

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 5 February 2019

Public Authority: Chief Constable of Staffordshire Police
Address: Staffordshire Police Headquarters
Weston Road
Stafford
ST18 0YY

Decision (including any steps ordered)

1. The complainant requested statistical information about the number of documents held by Staffordshire Police in relation to individuals who identify as a gender other than male or female.
2. Staffordshire Police 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 Staffordshire Police 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. The Commissioner requires no steps to be taken as a result of this decision.

Request and response

5. On 7 October 2018, the complainant wrote to Staffordshire Police and requested information in the following terms:

"Please can you provide statistical information concerning how many documents are held by the Staffordshire Police in relation to individuals who identify as a gender other than male or female, including outlining in your response what these alternative genders reportedly are".

6. Staffordshire Police responded on 23 October 2018: it refused to provide the requested information, citing section 12 (cost of compliance) of the FOIA. It also told the complainant that it was unable to suggest any way in which his request could be refined to allow it to be serviced within the time and cost threshold.
7. The complainant requested an internal review on 25 October 2018.
8. Prior to progressing his request for an internal review, Staffordshire Police sought clarification from the complainant about the wording of his request. The complainant confirmed that his request was for *'all information held'* in relation to the given criteria.
9. Staffordshire Police provided an internal review on 7 November 2018 in which it maintained its original position.

Scope of the case

10. The complainant contacted the Commissioner on 11 November 2018 to complain about the way his request for information had been handled.
11. He disputed Staffordshire Police's application of section 12 in this case.
12. The complainant also raised other issues that are not addressed in this Notice because they are not requirements of Part I of the FOIA.
13. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part I of the FOIA.
14. The analysis below considers Staffordshire Police's application of section 12(1) of the FOIA to the requested information. The Commissioner has also considered whether Staffordshire Police provided reasonable advice and assistance to the complainant at the time the request was made.

Reasons for decision

Section 12 - cost of compliance

15. 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".

16. This limit is set in the Freedom of Information and Data Protection Regulations 2004 (the fees regulations) at £600 for central government departments 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 18 hours in this case.

Would complying with the request exceed the appropriate limit?

17. 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.

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

19. In correspondence with the complainant, Staffordshire Police told him:

"The issue is that the vast majority of Staffordshire Police's electronic databases and 'hard copy' forms do not provide the option for an individual to identify themselves as anything other than male or female".

20. It confirmed that if somebody wished to identify as something other than male or female:

"... this would be recorded but not in an easily retrievable way".

21. By way of example, Staffordshire Police told the complainant:

"For example the victim of a crime can only be recorded as male or female on our crime database but if the complainant wished to be identified as anything else reference to this would be likely to be recorded within the text of the crime report".

22. It also confirmed that some forms used by Staffordshire Police have a blank box for the option of gender, but told him that that there is no way of easily researching this.

23. With regard to the volume of information within the scope of his request, Staffordshire Police explained that, due to the way the

information was captured, there was no way of complying with his request:

"... without trawling through virtually every document held by Staffordshire Police in which a person's details have been recorded".

24. It ultimately told him:

"Potentially millions, not thousands, of records would need to be researched".

25. During the course of the Commissioner's investigation, Staffordshire Police was asked to provide more detail in respect of its application of section 12, including a description of the work that would need to be undertaken in order to provide the requested information.

26. In its submission to the Commissioner, Staffordshire Police told her that to determine which of its systems have the facility to record gender other than male or female:

"...would require contacting every system administrator to explain how that particular system records the information".

27. Referring to a sampling exercise that had been carried out, Staffordshire Police told the Commissioner:

"Using the current Crime Management system & Command & Control system as examples

To manually read 1 record on these systems to obtain gender detail in the body of the text would take at a minimum:

Command & Control average timings for a 4 page report 15 minutes this would therefore equate to 48,071,75 (todays total record number) x 15 = 1,201,794 hours

Crime Management system for a 8-10 page log 15 minutes this would therefore equate to 10,124,44 (todays total record number) x 15 = 253,111 hours".

28. In addition, Staffordshire Police told the Commissioner that it would also be necessary to search its paper archive records and its files held in external storage in order to respond to the request.

29. In its submission to the Commissioner, Staffordshire Police told her that it does have some systems that provide the option for an individual to identify themselves, in a retrievable way, as anything other than male or female. For example, it told her:

"Our application forms do have male/female/non-binary/transgender/prefer to self-describe & prefer not to say options on them..."

30. In that respect, Staffordshire Police told the Commissioner:

"The FOI team considered providing the applicant with this information however it does not fully answer the question asked and could prove to be misleading as it suggests that we can record options other than male/female when this is not the case on the majority of our systems"

The Commissioner's view

31. The Commissioner notes that the complainant considered the way Staffordshire Police recorded its information to be, amongst other things, *"insensitive"* and *"outdated"*.

32. 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.

33. With respect to Staffordshire Police's observations about having some systems that enable it to capture relevant information, the Commissioner accepts that her guidance on section 12¹ states:

"As a matter of good practice, public authorities should avoid providing the information found as a result of its searching and claiming section 12 for the remainder of the information. It is accepted that this is often done with the intention of being helpful but it ultimately denies the requestor the right to express a preference as to which part or parts of the request they may wish to receive which can be provided under the appropriate limit"

34. Section 12(1) requires a public authority to estimate the cost of a request; it is not required to calculate the exact cost of the request. The question for the Commissioner here is whether the estimate made by

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

Staffordshire Police of the cost of this request was reasonable. If the Commissioner concludes that it was reasonable for Staffordshire Police to estimate that the cost of this request would exceed the limit of £450, section 12(1) will apply and Staffordshire Police was not obliged to comply with the complainant's information request.

35. In her guidance on section 12, the Commissioner, following the lead of the then Information Tribunal, considers that a reasonable estimate is one that is:

"...sensible, realistic and supported by cogent evidence".

36. While acknowledging that it is not a statutory requirement to explain how the estimate has been calculated, the Commissioner considers it is beneficial to do so:

"... to enable the requestor to assess the reasonableness of the estimate".

37. In this case, the Commissioner is satisfied that, in its correspondence with the complainant, Staffordshire Police explained why the request had been refused and provided him with details of the number of records that would need to be reviewed.
38. The Commissioner has considered the arguments put forward by Staffordshire Police in support of the reasonableness of its estimate.
39. She is also mindful of the wording of the request in this case and of the clarification the complainant provided regarding the scope of his request. She notes that his request was for statistical information about how many documents Staffordshire Police held, and did not specify any particular type of document.
40. Even if Staffordshire Police's estimate of the time taken, per record, to locate and extract the information was excessive, from the evidence she has seen during the course of her investigation, the Commissioner is satisfied that Staffordshire Police has demonstrated that it would exceed the appropriate limit to locate, retrieve and extract the requested information.
41. Section 12(1) does therefore apply and Staffordshire Police is not required to comply with the request.

Section 16 advice and assistance

42. 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"*.

43. In her guidance referred to above, 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".

44. 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.

45. In this case, Staffordshire Police initially told the complainant:

"Unfortunately I am not able to suggest any way in which your request could be refined to allow it to be serviced within the time and cost threshold".

46. In the course of its internal review, Staffordshire Police sought clarification from the complainant regarding the nature of his request.

47. Having received that clarification, confirming that the request *"doesn't stipulate any precise type of documents or provide a particular time period"*, Staffordshire Police told him that there was nothing further it could usefully add.

48. In the circumstances of this case, the Commissioner is satisfied that Staffordshire Police provided the complainant with reasonable advice and assistance and therefore that it complied with section 16(1).

Right of appeal

49. 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: www.justice.gov.uk/tribunals/general-regulatory-chamber

50. 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.
51. 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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