# Freedom of Information Act 2000 (FOIA)

# DECISION NOTICE

**Date:** 20 September 2011

**Public Authority:** The Chief Constable
**Address:** West Mercia Police
PO Box 55
Hindlip Hall
Hindlip
Worcestershire
WR3 8SP

## Decision (including any steps)

1. The complainant requested information relating to a police investigation. Having had his first requests refused on the grounds of exceeding the cost threshold he then submitted 24 separate requests on the same day. The public authority aggregated the cost of compliance with these requests and again refused to disclose this information on the grounds that to do so would exceed the appropriate limit.

2. The Commissioner's decision is that the public authority correctly aggregated the costs and that compliance would exceed the appropriate limit. It is not required to comply with the request.

## Background

3. The request relates to a major police investigation known as 'Operation Facility'. Various press articles can be found online.

http://www.telegraph.co.uk/news/uknews/8258159/Horse-trainer-murdered-ex-boyfriend-then-drank-wine-and-watched-his-body-burn.html

http://www.bbc.co.uk/news/uk-england-hereford-worcester-12557428

## Request and response

4. On 25 February 2011 the complainant first wrote to the public authority and requested the following information:

> *"In accordance with the provisions of the above Act, I request to be informed as to the total expenditure made by west Mercia Police in relation to Operation Facility commenced in august 2008 pursuant to the death of David Langdon and ancillary actions and costs arising therefrom.*
>
> *I should like this to be detailed between:*
>
> *Internal costs identifying*
>
> - *Operational expenses by West Mercia officers and employees relating to the investigation,*
> - *Family liaison,*
> - *Court attendance by West Mercia officers and employees,*
> - *Other internal costs;*
>
> *External costs identifying*
>
> - *Hire of equipment (including a helicopter),*
> - *Forensic examinations, studies, investigations and reports,*
> - *Procurement of expert witness reports and statements,*
> - *Other external costs".*

5. The public authority responded on 16 March 2011. It explained that to comply with the request would exceed the appropriate limit as laid down under section 12 of the FOIA. In an attempt to further assist the complainant it provided a table of some related costs and also some further information about the numbers of staff involved and some hours worked.

6. The complainant did not ask for an internal review of this response.

7. On the 22 March 2011 the complainant submitted a further 24 requests all relating to Operation Facility. They were received by the public authority in two batches, a set of 8 and a set of 16. The requests are summarised below.

### *Batch of eight requests*

1. The total cost of attendance by Police Officers to the Magistrate's Court on the 16th & 17th August and December 23rd 2008.

2. The total cost of attendance by Police Officers to the Worcester County Court in January and June 2009
3. The total cost of detaining the "suspects" in custody-
August 2008
3 persons for four days of which 36 hours on "suicide watch"
1 person for 1½ days
March 2009
3 persons for 1 day
4. The total cost of a Public Meeting held relating to this operation
5. The cost of accommodation at the Pilgrim Hotel for Police officers involved in the above investigation.
6. The total cost of the examinations and investigations undertaken by Metropolitan Police Cadaver Dog Team.
7. The total cost of the examinations undertaken by Force Medical Officers on the four arrested “suspects".
8. The cost of hiring a helicopter used to survey the incident scene on Saturday 17th August 2008.

***Batch of sixteen requests***

1. The total cost of the forensic examinations and investigations undertaken by the expert [name removed].
2. The total cost of the forensic examinations and investigations undertaken by the fire expert [name removed].
3. The total cost of the forensic examinations and investigations undertaken by [name removed].
4. The total cost of the peer review of [name removed]'s post-mortem examinations on the 16th & 17th August and her reports to West Mercia as undertaken by [name removed].
5. The total cost of the further review of forensic and pathological evidence as undertaken by [name removed].
6. The total cost of the forensic examinations and investigations undertaken by Manlove Forensics.
7. The total cost of the attendance of [name removed]to the incident site on Friday 16th August 2008, her subsequent post-mortem examinations on the 16th & 17th August and her several meetings and reports to West Mercia.
8. The total cost of the forensic examinations and investigations undertaken by [name removed].
9. The total cost of the forensic examinations and investigations undertaken by [name removed].
10. The total cost of the forensic examinations and investigations undertaken by [name removed].

11. The total cost of the forensic examinations and investigations undertaken by [name removed].
12. The total cost of the forensic examinations and investigations undertaken by [name removed].
13. The total cost of the forensic examinations and investigations undertaken by [name removed].
14. The total cost of the forensic examinations and investigations undertaken by [name removed].
15. The total cost of the forensic examinations and investigations undertaken by [name removed].
16. The total cost of the forensic examinations and investigations undertaken by [name removed].

8. On 19 April 2011 the public authority responded to the set of eight questions. It advised that because they all related to the same subject it was treating them as one request. Furthermore, it advised that they related to the same subject matter as the request of 25 February 2011, which had already been refused on the grounds of cost, and it was aggregating the costs.

9. On 3 May 2011 the public authority also sent out its response to the set of sixteen questions. It aggregated these requests to the others made. Furthermore, it also made reference to section 14 (vexatious requests) of the Act, although it did not rely on it.

10. On 3 May 2011 the complainant wrote to the public authority disagreeing with its response to the set of eight requests. He maintained that the requests should all be dealt with separately.

11. On 12 May 2011 the complainant wrote to the public authority disagreeing with its response to the set of sixteen requests. He again maintained that the requests should all be dealt with separately and also disagreed with the reference which had been made to section 14.

12. On 17 May 2011 the public authority sent out an internal review covering all 24 requests of 22 March 2011 in conjunction with the original request of 25 February 2011. It made no further reference to section 14.

## Scope of the case

13. On 6 June 2011 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant indicated at this stage that he was dissatisfied with the aggregation of all his requests. He stated:

*"Whilst the individual requests all related to a single investigation and to that extent were 'related', they were not on the same subject".*

14. He also expressed dissatisfaction with the public authority's comments about section 14 of the Act. However, as the public authority has not chosen to rely on this section the Commissioner has not considered this element of the complaint.

**Reasons for decision**

15. Section 12 of the FOIA provides an exemption from a public authority's obligation to comply with a request for information where the cost of compliance is estimated to exceed the appropriate limit. (More information can be found in the Commissioner's guidance on his website[1]).

16. As the complainant has complained about the aggregation of his requests the Commissioner has focussed on section 12(4). This says that where two or more requests for information are made to a public authority by one person, or by different persons who appear to the public authority to be acting in concert or in pursuance of a campaign, the estimated cost of complying with any of the requests is to be taken to be the estimated total cost of complying with all of them.

17. The Commissioner's guidance, referred to above, further explains:

*"The Fees Regulations state that two or more requests to one public authority can be aggregated for the purposes of calculating costs if they are:*

- *by one person, or by different persons who appear to the public authority to be acting in concert or in pursuance of a campaign;*
- *for the same or similar information; and*
- *the subsequent request is received by the public authority within 60 working days of the previous request.*

*The intention of this provision is to prevent individuals or organisations evading the appropriate limit by dividing a request into smaller parts."*

17. It is clear that the requests being considered have all been made by the complainant and also they were all submitted within a small time frame. The Commissioner also considers that all the requests concern

[1]http://www.ico.gov.uk/upload/documents/library/freedom_of_information/detailed_specialist_guides/fees_regulations_guidance_v2.pdf

the costs of a particular police operation and that they are therefore all for similar information. Accordingly the Commissioner concludes that the requests can all be aggregated for the purpose of calculating costs.

18. Furthermore, on receiving the refusal notice for his first request, when the public authority explained that compliance would exceed the appropriate limit, the Commissioner notes that the complainant did not ask for an internal review. The Commissioner therefore concludes that the complainant accepted the public authority's position at that time. It necessarily follows that the subsequent requests, which the Commissioner finds may be aggregated, are all caught within the same cost limit as originally cited by the public authority.

19. The Commissioner agrees with the public authority that it is able to aggregate the requests for the purpose of applying the appropriate limit.

## Other matters

20. Although not raised as an issue by the complainant, the Commissioner would like to comment that he did not find the public authority's refusal of the original request to be particularly helpful. Although he does not expect a precise calculation of the costs of complying with a request he believes that it could have given a clearer explanation about how it holds the information requested and how it arrived at its conclusion that compliance would exceed the appropriate limit.

## Right of appeal

21. 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: 0116 249 4253
    Email: informationtribunal@hmcts.gsi.gov.uk
    Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

    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.

    Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this Decision Notice is sent.

**Dated the 20th day of September 2011**

**Signed ……**

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