

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 25 January 2022

Public Authority: Commissioner of Police of the Metropolis
Address: New Scotland Yard
Broadway
London
SW1H 0BG

Decision (including any steps ordered)

1. The complainant has requested information about arrests and investigations related to drill music from the Metropolitan Police Service (the "MPS"). The MPS advised that to comply with the request would exceed to appropriate limit at section 12(1) of the FOIA.
2. The Commissioner's decision is that the MPS was entitled to rely on section 12(1) of the FOIA. There was no breach of section 16(1) (Advice and assistance). No steps are required.

Background

3. A decision about a similar, later request made by the same complainant is being issued at the same time as this notice - IC-79467-K9C4.

Request and response

4. On 25 June 2020, the complainant wrote to the MPS and requested information in the following terms:

"It is understood "[t]he Met has been monitoring the increase in violent content online since September 2015. A central database of more than 3,000 indexed videos has been built which officers

assess and use to gather intelligence. Its Social Media Hub consists of 17 staff and monitor digital channels for harmful content. Since the launch of the Social Media Hub, 673 cases of gang-related online content have been identified. 107 videos have been referred to YouTube for removal - with 83 taken down. They have arrested 18 people."

Request 1 - We ask for information for the number of arrests of persons for publication of drill music.

Request 1(a) - We ask for information for the number of on-going investigations for publication of drill music.

Further;

Request 1(b) - Please provide a gist of what the arrests were for (by percentage) and where possible without revealing personal information what authority the MPS relies upon for the arrest.

For clarity and for the avoidance of doubt, we are simply asking for the legal framework MPS relies upon when arresting publishers of UK drill music and what authority MPS has for this. We do not seek any personal information as to the on-going investigations or prosecutions. s.30(1) FOIA does not apply to this request within the context provided above.

Request 2 - We seek the number of charges brought against individuals for publishing UK drill music videos.

Request 3 - [name redacted] Information Manager at MPS stated in an email of 21st June 2019 "there is no formal policy that the MPS follows" in response to the request of whether there is a formal policy.

We seek the informal (or formal policy) used by MPS in removing UK drill music videos.

Request 3(a) - We request information on how the informal policy was created included but not limited to any equality impact assessment.

Request 4 - Please provide a statistical breakdown by ethnicity of those arrested and/or investigated for publication for UK drill music videos.

Request 4(a) - Please provide a statistical breakdown of ethnicity of those working in the social media hub.

Request 5 - The request for a list of all videos removed by MPS is repeated".

5. On 16 July 2020, the MPS wrote to the complainant requiring clarification from him. It asked for the following:

Questions 1, 1(b), 2 and 4:

"This information is not held, because the publication of drill music is not a criminal offence, and accordingly no arrests or charges can take place specifically for the publication of drill music. However, if there is evidence of a criminal offence within a drill music video for example, such as an assault, or possession of a firearm, then potentially this could be used as evidence to justify an individual's arrest, however there is no legislation that specifically proscribes the publication of drill music as an offence.

Please advise whether you therefore wish to revise or omit these questions".

Questions 1(a) and 4:

"Please can you clarify what you mean by "on-going investigations"?"

As explained above, any investigation into the publication of drill music would usually form part of a wider investigation, for example, serious youth violence, or to demonstrate association between individuals.

The MPS does submit referrals to social media companies to have content removed for breaching Google's community guidelines. Further to this, the MPS could provide a count of the number of referrals we have made since 1 April 2020, broken down by ethnicity, subject to exemption(s).

Please advise whether this would be a suitable alternative".

6. On 23 July 2020, the complainant revised his request as follows:

"Request 1 - We ask for information for the number of arrests of persons that involve or relate to publication of drill music. This includes where UK drill music content is being used as evidence in an investigation, arrest or charge.

Request 1(a) - We ask for information for the number of on-going investigations for publication of drill music. For clarity we consider

any on-going investigation to be an investigation where an arrest has been made.

Further;

Request 1(b) - Please provide a gist of what the arrest at request 1 above were for (by percentage) and where possible without revealing personal information what authority the MPS relies upon for the arrest.

For clarity and for the avoidance of doubt, we are simply asking for the legal framework MPS relies upon when arresting publishers of UK drill music and what authority MPS has for this. We do not seek any personal information as to the on-going investigations or prosecutions. s.30(1) FOIA does not apply to this request within the context provided above.

Request 2 - We seek the number of charges brought against individuals for offences relating to or contained in the publishing or publication of UK drill music and drill music videos.

Request 4 - Please provide a statistical breakdown by ethnicity of those arrested and/or investigated for offences relating to or touching on the publication for UK drill music videos.

The request is revised to any arrests or charges that "relate to or touch upon" the publication of UK drill music videos. This is a very broad request but should not take any length of time as the information we understand has already been collated.

If UK drill music videos are being used or have been used as evidence we would be grateful if you could provide a list of that information in a gist format with appropriate redactions to ensure there is no compromise of on-going investigations or criminal proceedings".

7. On 29 July 2020, the MPS asked the complainant to specify the timeframe for which he required the information. On 30 July 2020, the complainant advised: "... could you provide the information I've asked for from the start of 2017."
8. On 31 July 2020, the MPS responded. It advised that to comply with the request would exceed the cost limit at section 12 of the FOIA.
9. The complainant requested an internal review on 14 August 2020.
10. The MPS provided an internal review on 4 September 2020 in which it maintained its position.

Scope of the case

11. The complainant contacted the Commissioner on 8 September 2020 to complain about the way his request for information had been handled. He said that: *"[t]he principal concern raised is that MPS is censoring music and the black experience without any justification" and "... MPS is targeting UK Drill music because of the ethnicity of the artists"*.

12. The complainant added that he understood that:

"... the ICO will inevitably refuse our application because the ICO has given the tools to the MPS to avoid answering questions in order to be more opaque and obfuscate requests for information that concern arts, culture and the need for anxious scrutiny when a public authority specifically and publically [sic] targets the black community".

13. The complainant did not provide any rationale to support why he did not agree that section 12 applied to the request. He said:

"It is simply not the problem of the applicant if MPS cannot organize their data and information in an easily accessible manner where it ought to be accepted that a particular issue has a disproportionate impact on the black community. In other words the MPS exemption relies on the pretence that they are so disorganized they couldn't hope to answer the request without 92 hours of police work. This equates to the ICO rewarding disorganization and incompetence".

And:

"Cost is not a full exemption in our view where the requests for question 3, 3a and 5 can be answered they should be. There is good reason for the ICO to find in the applicants favour but there is no expectation that the ICO given the history of it's findings will return a favourable outcome in the pursuit of information or illumination for intended for public consumption. The real underlying concern is the Metropolitan police's approach to UK Drill music and what is easily classifiable as the denigration of black community art. If the ICO does not agree with this assertion then there ought to be real questions as to whether or not the ICO is an effective alternative to bringing proceedings where discrimination is alleged against a public body".

14. The Commissioner will consider the application of section 12 of the FOIA below.

Reasons for decision

Aggregation of requests

15. Multiple questions within a single item of correspondence are considered to be separate requests for the purpose of section 12. In the present case, this means that there are several requests to be considered. However, where requests relate to the same overarching theme, a public authority may aggregate two or more separate requests in accordance with the conditions laid out in the Fees Regulations. Any unrelated requests should be dealt with separately for the purposes of determining whether the appropriate limit is exceeded.
16. In the Commissioner's guidance¹ on exceeding the cost limits, he explains that:

"Regulation 5(2) of the Fees Regulations requires that the requests which are aggregated relate "to any extent" to the same or similar information. This is quite a wide test but public authorities should still ensure that the requests meet this requirement.

A public authority needs to consider each case on its own facts but requests are likely to relate to the same or similar information where, for example, the requestor has expressly linked the requests, or where there is an overarching theme or common thread running between the requests in terms of the nature of the information that has been requested".
17. The Fees Regulations wording of "*relate, to any extent, to the same or similar information*" makes clear that the requested information does not need to be closely linked to be aggregated, only that the requests can be linked.
18. Although the MPS did not address this point, having reviewed the wording of the complainant's request, the Commissioner is satisfied that there is an overarching theme. This is because the individual questions all refer to information about drill music. Therefore, the MPS was entitled to aggregate the costs of dealing with each question.

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

19. The complainant also alludes to the MPS being able to respond to some parts of his request on their own. However, the Commissioner's guidance on section 12 states that a public authority is not obliged to search for, compile or disclose *some* of the requested information before refusing a request that it estimates will exceed the appropriate limit.

Section 12 – cost of compliance

20. Section 12(1) 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.
21. When considering whether section 12(1) applies, the authority can only take into account certain costs, as set out in The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ('the Regulations'). These are:
- (a) *determining whether it holds the information,*
 - (b) *locating the information, or a document which may contain the information,*
 - (c) *retrieving the information, or a document which may contain the information, and*
 - (d) *extracting the information from a document containing it."*
22. The Regulations state that the appropriate cost limit is £600 for central government, legislative bodies and the armed forces, and £450 for all other public authorities. The cost limit in this case is £450, which is equivalent to 18 hours' work.
23. 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*, the Commissioner considers that any estimate must be "*sensible, realistic and supported by cogent evidence*"². 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 requests.
24. In refusing the request, the MPS advised the complainant as follows:

² <http://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i136/Randall.pdf>

"Having conducted initial enquiries in order to determine whether the information you have requested could be located, retrieved and extracted within the appropriate limit stipulated by the Fees Regulations, it became clear that this would not be possible. The reason for this is because the MPS does not record the requested information or level of detail within an indexed field. Consequently, it would be necessary to search information recorded in a non-standardised manner within free text fields in order to ascertain the extent of information held, if any, in relation to your request, and to locate, retrieve and extract such information.

As I explained in my letter dated 16 July 2020, the publication of drill music is not proscribed as a criminal offence, and accordingly no arrests or charges can take place specifically for this activity. Any investigation into the publication of drill music would usually form part of a wider investigation, for example, where there is evidence of a criminal offence within a drill music video. For example, serious youth violence, an assault, or possession of a firearm, which could potentially be used as evidence to justify an arrest. It therefore follows, that any information that may be held that "relates to or touches upon" the publication of drill music would not be easy to retrieve, or held in a readily retrievable format, and would require the manual interrogation of individual case files in order to determine this information. This activity would require an in-depth review of the investigation details screens of crime reports (also known as the 'Dets'), which are free text.

To explain further, in order to determine whether an arrest or charge "relates to or touches upon" the publication of drill music, a member of staff would need to access the crime reporting and information system (CRIS) and the criminal intelligence system (CrimInt) and initially look for reports that have a gang flag. A search for the word "drill" would then be required, and the Dets of each of these reports would need to be manually reviewed individually, for any reference to drill music specifically, and in order to determine how drill music features.

To give you an idea of the amount of work required to comply with your request, 1,587 arrests of individuals on the Gangs Matrix took place in 2018. Therefore if it only took 1 minute to appropriately review approximately 5,554 records in order to determine whether and how drill music features for the requested 3.5 year period, it would take at the very least, 92 hours to comply with Questions 1, 1a, 1b, 2 and 4 alone of your request. However in reality this is a very conservative estimate, given that these investigation details are not electronically searchable, and often contain full pages of text, extend over numerous pages, and are not limited in size,

depending upon the nature of the investigation and whether an offender/alleged offender has been identified”.

25. In explaining its position to the Commissioner the MPS advised:

“Within the clarified request at Question 4, mention is also made by the applicant that:

This is a very broad request but should not take any length of time as the information we understand has already been collated.

However, enquiries made during this Appeal has determined that information concerning the publication of drill music is not collated in any single location and could form part of wider investigations, as explained within our original response:

‘...the publication of drill music is not proscribed as a criminal offence, and accordingly no arrests or charges can take place specifically for this activity. Any investigation into the publication of drill music would usually form part of a wider investigation, for example, where there is evidence of a criminal offence within a drill music video. For example, serious youth violence, an assault, or possession of a firearm, which could potentially be used as evidence to justify an arrest. It therefore follows, that any information that may be held that “relates to or touches upon” the publication of drill music would not be easy to retrieve, or held in a readily retrievable format, and would require the manual interrogation of individual case files in order to determine this information. This activity would require an in-depth review of the investigation details screens of crime reports (also known as the ‘Dets’), which are free text.’

The issue around identifying information concerning the publication of drill music was again clarified at internal review:

‘...You have asked for information related to arrests and investigations where UK Drill music content and / or publication is a feature. There is no automatic means of identifying the information you have requested. As mentioned in our original response, there is not an offence which directly relates to the publication of Drill music.’”

26. The Commissioner notes the complainant’s views that:

“The public mood is strong in favour of disclosure. There is an overwhelming interest information [sic] concerning police accountability”.

And:

"The question that the Applicant wants the public to ask is whether or not the removal of these videos are a form of action taken by the police to diminish or criminalize the experience of those in the BME community. This can only be expressed through a full vetted understanding of what has been removed".

27. He also notes the complainant's views, as stated above in paragraph 10, that he has *"no expectation that the ICO ... will return a favourable outcome in the pursuit of information or illumination for intended for public consumption"*.
28. Whilst the Commissioner does not doubt the complainant's genuine concerns and his reasons for wanting disclosure of the requested information, there is no public interest test in respect of section 12 of the FOIA. It is not a 'choice' that the Commissioner is able to make. Quite simply, if compliance would exceed the appropriate limit then a public authority is not obliged to comply with a request.
29. The Commissioner further notes that the complainant has concerns that the Commissioner:

"... should be particularly concerned about the actions of the MPS in acceding that no formal policy exist when removing UK Drill music videos. This is facially unlawful as an informal policy is nothing more than capricious and arbitrary".
30. Such matters fall outside the Commissioner's jurisdiction. When dealing with a complaint to him under the FOIA, it is not the Commissioner's role to make a ruling on what information a public authority should hold, or how it should hold it. In responding to a complaint made to him under section 50 of the FOIA, the Commissioner is not concerned with how a public authority deploys its resources, on how it chooses to hold its information, or the strength of its business reasons for holding information in the way that it does as opposed to any other way. Rather, in a case such as this, the Commissioner's role is simply to decide whether or not the requested information can, or cannot, be provided to a requestor within the appropriate cost limit. On that point, the Information Tribunal in the case of *Johnson / MoJ (EA2006/0085)* has commented that the FOIA:

"... does not extend to what information the public authority should be collecting nor how they should be using the technical tools at their disposal, but rather it is concerned with the disclosure of the information they do hold".

31. The Commissioner considers that the MPS has made a reasonable estimate of 1 minute to consider whether or not a record of arrest has any association with drill music. This means that to look at each of the 1,587 records for 2018 would take in excess of 26 hours on its own, and then further work will be necessary to comply with the requests. Whilst the complainant may be disappointed, the Commissioner finds that the estimate is realistic and reasonable. He therefore accepts that to provide the information would exceed the appropriate limit.

Section 16 – advice and assistance

32. 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. In general where section 12(1) 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 that 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.

33. The MPS advised the Commissioner:

"... I refer to the following advice and assistance provided in our initial response, in order to assist the applicant to refine their request, namely:

'We are required to advise and assist you with reducing your request to a manageable level. If you were to reduce your request to Questions 3, 3a, 4a and 5, we could provide a response to these questions within the cost threshold, subject to exemption.

We could also offer a count of arrests and charges where "gang-related online content" has featured since January 2017, similar to the statistics provided within the press article to which your request refers.

As explained in my letter dated 16 July 2020, the MPS submits referrals to social media companies to have content removed for breaching Google's community guidelines. We could therefore also provide a count of the number of referrals we have made to social media companies since 1 April 2020, broken down by ethnicity, which we have previously offered to you."

34. The complainant was therefore offered alternative options for the provision of some information, albeit a much smaller scope.
35. In this case the public authority has explained to the complainant about how the information is held and why compliance would exceed the limit.

The Commissioner is satisfied that the MPS has provided advice and assistance to the complainant.

Other matters

36. Although they do not form part of this notice the Commissioner wishes to highlight the following matters of concern.

Engagement with the Commissioner and compliance with Information Notices

Information Notices IC-54745-C7Y9 and IC-79467-K9C4

37. The Commissioner would like to record here his disappointment that, due to the complete lack of engagement from MPS in this investigation, he found it necessary to issue the MPS with an Information Notice on this and the related case, in accordance with his powers under section 51 of the FOIA. In the interests of transparency, and as is his practice, the Commissioner will publish these Information Notices on his website.
38. Of even greater concern, however, is the egregious and unacceptable delay by the MPS in then complying with these Information Notices. The Commissioner's legal and casework teams experienced almost complete silence from the relevant individuals in the MPS's casework team despite numerous emails, phone calls and voicemails. These are ostensibly straightforward cases, and the lack of cooperation from the MPS led to the Commissioner pursuing contempt of court action under section 54 of the FOIA. Compliance was only achieved with the Notices shortly before the relevant paperwork for this action was due to be filed with the Court.
39. For context, the Information Notices were issued on 23 July 2021 and the MPS did not comply until 12 January 2022.
40. This is simply unacceptable. In light of the significant failings by the MPS in this case, the Commissioner will be keeping its compliance with the legislation and the quality of its engagement with his office and requesters under review. This will inform his view on whether further use of his statutory powers may be necessary to ensure better compliance with the law.

Right of appeal

41. 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

42. 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.
43. 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

**Laura Tomkinson
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