

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 13 June 2018

**Public Authority:** Crown Prosecution Service  
**Address:** Rose Court  
2 Southwark Bridge  
London  
SE1 9HS

#### Decision (including any steps ordered)

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1. The complainant requested information relating to speeding offence prosecutions.
2. The Crown Prosecution Service (CPS) refused to comply with the request on the basis that to do so would exceed the appropriate limit in costs set by section 12(1) (cost of compliance) of the FOIA.
3. The Commissioner's decision is that the CPS correctly applied section 12(1) and found that there is no breach of section 16(1) (duty to provide advice and assistance) of the FOIA.
4. She requires no steps to be taken as a result of this decision.

#### Request and response

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5. On 1 February 2018, the complainant wrote to the CPS and requested information in the following terms:  

*"Please inform me how many speeding offence prosecutions via mobile cameras, failed in court eg defendant found not guilty, over the last five years within England and Wales".*
6. The request was made using the 'whatdotheyknow' website.
7. The CPS responded on 22 February 2018. It refused to provide the requested information, citing section 12(1) (cost of compliance exceeds

the appropriate limit) of the FOIA. It provided advice in accordance with section 16 (duty to advice and assistance) of the FOIA.

8. Following an internal review the CPS provided an internal review on 27 February 2018 in which it maintained its original position.

## Scope of the case

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9. The complainant contacted the Commissioner on 27 February 2018.
10. The analysis below considers the CPS's application of section 12 of the FOIA to the requested information. The Commissioner has also considered whether the CPS provided appropriate advice and assistance under section 16 of the FOIA.

## Reasons for decision

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### *Section 12 cost of compliance exceeds appropriate limit*

11. Section 12(1) of the 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".*

12. This limit is set in the fees regulations at £600 for central government departments, including the CPS, and £450 for all other public authorities. 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 24 hours in this case.

### *Would complying with the request exceed the appropriate limit?*

13. 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:
  - determining whether it holds the information;
  - 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.

14. The four activities are sequential, covering the retrieval process of the information from the public authority's information store.

15. The complainant expressed surprise at the CPS's application of section 12(1) of the FOIA in this case. He told the CPS:

*"I am sure this information is now stored on your IT system".*

16. In response to the request, the CPS told the complainant:

*"The CPS does not centrally record this information".*

17. In correspondence with the complainant the CPS told him:

*"Speeding offences are specified proceedings. These are low level offences which the police prosecute in order to reduce unnecessary bureaucracy and ensure swifter justice. The CPS will only prosecute a specified offence in cases where a not guilty plea has been entered. Specified proceedings are designated by the Prosecution of Offences Act L985 (Specified Proceedings) Order L999 (the 1999 order) which are commenced by the police in accordance with Section 12 Magistrates' Courts Act 1980. It follows that offences of speeding, recorded by the CPS in the Case Management System, are those which the CPS have taken conduct of when the proceedings have ceased to be specified".*

18. It confirmed that the CPS held the number of speeding offences in which a prosecution commenced for the last 5 years. However, it advised that, in order to identify the outcome of the prosecution or the method by which the offence has been captured, would require a manual review of individual case files.

19. The CPS stated that it believed that the cost of manually reviewing 56,545 speeding offences would exceed the appropriate limit.

20. During the course of the Commissioner's investigation, the CPS was asked to provide more detail in respect of its application of section 12.

21. In its submission to the Commissioner, the CPS confirmed what it had told the complainant about the need to look through individual case files. It explained how it records prosecution proceedings against defendants on its Case Management System (CMS) and subsequently reports completed prosecution outcomes via the Management Information System (MIS).

22. It told the Commissioner:

*"Defendants are individually registered on the CMS, and at finalisation the outcome of the prosecution is extracted, as*

*anonymised data, into the MIS database. The records held within the MIS may be reported by volume and outcome type but cannot be further disaggregated by the outcome of the prosecution or the method by which offence has been captured as this would require a manual review of individual case files"*

23. The CPS provided the Commissioner with a breakdown, taken from its IT system, of the number of offences over the last five years which would need to be considered in order to respond to the request.

24. It told the Commissioner that:

*"... the only and most effective way to extract the required information is to manually review all 56,545 offences individually..."*.

25. In its correspondence with the Commissioner, the CPS confirmed that the time taken to comply with this request in its entirety would be 56,545 case files x 0.25 hours per case file.

26. In support of its estimate of 0.25 hours per case file, the CPS told the Commissioner:

*"The CPS regularly undertakes extensive evidence-based exercise to assess our casework quality. This involves review of individual case files which includes checking the case papers submitted by the investigatory authorities to the CPS. Based on this exercise, we have established that a review of an individual case file would require at least 15 minutes to complete, depending on the complexity of cases"*.

27. The CPS provided the Commissioner with a copy of its calculation in support of its estimate that it would take significantly more than 24 hours to respond to the request in this case.

#### *The Commissioner's view*

28. When dealing with a complaint to her under the FOIA, it is not the Commissioner's role to make a ruling on 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, the Commissioner's role is simply to decide whether the requested information can, or cannot, be provided to a requestor within the appropriate costs limit.

29. In essence, therefore, this case turns on whether the estimate provided by the CPS was reasonable.

30. The Commissioner considers that a reasonable estimate is one that is *"....sensible, realistic and supported by cogent evidence"*.

31. In this case, the CPS presented arguments which focused on it having recorded more than 56,000 speeding offences in which a prosecution commenced over the last five years.
32. Even if the CPS's estimate of the time taken to review the information was excessive, from the evidence she has seen during the course of her investigation, the Commissioner is satisfied that the CPS has demonstrated that it would exceed the appropriate limit to locate, retrieve and extract the requested information.
33. Section 12(1) does therefore apply and the CPS is not required to comply with the request.

*Section 16 advice and assistance*

34. 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 "*so far as it would be reasonable to expect the authority to do so*".
35. In her guidance<sup>1</sup> '*Requests where the cost of compliance exceeds the appropriate limit*', the Commissioner considers the provision of advice and assistance. She states:

*"In cases where it is reasonable to provide advice and assistance in the particular circumstances of the case, the minimum a public authority should do in order to satisfy section 16 is:*

- 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 requestor to make a refined request".*

36. 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.

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<sup>1</sup> [https://ico.org.uk/media/for-organisations/documents/1199/costs\\_of\\_compliance\\_exceeds\\_appropriate\\_limit.pdf](https://ico.org.uk/media/for-organisations/documents/1199/costs_of_compliance_exceeds_appropriate_limit.pdf)

37. The Commissioner is mindful that in this case, the CPS did not indicate to the complainant what information could be provided within the appropriate limit. During her investigation, the CPS told the Commissioner that it would only be able to look through 100 case files before triggering the section 12 exemption.
38. The Commissioner does, however, acknowledge that the CPS advised the complainant that the Ministry of Justice (MoJ) may hold more precise information relating to his request.
39. In the circumstances of this case, the Commissioner is satisfied that the CPS provided reasonable advice and assistance to the complainant and therefore complied with section 16(1) of the FOIA.

## Right of appeal

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40. 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](mailto:GRC@hmcts.gsi.gov.uk)  
Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

41. 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.

42. 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 .....**

**Deborah Clark  
Group Manager  
Information Commissioner's Office  
Wycliffe House  
Water Lane  
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SK9 5AF**