

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 17 August 2016

Public Authority: Chief Constable of Surrey Police
Address: Surrey Police Headquarters
PO Box 101
Guildford
Surrey
GU1 9PE

Decision (including any steps ordered)

1. The complainant asked for information relating to criminal offences committed by police officers. Surrey Police stated that complying with this request would exceed the cost limit and cited section 12(1) of the FOIA.
2. The Commissioner's decision is that Surrey Police cited section 12(1) correctly and so it was not obliged to comply with the request. However, it breached its obligation under section 16 of the FOIA in relation to the way in which it dealt with this request.
3. The Commissioner requires Surrey Police to take the following steps to ensure compliance with the legislation.
 - Provide the complainant with advice and assistance in accordance with its obligations under section 16 of the FOIA.
4. Surrey Police must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the FOIA and may be dealt with as a contempt of court.

Request and response

5. On 14 May 2015, the complainant wrote to Surrey Police and requested information in the following terms:

"Further to my request dated 19 February 2015 for police officers in your force arrested, charged and convicted for a small selection of serious offences, I should like to request the following additional information:

1) The number of police officers arrested from 01 January 2005 to 31 March 2015, broken down by offence category and calendar year.

2) The number of police officers proven guilty at court of an offence from 01 January 2005 to 31 March 2015 based on year of court hearing, broken down by traffic offence type and calendar year.

3) The number of police officers proven guilty at court of a traffic offence from 01 January 2005 to 31 March 2015 based on year of court hearing, broken down by traffic offence type and calendar year.

4) The number of police officers proven guilty at court of an offence from 01 January 2005 to 31 March 2015, broken down by result of internal investigation against officer and calendar year.

5) The number of police officers proven guilty at court of an offence from 01 January 2005 to 31 March 2015, broken down by action taken and calendar year."

6. Surrey Police wrote to the complainant on 26 May 2015 stating the following:

"Further to your request below, I directed your request to the Professional Standards Department. They have stated that as your request stands it would exceed costs. However they have suggested that you refine your timeframe to 2-3 years.

Please let me know if you would like to proceed with the refined timeframe. I shall place the request on hold pending your response. If I do not hear anything from you within 5 working days I shall close the request."

7. On 10 June 2015 the complainant confirmed that he was happy to reduce the time frame to 2-3 years.

8. On 18 June 2015 Surrey Police responded to the request stating that information could not be retrieved within the cost limit and therefore citing section 12(1) of the FOIA.
9. The complainant wrote to Surrey Police on 23 June 2015 stating that he was unhappy with their decision.
10. Surrey Police interpreted the complainant's correspondence of 23 June 2015 as a request for internal review and responded on 3 July 2015 stating that they were upholding the original refusal of the request under section 12(1).

Scope of the case

11. The complainant contacted the Commissioner on 10 August 2015 to complaint about Surrey Police's refusal of his request.
12. The following analysis covers Surrey Police's handling of the refined two to three years request dated 10 June 2015.

Reasons for decision

Section 12 – cost exceeds appropriate limit

13. Section 12 of the FOIA states that a public authority is not obliged to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit.
14. The estimate must be reasonable in the circumstances of the case. The appropriate limit in this case is £450, as laid out in section 3(2) of the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the fees regulations). This must be calculated at the rate of £25 per hour, providing an effective time limit of 18 hours. The fees regulations also specify the tasks that can be taken into account when forming a cost estimate as follows:
 - Determining whether the requested 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.
 - Extracting the information from a document containing it.

15. A public authority is required to estimate the cost of a request, rather than form an exact calculation. The task for the Commissioner here is to reach a conclusion as to whether the cost estimate made by Surrey Police was reasonable. If it estimated reasonably that the cost of compliance with the request would exceed the limit of £450, section 12(1) applied and it was not obliged to comply with the request.
16. Section 12(4) of the FOIA states that:

“The Secretary of State may by regulations provide that, in such circumstances as may be prescribed, where two or more requests for information are made to a public authority-

 - (a) by one person, or*
 - (b) by different persons who appear to the public authority to be acting in concert or in pursuance of campaign, the estimated cost of complying with any of the requests is to be taken to be the estimated total cost of complying with all of them”.*
17. In other words, when a public authority is estimating whether the appropriate limit is likely to be exceeded, it can aggregate the costs of complying with multiple requests if the conditions laid out in the Fees Regulations are satisfied.
18. Regulation 5(2) of the Fees Regulations requires that the requests which are to be aggregated must relate *“to any extent”* to the same or similar information. It follows that any unrelated request should be dealt with separately for the purposes of determining whether the appropriate limit is exceeded.
19. The Commissioner’s guidance¹ on requests where the cost of compliance exceeds the appropriate limit recognises that multiple requests within a single item of correspondence may be separate requests for the purpose of section 12. This was confirmed by the Information Tribunal in the case of *Ian Fitzsimmons v ICO & Department for Culture, Media and Sport* (EA/2007/0124, 17 June 2008).
20. The Commissioner considers that requests are likely to relate to the same or similar information where, for example, the requester has expressly linked the requests, or where there is an overarching theme or

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https://ico.org.uk/media/fororganisations/documents/1199/costs_of_compliance_exceeds_appropriate_limit.pdf

common thread running between the requests in terms of the nature of the information requested.

21. In this case, Surrey Police has aggregated all five requests. The Commissioner also notes that there is a common thread running through the requests as they all relate to offences by police officers. The Commissioner is therefore satisfied that Surrey Police was entitled to aggregate the requests when considering whether complying with them would exceed the appropriate limit.
22. In its submission to the Commissioner, Surrey Police explained that it would need to conduct two searches to comply with the requests; one search to answer points one, two, four and five and a separate search for point three focussed on driving offences.
23. In regards to point three of the complainant's request, Surrey Police stated that it would need to check its MI and IX case records. Surrey Police explained that MI and IX are prefixes which denote the Miscellaneous and Inbox case types; both have or currently are used as catch-all categories when something does not fit into another case type. It explained that cases were recorded as MI up to 2011 and IX after 2011.
24. Surrey Police explained to the Commissioner that although the complainant's request is focused on cases recorded in the last two to three years, it would need to carry out a search of all MI cases. When the Commissioner asked why this was the case, Surrey Police explained that it had found instances where recent cases had been accidentally recorded as MI and would need to carry out a check to ensure no MI cases fell within the scope of the complainant's request.
25. In regards to the IX cases recorded, Surrey Police explained that it identified 97 cases recorded clearly as driving offences by officers. However, after discussion with the Commissioner, Surrey Police explained that it had found cases which were not clearly recorded as driving offences by officers and it would therefore need to check all cases to ensure information within the scope of the request had not been missed.
26. Surrey Police provided the Commissioner with screenshots of the IX case types. The information showed that, when a search was carried out for all IX case types, it returned 2580 records. Based on the evidence provided, the Commissioner accepts that figure. Surrey Police also provided evidence showing that the total number of MI case types was 477.

27. Surrey Police explained that to answer point three of the complainant's request it would need to check all records on both of its MI and IX systems to establish whether there was a court hearing in relation to any driving offence by an officer recorded. It provided the Commissioner with screenshots of the systems to show how information was recorded and the process that would be necessary to access information relating to court hearings.
28. Surrey Police stated that it had carried out a sample search of one driving offence case. It stated that having reviewed this sample case for two minutes, it was still unable to extract the information specified in the request.
29. The Commissioner has considered the explanations and evidence provided by Surrey Police. Given the volume of records Surrey Police would need to review in order to respond to point three of the complainant's request, the Commissioner accepts that it would be impossible to review them all within 18 hours. The Commissioner is therefore satisfied that Surrey Police would not be able to comply with point three of the complainant's request within the appropriate limit.
30. For these reasons the Commissioner is satisfied that point three of the complainant's request exceeds the appropriate cost limit and as she has found that all of the requests can be aggregated for the purposes of forming a cost estimate, the Commissioner's conclusion is that Surrey Police was not required to comply with the complainant's requests as section 12(1) of the FOIA applied.

Section 16 – advice and assistance

31. 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.
32. The Commissioner notes from correspondence provided to her during the investigation of this complaint that Surrey Police exchanged internal correspondence in which it stated that if the complainant was happy to exclude the driving offences, collating some of the other requested information within the cost limit may be possible. However, it appears that this information was not passed to the complainant and Surrey Police ultimately refused the request under section 12(1).
33. The Commissioner believes that Surrey Police could have advised the complainant to narrow their request to exclude driving offences. In not doing so it breached the requirement of section 16(1) to provide advice

and assistance. At paragraph 3 above it is now required to write to the complainant giving this advice.

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: <http://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

Ben Tomes
Senior Case Officer
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