

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** **8 November 2022**

**Public Authority:** **Chief Constable Cambridgeshire Constabulary**  
**Address:** **Constabulary Headquarters**  
**Hinchingsbrooke Park**  
**Huntingdon**  
**Cambridgeshire**  
**PE29 6NP**

#### **Decision (including any steps ordered)**

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1. The complainant has requested information from Chief Constable Cambridgeshire Constabulary ("the Constabulary") relating to the implementation of the Henriques Report. The Constabulary refused to comply with the request, citing section 12(1) of FOIA – cost of compliance exceeds appropriate limit.
2. The Commissioner's decision is that the Constabulary has failed to demonstrate that section 12(1) is engaged and therefore, it is not entitled to rely on this exemption. Further, the Commissioner finds that by failing to respond to the request within 20 working days, the Constabulary breached section 10(1) of FOIA.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
  - The Constabulary must issue a fresh response to the request which does not rely on section 12(1) of FOIA.
4. The public authority 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 FOIA and may be dealt with as a contempt of court.

## **Request and response**

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5. On 21 July 2020, the complainant wrote to the Constabulary and requested information in the following terms:

“Under the terms of this act I am asking, with specific reference to Cambs Police questions the NCP + NPCC are answering. Namely,

  - 1) What evidence shows that recommendations of 1-5, 13-16, 25 of the Henriques report have been implemented
  - 2) Can you provide documentary evidence to show these are implemented in documentation and guidance as well as in practice.”
6. The Constabulary responded on 2 September 2021. It stated that it was unable to comply with the request, citing section 12(1) of FOIA – the cost of compliance exceeds the appropriate limit.
7. On 17 November 2021, the complainant wrote to the Constabulary and requested an internal review.
8. Following an internal review the Constabulary wrote to the complainant on 10 June 2022. It stated that it was upholding its original stance on the matter.

## **Reasons for decision**

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### **Section 12 – cost of compliance exceeds the appropriate limit**

9. Section 12(1) of FOIA provides 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 cost limit.
10. 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 Constabulary.
11. 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 effectively imposes a time limit of 18 hours for the Constabulary.
12. 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.
13. A public authority does not have to make a precise calculation of the cost of determining whether the information is held, only an estimate is required. However, it must be a reasonable estimate. In accordance with the First-Tier Tribunal decision in the case of *Randall v IC & Medicines and Healthcare Products Regulatory Agency EA/20017/00041*, the Commissioner considers that any estimate must be “sensible, realistic and supported by cogent evidence”.

### **The Constabulary’s position**

14. The entirety of the Constabulary’s explanation of its reliance on section 12(1) was provided in its response to the complainant dated 2 September 2021. It stated:

“Having spoke to several different departments from across the constabulary the information you have requested would not be centrally recorded and would require a lot of time to locate and collate, this time would be well over the 18 hours stipulated under FOI Legislation.

Unfortunately this means it is not possible to suggest a way to refine this request, as even if the date range were reduced it would still require hundreds of records to be manually checked.”

15. The Constabulary offered no further arguments to support its position in its internal review response of 10 June 2022.

### **The Commissioner’s position**

16. The task for the Commissioner in a section 12(1) matter is to determine whether the public authority made a reasonable estimate of the cost of complying with the request.
17. As is normal practice in a case in which a public authority has cited section 12(1) of FOIA, and where the Commissioner is unable to deduce the information he requires to make a decision on a complaint solely from the public authority’s initial response and internal review outcome, the Commissioner wrote to the Constabulary on two occasions and

asked it to provide a detailed explanation of its estimate of the time and nature of the work which would need to be conducted in order to comply with the request.

18. The Constabulary did not respond to either of the Commissioner's two requests for further information to support its position and explain how it had estimated that the cost of complying with the request would exceed the appropriate limit.
19. In the absence of any "sensible, realistic and cogent evidence", the Commissioner considers that the Constabulary has failed to demonstrate how the cost of complying with the request would exceed the appropriate limit. Therefore, the Commissioner's decision is that the Constabulary is not entitled to rely on section 12(1) of FOIA to refuse to comply with the request.
20. The Commissioner requires the Constabulary to issue the complainant with a fresh response to their request which does not rely on section 12(1) of FOIA.

### **Section 10 – Time for compliance**

21. Section 10(1) of FOIA provides that a public authority must comply with section 1(1) promptly, and in any event not later than the twentieth working day following the date of receipt.
22. The Commissioner is disappointed to note that it took the Constabulary almost 14 months to provide a response to the complainant – a clear breach of section 10(1).
23. The Commissioner is further disappointed that he was unable find any explanation for such a long delay in either the initial response or internal review response.
24. Whilst the Commissioner accepts that there may well be a legitimate reason to justify why such a breach occurred, he is unable to comment further due to the Constabulary not responding to his communications regarding this case.

## Right of appeal

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25. 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: 0203 936 8963

Fax: 0870 739 5836

Email: [grc@justice.gov.uk](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

26. 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.
27. 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 .....**

**Catherine Fletcher  
Team Manager  
Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**