

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 22 November 2024

**Public Authority:** Chief Constable of Cleveland Police  
**Address:** St Marks House  
St Marks Court  
Thornaby  
Stockton on Tees  
TS17 6QW

#### Decision (including any steps ordered)

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1. The complainant has requested information from Cleveland Police regarding data breaches for a specific period. Cleveland Police relied on section 12 of FOIA (cost of compliance) to refuse the request.
2. The Commissioner's decision is that Cleveland Police was entitled to rely on section 12(1) of FOIA to refuse the request. The Commissioner also finds that Cleveland Police did comply with its section 16 obligation to offer advice and assistance.
3. The Commissioner does not require further steps to be taken.

#### Request and response

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4. On 27 April, the complainant wrote to the public authority and requested information in the following terms:  
"Covering reporting period 1.4.23 to 31.3.24 tell me:  
-number of data breaches your force encountered  
-depersonalised brief detail of each breach  
-actions taken for each breach  
-lessons learned from each  
-which of these breaches were reported to the ico  
-overall number of breaches notified to data subjects."

5. On 29 May 2024, Cleveland Police responded. It provided the complainant with the number of breaches incurred and the number of breaches reported to the ICO, but advised that it was relying on section 12 of FOIA to refuse the remaining parts of the request – a position it upheld following an internal review.

## Reasons for decision

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### Section 12 – cost of compliance

6. The following analysis covers whether complying with the request would have exceeded the appropriate limit.
7. Section 12(1) of the 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”)
8. 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 Cleveland Police is £450.
9. 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 Cleveland Police.
10. 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.
11. 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. 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.

12. 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.
13. 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.

### **The complainant's position**

14. The complainant advised that Cleveland Police used Microsoft forms to report data breaches. These data forms then populate a SharePoint list, which the complainant considers should only take a few seconds to export. They added that all the data captured on the form would then be transferred to an Excel Spreadsheet.
15. The complainant's view is that, at most, extracting the information should take a few minutes and queried that it would 20 minutes to extract each record.

### **Cleveland Police's position**

16. Cleveland Police explained to the Commissioner that for the requested period, there are 96 records which would require manual reviewing to retrieve the requested information.
17. Cleveland Police advised that it would take 20 minutes to review each record which would amount to 32 hours worth of work. It advised that this estimate was established by its information rights team during a sampling exercise.
18. Cleveland Police advised that during the requested period its systems had undergone several changes in an effort to improve data management. Due to these changes some of the systems, which would require consultation for the requested information, were "legacy" systems. It explained that each system holds data in different formats and structures and, due to this, a thorough review would be required in order for the requested information to be identified, validated and compiled for the purposes of the request.
19. Cleveland Police further explained that, despite its best efforts, the previous systems did not meet the requirements of Cleveland Police and this led to inconsistencies in the way data breaches were reported.

20. Cleveland Police confirmed it had conducted a dip sample to establish the estimate of retrieving the information. In this test, it took 5 random records from each system to provide an accurate estimate of the work required to retrieve, analyse and compile each record into a reportable format.
21. Cleveland Police confirmed that, on average, it took approximately 20 minutes to process each record and, for this reason, it had concluded that it would be required to spend an average of 20 minutes to retrieve, review and compile each record.

### **The Commissioner's view**

22. The Commissioner is satisfied that complying with this request would exceed the appropriate limit.
23. Cleveland Police has outlined to the Commissioner that a dip test was undertaken in multiple systems in order for an accurate estimate to be provided. Having reviewed Cleveland Police's reasoning and the work required to locate the information, the Commissioner is satisfied that the estimate is reasonable. Even were the estimate reduced by a quarter, the request would still exceed the cost limit.
24. Complying with the request would therefore exceed the cost limit and so Cleveland Police was entitled to rely on section 12(1) of FOIA to refuse the request.

### **Procedural matters**

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#### **Section 16 – advice and assistance**

25. Section 16 of FOIA requires public authorities to provide reasonable advice and assistance to those making, or wishing to make, information requests.
26. When a public authority refuses a request because the cost of compliance exceeds the appropriate limit, it should explain, to the requester, how they could refine their request such that it would fall within that limit. In rare cases, it will be appropriate for the public authority to explain to the requester why their request cannot be meaningfully refined.
27. In this case, Cleveland Police advised the complainant that it was unable to provide any meaningful advice and assistance on how to refine part of the request. It did explain that due to this some information was being provided as a gesture of goodwill.

Reference: IC-320632-N8Y8



28. Based on the above, the Commissioner is therefore satisfied that Cleveland Police did comply with section 16 of FOIA when dealing with this request.

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: 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)

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.

**Michael Lea**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**