

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 13 December 2023

**Public Authority:** Chief Constable West Midlands Police

**Address:** Lloyd House  
Colmore Circus  
Birmingham  
B4 6NQ

#### **Decision (including any steps ordered)**

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1. The complainant has requested information relating to lost or stolen vehicles. West Midlands Police ("WMP") refused to comply with the request, citing section 12 (cost of compliance) of FOIA as its basis for doing so.
2. The Commissioner's decision is that WMP was entitled to refuse to comply with the request in accordance with section 12(1) of FOIA. The Commissioner also finds that WMP complied with its obligations under section 16 to offer advice and assistance.
3. The Commissioner does not require WMP to take any further steps.

#### **Request and response**

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4. On 22 August 2023, the complainant wrote to WMP and requested information in the following terms:

"Please provide the following information in accordance with the Freedom of Information Act, since 01/01/2022 in excel format:

- i. Vehicles/VRMs\*, make and model, reported stolen with the date of loss
- ii. Of the above (at 'i') those recovered – the date of recovery
- iii. Of the above (at 'i') those that were 'weeded'\*\* with the date of said weeding
- iv. Of the above (at 'iii') the date the VRMs were reinstated on PNC [Police National Computer] LoS [lost or stolen]
  - a. The above should determine/identify those currently weeded, the date they were weeded, but have yet to be reinstated
- v. The PNC policy/advice (PNC manual information) relating to recording a vehicle LoS on PNC and policy relating to 'weeding'
- vi. Your constabulary's policy with regard to recording a vehicle LoS on PNC and your policy relating to 'weeding' – the actions to be taken from notification of theft, confirmation of the crime, use of PNC 150(?), in the event of weeding, to finalisation and with whom responsibility rests during the life of the crime

\*In the event you are not prepared to release the full VRM, I believe the first 4 characters can be supplied

\*\*understood to be the process of an 'unconfirmed' LoS report 'falling off' (being automatically removed) from PNC LoS after about 6 weeks from the initial recording of LoS on PNC"

5. WMP responded on 20 September 2023. It stated that locating and retrieving the requested information would far exceed the appropriate limit, therefore it cited section 12 of FOIA. It also provided advice as to how the request could be refined in order that it may be dealt with under the appropriate limit.
6. Following an internal review WMP wrote to the complainant on 2 October 2023. It maintained its reliance on section 12 of FOIA to refuse the request.

## Reasons for decision

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### Section 12 – cost of compliance

7. Section 12(1) of FOIA states that a public authority is not obliged to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the "appropriate limit"

as set out in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ("the Fees Regulations").

8. The appropriate limit is set in the Fees Regulations at £600 for central government, legislative bodies and the armed forces and at £450 for all other public authorities. The appropriate limit for WMP is £450.
9. 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 for WMP.
10. Regulation 4(3) of the Fees Regulations states that a public authority can only take into account the cost it reasonably expects to incur in carrying out the following permitted activities in complying with the request:
  - 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.
11. 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.
12. However, it must be a reasonable estimate. In accordance with the First-tier Tribunal in the case of *Randall v Information Commissioner & Medicines and Healthcare Products Regulatory Agency EA/2007/0004*, the Commissioner considers that any estimate must be "sensible, realistic and supported by cogent evidence". The task for the Commissioner in a section 12 matter is to determine whether the public authority made a reasonable estimate of the cost of complying with the request.
13. Section 12 is not subject to a public interest test; if complying with the request would exceed the cost limit then there is no requirement under FOIA to consider whether there is a public interest in the disclosure of the information.
14. Where a public authority claims that section 12 of FOIA is engaged it should, where reasonable, provide advice and assistance to help the requester refine the request so that it can be dealt with under the appropriate limit, in line with section 16 of FOIA.

### **Would the cost of compliance exceed the appropriate limit?**

15. In this case, based on the estimate that WMP provided in its response to the request, the Commissioner was satisfied that a decision could be reached without seeking further submissions from WMP.
16. WMP explained that the data is not recorded in such a way that would allow it to comply with the request in full within the appropriate limit. LoS vehicles is not a mandatory field within WMPs systems, nor is LoS always entered into the originator line within the system. Sometimes the data is inputted using a log number due to the originator line being a free text format. Therefore, it is not possible to retrieve all relevant records via a simple automated search and filter approach. All records that contain an update and log number would need to be located, retrieved and manually reviewed to determine if they contain information falling within the scope of the request.
17. In order to produce an estimate of the time/cost required to comply with the request in full, WMP conducted a sampling exercise using the first 3 months of 2022. This produced 1906 records which may fall within the scope of the request, and WMP allowed 5 minutes to review each record to determine if it contains relevant information. This totalled 158 hours of work required to review just 3 months worth of records, meaning the time required to consider all potentially relevant records across the whole timeframe specified in the request would be approximately 1106 hours.
18. WMP did not explain why it would take as long as 5 minutes to review each record. However, the Commissioner's published guidance<sup>1</sup> explains that an estimate does not have to show the exact cost of complying with the request. It simply has to be robust enough to establish whether the request would exceed the appropriate limit. In some cases, a quick calculation will be all that is needed to show that the cost would clearly be above or below the limit. In this case, even if WMP allowed for a much more conservative estimate of only 1 minute per record the total would still clearly be a long way over the appropriate limit.
19. The Commissioner notes that in their internal review request the complainant stated "Please clearly explain which, if any, question causes section 12 to be engaged and remove this". However, it is not the responsibility of the public authority to choose how to refine a request in

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<sup>1</sup> <https://ico.org.uk/for-organisations/foi-eir-and-access-to-information/freedom-of-information-and-environmental-information-regulations/section-12-requests-where-the-cost-of-compliance-exceeds-the-appropriate-limit/#produce-an-estimate>

a section 12 matter. Nor is a public authority obliged to comply with a request up to the point at which it reaches the appropriate limit. The public authority's responsibility is to sufficiently demonstrate why section 12 of FOIA is engaged, and to offer advice and assistance in order that the complainant may refine the request themselves.

20. The Commissioner considers that WMP estimated reasonably that it would take more than the 18 hours/£450 limit to comply with the request. WMP was therefore entitled to rely on section 12(1) of FOIA to refuse the request.

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

21. Section 16(1) of FOIA provides that a public authority should give advice and assistance to any person making an information request. Section 16(2) clarifies that, providing an authority conforms to the recommendations as to good practice contained within the section 45 code of practice<sup>2</sup> in providing advice and assistance, it will have complied with section 16(1).
22. The Commissioner notes that WMP provided suggestions of how the complainant may rephrase or refocus each part of the request in order that it may be able to deal with the request within the appropriate limit. The Commissioner is therefore satisfied that WMP met its obligations under section 16 of FOIA.

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<sup>2</sup> <https://www.gov.uk/government/publications/freedom-of-information-code-of-practice>

## Right of appeal

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23. 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: 0203 936 8963

Fax: 0870 739 5836

Email: [grc@justice.gov.uk](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

24. 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.
25. 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 .....**

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