

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 6 January 2022

Public Authority: Chief Constable of Dyfed Powys Police
Address: Police Headquarters
PO Box 99
Llangunnor
Carmarthen
SA31 2PF

Decision (including any steps ordered)

1. The complainant requested information from Dyfed Powys Police ("DPP") relating to the forms used by officers to request examination of digital devices.
2. The Commissioner's decision is that DPP were entitled to refuse to comply with the request under section 12(2) of the FOIA, and that they had complied with their obligations under section 16(1) of the FOIA to provide adequate advice and assistance to the complainant.
3. The Commissioner does not require the public authority to take any further steps.

Request and response

4. On 14 March 2021, the complainant wrote to DPP and requested information in the following terms:

"1. Please provide copies of any forms officers must complete to request the examination of the contents of digital devices e.g. laptops and phones. If no forms are used and details are instead input on a computer, please provide relevant screenshots.

- 2. Please provide all guidance available to officers to assist them in requesting the examination of the contents of digital devices.*
 - 3. Please provide the name of the department responsible for examining the contents of digital devices and state the number of staff it employs (WTE).*
 - 4. If your force uses portable devices that allow officers to download the contents of people's digital devices, please state the number of such devices you have.*
 - 5. For the year 2019/20, please provide the total number of examinations of digital devices you carried out.*
 - 6. For 2019/20, please provide the number of digital devices earmarked for download recorded as lost either before or after examination, if any."*
5. DPP responded on 14 April 2021, stating they required more time in order to consider a potential exemption at Section 31(1)(a)(b) Law Enforcement.
 6. They further responded to the complainant on 10 May 2021, saying they were unable to confirm or deny whether they held the requested information for question 6 since they considered to retrieve the information would invoke section 12(2) FOIA. However, they supplied information to questions 3 – 5, 'as a gesture of goodwill'.
 7. DPP upheld their response at internal review on 19 May 2021, relying on section 12(2) of the FOIA. However, under section 16 (advice and assistance) of the FOIA, they reiterated that a new request, limited to questions 1 and 2, may enable them to comply with a request for that information.

Scope of the case

8. The complainant contacted the Commissioner on 22 May 2021 to complain about the way their request for information had been handled.
9. The Commissioner considers the scope of this case is to determine if the public authority has correctly cited section 12(2) of the FOIA in response to the request.

Reasons for decision

Section 12 – cost of compliance exceeds the appropriate limit

10. Section 1(1) of the FOIA states that:

"(1) Any person making a request for information to a public authority is entitled –

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him."

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. Section 12(2) of FOIA states that:

"Subsection (1) does not exempt the public authority from its obligation to comply with paragraph (a) of section 1(1) unless the estimated cost of complying with that paragraph alone would exceed the appropriate limit."

13. The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ("the Regulations") sets the appropriate limit at £450 for the public authority in question. Under the Regulations, a public authority may charge a maximum of £25 per hour for work undertaken to comply with a request. This equates to 18 hours work in accordance with the appropriate limit set out above.

14. Section 12(2) requires a public authority to estimate the cost of confirmation or denial, rather than to formulate an exact calculation. However, there is no statutory requirement under section 17 for the refusal notice to include an estimate of the costs involved, or any other explanation of why the cost limit would be exceeded.

15. The issue for the Commissioner to decide is whether the cost estimate was reasonable. If it was, section 12(2) is engaged and DPP were not obliged to confirm or deny whether the requested information was held.

Would confirmation or denial exceed the appropriate limit?

16. A public authority is only required to provide a reasonable estimate, rather than a precise calculation, of the cost of complying with the

request, and in putting together its estimate it can take the following processes into consideration:

- 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.
17. 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. In accordance with the First-Tier Tribunal decision in the case of *Randall v IC & Medicines and Healthcare Products Regulatory Agency EA/20017/0004*¹, the Commissioner considers that any estimate must be "*sensible, realistic and supported by cogent evidence*".
18. Where a public authority claims that section 12 of the FOIA is engaged it should, where reasonable, provide advice and assistance to help the applicant refine the request so that it can be dealt with under the appropriate limit, in line with section 16(1) of the FOIA.

DPP's position

19. DPP informed the Commissioner that when the request was initially received, work was undertaken to confirm if the information was held. It explained that in order to specifically answer question 6, they would need to ask every officer to search for their own submissions as the information was not held centrally and was the responsibility of the Officer In the Case (OIC). DPP estimate that this would take 5 minutes per submission. This information would then need to be cross referenced to check if an item was lost either before or in the process of submission.
20. DPP explained that it became apparent that the work involved to obtain the initial information would exceed the cost limit. It advised that it would take approximately 5 minutes to review each record (as mentioned above) which equates to a minimum of 99 hours (1196 officers x 5 minutes = 99.67 hours). If the time taken could be reduced to 1 minute, that would equate to a minimum of 20 hours, which would

¹<https://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i136/Randall.pdf>

still exceed the appropriate amount, and didn't include further work required to establish it's context with regard to question 6.

21. DPP further explained to the Commissioner that the estimate was purely to establish if any information was in scope of question 6, before any further cross referencing or further work was undertaken to determine if any relevant information was actually held.

The Commissioner's conclusion

22. By virtue of section 12(2) of FOIA a public authority is not required to comply with the duty in section (1)(1)(a) of FOIA (i.e., to confirm or deny whether the requested information is held) if to do so would exceed the appropriate limit.

23. Paragraph 6.6 of the FOI Code of Practice also states:

"Public authorities do not have to search for information in scope of a request until the cost limit is reached, even if the applicant requests that they do so. If responding to one part of a request would exceed the cost limit, public authorities do not have to provide a response to any other parts of the request."²

24. In the circumstances of this case, as DPP has found that complying with part of the request would exceed the cost limit, they are not obliged to respond to the remainder of the request in its entirety.
25. The Commissioner's guidance states that whilst a public authority may search up to or even beyond the appropriate limit of its own volition, there is no requirement for a public authority to do so. For more information, see paragraph 28 onwards of the Commissioner's guidance on costs of compliance exceeds appropriate limit.³
26. The Commissioner acknowledges that the complainant believes that DPP should be able to supply the information he has requested. He accepts that, in correspondence with the Commissioner about DPP's application of section 12, the complainant argued that they believed it would not

² [CoP FOI Code of Practice - Minor Amendments 20180926 .pdf](https://publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/684222/CoP_FOI_Code_of_Practice_-_Minor_Amendments_20180926_.pdf)
(publishing.service.gov.uk)

³ https://ico.org.uk/media/for-organisations/documents/1199/costs_of_compliance_exceeds_appropriate_limit.pdf

exceed the section 12 limit for DPP to provide the relevant information, and that other police forces have been able to supply the relevant data.

27. However, when dealing with a complaint to him under 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 oppose to any other way. Rather, in a case such as this, the Commissioner's role is simply to decide whether the public authority can confirm, within the appropriate costs limit, whether information falling within the scope of the request is held.
28. During the investigation, DPP provided the Commissioner with a detailed explanation of what it would need to do to obtain the requested information. The Commissioner accepts that DPP's estimates are reasonable and that it would exceed the appropriate limit to obtain the information.
29. The Commissioner therefore considers that DPP estimated reasonably that the request could not be answered within the cost limit, and as such, DPP was entitled to rely on section 12(2) of the FOIA to refuse the request.

Section 16(1) – duty to provide advice and assistance

30. Section 16 of the FOIA states:

"(1) It shall be the duty of a public authority to provide advice and assistance, so far as would be reasonable to expect the authority to do so, to persons to propose to make, or have made, requests for information to it.

(2) Any public authority which, in relation to the provision of advice or assistance in any case, conforms with the code of practice under section 45 is to be taken to comply with the duty imposed by subsection (1) in relation to that case."

31. The Commissioner's view is that, where a public authority refuses a request under section 12(2) of the FOIA, section 16(1) creates an obligation to provide advice and assistance on how the scope of the request could be refined or reduced to avoid exceeding the appropriate limit.
32. In this case, DPP advised the complainant at review stage, that if he narrowed the scope of his request to points 1 and 2, it may be able to comply with a request for information.

33. The Commissioner has considered the advice and assistance provided to the complainant by DPP, and Paragraph 6.9 of the FOI Code of Practice advises that helping an applicant narrow the scope of their request may include suggesting that the subject or timespan of the request is narrowed.
34. The Commissioner considers that the advice and assistance DPP offered the complainant was adequate. The Commissioner is therefore satisfied that DPP has complied with its obligations under section 16(1) of the FOIA in its handling of this request.

Right of appeal

35. 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@justice.gov.uk

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

36. 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.
37. 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

Phillip Angell
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF