

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 10 January 2019

Public Authority: Chief Constable of Devon & Cornwall Police
Address: Police Headquarters
Middlemoor
Exeter
Devon
EX2 7HQ

Decision (including any steps ordered)

1. The complainant has requested details of any notes / investigations undertaken by a named police constable at a named address from Devon & Cornwall Police (D&C). D&C advised to comply with the request would exceed the appropriate limit at section 12(2) (cost of compliance exceeds appropriate limit) of the FOIA.
2. The Commissioner's decision is that D&C was entitled to rely on section 12(2) of the FOIA to refuse the request and that appropriate section 16(1) advice and assistance has been provided. No steps are required.

Request and response

3. Following an earlier information request, on 19 September 2018 the complainant wrote to D&C and requested information in the following terms:

"All records of notes and investigations written or dictated by Police Constable [name removed] in relation to all visitations that he made to [address removed]. Please redact names of any residents at the property who may or may not have resided at the premises at the time of Police Constable [name removed] visitation(s). This request for records is specific to an inanimate premises connected to records held by the Police Force. This request does not relate to any occupants and therefore it does not risk revealing any member

of the public's identity. It therefore does not fall under the exemption of section 40".

4. On 26 September 2018 D&C responded. It refused to provide the requested information advising that to do so would exceed the appropriate limit at section 12 of the FOIA.
5. Following an internal review, D&C wrote to the complainant on 11 October 2018. It maintained its position, advising that it was relying on section 12(2) as it would exceed the cost limit to ascertain whether or not it actually holds any information.

Scope of the case

6. The complainant initially contacted the Commissioner on 11 October 2018 to complain about the way her request for information had been handled. The Commissioner required more information from her which was received on 26 October 2018.
7. The complainant did not agree that compliance with her request would exceed the cost limit and gave the following grounds:
 - An extensive search is not needed as she only wants those notes and investigations related to the named address, not *all* notes and investigations the officer had been involved with.
 - It cannot "hold true" that it would exceed 18 hours to locate records stored by the force, saying: "*Are we to reasonably conclude therefore that any and every record which a member of the judicial system wishes to find at the RMC [Records Management Centre] or on electronic file will take in excess of 18 hours?*"
 - If the cost limit is engaged she asked the Commissioner to: "*confirm that this is true and explain why records are not stored in a rational order for rapid retrieval such as say by alphabetical, chronological, date, place, name etc*".
 - She added: "*In conclusion my FOI request regards an inanimate premises and not an individual. Should any records be found which contain names of individuals then these can be redacted. A search of **all** records is very unlikely to have to be made and it is not reasonable to presume that no major crime occurred. Therefore please would you grant up to 18 hours to locate records at the RMC warehouse in connection with my FOI request?*"
8. When writing to the complainant the Commissioner advised that, although not necessary, it would be helpful if she could explain what

type of information she thought the force may hold as this would assist with locating anything which may be held, adding that dates would also be helpful.

9. The complainant responded advising that she had "*reason to believe [sic] that Police Constable [name removed] conducted investigations at [location removed] between the years 1980 and 1982*" but that she was "*unaware of what information was collected*". Therefore, whilst in her grounds of complaint she states that it is "*not reasonable to presume that no major crime occurred*" she has been unable to provide any details as to what "*major crime*" she believes may have taken place, providing no details of names or what she alleges may have occurred.
10. The Commissioner will consider the application of section 12(2) of the FOIA to the request below.

Reasons for decision

Section 12 – cost of compliance exceeds appropriate limit

11. Section 12(2) provides that a public authority is not obliged to confirm or deny whether requested information is held if it estimates that to do so would incur costs in excess of the appropriate limit. In other words, if the cost of establishing whether information of the description specified in the request is held would be excessive, the public authority is not required to do so.
12. The appropriate limit is set at £450 for D&C by the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the fees regulations).
13. The fees regulations also provide that a cost estimate must be calculated at the rate of £25 per hour, giving an effective time limit of 18 hours, and specify the tasks that can be taken into account when forming a cost estimate as follows:
 - 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.
14. Section 12(2) requires a public authority to estimate the cost of confirmation or denial, rather than to formulate an exact calculation. The question for the Commissioner here is whether the cost estimate by D&C was reasonable. If it was, then section 12(2) was engaged and D&C was not obliged to confirm or deny whether the requested information was held.

15. The Commissioner would initially advise that although the complainant wishes for her to "grant up to 18 hours to locate records" this is not a requirement under the FOIA. A public authority is not obliged to search up to the appropriate limit, although it may search up to or even beyond the appropriate limit of its own volition.
16. In respect of the searches for information which it has undertaken, D&C has advised the Commissioner as follows.

Electronic searches

17. D&C confirmed to the Commissioner that it had undertaken a direct search for the address and officer name provided by the complainant on Unifi (its current crime recording system) but there were no results which matched the search criteria provided.
18. It advised the Commissioner that:

"The Performance and Analysis Department have confirmed for the crime recording system that a search of the crime data we hold on our own reporting system, Qlikview/Unifi, is not possible in its current format as data older than 1st April 2013 has only been imported at the highest level and shows only Crime Reference, Date Entered, Area, Local Policing Authority (LPA), Sector, Beat Code, Offence Code and Text, Offence Group and Outcome details. It does not hold addresses or any details of the officers linked to the offences. The Offence text is only the first few words and a search showed no reference to [address name] or [officer name] in any of the data. This search took approx. 30 minutes".

And:

"The Performance and Analysis Department have confirmed for the incident recording system that they hold incident data within this department for incidents from April 2012. The force moved to using STORM on 19th June 2012. When the force moved to Storm a limited amount of information dating from 2008 was converted from OIS (old incident reporting system) and put into a Qlikview report. However, this falls outside of the time parameters requested".

Paper based searches

19. D&C advised the Commissioner that, due to the time frame of the request, any information would be held in paper form, if held at all. It further explained:

"The Records Management Centre (RMC) hold all concluded crime files both Undetected crime (when the investigation is concluded but no offender is identified) and Detected crime (when an offender

has been given a final outcome), these files are always in a hard copy format and we cover all of Devon and Cornwall Police. The RMC is a central archive store for the Force which is a warehouse covering more than 20,000 sq feet and has a further upper floor space housing further material. All files are stored under the crime number which is generated from the police IT systems".

20. D&C also advised the Commissioner:

"The time taken to confirm whether or not PC [name removed] was connected with a crime file in relation to [address removed] would be impossible to accurately estimate. The material gathered in an investigation and contained on a crime file can vary greatly from a few pages if it is a low level offence with no suspect to many A3 boxes of material if it was a detected offence with many complainants/witnesses/offenders and exhibits.

The RMC store is 20,000 sq feet filled with boxes and crime files, narrowing the amount of files we'd have to review to find the information and looking only at the [location removed] Area would still be an inordinate task".

Sampling exercise

21. D&C confirmed that it had conducted a sampling exercise on five files which it had randomly selected. It advised that it had taken 74 minutes to review these files and ascertain that they were not of relevance to the request. On this basis it advised that: *"... allowing approximately 14.8 minutes per box/file for a 20,000 square feet warehouse to determine whether we do or do not hold the requested information would take easily in excess of the 18 hour limit".*
22. D&C confirmed that the above searches had been based on the quickest method in trying to identify whether or not the force holds the requested material.
23. D&C finalised its position to the Commissioner as follows:

" ... it can be established that due to the time frame the most likely place where information may or may not be held would be the RMC. Due to the way in which the information is stored in RMC (Crime reference) and that we have no further detail to aid our searches from the requester, it would require a manual search of all RMC files. As per the above exercise detailed in this letter, this would be an inordinate task to identify whether or not we hold any of the requested information. Therefore, the force stands by the original Section 12(2) refusal notice".

Conclusion

24. The complainant is of the view that D&C should be able to locate the information she has requested on the basis of the address she provided and the name of the officer concerned and, because she only wants a limited amount of information, that this should not be time-consuming. Furthermore, she thinks that the information must be retrievable because, if it would not be possible to locate it for her then it would not be possible to locate it for the "judiciary system". She finds it hard to believe that the records are not readily retrievable.
25. On the basis of the explanations given by D&C, the Commissioner accepts that, due to their age, any information which might be held would be in a paper record and would therefore be at the RMC as described above. The Commissioner agrees with the complainant that these records, albeit paper-based, need to be stored in such a way that they are retrievable when required or there would be no way of knowing what is or isn't held. However, whilst the complainant is of the view that they should be held in such a way that D&C could respond to her request this is clearly not the case. The information is not stored by reference to an officer or an address, it is stored by reference to a crime number. This would allow the retrieval of relevant information for the judiciary, or any other relevant party, provided a crime reference number is known. This is clearly the methodology which is most suitable to the force for organising its information and allows it to retrieve information, as required, for its own business purposes. However, unfortunately this does not allow it to retrieve information based on the type of search criteria given by the complainant.
26. Having considered the estimate above, the Commissioner considers this estimate to be a reasonable one. The Commissioner therefore concludes that section 12(2) of the FOIA is engaged and D&C was not obliged to confirm or deny holding the information requested.

Section 16 – advice and assistance

27. 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. In general, where section 12 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, albeit that the Commissioner does recognise that where a request is far in excess of the limit, it may not be practical to provide any useful advice.
28. In this case D&C has previously provided the complainant with a copy of its Records Management policy which covers retention periods for the types of information it holds. As the complainant has not indicated the type of information she thinks may exist, then it is not possible to

specify how long the information she requires would be retained.
However, the provision of this policy document is helpful as it covers all information types.

29. The Commissioner considers that D&C has tried to explain how it holds its information and has thereby provide advice and assistance to the complainant. Accordingly she finds that it has complied with its duties under section 16. However, she does note that D&C provided her with more details than it provided the complainant. It may therefore have been helpful if the information contained in the more detailed response it provided to her had also been provided to the complainant.

Other matters

30. D&C also explained to the Commissioner:

"In order to aid any searches should a future request be made, more information about the type of information they are trying to identify/source may assist in helping us navigate and find the most appropriate extraction and collation process".

31. Therefore, were the complainant to consider making a further request, the provision of more details, such as names of those involved and the type of crime she thinks may have been committed, may assist D&C in locating any information which it may hold.

Right of appeal

32. 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

33. 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.
34. 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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