

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 9 May 2024

Public Authority: Chief Constable of Greater Manchester Police
Address: GMP Headquarters
Central Park
Northampton Road
Manchester
M40 5BP

Decision (including any steps ordered)

1. The complainant made a request for information relating to cases referred to the Crown Prosecution Service (CPS), outsourcing operational activities and the employees at Greater Manchester Police (GMP). GMP refused to provide the requested information saying that to do so would exceed the appropriate limit at section 12(1) (cost of compliance) of the FOIA.
2. The Commissioner's decision is that, in respect of requests one, two and three GMP was entitled to aggregate these requests and rely on section 12(1). The Commissioner does not agree that requests four to eight can be aggregated with the rest. The Commissioner also finds that GMP did not comply with its section 16(1) obligation to offer advice and assistance.
3. The following steps are required:
 - Issue fresh responses to requests four to eight.
 - Provide the complainant with appropriate advice and assistance in respect of requests one, two and three or state that they cannot be meaningfully refined.
4. GMP must take these steps within 30 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 Act and may be dealt with as a contempt of court.

Request and response

5. On 9 November 2023, the complainant wrote to GMP and requested information in eight separate requests in the following terms:

"1. Where someone reports something to Greater Manchester Police (GMP), what percentage of cases are referred to the Crown Prosecution Service and how does this differ depending on which internal department/area in GMP decides whether to make the referral or not?

2. Where someone reports something to Greater Manchester Police (GMP), what percentage of cases are referred to the Crown Prosecution Service and please can this be broken down across each of the 10 constituent local authorities of Greater Manchester? The location is in reference to where the person making the report lives at the time of making the report.

3. Where someone reports something for Greater Manchester Police, what percentage of cases are referred to the Crown Prosecution Service and please can this be broken down by each council ward across each of the 10 constituent local authorities of Greater Manchester? The location is in reference to where the person making the report lives at the time of making the report.

4. Does Greater Manchester Police outsource any (operational) activities to private security firms and, if yes, what are these activities, what are names of the private security firms and how much is spent?

5. How many and what percentage of employees in Greater Manchester Police (GMP) have written contracts of employment? How does this percentage differ by the employees' functions and departments?

6. How many and what percentage of employees of Greater Manchester police need to view members of the public's social media profiles, pages, posts and presence as part of their work, how does this differ according to the employees' functions and departments and, lastly, provide estimates of percentages of these employees' time spent on such activities?

7. What percentage of GMP's employees work unpaid hours on top of their conditioned hours? Where this is greater than 0, please provide summary and descriptive statistics (e.g. range, mean, median, mode, percentiles/quartiles) for the past 5 financial years?

8. Where this is recorded, how many employees of GMP have been offered bribes (including how many bribes offered in total) over the past 30 financial years?"
6. GMP responded on 4 September 2023 stating that the cost threshold had been exceeded with the first two parts of the request and it was refusing the request under section 12(1) of the FOIA.
7. GMP conducted an internal review on 26 January 2024 maintaining its original position.

Scope of the case

8. The complainant contacted the Commissioner on 10 November 2023 to complain about the way his request for information had been handled.
9. The Commissioner considers the scope of this case to be to determine whether GMP is able to rely on section 12 of the FOIA to refuse the requests.

Reasons for decision

Section 12(4) – aggregation of related requests

10. When a public authority is estimating whether the appropriate limit is likely to be exceeded, it can include the costs of complying with two or more requests if the conditions laid out in regulation 5 of the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ("the Fees Regulations") can be satisfied.
11. Regulation 5 of the Fees Regulations states:
 - “(1) In circumstances in which this regulation applies, where two or more requests for information to which section 1(1) of the 2000 Act would, apart from the appropriate limit, to any extent apply, are made to a public authority –
 - (a) by one person, or
 - (b) by different persons who appear to the public authority to be acting in concert or in pursuance of a campaign, the estimated cost of complying with any of the requests is to be taken to be the total costs which may be taken into account by the authority, under regulation 4, of complying with all of them.

(2) This regulation applies in circumstances in which – (a) the two or more requests referred to in paragraph (1) relate, to any extent, to the same or similar information, and (b) those requests are received by the public authority within any period of sixty consecutive working days.

(3) In this regulation, “working day” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in any part of the United Kingdom.”

12. The Commissioner has reviewed the complainant’s eight separate requests aggregated by GMP. These requests were submitted on the same day, 9 November 2023. He is satisfied that all eight requests were made by the same complainant and within 60 working days of each other, fulfilling the criteria at regulations 5(1)(a) and 5(2)(b).
13. The Commissioner must now consider whether these requests relate, to any extent, to the same or similar information. The Commissioner’s view on aggregating requests can be found in the guidance on requests where the cost of compliance exceeds the appropriate limit (see footnote 2 above).
14. Paragraphs 44 and 45 of this guidance state:

‘Regulation 5(2) of the Fees Regulations requires that the requests which are aggregated relate “to any extent” to the same or similar information. This is quite a wide test, but public authorities should still ensure that the requests meet this requirement.

A public authority needs to consider each case on its own facts, but requests are likely to relate to the same or similar information where, for example, the requestor has expressly linked the requests, or where there is an overarching theme or common thread running between the requests in terms of the nature of the information that has been requested.’
15. Clearly all parts of the request are made by the same party and were all made in one request on the same date. However, whilst part one to three of the request all relate to referrals to the CPS, part four refers specifically to outsourcing and the remaining questions relate to the general activity of GMP’s employees. The involvement of the CPS was an overarching theme of parts one to three, but that theme does not apply to any of the other parts.
16. The Commissioner is therefore not satisfied that GMP was entitled to aggregate all eight parts of the request as he considers that they do not

all have one overarching theme. He is however satisfied that the first three parts of the request relate to the same subject matter and he has been provided with sufficient detail to enable him to consider the application of section 12(1) to these parts below.

Section 12 – cost of compliance

17. 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”).
18. The appropriate limit is set in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 at £600 for central government, legislative bodies and the armed forces and at £450 for all other public authorities. The appropriate limit for GMP is £450.
19. 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 GMP.
20. 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
21. 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. 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.
22. 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.

23. 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?

24. In its submission to the Commissioner, GMP stated the following:

"In respect of Question 1 of the FOI, the applicant has stated "...where [someone reports something] to Greater Manchester Police (GMP), what percentage of cases are referred to the Crown Prosecution Service and how does this differ depending on which internal department/area in GMP decides whether to make the referral or not?". Similarly for Question 2, the applicant has also stated "...someone reports something". By using this quote, the searches have been conducted for data from all reported incidents to GMP as "something" is not a search parameter in the system. In addition, there is no timeframe for the search and therefore this would involve extensive searches as we would need to search every recording system for historic data including physical documents which GMP holds."

25. GMP explained that upon conducting its initial searches on its electronic systems, the number of reported records in accordance with the request totals to 939,549. It explained that due to the current capabilities of GMP's systems, it cannot search or accurately determine whether a reported incident was "referred" to the Crown Prosecution Service (CPS).
26. GMP explained to the Commissioner that to identify the records that are referred to the CPS, this would require a manual search of all records as GMP systems do not have a filter and tools to collate this data promptly. It stated that it would therefore be required to search and validate the record, determining if it is linked to a crime and if a Pre-Trial Issue (PTI) file has been created. It explained that it would need to review the PTI file in order to view if the case was referred to the CPS, and in the interests of accuracy, the manual review would also require a check to see whether the record was one of the multiple reports of the same incident.
27. GMP confirmed that a sampling exercise was conducted specifically for this request, it confirmed that the estimate has been based upon the quickest method. It stated that the exercise indicated that on average each record would take 10 minutes to search, review and validate the data contained within the record. It therefore estimated that it would take 9,394,490 minutes to manually review each record which would equate to 156,574 hours.

28. The Commissioner is satisfied that the broad nature of the request means that there is a large volume of information that GMP would need to review, and even if GMP were to halve the estimate, it would take far more than 18 hours to comply with the request.
29. The Commissioner therefore accepts that GMP was correct to apply section 12(1) of FOIA to parts one, two and three of the complainant's request.
30. As per his analysis regarding aggregation above, the Commissioner does not consider that parts four to eight of the request fall within the same overarching theme as the other three. They cannot be aggregated with those parts of the request, however this does not mean requests four to eight cannot be aggregated separately. The Commissioner does not have sufficient evidence before him to determine whether any the remaining parts of the request either collectively or individual could be responded to without breaching the cost limit.
31. The Commissioner therefore requires GMP to issue a fresh response to requests four to eight.

Section 16 – the duty to provide advice and assistance

32. Section 16 of FOIA requires public authorities to provide reasonable advice and assistance to those making, or wishing to make, information requests.
33. When a public authority refuses a request because the cost of compliance exceeds the appropriate limit, it should explain, to the requester, how they could refine their request such that it would fall within that limit. In rare cases, it will be appropriate for the public authority to explain to the requester why their request cannot be meaningfully refined.
34. In its submission to the Commissioner, GMP explained that it advised the complainant to refine their request to specific question(s) which could result in the response being within the appropriate cost limit. It explained that if the scope of the request is narrowed, the time taken to locate and review the information would be far less than a voluminous request.
35. In this case, GMP does not appear to have provided any meaningful advice and assistance to the complainant – or explained why it is unable to do so.
36. The Commissioner is therefore satisfied that GMP did not comply with section 16 of FOIA when dealing with this request.

37. GMP must now provide reasonable advice and assistance, to the complainant, to help them refine their requests in regards to requests one, two and three or state that they cannot be meaningfully refined.

Right of appeal

38. 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

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

39. 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.
40. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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