

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 18 December 2014

Public Authority: Chief Constable of Essex Police
Address: Essex Police Headquarters
PO Box 2
Springfield
Chelmsford
Essex
CM2 6DA

Decision (including any steps ordered)

1. The complainant requested copies of two investigative reports connected with the death of a man. He followed this with a second request about costs of these investigations. Essex Police aggregated these two requests and advised that to comply with them would exceed the appropriate limit. The Commissioner's decision is that Essex Police was correct to aggregate the requests and that it was entitled to rely on section 12(2). He requires no steps.

Request and response

2. On 21 August 2014, the complainant wrote to Essex Police and made the following request:

"This is a request under the Freedom of Information Act for two reports compiled by Essex Police.

At a public inquest hearing into the death of [name removed], whose body was found [location removed] in [date removed], coroner [name removed] announced that two internal investigations had been carried out into Essex Police's investigation of his disappearance.

One internal investigation was led by Detective Superintendent [name removed]. A report was compiled and given to [name removed].

A separate report was ordered by the IPCC and compiled by Detective Inspector [name removed], also turned over to [name removed].

Please furnish me with copies of both of these reports.

I do not wish to receive any information which would breach the Data Protection Act. Any information which would breach the Data Protection Act should be redacted.

However, the force should keep in mind that police officers are employed by taxpayers and these investigations have been funded by taxpayers because they were deemed to be in the public interest.

Moreover, they have been discussed in open court as material evidence in an inquest. An inquest is deemed by law to be held in the public interest.

Thus, the presumption regarding this report must always be in favour of not redacting information.

Information should only be redacted if officers feel they can demonstrate that it is not in the public interest.

The names of senior officers already associated with the investigation, via Essex Police's public press releases at the time and/or via inquest hearings in open court, would not in and of themselves constitute personal data. The same goes for the names of [name removed] and his family, who have already been identified in the same way".

Any information which is material to the investigation and/or which has been discussed in open court should not be redacted.

3. On 22 August 2014 the complainant submitted the following request about the same two reports:

"This is a request under the Freedom of Information Act for information about the cost to Essex Police of conducting two investigations and compiling two report. Their existence was confirmed by police officers at a public inquest hearing into the death of [name removed], whose body was found [location

removed] in [date removed]. The investigations both concerned Essex Police's handling of its investigation into [name removed]'s death.

One internal investigation was led by Detective Superintendent [name removed]. A report was compiled and given to coroner [name removed].

A separate report was ordered by the IPCC and compiled by Detective Inspector [name removed], and was also turned over to [name removed].

Please supply me with the following information:

DETECTIVE SUPERINTENDENT [name removed]'s INVESTIGATION / REPORT

1) The number of Essex Police officers who contributed to Detective Superintendent [name removed]'s investigation or report, including but not limited to investigators, witnesses and those who helped in an administrative capacity.

2) For each Essex Police officer who contributed, please specify:
a) their rank, b) their role in the investigation or report, c) the amount of hours they contributed, and d) the hourly cost to Essex Police of employing the officer.

3) The number of Essex Police staff members, excluding officers, who contributed to Detective Superintendent [name removed]'s investigation or report, including but not limited to investigators, witnesses and those who helped in an administrative capacity.

4) For each Essex Police staff member who contributed, please specify:
a) the department they work in, b) their role in the investigation or report, c) the amount of hours they contributed, and d) the hourly cost to Essex Police of employing the staff member.

5) The number of non-Essex Police officers who contributed to Detective Superintendent [name removed]'s investigation or report, including but not limited to investigators, witnesses and those who helped in an administrative capacity.

6) For each non-Essex Police officer who contributed, please specify: a) their rank, b) the force they belong to, c) their role in

the investigation or report and d) the amount of hours they contributed.

DI [name removed]'s INVESTIGATION/REPORT

7) The number of police officers who contributed to DI [name removed]'s investigation or report, including but not limited to investigators, witnesses and those who helped in an administrative capacity.

*8) For each police officer who contributed, please specify:
a) their rank, b) their role in the investigation or report, c) the amount of hours they contributed, and d) the hourly cost to Essex Police of employing the officer.*

9) The number of police staff members, excluding officers, who contributed to DI [name removed]'s investigation or report, including but not limited to investigators, witnesses and those who helped in an administrative capacity.

*10) For each police staff member who contributed, please specify:
a) the department they work in, b) their role in the investigation or report, c) the amount of hours they contributed, and d) the hourly cost to Essex Police of employing the staff member.*

11) The number of non-Essex Police officers who contributed to Detective Superintendent [name removed]'s investigation or report, including but not limited to investigators, witnesses and those who helped in an administrative capacity.

*12) For each non-Essex Police officer who contributed, please specify:
a) their rank, b) the force they belong to, c) their role in the investigation or report and d) the amount of hours they*

4. Essex Police responded on 9 September 2014. It advised that it was aggregating the two requests as they related to the same investigation. It went on to advise that in order to determine whether or not any information was held in respect of the latter request this would require the manual examination of a very high number of records which would exceed the appropriate limit under section 12(2) of the FOIA. It explained:

"There is no central record kept, and no reason to do so, relating to the significant number of questions asked in relation to officer / staff roles, time spent etc. To extract that we would need to

examine every document in the investigation file and cross reference to time sheets (hours worked) etc. It is further complicated as officers may have been working on more than just the one investigation during this time so accurate information will be hard to achieve".

5. It added:

"Having applied this exemption I am not required to provide further detail but in an effort to assist I would say that even if all the other information requested was available we would not release details of the report to the Coroner.

The report requested is held by Essex Police but as it was specifically written for the purposes of the Coroners Court, and addressed personally to the Coroner, and under section 17 of the Freedom of Information Act 2000 (FOIA), we would refuse that part of your request on the basis that the exemptions given at Section 32(1) Court Records..."

6. It also advised that it could cite section 38(1) advising the complainant:

"... a key factor, is the exemption at s38 Health & Safety, in respect of the family and the SIO [Senior Investigating Officer] having spoken to the family, advises that "they do not want our reports released – they are happy for us to acknowledged there is areas for learning etc. but they are working with us and do not want anti police media messages appearing in the papers especially at the expense of their family member"".

7. When asking for an internal review the complainant stated:

"I requested two reports. One of them was ordered by the IPCC, not by the coroner. No explanation has been given as to why that report has not been released, other than the ludicrous suggestion that its release would cause [name removed]'s family to become mentally ill.

I also refute the claim that it would take 18 hours to work out how many officers contributed to each report and at what cost. The officers who compiled the reports should have kept records of who contributed and in what capacity, and those records should be immediately accessible. I sincerely doubt whether those contributors' hourly pay rates would take 18 hours to locate. I'm pretty sure my manager could find out all of my colleagues' salaries within about 20 minutes".

8. Following an internal review Essex Police wrote to the complainant on 7 October 2014. It maintained its position and provided more background information as follows:

"When [name removed] was found deceased [location removed], an internal review of Essex Police's actions was requested by C/Supt [name removed]. That review identified issues in the areas of the investigation and which became the catalyst for the letter of complaint submitted to Essex Police by members of [name removed]'s family.

As a result, Essex Police referred the matter to the IPCC for their oversight. They returned the matter back to be dealt with as a 'local' investigation. Under this mode of investigation, the IPCC did not even request or require sight of any report, let alone 'ordered' it. They had no investigative involvement at all.

The family lodged a formal complaint and an investigating Officer's (IO) report detailing the Professional Standards investigation into the issues they had raised was drawn up by Detective Inspector [name removed]. That report was shared with the family as would always be the case and, with the family's permission, Her Majesty's Coroner, [name removed].

Unlike an IPCC investigation, which may well be published in full or in part by them, an IO report is a document which is written for the complainant only. If the complainant then wishes to share this with the press, that is their prerogative.

It may include recommendations which are, of course used to develop individuals and inform and evolve the organisation but it not shared with the public as it is the complainant who has raised the issues.

As you will see the report, despite your suggestion, was not written at the request of the IPCC but as a result of the family's complaint".

9. Essex Police also provided more details about the numbers of staff who had been involved.

Scope of the case

10. The complainant contacted the Commissioner on 7 October 2014 to complain about the way his request for information had been handled. His complaint focussed on the withholding of the two reports which he

considered should be disclosed, in the greater public interest, as he believed they identified organisational failures.

11. The Commissioner advised that he could not consider release of the reports as such as he was only able to consider the exemption being relied on by Essex Police, ie section 12(2). The complainant accepted this and confirmed that he would like the Commissioner to consider whether or not Essex Police was correct to aggregate the requests and then to apply the cost limit to the two of them together.
12. The Commissioner will consider aggregation and the application of section 12(2) below.

Reasons for decision

Section 12 – the appropriate limit

13. Section 12(1) of FOIA 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.
14. Under FOIA, if a public authority receives multiple requests it should ensure that each request can be aggregated in accordance with the conditions laid out in the Fees Regulations. Any unrelated request should be dealt with separately for the purposes of determining whether the appropriate limit is exceeded.
15. 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 in regulation 5 of the regulations are satisfied. Requests must be:
 - made by one person, or different persons who appear to the public authority to be acting in concert or in pursuance of a campaign;
 - made for the same or similar information; and
 - received by the public authority within any period of 60 consecutive working days.
16. Essex Police explained that it had aggregated the requests as they were from the same person and were deemed to be requests for information relating to the same investigation.
17. The Commissioner agrees that the requests were both made by the same person on consecutive days. Therefore, he will consider whether the two requests are for the same or similar information.

Are the requests for the same or similar information?

18. Regulation 5(2) of the regulations requires that requests which are to be aggregated relate 'to any extent' to the same or similar information. The Commissioner acknowledges that this is quite a wide test but public authorities must ensure that the requests meet this requirement.
19. Essex Police informed the complainant that it had aggregated his requests in line with the regulations as they related to the same investigation.
20. The Commissioner considers that requests are likely to relate to the same or similar information where, for example, the requester 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 requested.
21. The Commissioner has considered the wording of each of the requests and the complainant's and both party's submissions. He considers that there is clearly a common thread running through both of them as they relate to the same occurrence.

Can the requests be aggregated?

22. The complainant was unhappy that: *"Essex Police treated both requests as one request without asking my permission, then rejected the request on the basis it would take too long to complete"*. He also advised the Commissioner that in his opinion Essex Police are: *"intentionally aggregating requests with the specific intention of making them too large and therefore refusing to answer them"*.
23. Whilst the complainant may be unhappy that Essex Police has aggregated his requests without consulting him, the legislation does not require it to do so; it only needs to demonstrate the processes as shown above.
24. Based on the analysis above, the Commissioner's decision is that Essex Police was entitled to aggregate both requests.

Would complying with the request exceed the appropriate limit?

25. Section 12(1) does not oblige a public authority to comply with a request for information if it estimates that the cost of complying with the request would exceed the appropriate limit.

26. Section 12(2) provides that subsection 12(1) does not exempt the public authority from its obligation to comply with paragraph (a) of section 1(1) unless the estimated cost of complying with that paragraph alone would exceed the appropriate limit. (Section 1(1)(a) is the entitlement to be informed in writing as to whether or not a public authority holds the information requested).
27. When considering whether section 12 applies, a public authority can only take into account certain costs, as set out in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ('the Regulations'). These are:
- determining whether it holds the information,
 - locating the information, or a document which may contain the information,
 - retrieving the information, or a document which may contain the information and,
 - extracting the information from a document containing it.
28. The four activities are sequential, covering the retrieval process of the information from the public authority's information store.
29. The Regulations state that the appropriate cost limit is £600 for central government, legislative bodies and the armed forces, and £450 for all other public authorities. The cost limit in this case is £450, which is equivalent to 18 hours' work.
30. Section 12 of the FOIA makes it clear that a public authority only has to estimate whether the cost of complying would exceed the appropriate limit. It is not required to provide a precise calculation.
31. In response to his request, Essex Police told the complainant:

*"Essex Police does not hold the information requested in a format that allows it to be retrieved with the scope of FOI...
... In this instance, to determine whether or not Essex Police even hold the information as specified in your [second] request (our ref. 6449) would require the manual examination of a very high number of records, simply in order to ascertain whether the information as held [sic]. Such an exercise would extend beyond the reasonable amount that a public authority is required to expend in responding to a request under the Freedom of Information Act, as set out in the Data Protection and Freedom of Information (Fees and appropriate Limit) Regulations 2004, which currently stands at £450 or eighteen hours.*

There is no central record kept, and no reason to do so, relating to the significant number of questions asked in relation to officer / staff roles, time spent etc. To extract that we would need to examine every document in the investigation file and cross reference to time sheets (hours worked) etc. It is further complicated as officers may have been working on more than just the one investigation during this time so accurate information will be hard to achieve.

Consequently, and by virtue of the exception at section 12(2) of the FOI Act 2000, Essex Police are exempt from the duty to comply with section 1(1)(a) of the FOI Act."

32. In respect of the two reports covered by the first request, the complainant was additionally advised - as per paragraphs (5) and (6) above - that they would be likely to be exempt by virtue of different exemptions if they weren't caught by the appropriate limit.
33. Following its internal review the complainant was also told:

"Essex Police's use of the Section 12(2) 'cost' exemption is founded on the anticipated aggregated time it would take to retrieve [sic] the information sought. Essex Police does not have a single system recording the various data sought ... Instead the force would need to manually review each investigation file (those completed by Detective Superintendent [name removed] and Detective Inspector [name removed]) to identify those who had participated in the creation of each report and then conduct further activity to identify the detail requested i.e. contact all those identified, confirm their roles, ascertain if they recorded the time spent, and then return those details

Detective Inspector [name removed] has been contacted and has provided the following detail :

"PSD alone gained reports and statements from over 60 police officers, including senior officers, some of those whom have referred to specialist colleagues from departments such as FCR, Missing persons, Mental Health and specialists from other forces in order to accurately give their accounts. Administration staff, and Chief Officers time for Gold groups and the subsequent actions arising from those meetings would also need to be calculated."

And

"I do not know how many officers were spoken to or were involved in the SCD investigation but I suspect this would be the same number again, if not more."

Detective Superintendent [name removed] has advised that Operation [name removed], which led to her report to Her Majesty's Coroner, [name removed], involved 47 statements, 34 reports and 313 documents registered, with four Detective Constables, one Detective Sergeant and one Detective Inspector working on the enquiry team. Beyond them would be all the other individuals captured by the scope of your requests with whom further enquiries would have to be made.

Having considered the evidence set out above I find that the force's application of Section 12(2) was reasonable and appropriate".

34. The Commissioner asked for further details from Essex Police and was given the following responses:

"[The complainant] has made an assumption that he knows how Essex Police cost operations, his assumptions are wrong. Officers rarely work on just one case / investigation they will split their time across however many that may be, and there is no expectation (and it would not be reasonable) to record that they spent xx minutes / hours on one case and then yy minutes / hours on the next and so on...

[The complainant] ... assumes that a level of detail is recorded that simply is not the case, files will be collated that include each officers contribution to the investigations (both the original enquiry and the PSD investigation) but none of these will record a breakdown of what every individual officer contributed, and the amount of time they spent – the cost therefore for each officers time cannot be calculated.

He also assumes "a couple of officers / staff" were involved although due to the complexity of the case that clearly was not a true reflection...

In total the numbers of officers / staff / individuals that would need to be approached to see what information they hold comes to over 100. This does not include the separate review of STORM (our Command & Control System), COMPACT (our missing persons database which hold several thousand entries relating to this case), PROTECT (our records relating to Domestic Abuse), individual officers Pocket Note Books, minutes of meetings (if held) including

those of Chief Officers "Gold groups" meetings, and a manual review of the statements, reports and documents mentioned above.

Further to that initial contact many of those officers and staff will have to contact other parties to establish their involvement widening the scope of the research even further.

Without considering the other research as above, the time it would take to contact over 100 people to establish their involvement, time spent on the case etc. would easily exceed the time / cost constraints of FOI. 18 hours equates to 1080 minutes, divided by 100 people allows just 10 minutes for each to provide the information requested. That information (if held at all) would not easily be accessible to them and would require them to check their own personal records / timesheets etc to establish what they hold.

Prior to that however it would require one person to retrieve all the case files (statements / reports / documents mentioned above), the PSD files (also as above) and identify who to contact, plus of course the review of the systems also previously mentioned".

35. Having considered the estimates provided the Commissioner finds that they are realistic and reasonable. He therefore accepts that for Essex Police to ascertain whether or not it holds all of the requested information would exceed the appropriate limit and that section 12(2) was properly cited.

Section 16 - advice and assistance

36. 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.
37. In this case Essex Police has explained how compliance with the request would exceed the appropriate limit. It has also advised that, were it to consider the first request in isolation, that it would be likely to attract other exemptions. It explained to the Commissioner:

"We were making the point that should [the complainant] amend his request to just the first of the two we would not release the reports as those exemptions mentioned, and perhaps others, were likely to apply. We were making the point that whilst he could refine his request to just asking for the reports we would not release

them. The aim was to avoid the situation where we suggested refining the request and then subsequently refusing the request”.

38. The complainant has not asked for Essex Police to deal with either request in isolation and he has maintained his position that the second request would not exceed the appropriate limit.
39. The Commissioner considers that Essex Police has tried to assist the complainant and, as such, he considers that it has complied with section 16.

Other matters

40. The Commissioner would like to draw the complainant's attention to one of his previous decision notices¹. This notice concerns a request for a report ordered by a Coroner. The Commissioner determined in that case that the report was absolutely exempt from disclosure by virtue of section 32(1). The Commissioner would like to advise the complainant that it is likely that he would reach the same determination in this case.

¹ https://ico.org.uk/media/action-weve-taken/decision-notices/2012/721380/fs_50430180.pdf

Right of appeal

41. 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

42. 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.
43. 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

Pam Clements
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SK9 5AF