

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 15 February 2022

Public Authority: Chief Constable of Staffordshire Police
Address: Police Headquarters
Weston Road
Stafford
ST18 0YY

Decision (including any steps ordered)

1. The complainant requested information relating to online video footage of a police officer talking to a hunt monitor. After making initial enquiries with the complainant in relation to the footage, Staffordshire Police cited section 21 and provided a link to its Privacy Notice regarding information sharing. Ultimately, at internal review, Staffordshire Police said it did not hold any information relating to the incident in the footage and refused to provide the requested information, citing section 12(1) of FOIA (cost of compliance), as it said to do so would exceed the appropriate cost and time limit. The complainant did not challenge Staffordshire Police's position that it does not hold any information relating to the video footage incident and instead centered his complaint on its reliance on section 12(1) of FOIA.
2. The Commissioner's decision is that Staffordshire Police was not obliged to comply with the request under section 12(1) of FOIA. He also finds that Staffordshire Police complied with its section 16 FOIA obligations.
3. The Commissioner does not require Staffordshire Police to take any steps to ensure compliance with the legislation.

Background

4. The link provided by the complainant to the YouTube video footage referenced in his request indicates that the video is no longer available. This was the position at the time of the Commissioner's investigation so he has not been able to view the footage for himself. In any event,

unless it was a 'formal' disclosure made by a public authority the Commissioner would not take it into consideration as its validity could not be confirmed. Furthermore, Staffordshire Police had informed the complainant (in its substantive response) that the footage was not of one of its own police officers, which the complainant did not challenge.

5. The complainant confirmed to Staffordshire Police that he wished the questions posed in his request to be addressed by Staffordshire Police rather than the force the officer in the footage belonged to.

Request and response

6. On 10 May 2021, the complainant wrote to Staffordshire Police via the WhatDoTheyKnow.com website and requested information in the following terms:

"I refer to this video on youtube:

https://www.youtube.com/watch?v=T-0u_QrI...

In which a serving police officer with your force is clearly seen asking hunt monitors for their personal details so he can pass on those details to a farmer. (He admits this in the video).

Under the Freedom of Information Act (FOI) 2000, therefore, I require the following information.

1) Please cite the relevant exception in the Data Protection Act (2018) which allows Police Officers to pass on personal information of others to Farmers providing any document you have to show:

(a) You have such an exception.

(b) Passing personal information of others to a Farmer is a lawful activity.

Just one document will do for both.

2) Please cite any legislation which allows Police Officers to pass on personal information of others to Farmers providing any document you have to show this is legal. (Again, one document will do)

3) Also, provide the number of times police officers have passed on personal information of others to Farmers, and how much money the Farmer paid the police officer for this information."

7. On 11 May 2021, having watched the footage, Staffordshire Police asked the complainant whether he wished to direct his request to a different public authority, because it said the officer within the footage belonged to another police force.
8. The complainant declined and asked Staffordshire Police to respond to his request under FOIA.
9. Staffordshire Police therefore provided its substantive response on 24 May 2021. It refused to provide the requested information, citing the exemption contained in section 21 of FOIA – information accessible to applicant by other means. It provided a link to its Privacy Notice¹ which explains how Staffordshire Police uses people's data.
10. The complainant requested an internal review on 26 May 2021, stating that he did not consider the information to be reasonably accessible and that no explanation had been provided as to how to access it.
11. Staffordshire Police provided an internal review on 11 June 2021 in which it revised its position stating that no information is held in relation to the incident itself. Staffordshire Police also advised:

“In respect of your clarification asking Staffordshire Police to respond to the questions posed on behalf of Staffordshire Police. If taking these questions in isolation and not relating to the incident in the footage, I wish to advise you that whilst I can confirm that Staffordshire Police may hold the information requested, the force claims the provision under Section 12(1) of the Act (where the cost of compliance exceeds the appropriate limit). ‘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 prescribed limit’.

In order to obtain the information requested, please note that your questions all deal with disclosure of information specifically to farmers. Many methods are available for farmers to seek disclosure of information (Right of Access, Civil Proceedings, Court orders, Care Proceedings etc) however these are conducted on a case by case basis and afford the applicant no bias based upon profession and merely fall under the rights afforded to any individual. Therefore, in order to ascertain whether any such disclosure had been undertaken, this would

¹ <https://www.staffordshire.police.uk/hyg/fpnstaffordshire/privacy-notice/>

require viewing all Court orders, Right of Access Requests, Civil Proceedings etc in an attempt to identify the occupation of the individual involved. This would exceed the time and cost threshold of the FOI Act by some considerable margin."

12. As part of its response, Staffordshire Police highlighted section 84 of FOIA, advising:

"Information is defined in section 84 of the Act as 'information recorded in any form'. The Act therefore only extends to requests for recorded information. It does not require public authorities to answer questions generally; only if they already hold the answers in recorded form. The Act does not extend to requests for information about policies or their implementation, or the merits or demerits of any proposal or action - unless, of course, the answer to any such request is already held in recorded form."

Scope of the case

13. The complainant contacted the Commissioner on 24 June 2021 to complain about the way his request for information had been handled.
14. The complainant's original complaint to the Commissioner only referenced Staffordshire Police's reliance on section 12(1) of FOIA. As he did not complain about Staffordshire Police's position that it did not hold any information relating to the video footage, the Commissioner has not considered this aspect any further.
15. During the latter stage of the Commissioner's investigation the complainant wrote disputing the veracity of section 12(1) and suggested that the requested information could be provided by Staffordshire Police in a "single document" which would not exceed the cost limit.
16. The Commissioner contacted the complainant on 14 February to ask him to clarify what he meant by a "single document". In reply the complainant said:

"the [Privacy Notice] link provided, did not state;

(A) You have such an exception.

(B) Passing personal information of others to a Farmer is a lawful activity.

If it does, please highlight were [sic] exactly it does this.

Neither does it provide the number of times the Police have passed on information to Farmers, in the document.

If it does, please highlight were [sic]?

All this information can be given on one document, so the cost argument does not apply. Somebody on the police side, can collect the information and put it on the police side. Why you have difficulty understanding this simple point and need it clarifying, I have no idea.”

17. As part of its investigation response, Staffordshire Police had told the Commissioner:

“This response is general about section 12(1) and any records relating to farmers but please do not take any inference from the reply that it confirms or not as to whether the YouTube footage supplied did belong to SP [Staffordshire Police]. As the footage can't be viewed there is no way of independently assessing it to determine if the exemptions applied by the FOI team at request and FOI supervisors at internal review were correct or not.”

18. On 14 February 2022, Staffordshire Police clarified its intended final position in relation to the request to the Commissioner. It said that it was no longer relying on section 21 for any part of the request and confirmed that section 12(1) was being applied to the request in its entirety. It also stated that it could not address the complainant's request in a “single document” on cost grounds.
19. With regard to the complainant's comments about not being able to locate some of the requested information at the link to its Privacy Notice, the Commissioner considers them no longer relevant. This is because Staffordshire Police is now stating that section 12 applies to the request as a whole. In any event, the Privacy Notice includes a section titled “What disclosures do we make of your personal data?” which explains what it may do in scenarios such as those described by the complainant.
20. As set out in the ‘Scope’ section above, the Commissioner accepts that the footage can no longer be viewed as he has attempted to view it for himself. He has considered whether Staffordshire Police was entitled to rely on section 12(1) of FOIA to refuse this request and whether it has complied with its section 16 of FOIA advice and assistance obligations.

Reasons for decision

Section 12(1) – cost of compliance exceeds the appropriate limit

21. Section 1(1) of FOIA states that:

“(1) Any person making a request for information to a public authority is entitled –

- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
- (b) if that is the case, to have that information communicated to him.”

22. Section 12(1) of FOIA states 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 limit.”

23. The Fees Regulations set the appropriate limit at £450 for Staffordshire Police; they also specify that the cost of complying with a request must be calculated at the rate of £25 per hour, meaning that the appropriate limit for Staffordshire Police equates to 18 hours.

24. In estimating whether complying with a request would exceed the appropriate limit, regulation 4(3) states that an authority can only take into account the costs it reasonably expects to incur in:

- a. determining whether it holds the information;
- b. locating the information, or a document containing it;
- c. retrieving the information, or a document containing it; and
- d. extracting the information from a document containing it.

Can all parts of the request be aggregated?

25. Section 12(4) of FOIA can be engaged where one person makes two or more requests. It allows for the aggregation of these requests for the purpose of calculating costs in circumstances which are set out in Regulation 5 of the Fees Regulations. This Regulation provides that multiple requests can be aggregated where two or more requests relate, to any extent, to the same or similar information.

26. Given the effect of section 12(4), the Commissioner first considered whether the complainant’s request of 10 May 2021 constituted a single request with multiple elements or multiple requests. The Information

Tribunal considered a similar issue in *Fitzsimmons v ICO & Department for Culture Media and Sport* [EA/2007/0124]².

27. Taking the Tribunal's decision in *Fitzsimmons* into consideration, the Commissioner would characterise the complainant's request as containing multiple requests within a single item of correspondence.
28. Having established that the complainant has made multiple requests in a single request, the Commissioner went on to consider whether those requests could be aggregated for the purpose of calculating the cost of compliance. The Commissioner notes that all parts of the request relate to the disclosure of information to farmers. The Commissioner has therefore concluded that it is reasonable for them to be aggregated for the purpose of calculating the cost of compliance because they follow an overarching theme.
29. Having reached this conclusion, the Commissioner will next consider the application of section 12(1). In determining whether Staffordshire Police has correctly applied section 12 of FOIA in this case, the Commissioner has considered Staffordshire Police's rationale.

Application of section 12(1)

30. Staffordshire Police advised the Commissioner as follows:

"All SP disclosures should be completed by the correct department i.e. the Central Disclosure Unit, Common Law Police Disclosure team, Justice Services, Legal Services etc. none of which are staffed by police officers. Therefore to determine if a police officer had conducted any disclosure outside of the agreed practices all of the incident logs (current total of closed logs is 5,216,417) and case management records (the return of these records stops at 1 million) would need to be searched individually to firstly determine if they related to farmers and then if any disclosure had taken place by a police officer. There is no mandatory requirement under any process to record the occupation of anyone contacting SP so it would be impossible to search for information relating specifically to farmers without reading every record."

31. Staffordshire Police also said:

²<http://informationrights.decisions.tribunals.gov.uk//DBFiles/Decision/i242/Fitzsimmons.pdf>

"The applicant has not indicated a time frame for the request so the response relates to electronic records only and not manual records."

32. It said it was unable to provide a representative sample to the Commissioner without carrying out the searches of its systems as described above.
33. The Commissioner has considered Staffordshire Police's explanations in the internal review and during his investigation. He accepts that its explanations are reasonable particularly given the specific focus of the complainant's request. He notes that occupations of individuals contacting Staffordshire Police are not required to be recorded, such that each record will need to be checked to determine whether it relates to 'farmers' and then to see if any disclosure by a police officer had occurred.

Conclusion

34. The Commissioner has concluded that Staffordshire Police's estimate as to how many records would need to be searched in order to ascertain those in scope is reasonable and that, in the circumstances of this case, it was entitled to rely on section 12 for this request. He is satisfied that Staffordshire Police is unable to provide a response in a "single document" as suggested by the complainant because to do so would exceed the cost limit.

Section 16 – duty to provide advice and assistance

35. Section 16 of FOIA states:

"(1) It shall be the duty of a public authority to provide advice and assistance, so far as would be reasonable to expect the authority to do so, to persons to propose to make, or have made, requests for information to it.

(2) Any public authority which, in relation to the provision of advice or assistance in any case, conforms with the code of practice under section 45 is to be taken to comply with the duty imposed by subsection (1) in relation to that case."

36. The Commissioner's view is that, where a public authority refuses a request under section 12(1) of FOIA, section 16(1) creates an obligation to provide advice and assistance on how the scope of the request could be refined or reduced to avoid exceeding the appropriate limit.
37. In its response to the request of 27 July 2021, Staffordshire Police advised the complainant:

"In order to assist you with refining your request, within your initial request you have provided a link to footage depicting a [name of police force redacted] Police Officer; however, you have requested answers to your questions from Staffordshire Police under the FOI Act. It may be worth directing your request to [name of police force redacted]. However exemptions may apply."

38. In its investigation response, Staffordshire Police told the Commissioner:

"This applicant has been given advice and it may be that if the You Tube footage was from [name of police force redacted] and the applicant had contacted them as advised they may have been able to assist in answering the questions posed."

39. The Commissioner considers that Staffordshire Police initially complied with its section 16 advice and assistance obligations, given its initial response to the request and suggestion to contact the appropriate police force. Furthermore, it provided a link to its Privacy Notice which explains how it deals with the sharing of personal information.
40. However, the Commissioner does note that, from an objective reading of the request, the source of the footage referred to, or even the actual footage itself, is not of any consequence to what the complainant is ultimately requesting as there is no requirement to watch or even consider it in order to respond to the request, which centres generally on Staffordshire Police's disclosure of information to farmers.

Conclusion

41. For the reasons set out above, the Commissioner is satisfied that Staffordshire Police ultimately complied with its section 16 obligations in its handling of this request. Whilst it did not make any suggestions as to how it might be refined, the open-ended and broad nature of the request means that the Commissioner can see no obvious way in which Staffordshire Police could suggest how it could be refined to fall within the cost limit; he has not ordered any steps.

Right of appeal

42. 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

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

43. 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.
44. 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

Carolyn Howes
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