

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 20 March 2019

Public Authority: Police Service Northern Ireland
Address: Brooklyn
Knock Road
Belfast
BT5 6LE

Decision (including any steps ordered)

1. The complainant requested information relating to the Northern Ireland Road Safety Partnership. The Police Service of Northern Ireland ('PSNI') 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) (the cost of compliance) of FOIA.
2. The Commissioner's decision is that PSNI correctly applied section 12(1) and found that there is no breach of section 16(1) (the duty to provide advice and assistance) of FOIA. However, by failing to respond to the request and issue a refusal notice within the statutory timescale of 20 working days, the Commissioner finds that PSNI has breached sections 10 (time for compliance) and 17 (refusal of a request) of FOIA.
3. The Commissioner requires no steps to be taken as a result of this decision.

Request and response

4. On 26 March 2018, the complainant wrote to PSNI and requested the following information via the *WhatDoTheyKnow.com* website¹:

"Please provide:

- 1. Amount of funding and source provided to NI Road Safety Partnership in last 3 years*
- 2. Copy of any funding terms, conditions, financial or governance memorandum or similar attached to funding at 1 above*
- 3. Details of any complaints or governance issues raised with Partnership in last 3 years".*

5. PSNI responded, late, on 18 July 2018. It refused to provide the requested information citing section 12(1) of FOIA, the cost of compliance. It explained that responding to part three of the request would exceed the cost limit. It offered advice and assistance in line with its section 16 duties, advising how the request could be refined to bring it under the appropriate cost limit; it said that the information may be available if the request was refined to parts one and two only, subject to any exemptions which may apply.
6. The complainant requested an internal review on 21 July 2018 which PSNI provided on 1 August 2018. It maintained that section 12(1) applied and clarified that it is not under any obligation to respond to any part of the request where one part of a request exceeds the cost threshold. It also provided further details in relation to its section 16 obligations (see paragraphs 27 to 32 below).

Scope of the case

7. The complainant initially contacted the Commissioner on 4 June 2018 to complain that he had not had a substantive response to his request for information. Following the Commissioner's intervention PSNI provided its response on 18 July 2018.
8. The complainant contacted the Commissioner again on 1 August 2018 to complain, stating:

¹ https://www.whatdotheyknow.com/request/ni_road_safety_partnership_fundi

"I do not accept that the body has treated my request appropriately and lawfully. There was no attempt to clarify my request to provide the material requested at 1 and 2. The response was delayed significantly which appears to be a systemic problem."

9. The Commissioner has considered whether PSNI was correct to rely on section 12(1) of FOIA and whether it complied with section 16 in relation to its advice and assistance obligations. She has also noted the delay in this case.

Reasons for decision

Section 12 - cost of compliance

10. Section 12(1) of 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 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?

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. PSNI has explained to both the complainant and the Commissioner that there is no complaint process within the NI Road Safety Partnership and that, therefore, the information requested in part three of the request is not held centrally, nor is there any business need to do so.

14. It also told the Commissioner that it does not operate a complaint process with regard to this partnership, explaining that if PSNI receives any general complaints or specific queries, these are attached to a corresponding individual case file. It said that each matter is dealt with by reference to that unique case and that PSNI does not hold a central registry of complaints nor does it have an electronic search function which can extract 'complaint data' from these case files. PSNI also confirmed that it is not required to report on any complaints received.
15. PSNI said that for the requested three year time period, there are in excess of 120,000 files held on its database. To identify all complaints it would therefore need to search each file individually.
16. Referring to a sampling exercise that had been carried out, PSNI told the Commissioner:

"...it would take approximately 3 minutes to read each file to establish if it holds any of the requested information. I can confirm that the quickest method was used to provide PSNI's estimate as the files accessed are electronic files.

Searching of 120,000 files x 3 mins (to review each file) = 360,000 which equates to 6,000 hours".

The Commissioner's view

17. When dealing with a complaint to her 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. Rather, the Commissioner's role is simply to decide whether the requested information can, or cannot, be provided to a requestor within the appropriate cost limit.
18. With respect to the complainant's concerns, raised at internal review, that PSNI had failed to provide the information requested at parts one and two of his request, the Commissioner's guidance on section 12² 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

² https://ico.org.uk/media/for-organisations/documents/1199/costs_of_compliance_exceeds_appropriate_limit.pdf

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".

19. Therefore, in advising the complainant that it is not under any obligation to respond to any one part of a request when another part would exceed the cost threshold, PSNI was following the Commissioner's guidance; it is for the requester to refine their request in line with any advice and assistance offered.
20. Section 12(1) requires a public authority to estimate the cost of compliance with 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 PSNI of the cost of this request was reasonable. If the Commissioner concludes that it was reasonable for PSNI to estimate that the cost of this request would exceed the limit of £450, section 12(1) will apply and PSNI was not obliged to comply with the complainant's information request.
21. 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".
22. 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".
23. The Commissioner has therefore considered the arguments put forward by PSNI in support of the reasonableness of its estimate.
24. In this case, the Commissioner is satisfied that, in its correspondence with the complainant, PSNI explained why the request had been refused and provided him with details of the number of records that would need to be reviewed.
25. Even if PSNI's estimate of the time taken was considered excessive and was reduced from 3 minutes per file to 1 minute per file to locate and extract the information, to comply with the request would still significantly exceed the cost limit.
26. From the evidence she has seen during the course of her investigation, the Commissioner is satisfied that PSNI has demonstrated that it would

exceed the appropriate limit to locate, retrieve and extract the requested information. Section 12(1) does therefore apply and PSNI is not required to comply with the request.

Section 16 - advice and assistance

27. Section 16(1) of 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"*.

28. 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".

29. 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.

30. In this case, PSNI initially told the complainant:

"You may wish to submit a refined request in order that the cost of complying with your request may be facilitated within the 'appropriate limit'. In compliance with Section 16 of the FOIA, I have considered how your request may be refined to bring it under the appropriate limit and Requests 1 and 2 may be available subject to any exemptions which may apply. Submission of a refined request would be treated as a new request, and considered in accordance with the FOIA, including consideration of relevant Part II exemptions."

31. During the course of the investigation, PSNI advised the Commissioner that the complainant had subsequently refined his request to include parts one and two only as suggested, and that he had now received a substantive response to his refined request.

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

Section 10(1) – time for compliance with a request

33. Section 1(1) of FOIA states:

"(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."

34. Section 10(1) of FOIA states:

"(1) Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt."

35. The complainant submitted his request on 26 March 2018. PSNI did not confirm whether it held the requested information until 18 July 2018, which is 78 working days after receipt of the request.

36. As PSNI did not communicate held information to the complainant within 20 working days it breached section 10(1) of FOIA. As the response has been issued no steps are required.

Section 17(1) – time for refusal of a request

37. Section 17(1) of FOIA states:

*"(1) A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, **within the time for complying with section 1(1)**, give the applicant a notice which –*

(a) states that fact,

(b) specifies the exemption in question, and

(c) states (if that would not otherwise be apparent) why the exemption applies."

38. PSNI's response to the complainant withheld the requested information under section 12(1) of FOIA. As this refusal notice was not issued within the time frame for complying with section 1(1) (ie 20 working days), PSNI breached section 17(1) of FOIA. As the response has been issued no steps are required.
39. The Commissioner has made a record of the delays in this case.

Right of appeal

40. 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

41. 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.
42. 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

Carolyn Howes
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