

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 22 September 2022

Public Authority: Metropolitan Police Service

Address: PO Box 313
Sidcup
DA15 0HH

Decision (including any steps ordered)

1. The complainant requested from Metropolitan Police Service (MPS) information relating to offences on Westminster Bridge within the last 8 years. MPS refused to comply with the request and cited section 12(1) (cost of compliance) of FOIA.
2. The Commissioner's decision is that MPS was entitled to refuse to comply with the request in accordance with section 12(1) of FOIA. The Commissioner also finds that MPS complied with its obligations under section 16(1) of FOIA to offer advice and assistance. Therefore, the Commissioner does not require MPS to take any steps as a result of this decision.

Request and response

3. On 11 October 2021, the complainant wrote to MPS and requested information in the following terms:

"Please supply the mug shots of all people convicted of offences on Westminster Bridge in the last 8 years. In particular those involved in the organised Romanian Crime gangs.

Alternatively, if you publish them along with the other mug shots that you publish on your website, can you please tell me where to find them?"

4. On 11 November 2021 MPS responded and refused the request under section 12(1) (cost of compliance) of FOIA.
5. On the same day the complainant asked MPS the following: "Can you please supply the actual cost so I can determine if I will pay for the research?"
6. On 16 November 2021 the complainant stated he had not asked for a review but "...asked for the costings that you worked out as part of your refusal of my request." He said since MPS already have the costings, he questioned why MPS could not send them to him.
7. On 18 November 2021 MPS responded. It said that in keeping with the FOIA Code of Practice, it will seek to determine whether the decision reached was correct, and if any information can be provided relevant to the request that would not exceed the cost threshold.
8. On 23 November 2021 the complainant reiterated that he had not asked for a review but for a breakdown of the costs that MPS "worked out to deny the review in the first place." He said that given the costings which MPS has, it will be able to "modify the request into a form that you can meet." He argued that it is not about a review, but about the costs and that MPS has that information from its response from the first request.
9. On 1 December 2021 the complainant asked MPS for an internal review.
10. On 1 December 2021 MPS provided its internal review and upheld its decision to refuse the request under section 12(1) of FOIA. MPS stressed to the complainant "that even if personal information has been placed into the public domain in the past, it does not remain there indefinitely." MPS considers that to comply with the request in the format requested, would be a substantial burden to its resources which are limited.

Scope of the case

11. The complainant contacted the Commissioner on 6 December 2021 to complain about the way his request for information had been handled.
12. The following analysis focuses on whether MPS correctly cited section 12(1) of FOIA in response to the request. The analysis will also consider whether MPS met its obligation to offer advice and assistance under section 16(1) of FOIA.

Reasons for decision

Section 12 – cost of compliance

13. 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 limit” as set out in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (“the Fees Regulations”).
14. The appropriate limit is set in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 at £600 for central government, legislative bodies and the armed forces and at £450 for all other public authorities. The appropriate limit for MPS is £450.
15. 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 MPS.
16. 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.
17. A public authority does not have to make a precise calculation of the costs of complying with a request; instead only an estimate is required. However, it must be a reasonable estimate. In accordance with the First-Tier Tribunal in the case of *Randall v Information Commissioner & Medicines and Healthcare Products Regulatory Agency EA/2007/0004*¹, the Commissioner considers that any estimate must be “sensible, realistic and supported by cogent evidence”. The task for the Commissioner in a section 12 matter is to determine whether the public authority made a reasonable estimate of the cost of complying with the request.

¹ <https://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i136/Randall.pdf>

18. Section 12 is not subject to a public interest test; if complying with the request would exceed the cost limit then there is no requirement under FOIA to consider whether there is a public interest in the disclosure of the information.
19. Where a public authority claims that section 12 of FOIA is engaged, it should, where reasonable, provide advice and assistance to help the requester refine the request so that it can be dealt with under the appropriate limit, in line with section 16 of FOIA.

Would the cost of compliance exceed the appropriate limit?

20. As is the practice in a case where the public authority has informed the complainant that it holds the information, the Commissioner asked MPS to provide a detailed estimate of the time/cost taken to provide the information falling within the scope of this request.
21. In its submission to the Commissioner, MPS said; "It is estimated that to log on the system and open each individual case, once open, examine the Dets screen/s (pages containing free text detailing the circumstances and actions throughout the life of the crime) and then conduct PNC, COPA, CRIMINIT & CIS checks, is estimated at a minimum of 5/10 minutes per image (this would be even more so should a report have multiple identifications for multiple suspects held within one CRIS report)." MPS provided the following estimates:

672,810 (number of images) x 5 minutes / 60 minutes = 56,067 hours
672,810 (number of images) x 10 minutes / 60 minutes = 112,135 hours.

22. MPS said initially that based on its calculations, it estimated that it would take a member of staff a minimum of 56 hours to respond to the complainant's request. MPS explained that "due to the volume of information held and potentially the number of variable pertinent to this request, it is unable to suggest an alternative formulation that would enable information to be provided within the appropriate cost limit."
23. During the Commissioner's investigation, MPS was asked to confirm the estimates and it clarified the time was 56,067 hours for a member of staff to respond to this request. MPS was asked additional questions regarding its calculations.
24. In response to the question about the most effective way to extract the information in scope of the request, MPS said there are alternative ways of finding out how many arrests have been made on Westminster Bridge, through reviewing crime report data.

25. It explained that "each CRIS (Crime Reporting Information System) report would need to be manually reviewed to establish the name under which any person was charged."
26. MPS said that "PNC (Police National Computer) would need to be checked to ascertain if that person was convicted. If so, the PNC record and CIS (Custody Imaging System) could then be checked to see if an image of the accused person was taken." MPS went on to explain "there are two caveats: 1; not all offences are recordable (requirement to complete a CRIS report). 2; There is no objective definition of 'Romanian Crime Gang'. Any convicted individual would need checking through intel data to see if there was any such connection. Absolutely no guarantee such information is known or recorded. Objectively, to do all the above (CRIS check, PNC check, CIS check, IIP check for every CRIS will take at least 20 minutes to do (possibly a generous estimate) for an educated guess whether the subject fits the definition of member of a 'Romanian Crime Gang'."
27. MPS explained the reason for extracting all the information manually, it said that "every entry would need to be checked. Even if you looked at place of birth, just because someone is born in Romania cannot be assumed to be involved in organised crime."
28. With regard to any alternative ways of extracting the information i.e. exporting and reviewing all the information, MPS said that the only source information it has for persons convicted of offences on Westminster Bridge is PNC. MPS stated that it "cannot export any information from PNC to carry out any kind of bulk search. PNC enquiries can only be done on individual names, dates of births etc."
29. MPS reiterated that some offences are not recordable, but PACE allows the police to take a photograph of any person in custody, recordable or not. MPS further explained "Therefore, if a photograph was taken, it would be on CIS. The other option is auditing NSPIS for custody record data for the place of arrest (not necessarily the same as place of offence)."
30. In order to help the Commissioner to understand the reason the request can not be refined to within the cost limit, MPS was also asked about filtering the data further to reduce the number of images that require searching. For example; images where a conviction occurred, or, filtered by region or by street, to determine the exact number of images that require searching on the case file, to enable MPS to respond to the request. MPS said that this was not possible due to the system which is used.

31. MPS stated it is not possible to respond to this request within the costs threshold, as it would exceed 18 hours to comply with the request. It explained that "images of wanted suspects and images of persons convicted are automatically deleted after three months from the MPS website as they are only released contemporaneously." MPS said it would have to interrogate a minimum of five MPS systems in order to respond to this request, and it detailed to the Commissioner each of the five systems. MPS added that these platforms were never developed to produce the type of data requested.
32. The requested information is for images of people convicted of offences on Westminster Bridge in the last eight years. Specifically, the complainant asked for images of those involved in organised Romanian crime gangs.
33. MPS said its databases do not have a definition of this search term which would allow it to accurately extrapolate any meaningful data from its database to enable further PNC searching for conviction data. MPS explained that in order to locate, retrieve and extract the information requested, it would require a member of staff to be abstracted from normal duties for a period of time to go through each and every record that would be relevant to this request. It would have to interrogate various police indices CRIS, PNC, COPA reports to match up with disposals, convictions for accurate Custody Numbers, PNCID Numbers, first names and surnames, alias names, to then locate a potential image from CIS to then start building a pen picture. MPS said, depending on the outcome, it would then have to possibly review all its CRIMINT intelligence reports and link them to all Romanian crime families for a period of 8 years' worth of data. MPS further explained that "A basic search would be to search, read and review the CRIS system. Conduct a record-by-record search in order to locate and extract all the requested information (named suspects) then search PNC to see if they were actually convicted/outcome and then further searches on COPA and CRIMINT and finally to go into CIS to find their custody image. Potentially the time would extend further in contacting each officer in the case for accuracy purposes and confirmation of the outcomes which would add to the strain on time."

The complainant's position

34. The complainant disagrees with MPS's refusal to comply with his request and disputes its reliance of section 12(1) of FOIA. He confirmed to the Commissioner that he would like MPS to supply him with the costs and the requested information. The complainant said he asked for the costs to decide either to pay the costs or to narrow his requests in order to "make it cheaper". He suggested that in this case, to exclude information of the last two years (due to Covid).

35. The complainant raised a concern that MPS treated his correspondence as an internal review request, when in fact, he was asking for the costs. The complainant subsequently asked MPS for an internal review and he remained dissatisfied with the internal review response.

MPS's position

36. MPS explained that in relation to it not supplying costs and not supplying data, MPS is unable to provide the information as it considers the complainant's request exempt under section 12 of FOIA. With regard to the complainant "paying for the cost of the FOIA, the MPS would not offer this option due to the amount of work that would be involved and as a public authority it would be at our discretion. The MPS does not offer a payment of fees option for cost refused information."
37. MPS stated; "As per the College of Policing guidance under Freedom of Information, Fees and Charges Forces cannot be legally compelled to undertake this work and national policing policy is that requests that exceed the limit are refused as these will have serious staff resource implications. Therefore there is no statutory requirement or obligation to comply with a request when section 12 is relevant. It is also the National Police Chief's Council (NPCC) position to not accept payment and apply section 12 where appropriate."
38. As the scope of the request is very broad, the Commissioner considers that MPS estimated reasonably that the cost of complying with the request would exceed the appropriate limit. He accepts that MPS provided a reasonable explanation of its search strategy and its sampling estimates. The Commissioner is satisfied that compliance with this request would exceed 18 hours/£450. MPS was therefore entitled to rely on section 12(1) of FOIA to refuse the complainant's request.

Section 16(1) – advice and assistance

39. Section 16(1) of FOIA provides that a public authority is required to provide advice and assistance to any individual making an information request. Section 16(2) clarifies that, providing an authority conforms to the recommendations as to good practice contained within the section 45 code of practice² in providing advice and assistance, it will have complied with section 16(1).

² <https://www.gov.uk/government/publications/freedom-of-information-code-of-practice>

40. In general, where section 12(1) is cited, in order to comply with this duty, a public authority should advise the requester how their request could be refined or reduced to potentially bring it within the cost limit.
41. The Commissioner recognises that within its initial response to the complainant, MPS advised him that "due to the specifics of our request I am unable to suggest a more refined version of your request. Even if the request was amended, given what you are requesting it is likely that other exemptions would still be applicable".
42. The Commissioner noted that MPS had attempted to comply with section 16 of FOIA by offering the complainant a link to the MPS latest media library, which holds mugshots, images and videos that are readily available of individuals of interest to police. MPS said that these images are automatically deleted from the site after three months.
43. MPS confirmed to the Commissioner, that fresh consideration had been given regarding advice and assistance which could be provided to help the complainant reframe or refocus his request within the cost limit. MPS said that due to the specific nature of the request, it is unable to suggest any meaningful or practical way of modifying or narrowing the scope of the request in order to bring it within the appropriate limit.
44. Although MPS has been unable to assist with narrowing the request sufficiently in order to bring it within the appropriate limit, the Commissioner accepts that in this instance, this has not been practicable.
45. In conclusion, the Commissioner considers that the advice and assistance MPS offered the complainant was adequate. Therefore, the Commissioner is satisfied that MPS complied with its obligations under section 16(1) of FOIA in its handling of this request.

Right of appeal

46. 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

47. 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.
48. 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

Phillip Angell
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF