example plan, email, reports, surveys, performance reports etc*
 - *8. Please provide detail/copy of procedure, policy and process for stopping drivers suspected of using a mobile whilst driving / what procedure should an officer do/carry out*
 - *9. Please provide a copy of an risk or impact assessment undertaken for this operation*
 - *10. Please provide the names and collar numbers of all officers on duty and involved in this operation including their training relevant to undertaking this duty/operation*
 - *11. The total amount of fines imposed / collected during this operation (breakdown by specific offences)*
 - *12. Breakdown of driver ethnicity and confirm whether single occupant driver or not*
 - *13. Name of officer in charge of operation"*
5. Although the complainant did not number the individual parts of the request, the Commissioner has numbered them for clarity.
6. Nottinghamshire Police responded on 2 April 2014. It confirmed that it holds some information within the scope of the request. However it also told the complainant that much of it will not be held "as it does not routinely record the type of information requested above".

7. It refused to provide any such information it may hold within the scope of the requested information. It cited section 12 (cost of compliance exceeds the appropriate limit) as its basis for doing so.
8. Following an internal review, Nottinghamshire Police wrote to the complainant on 22 May 2014 providing responses in relation to points 8 and 13 of the request. It clarified which information is not held and which information it considers engages section 12.

Scope of the case

9. The complainant contacted the Commissioner on 27 May 2014 to complain about the way his request for information had been handled. He told the Commissioner that he considered that he had not been provided with all the information he is entitled to receive. During the course of his investigation, he told the Commissioner:

"I believe that Nottinghamshire Police is not correct when it says that it does not hold the information I have requested – this is basic record keeping and the organisation should have a duty to maintain accurate and up to date records, policies and procedures to safeguard the public".

10. The Commissioner considers the scope of his investigation to be whether Nottinghamshire Police is entitled to rely on section 12 as a basis for refusing to provide the requested information relating to points 6, 7 and 10 of the request.
11. He has also considered whether it is correct when it says that it does not hold the remaining requested information.

Reasons for decision

12. Section 12(1) of the FOIA states 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".

13. 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.

Would complying with the request exceed the appropriate limit?

14. 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.
15. The four activities are sequential, covering the retrieval process of the information from the public authority's information store.
16. In relation to any such information that may be held, Nottinghamshire Police initially simply told the complainant:

"Records relating to this type of operation are not held centrally and could potentially be located across more than one department.... recording systems would require cross referencing to ascertain if any information was held in respect of your request".
17. It advised that the work necessary to identify relevant information *"would certainly exceed 18 working hours"*.
18. The Commissioner acknowledges that, following an internal review of its handling of his request, Nottinghamshire Police provided the complainant with a more detailed estimate of the time/cost taken to provide the information falling within the scope of those parts of the request it considers engages section 12.
19. For example, with respect to the information requested at point 6 of the request it told the complainant that the system used to record the TOR (Traffic Offence Report) information is unable to run reports of TOR to outcome. It explained that it has issued 20,000 TORs in one year and that averaging one month's worth of TORs would equate to 1666 records. Estimating 10 minutes per record, it told the complaint that the work involved to satisfy that part of his request *"is estimated at 277 hours"*.
20. In its substantive submission during the course of his investigation, Nottinghamshire Police advised the Commissioner – in respect of the request in its entirety - that enquiries were made of the Head of Road Policing. In that respect it explained that:

"a lengthy discussion was undertaken to get a full understanding of the systems used and what is recorded where and how easily it is retrievable".

21. In respect of its application of section 12, Nottinghamshire Police confirmed its estimate of the time/cost taken to provide the information falling within the scope of the request. In support of its application of that section it told the Commissioner that the requested information would be held in different electronic systems and email accounts. It referred to a number of systems, for example its Briefing and Tasking Systems, human resources systems and a recording tool for traffic offences. It explained that, rather than dealing specifically with operations in the scope of the information requested in this case, those systems can be used for a variety of policing purposes. It also confirmed that:

"operations of this nature are not centrally recorded".

22. From the evidence he has seen during the course of his investigation, the Commissioner is satisfied that Nottinghamshire Police has provided adequate explanations to demonstrate that it would exceed the appropriate limit to locate, retrieve and extract the requested information. Section 12(1) does therefore apply and Nottinghamshire Police is not required to comply with the request.

Section 16 advice and assistance

23. Section 16(1) of the FOIA provides that a public authority is required to provide advice and assistance to any individual making an information request. In general where section 12(1) is cited, in order to comply with this duty a public authority should advise the requester as to how their request could be refined to bring it within the cost limit, albeit that the Commissioner does recognise that where a request is far in excess of the limit, it may not be practical to provide any useful advice.
24. In this case, although it explained why the information could not be provided within the appropriate limit Nottinghamshire Police did not suggest to the complainant how he could narrow his request to bring it under the cost limit. During the Commissioner's investigation Nottinghamshire Police advised the Commissioner it was unable to suggest a refinement to bring the requests inside the cost limit due to the scope of the questions. It also explained that efforts had been made to explain to the complainant that it does not hold information in the way he may consider it should be held.
25. Although Nottinghamshire Police may not be able to deal with a refined request within the cost limit, from the evidence he has seen, the

Commissioner is satisfied that advice and assistance was provided to the complainant. He therefore finds that Nottinghamshire Police complied with section 16(1).

Section 1 – general right of access

26. Section 1 of the FOIA states that any person making a request for information to a public authority is entitled to be informed in writing by the public authority whether it holds information within the scope of the request, and if so, to have that information communicated to him.
27. The Commissioner acknowledges that the complainant considers, for example, that the type of information in dispute "*should be recordable at the time of the event either in paper or electronic format*".
28. In cases where a dispute arises over the extent of the recorded information that was held by a public authority at the time of a request, the Commissioner will consider the complainant's evidence and argument. He will also consider the actions taken by the authority to check that the information is not held and any other reasons offered by the public authority to explain why the information is not held. He will also consider any reason why it is inherently likely or unlikely that information is not held. For clarity, the Commissioner is not expected to prove categorically whether the information is held, he is only required to make a judgement on whether the information is held on the civil standard of the balance of probabilities.
29. Accordingly, Nottinghamshire Police was asked to provide the ICO with an explanation of the searches that were carried out in response to the complainant's request, as well as any other reasons it had for concluding that it did not hold the requested information.
30. In its substantive submission, Nottinghamshire Police advised the Commissioner – in respect of the request in its entirety - that enquiries were made of the Head of Road Policing.
31. As a result of those enquiries, Nottinghamshire Police advised the Commissioner that some of the requested information is not recorded "*as there is not a requirement to do so*". It also confirmed that information relating to points 5 and 11 is not held by Nottinghamshire Police.
32. While appreciating the complainant's frustration in this case, the FOIA provides an access regime to information held on record by a public authority - it does not require public authorities to keep records or create information. In that respect, the Commissioner 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".

33. In the circumstances, the Commissioner does not consider that there is any evidence that would justify refusing to accept Nottinghamshire Police's position that it does not hold the requested information. The Commissioner is satisfied that, on the balance of probabilities, that information is not held by Nottinghamshire Police.

Right of appeal

34. 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: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

35. 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.
36. 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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