

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 24 March 2021

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 relating to late responses to subject access requests (SARs).
2. The Commissioner's decision is that Northumbria Police has correctly cited section 12(1) – cost of compliance, in response to the request.
3. The Commissioner does not require the public authority to take any steps as a result of this decision notice.

Request and response

4. On 3 September 2020, the complainant wrote to Northumbria Police and requested the following information:

"1. for 01/01/2019 to 01/01/2020 how many times did this force breach the required 28 day calendar response time required in subject access requests made and was late in replying to data subjects?"

2. for 02/01/20 to 02/09/20 same question.

3. as of today 03/09/20--how many subject access requests by data subjects are late and still outstanding and not answered?"

5. Northumbria Police responded on 11 September 2020 and provided the information requested at parts 2 and 3. However, with regard to part 1 of the request, it cited section 12 FOIA.
6. Following intervention by the Commissioner, Northumbria Police provided an internal review on 12 January 2021 and maintained its position.

Scope of the case

7. The complainant initially contacted the Commissioner on 11 September 2020 to complain about the way his request for information had been handled. However, he was advised to seek an internal review from Northumbria Police before submitting his complaint. The Commissioner considers the scope of this case is to determine if Northumbria Police has correctly cited section 12(1) in response to the request.

Reasons for decision

Section 12 – cost of compliance

8. Section 12(1) of 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 cost limit.
9. The appropriate limit is set in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ('the Fees Regulations') at £450 for public authorities such as the university.
10. 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 for the public authority.
11. Regulation 4(3) of the Fees Regulations states that a public authority can only take into account the cost it reasonably expects to incur in carrying out the following permitted activities in complying with the request:
 - 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.
12. There is no public interest test.
 13. In its response to the complainant Northumbria Police explained that the information requested at part 1 was not recorded as reports were not regularly done to compile such data.
 14. It went on to explain that to extract this data would involve the manual review of 451 SARs and calculate how long it took for each to be responded. It noted that some responses also generate further correspondence and further disclosure so whilst the initial response may be provided within 28 days, upon further review a further disclosure may be necessary.
 15. It therefore concluded that to provide a response, a manual review of 451 SARs, was estimated as exceeding the permitted 18 hours, and therefore the cited section 12 FOIA. However it did provide what it had been able to as a goodwill gesture in order to assist.

The Complainant's view

16. In his correspondence with the Commissioner the complainant stated that he does not believe that Northumbria Police have not got spreadsheets recording this information. He further stated that even if the public authority had to look through the files manually he did not consider it would take 18 hours to determine the original received date and the response date and determine whether it had breached the Data Protection Act 2018.
17. He further added that the Met Police routinely provide the exact same data for over 1500 SARs.

Northumbria Police's position

18. In its internal review Northumbria Police explained that through 2019, the department did not collate data/statistics on the time taken to comply with SARs. The scanning/tracking system used can provide a "snap-shot" of the position of requests as at the date the enquiry is made but cannot provide historic statistical data.
19. The system can only show the status of requests as they stand on the day the enquiry is made. Through 2020, the requirements of the Team changed and figures were collated monthly on the number of requests that were received and completed during that month along with information on requests that may have gone over the one month time limit. A snap-shot is reviewed monthly to extract figures and statistical data is collated. This meant that the information requested at parts 2

and 3 could effectively be responded to as the data was readily available.

20. It went on to explain that the only way to review the time taken for the requests received in 2019 would be to manually review each and every request to establish how long that request took to process and complete.
21. As part of the internal review Northumbria Police carried out a sampling exercise, and revisited the list of SARs received in 2019 and manually reviewed 10 requests received. It stated that the following steps were taken to review the files:
 - Each file was entered and the initial scan date was noted.
 - Any subsequent correspondence was reviewed to extract the date of response.
 - It noted that some files contained follow up correspondence and the latest date on file was not always the date of the initial response. Therefore it could not be taken as the date to use for compliance.
 - Furthermore the date shown by the system was the date a document was scanned which could be later than the date the response was sent.
 - This review of 10 records took just over 30 minutes.
22. It concluded that, based on the review time taking an average of 3 minutes per record, a manual review of each of the 451 records would take in excess of 22 hours. Accordingly this exceeded the 18 hours set by the Act for responding to FOI requests.

The Commissioner's conclusion

23. It appears that the main area of contention here is the way the information is recorded for 2019. Despite the complainant's assertions that it should be on a spreadsheet Northumbria Police has explained that this has only been done in 2020.
24. The Commissioner cannot dictate how information should be held. Her remit in this case is to determine if Northumbria Police has been reasonable in its estimate of providing the information as outlined in paragraph 11 above.
25. The Commissioner has concluded that Northumbria Police has provided sufficient evidence to support its view that the request exceeded the appropriate limit for compliance.

26. Northumbria Police has also explained that due to the different methods of recording information across 43 forces, a specific response from one constabulary cannot be seen as an indication of what information could be supplied (within cost) by another.
27. Furthermore, systems used for recording these figures are not generic, nor are the procedures used locally in capturing the data. For this reason responses between forces may differ, and should not be used for comparative purposes.
28. Based upon the public authority's submissions, the Commissioner accepts that it would exceed the cost limit to comply with the request and therefore section 12 was correctly engaged in this case.

Right of appeal

29. 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@justice.gov.uk

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

30. 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.
31. 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

Susan Duffy
Senior Case Officer
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Wycliffe House
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Wilmslow
Cheshire
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