

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 10 September 2015

Public Authority: Police and Crime Commissioner for Northumbria
Address: 2nd Floor Victory House
Balliol Business Park
Benton Lane
Newcastle upon Tyne
NE12 8EW

Decision (including any steps ordered)

1. The complainant requested information relating to meetings the Police and Crime Commissioner for Northumbria (the 'PCC') held with members of the public. The PCC refused the request on cost grounds under section 12(1) of the FOIA.
2. The Commissioner's decision is that the PCC cited section 12(1) correctly and so it was not obliged to comply with the request. However, he has also found that the PCC did not comply with its obligation under section 16(1) to provide advice and assistance to the requester as it did not provide guidance as to how the complainant's request could be refined to bring it within the cost limit. It is now required to respond to the complainant with this advice.
3. The Commissioner requires the PCC to take the following steps to ensure compliance with the legislation.
 - Write to the complainant with advice as to how his request could be refined to bring it within the cost limit.
4. The PCC 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 the FOIA and may be dealt with as a contempt of court.

Request and response

5. On 1 December 2014 the complainant wrote to the PCC and requested information in the following terms:

"(1) During the period between her appointment and 30 November 2014, how many communications by letter or email has the office of the Police & Crime Commissioner for Northumberland received by letter or email from members of the public?"

"(2) Out of the above total number of communicants by letter or email, how many individuals subsequently had private one to one meetings face to face with Vera Baird?"

6. The PCC responded to this request on 6 January 2015. In response to request (1) a figure was disclosed, but whilst it was confirmed that information was held within the scope of request (2), this request was refused on cost grounds under section 12(1) of the FOIA.
7. The complainant responded on 24 January 2015 and requested an internal review. The PCC responded with the outcome of the review on 24 February 2015. The conclusion of this was that the refusal of request (2) under section 12(1) of the FOIA was upheld.

Scope of the case

8. The complainant contacted the Commissioner by letter dated 18 March 2015 to complain about the refusal of his information request. The complainant stated that he did not agree with the refusal of his request on cost grounds and also that he believed that the PCC had failed to abide by its obligation under section 16(1) of the FOIA to provide advice and assistance.

Reasons for decision

Section 12

9. Section 12(1) provides that a public authority is not obliged to comply with a request where it estimates that the cost of doing so would exceed the appropriate limit, which for the PCC is £450. The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the 'fees regulations') provide that the cost of a request must be calculated at the rate of £25 per hour, providing an effective time limit of 18 hours. The fees regulations also specify the

tasks that can be taken into account when forming a cost estimate as follows:

- Determining whether the requested information is held.
 - Locating the information, or a document which may contain the information.
 - Retrieving the information, or a document which may contain the information.
 - Extracting the information from a document containing it.
10. A public authority is required to estimate the cost of a request, rather than form an exact calculation. The task for the Commissioner here is to reach a conclusion as to whether the cost estimate made by the PCC was reasonable; if it estimated reasonably that the cost of compliance with the request would exceed the limit of £450, section 12(1) applied and it was not obliged to comply with the FOIA.
 11. Turning to the explanation given by the PCC for its cost estimate, it stated that the first step would be to review entries in the PCC's diary to ascertain whether they related to in person meetings with the PCC. It stated that having identified diary entries that may relate to a meeting, it would be necessary to search other sources to verify if those entries did relate to a face to face meeting. It stated that it would not be possible to verify this from the diary entry alone.
 12. It also stated that it would be necessary to search "*communications received by letter or email*" in order to verify if any of those related to a meeting that was not recorded within the PCC's diary. It stated that it had carried out a sample search for information within the scope of the request covering a single month and this had taken approximately 9 hours and it provided to the Commissioner a detailed breakdown of this sample search.
 13. The Commissioner accepts that the PCC has given a reasonable estimate of the time that would be taken on the tasks that it states would be necessary in order to comply with the request. He also accepts that those tasks are within the list specified in the fees regulations. Given that the request for a single month was approximately 9 hours, the estimate for the entire time period specified in the request - approximately 24 months - would be well in excess of the effective time limit of 18 hours.
 14. The remaining question is whether it is correct to state that it would be necessary to carry out those tasks in order to comply with the complainant's request. The complainant would argue that it is not

necessary for all of these tasks to be carried out; he believes that the request could be satisfied by reference to the PCC's diary alone. The counter-reasoning from the PCC was that *"the PCC's role is such that during the course of her duties, ad hoc one to one meetings with members of the public may arise but due to their nature, may not necessarily be recorded as a formal diary entry"*.

15. The Commissioner's view is that there are two key points here; first, that the complainant's request covers a long time period and, secondly, the issue of whether it is correct that it would be necessary to search sources of information other than the PCC's diary in order to comply with the request. If that is the case, then the requirement to search multiple sources covering the entire time period specified in the request suggests that the cost limit would be relevant.
16. On the basis of the representations from the PCC about the nature of entries in the diary not necessarily being clear on whether they relate to a face-to-face meeting and that it is possible for meetings to arise in an ad hoc way, and that the request specifically refers to meetings arising from written communications, the Commissioner accepts that carrying out a thorough search for information within the scope of the request would necessitate searching the various sources referred to by the PCC, not only the diary. Having previously accepted the detailed breakdown provided by the PCC as an accurate description of the tasks that it would be necessary to carry out for a single month's worth of information, he also accepts as reasonable, when extrapolating that estimate to cover the entire period covered by the request, that the total cost of complying with the request would exceed the cost limit.
17. The conclusion of the Commissioner is that section 12(1) of the FOIA applied in relation to the complainant's request and, therefore, the PCC was not obliged to comply with that request.

Section 16

18. Section 16(1) of the FOIA provides that all public authorities are under a duty to provide advice and assistance to any person who has made or who intends to make an information request to it. The Commissioner's published guidance on section 12¹ sets out the following minimum

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https://ico.org.uk/media/1199/costs_of_compliance_exceeds_appropriate_limit.pdf

advice and assistance that a public authority should provide to a requester when refusing a request on cost grounds:

- either indicate if it is not able to provide any information at all within the appropriate limit; or
 - provide an indication of what information could be provided within the appropriate limit; and
 - provide advice and assistance to enable the requester to make a refined request.
19. In this case the PCC addressed its section 16(1) duty by stating to the complainant that it did not believe there was any useful advice and assistance that it could provide on refining the request. The Commissioner does not, however, agree that this was the case.
20. Based on the information that the PCC provided about its cost estimate, the Commissioner believes that it would have been possible for it to have advised the complainant that a request covering a period of two months may not have exceeded the cost limit. In addition, given the extent to which the cost estimate relies on time spent searching correspondence, the PCC could have, for example, advised the complainant to refine his request to cover only meetings recorded in the PCC's diary.
21. For these reasons the Commissioner finds that the PCC breached section 16(1) in this case by failing to meet its obligation to provide advice and assistance. At paragraph 3 above it is now required to respond to the complainant with advice on how his request could be refined to bring it within the cost limit.

Right of appeal

22. 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: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

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

23. 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.
24. 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

Jon Manners
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