

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 14 December 2018

Public Authority: Chief Constable of Lincolnshire Police
Address: Information Management Unit
Police Headquarters
PO Box 999
Lincoln
LN5 7PH

Decision (including any steps ordered)

1. The complainant has requested information relating to a policy requiring all applicants to provide medical information from their general practitioners for the grant and renewal of shotgun certificates. The complainant also requested information about gun related suicides.
2. The Commissioner's decision is that Lincolnshire Police is not obliged to comply with the request under section 12(1). However, she finds Lincolnshire Police breached section 16 of the FOIA by failing to provide advice and assistance to the complainant.
3. The Commissioner requires Lincolnshire Police to take the following steps to ensure compliance with the legislation.
 - Provide advice and assistance to the complainant to assist them in refining their request where it is possible to do so.
4. Lincolnshire Police must take these steps within 35 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 27 February 2018, the complainant wrote to Lincolnshire Police and requested information in the following terms:

"I am requesting any information held by the Lincolnshire Police in respect of its policy relating to its decision to require all applicants for the grant of new and the renewal of shotgun certificates to provide medical information from their general practitioners.

That information should relate to all notes, records policies and instructions held on computer or capable of being inputted on to computer.

Any documents of any kind held or written by detective Inspector [name redacted], who I understand is currently the force's lead on firearms such as.

- Any material which also relates to any discussions or meeting [name redacted] has had with any other member of the force in respect of this matter such as policies, or background documents and emails.*

- Any SWOT, SMART or Risk Assessment relevant to this request*

2. Any information, relating to any management decisions that required applicants for such certificates to obtain a medical letters from their general practitioners?

3. On what basis was the evidence made to require applicants to obtain such information from their general practitioners and who identified this as an issue?

It is understood there has been an inordinate number of gun related suicides and criminal offences - please prove me the actual figures that support any assertions that the police appear to be relying on.

4. On what legal basis did the Lincolnshire police base its decision to make such a requirement of shotgun certificate applicants?

5. Who in the Lincolnshire Police made the decision to require shotgun certificate holders to obtain medical notes from their general practitioners and where is that information recorded?

6. What relevant part(s) of the Home Office Guide to firearms licensing law 2016 and the Firearms Act 1968 are the Lincolnshire Police relying on to make their decision for shotgun certificate applicants to pay their general practitioners to provide such medical information

7. Who authorised Inspector [name redacted] to appear on the BBC Countryfile programme of Sunday the 8th January 2018.

8. Were the comments made by Inspector [name redacted] accurately reported on the programme and are the comments properly reflective of the Lincolnshire Police policy in this matter."

6. Lincolnshire Police responded on 13 March 2018. It refused to provide the requested information, citing the cost limit at section 12 of the FOIA as its basis for doing so.
7. Following an internal review Lincolnshire Police wrote to the complainant on 17 April 2018. It maintained its original position.

Scope of the case

8. The complainant contacted the Commissioner on 8 May 2018 to complain about the way his request for information had been handled.
9. The Commissioner has considered whether Lincolnshire Police was correct to apply section 12 of the FOIA to the request in this case.

Reasons for decision

Section 12 – cost of compliance exceeds appropriate limit

10. 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".

11. This limit is set in 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?

12. 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.
13. In response to the complainant's request about gun related suicides, Lincolnshire Police stated that it cannot provide the detail regarding certificate holders who have committed suicide but has referred previous requests made under the FOIA to the coroners. It stated that to determine which of its former certificate holders have been formally declared as dead by means of suicide would mean it would have to check each individual paper record to determine which have died and which of these had committed suicide.
14. In its submission to the Commissioner, Lincolnshire Police explained that to answer this part of the request relating to gun related suicides alone would take it over 18 hours of work to answer.
15. Lincolnshire Police confirmed to the Commissioner that there are about 16,000 certificate holders and well over 20,000 certificates as some individuals have a shotgun certificate and firearms certificate as well. The Commissioner asked Lincolnshire Police to clarify in how many instances details of certificate holders are held electronically and how many are held manually; it clarified that details of all certificate holders will be on an electronic system NFLMS (National Firearms Management System) and all certificate holders will also have had a paper file until the summer of 2017, when the force went digital. It also stated the following to the Commissioner:

"The quality of data on this system varies from force to force BUT IT DOES NOT STORE DOCUMENTS and Firearms Licensing is still a process that is run on paper files.

This means forces have the certificate holders details on NFLMS, but all the applications that have been made, the reports, and incidents will be kept on a separate and more detailed paper based file.

Lincolnshire have recently introduced the first digital Firearms Licensing system in England and Wales and this began operating in

the summer of 2017. All Lincolnshire's paper files have now been scanned and back record converted so they can be more readily accessed."

16. The Commissioner asked Lincolnshire Police to confirm how long it would take to search an electronic licence for the information requested and how this time was estimated. Lincolnshire Police responded stating the following:

"This would take the same as for a paper file as the certificate holders' electronic record has to be accessed and each page of scanned information has to be accessed to try and locate the information required.

DI [name redacted] advised that he has used the archive programme to check on certificate holders who have submitted false medical declarations and advised that it can mean accessing two systems and searching for the relevant page.

It takes about three minutes to access an electronic record and extract the required information from it. This would therefore take hundreds of hours to access all relevant records for our force."

17. The Commissioner also asked Lincolnshire Police how long it would take to search a manual licence for the information requested and how this time was estimated. It responded stating that it would take the same time as searching the electronic file or slightly quicker if the file was in the main office as opposed to its storage location.
18. The Commissioner considers that Lincolnshire Police may have been generous in its estimate of three minutes to search each of the 16000 individual electronic certificates, but even if this was reduced to 1 minute per record it would still exceed the threshold. In addition, the Commissioner accepts that it may need to check manual records if the information about the certificate holder's cause of death was not contained on the electronic licence.
19. In her guidance on section 12¹, the Commissioner explains that as soon as a public authority becomes aware that it intends to rely on section

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

12, it makes sense for it to stop searching for the requested information and inform the complainant. She also explains that this avoids any unnecessary work for the public authority as it does not have to provide any information at all if section 12 is engaged. The Commissioner is therefore satisfied that, as searching for the information concerning gun related suicides would exceed the cost limit, Lincolnshire Police does not have to provide any information in response to the request.

20. Taking all of the above into account, the Commissioner considers that Lincolnshire Police has applied section 12 appropriately and therefore does not have to comply with the request.

Procedural issues

Section 16 – duty to provide advice and assistance

21. 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"*.

22. In her guidance on section 16², the Commissioner explains that:

"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 requester to make refined request."*

23. Where section 12(1) is cited, in order to comply with section 16, a public authority should advise the requester as to how their request could be refined to bring it within the cost limit.

² <https://ico.org.uk/media/1624140/duty-to-provide-advice-and-assistance-foia-section-16.pdf>

24. In her guidance the Commissioner explains that a public authority should consider how it can provide advice and assistance to help an applicant narrow, reform or refocus their request, although there will be occasions where there are no obvious alternative formulations of the request.

25. In its response of 13 March 2018 Lincolnshire Police stated the following in regards to section 16 of the FOIA:

"Unfortunately, due to the way in which information is held in relation to the requested information I am unable to provide advice in relation to refining your request."

26. However, in its internal review Lincolnshire Police stated that its Data Protection Department are happy to look at ways in which the complainant could refine his request in order to access some of the information he requested, it then provided details for the complainant to Lincolnshire Police.

27. During the Commissioner's investigation, Lincolnshire Police confirmed that the complainant refined his request and submitted a new refined request at the same time as requesting an internal review of the handling of the request this decision notice addresses.

28. The Commissioner contacted the complainant in regards to this new refined request and whether he was satisfied with the information provided and the advice and assistance provided in order to refine his request. The Complainant confirmed to the Commissioner that although he received all information requested in relation to his refined request, he was not satisfied with the advice and assistance provided to him in regards to his original request of 27 February 2018.

29. The Commissioner finds that Lincolnshire Police should reasonably have offered advice and assistance within the internal review, instead of asking the complainant to contact it. As Lincolnshire Police did not provide sufficient advice or assistance she considers it breached section 16(1) of the FOIA. The Commissioner finds it conceivable to consider narrowing the request to focus on one of the outstanding areas and shortening the timeframe.

Right of appeal

30. 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

31. 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.
32. 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

Debbie Clark
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