Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 4 March 2019

Public Authority: Chief Constable of Northumbria Police
Address: Northumbria Police Headquarters
Middle Engine Lane
Wallsend
Tyne & Wear
NE28 9NT

Decision (including any steps ordered)

1. The complainant has requested information about the interpretation of several pieces of legislation. Northumbria Police would neither confirm nor deny whether it held the requested information, on the grounds that doing so would exceed the appropriate cost limit set out under section 12(2) of the FOIA.

2. The Commissioner's decision is that Northumbria Police was entitled to rely on section 12(2) to neither confirm nor deny whether it held the information and that appropriate section 16(1) FOIA advice and assistance has been provided.

3. No steps are required as a result of this decision notice.

Background

4. The Commissioner understands that the request relates to a longstanding grievance the complainant has with third parties about a planning matter and about which he has contacted the police in the past.

5. The Town and Country Planning Act 1990 regulates the development of land in England and Wales. It creates offences in respect of supplying misleading or false information in connection with planning applications.

6. The Fraud Act 2006 gives a statutory definition of the criminal offence of fraud, defining it in three classes - fraud by false representation, fraud by failing to disclose information and fraud by abuse of position.

Request and response

7. On 1 August 2018, the complainant wrote to Northumbria Police and requested information in the following terms:

> *"1. I request any information Northumbria Police hold in recorded form and legislation Section/Act or Policy/Procedure relating to what points would need to be proven prior to an offence under Section 65 of the Town and Country Planning Act 1990 being made out.*
>
> *2. I request any information Northumbria Police hold in recorded form and legislation Section/Act or Policy/Procedure relating to Section 65 of the Town and County Planning Act 1990. Section 1(2)(a) of the Fraud Act 2006 or other associated offences.*
>
> *3. I request any information Northumbria Police hold in recorded form and legislation Section/Act or Policy/Procedure relating to Section 65 of the Town and Country Planning Act 1990. Section 1(2)(a) of the Fraud Act 2006 or other associated offences relating to (Only likely in very exceptional circumstances) which arise from Northumbria Police Report CO/131/17 to the IOPC Ref: 2017/080449".*

8. Northumbria Police responded on 21 August 2018. It would neither confirm nor deny ('NCND') whether it held the requested information, saying that to do so would exceed the appropriate limit at section 12 (cost of compliance) of the FOIA. It also referred the complainant to a notice it had previously issued him, warning that it was considering treating further requests from him on the same subject as vexatious, under section 14(1) of the FOIA.

9. The complainant requested an internal review on 21 August 2018. He clarified his request, stating:

> *"You state that I have not provided a time frame in my request so you assume that I am asking for information held back in 1990.*
>
> *I have not provided a time frame as I am asking for the information you hold "Now" not back in 1990. I will simplify my request so that there is no misunderstanding. All I am requesting from Northumbria Police is that you provide me with tegislationllnformation* [sic] — *Section/Act — Policy/Procedure relating to the three points I have requested.*

As an example:

Under Section "A" Act "B" or Policy "C" Procedure "D" and quote the legislation which states: "Only likely to occur in very exceptional circumstances" relating to the three points I have requested. It is a very simple straight forward request".

10. Following the Commissioner's intervention, Northumbria Police provided the outcome of the internal review on 19 November 2018, upholding its decision to apply section 12(2) of the FOIA. It also commented that it was effectively being asked to provide legal advice on the interpretation of legislation, which it was not its role to do.

Scope of the case

11. The complainant initially contacted the Commissioner on 19 September 2018 to complain about Northumbria Police's failure to conduct an internal review of its decision to refuse his request.

12. On 3 October 2018 the Commissioner chased a response from Northumbria Police; it provided an internal review on 19 November 2018.

13. The complainant then submitted a further complaint to the Commissioner on 19 November 2018 regarding the decision to apply section 12(2) of the FOIA to issue a NCND response to his request.

14. The Commissioner has considered in this decision notice whether Northumbria Police was entitled to NCND whether it held the requested information, under section 12(2) of the FOIA and whether appropriate section 16(1) FOIA advice and assistance was provided.

Reasons for decision

Section 12 – cost of compliance exceeds appropriate limit

15. Section 12(2) provides that a public authority is not obliged to confirm or deny whether requested information is held if it estimates that to do so would incur costs in excess of the appropriate limit. In other words, if the cost of establishing whether information of the description specified in the request is held would be excessive, the public authority is not required to do so.

16. The appropriate limit is set at £450 for police forces by the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ('the fees regulations').

17. The fees regulations also provide that a cost estimate must be calculated at the rate of £25 per hour (giving an effective time limit of 18 hours work) and specify the tasks that can be taken into account when forming a cost estimate as follows:

    - determining whether the information is held;
    - 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.

18. Section 12(2) requires a public authority to *estimate* the cost of confirmation or denial, rather than to formulate an exact calculation. The question for the Commissioner is therefore whether the cost estimate by Northumbria Police was reasonable. If it was, then section 12(2) of the FOIA was engaged and Northumbria Police was not obliged to confirm or deny whether it held the requested information.

19. Northumbria Police explained to the Commissioner that the work that would be required in order to establish whether relevant information was held was extensive and would exceed the appropriate limit.

20. Northumbria Police explained that the information requested was wide ranging and there was no specific team within the force who would have particular responsibility for holding it. It had made enquiries of the force's legal department, to ascertain whether it held any relevant information. The legal department had confirmed that it did not. Northumbria Police said that it would therefore have to "*…seek the information across the widest spectrum of possible searches*" in order to establish whether or not it was held.

21. To that end, Northumbria Police said that it had conducted searches of police information systems for the term "Town and country planning", but this had not yielded any results.

22. It said that to attempt to identify whether it held the information elsewhere would involve contacting individual members of police staff to establish if they held any information on the subjects specified in the request. Each one would be required to search for, retrieve, examine and consider the content of all email accounts, and any other locations where correspondence (including emails, faxes, minutes and letters) might be held and to ascertain whether any email sent from those accounts, or correspondence held in those locations, touched upon the information sought. Northumbria Police employs over 5,000 members of staff, any one of whom might hold such information. It said:

"…it is clear that such a task would take far in excess of 18 hours. At a very rough estimate of 10 minutes per person, this exercise would take over 834 hours. Additionally many staff members will be on secondment, annual leave and/or sick leave and accordingly the response would inevitably be delayed further."

Conclusion

23. While the complainant has described it as "*a simple, straightforward request*", the Commissioner considers the request to be not clear, requesting as it does, policies and procedures in respect of two sets of specified offences and also of "*other associated offences*". Furthermore, the complainant's clarification that he only wants information held now, rather than in 1990, fails to take into account that the wording of the request will cover *everything* held on the matters described at the time the request was received (and thus, if information held in 1990 was still held, it would be covered by the request). Compliance with the request as it is written would require Northumbria Police to cast its net very wide in order to establish what relevant information it does, or does not, hold.

24. The third part of the request cites a particular report and reference number, which does give it more focus than the other two parts of the request. However, the stipulation that information must include "*other associated offences*", which the complainant has not specified, extends its scope, and thus the work involved in complying with it, significantly.

25. Northumbria Police has explained that compliance would involve around 5000 staff checking for relevant information. It has estimated that it would take around 10 minutes per person to do this. Given the extension of the request to include "*other associated offences*" which the complainant has not specified, the Commissioner considers that for a meaningful search to be conducted, 10 minutes is not an unreasonable estimate. She further notes that even if this estimate for the search time was dramatically reduced to say, three minutes, the appropriate limit of 18 hours work would still be greatly exceeded. Finally, she notes that, under the FOIA, a public authority is not obliged to conduct searches up to the appropriate limit before invoking section 12(2).

26. Taking all the above information into account, and with reference to the particular wording of the request and the range of information which potentially falls within its scope, the Commissioner considers this estimate to be a reasonable one. The Commissioner therefore concludes that section 12(2) of the FOIA is engaged and that Northumbria Police was not obliged to either confirm or deny whether or not it held the information requested.

Section 16 – advice and assistance

27. 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, where it would be reasonable to expect them to do so. In general, where section 12 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 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.

28. The Commissioner's guidance[1] states that, where it is reasonable to provide advice and assistance in the particular circumstances of the case, the minimum a public authority should do in order to satisfy section 16 is:

    - either indicate if it is not able to provide any information at all within the appropriate limit; or
    - provide an indication of what information could be provided within the appropriate limit; and
    - provide advice and assistance to enable the requestor to make a refined request.

29. In this case, when issuing the refusal notice, Northumbria Police did not explain how the request might be refined so that it might be dealt with within the appropriate limit. However, it did provide a reasonably detailed description of the process which would need to be followed in order to identify the extent of any information held about the matters requested, and why this would exceed the cost limit. It also explained that reducing the timescale covered by the request alone would be unlikely to be sufficient to bring the request within that limit. The Commissioner considers that this did provide the complainant with information about his request which he could use in determining how or whether to refine it and that Northumbria Police thereby provided advice and assistance to him. Accordingly she finds that it has complied with its duties under section 16(1) of the FOIA.

[1] https://ico.org.uk/media/for-organisations/documents/1199/costs_of_compliance_exceeds_appropriate_limit.pdf

Other matters

Section 45 - internal review

30. There is no obligation under the FOIA for a public authority to provide an internal review process. However, it is good practice to do so, and where an authority chooses to offer one the code of practice established under section 45 of the FOIA sets out, in general terms, the procedure that should be followed. The code states that reviews should be conducted promptly and within reasonable timescales.

31. The Commissioner has interpreted this to mean that internal reviews should take no longer than 20 working days in most cases, or 40 in exceptional circumstances.

32. The complainant asked for an internal review of the decision to refuse his request on 21 August 2018. Northumbria Police did not provide the results of its review until 19 November 2018, 63 working days later.

33. The Commissioner considers that in failing to conduct an internal review within the timescales set out above, Northumbria Police has not conformed with the section 45 code.

34. The Commissioner would remind Northumbria Police that she routinely monitors the performance of public authorities and their compliance with the legislation and the codes of practice. Records of procedural breaches are retained to assist the Commissioner with this process and further remedial work may be required in the future should any patterns of non-compliance emerge.

Right of appeal

35. 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

36. 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.

37. 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 .....

Samantha Bracegirdle
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