

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 2 December 2013

Public Authority: Commissioner of the Metropolitan Police
Service

Address: New Scotland Yard
Broadway
London
SW1H 0BG

Decision (including any steps ordered)

1. The complainant has requested information about joint agency operations which include surveillance. The public authority has advised that to respond to the request would exceed the appropriate limit. Having considered the public authority's submissions the Commissioner accepts that this is correct. He does not require it to take any steps.

Background

2. The full request can be followed on the "What do they know" (WDTK) website¹. It is a lengthy string of correspondence which contains more than one request.

Request and response

3. Following earlier correspondence, on 22 December 2012 the complainant wrote to the public authority and requested information in the following terms:

"Please could you tell me if the Metropolitan Police Service is involved in any joint agency operations which include surveillance?"

If so, could you please specify how many operations and how many staff are committed to these at date of writing?"

Could you also please specify the total number of people who are the target of these operations?"

4. Having previously acknowledged the request, on 10 January 2013 the public authority asked the complainant to clarify what he meant by the term "joint agency operations".
5. On 16 January 2013 the complainant advised:

"Joint means with, as in to work with in any way.

By agency, I mean any force/organisation/company/ngo etc who are not Metropolitan Police Service. As mentioned this is for operations which involve surveillance".

6. Following further clarification, the complainant agreed to the revised wording of the request as:

1. *The number of ongoing joint Agency operations which include surveillance as at 22/12/2012*

¹https://www.whatdotheyknow.com/request/metropolitan_police_service_inv
o

2. *The number of MPS staff committed to question 1 as at 22/12/2012*
 3. *The total number of people who are the target of question 1 as at 22/12/2012*
7. On 18 February 2013 the public authority advised the complainant that to comply with the request would exceed the appropriate limit, citing section 12(1) of the FOIA.
 8. Following an internal review, on 10 May 2013 it maintained reliance on the cost limit but revised this to section 12(2).

Scope of the case

9. The complainant contacted the Commissioner on 3 July 2013 to complain about the way his request for information had been handled. He said: *"I have been refused information and told that their [sic] is no opportunity for refinement of the request on the grounds of excessive cost"*.
10. The Commissioner clarified with the public authority that it wished to rely on section 12(1) and he will therefore consider its application to the request.

Reasons for decision

Section 12 – cost of compliance exceeds appropriate limit

11. Section 12(1) of FOIA states:

"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".

12. In other words, section 12 of FOIA provides an exemption from a public authority's obligation to comply with a request for information where the cost of compliance is estimated to exceed the appropriate limit.
13. 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.

14. 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:
- a. determining whether it holds the information;
 - b. locating a document containing the information;
 - c. retrieving a document containing the information; and
 - d. extracting the information from a document containing it.

The four activities are sequential, covering the retrieval process of the information by the public authority.

15. Furthermore, a public authority is able to aggregate requests where they fall 'to any extent' under the same over-arching theme. In the Commissioner's view, the three parts to this request are clearly inter-related so can be considered together.

16. In refusing the request the public authority advised the complainant:

"This email is to inform you that it will not be possible to respond to your request within the cost threshold. The MPS has more than 32 Borough/Operational Command Units (B/OCUs). Police officers of various ranks are able to perform surveillance on subjects, for any number of reasons.

To establish if the information you require is held by the MPS can not be achieved within the time provided by the Freedom of Information Act 2000 (the Act) as to do so will require the searching of many of the MPS's electronic systems, and paper based files located in all the B/OCUs".

17. When he asked for an internal review the complainant advised:

"I am dissatisfied because I believe it unlikely that there would not be some aggregated record of surveillance within areas and/or at a wider level which could be accessed simply.

There is increasing media coverage of reductions in budgets for public bodies and I think it is likely that there would be in depth and ongoing analysis of how funding is apportioned.

A good record keeping system is usually kept within organisations for a multitude of different purposes such as avoiding overlap of duties/conflicts of interest, accounting for uses of staff and assets and maintaining compliance with legislation.

I think that it is possible that if the request were to be refined appropriately the information could be successfully [sic] released within the time/expenditure limit, provided it is sought in a sensible way (I.e. e-mailing the specific individuals who would be in a positions of surveillance oversight). If I were to refine the request I would do it based organisation(s) involved in the joint effort”.

18. In its internal review the public authority further explained:

“As mentioned in the original response ‘Police officers of various ranks are able to perform surveillance on subjects, for any number of reasons.’ Therefore, in order to establish if information is held, locate and extract the information will require a member of police staff contacting over 45 Borough and Operational Command Units (B/OCU) within the MPS. Within each of the B/OCU further contact would have to made with thousands of officers and staff. Once this enquiry had established whether B/OCUs held this information on ‘joint agency operations’ additional work would then need to be undertaken to collate and extract the relevant information surrounding the number ‘of staff committed’ (question 2) and the total number of people who are the target of these operations’ (question 3).

To provide you with a reasonable estimation even if the initial search for question 1 took just 1 minute, this would equate to over 33 hours for every 2000 officers who would need to be contacted. With over 32,000 police officers within the MPS, it is clear this aspect of your request will exceed the appropriate 18 hour limit set out under the FoIA legislation. This estimation does not include the time for the remainder of your request for questions 2 and 3”.

19. In response to the complainant’s comments when asking for an internal review – as cited above - the Commissioner would note that he is mindful of the comments made by the Information Tribunal in the case of Johnson / MoJ [EA2006/0085] that FOIA:

“does not extend to what information the public authority should be collecting nor how they should be using the technical tools at their disposal, but rather it is concerned with the disclosure of the information they do hold”.

20. This demonstrates that a public authority does not have an obligation to create information, even if a requester believes that it should be collating and storing information in such a way as to allow it to process his request.

Would compliance with the request exceed the appropriate limit?

21. There were some initial concerns in clarifying the scope of this request. The Commissioner therefore asked the public authority some further questions to explain how it had interpreted the wording of the request as he believed this could have some bearing on its citing of the cost limit. It provided the following helpful responses.
22. It confirmed that it had interpreted the term 'joint operations' as being work undertaken which would include: *"some sort of collaborative arrangement in achieving an objective, be that short, medium or long term, and would, along with the MPS, include another agency or body in that 'collaboration'"*.
23. In order to ascertain how broad the request was, the Commissioner asked the public authority to give some examples of the types of 'agency' work that it may undertake. It responded:

"The number and scope of other bodies that work with the MPS in "joint operations" is extensive but could include; Other police forces, local authorities, UKBA, RSPCA, Trading Standards NCA and TfL [Transport for London] to name but a few. In order to illustrate such activity I have provided a number of internet links that show who we may work with on a day to day basis and to what end²".

²http://www.london24.com/news/crime/met_gang_unit_arrests_10_on_drugs_charges_in_joint_operation_with_kent_police_1_2356920
http://www.met.police.uk/op_maxim/
<http://content.met.police.uk/News/Joint-operation-in-Brixton-Market/1400014827504/1257246745756>
<http://content.met.police.uk/News/Haverling-Police-joint-Operation/1400012167990/1257246741786>
http://www.lbhf.gov.uk/Directory/News/Arrests_made_in_joint_operation.asp
<http://www.ukba.homeoffice.gov.uk/sitecontent/newsarticles/2013/may/82-hounslow-beds>
http://www.newsshopper.co.uk/news/bromley/10582170.Public_transport_proverts_targeted_in_police_operation/
<http://www.lincs.police.uk/News-Centre/News-Releases-2013/Gangmasters-Licensing-Authority-Press-Release-Seven-Arrested-in-Joint-Operation.html>
http://www.ilfordrecorder.co.uk/news/news/three_men_arrested_in_redbridge_for_crimes_in_romania_and_poland_following_met_police_and_national_crime_agency_op_1_2931758

24. He also asked the public authority to provide some examples of 'hypothetical reasons' why its officers might be required to undertake surveillance as part of a 'joint operation'. It advised as follows:

"In respect of surveillance there are two basic types, covert and overt. In circumstances where covert surveillance is required then the use of such a tactic is governed by legislation, (Regulation Investigatory Powers Act 2000) and its usage monitored by the Office of the Surveillance Commissioner.

Both covert and overt surveillance are covered in some detail within the Home Office Code of Practice for Covert Surveillance and Property Interference. I have provided a link as I believe the answers to the ICO's last question are contained within that document. There are clear examples within the Code of Practice that illustrate when such surveillance, covert or overt, may be used. Clearly the examples contained within the report cover a multitude of agencies but are in the majority of cases entirely applicable to the MPS"³.

25. The above responses indicate the large number of agencies which could be covered by the requests as well as the potentially huge number of officers who could be conducting either overt or covert surveillance.
26. Section 12 explicitly states that public authorities are only required to estimate the cost of compliance with a request, not give a precise calculation. A number of Information Tribunals have made it clear that an estimate for the purposes of section 12 has to be 'reasonable', which means it is not sufficient for a public authority simply to assert that the appropriate costs limit has been met.
27. What amounts to a reasonable estimate can only be considered on a case by case basis. The Information Tribunal in the case of *Randall v Information Commissioner and Medicines and Healthcare Products*

<https://www.facebook.com/metpoliceuk/posts/600901976633445>

http://www.essex.police.uk/news_features/features_archive/2010/april/teaming_up_with_the_metropolit.aspx

http://www.ceop.police.uk/Documents/CEOP_Annual_Review_2008-09.pdf

<http://crownnews.wordpress.com/2011/10/12/drug-smuggler-ali-shah-from-colchester-essex-who-imported-heroin-inside-radishes-at-heathrow-airport-west-london-jailed-for-11-years/>

³https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/97960/code-of-practice-covert.pdf

Regulatory Agency [EA/2006/0004] said that a reasonable estimate is one that is "...sensible, realistic and supported by cogent evidence".

28. In addition to the explanations it had provided to the complainant, the public authority also provided further details to the Commissioner. It explained to the Commissioner that, during his investigation, it had contacted one business area which is involved in the central funding of some operations. This section was able to identify a limited number of operations which it had been involved with during 2012 as these had required central funding. However, it was apparent that it would still be necessary to ascertain whether or not that centrally funded operation was a 'joint operation' requiring 'surveillance' and also whether it was 'live' at the time of the request. Furthermore, having ascertained this response, it would then be necessary to calculate the numbers of staff involved with that operation as well as the number of targets.
29. In respect of those operations which had not required central funding, it would be necessary to contact all other business areas which might have had involvement in surveillance operations. Such business areas may not have had overall responsibility for the operation itself, but they may have provided staff to assist (which would be needed for the second part of the request). The public authority advised that it would be necessary to contact staff in many business areas and it identified the following sections in its Serious Crime and Operations Directorate:
- Pan London Taskforce – air support unit, dog support, mounted branch, marine policing
 - Homicide and Serious Crime
 - Sexual Offences, Exploitation and Child Abuse
 - Forensic Services
 - Public Order Branch
 - Specialist Firearms Command
 - Traffic
 - Trident Gang Command
 - Specialised, Organised and Economic Crime Command – including Specialist Crime Reduction Command

It further commented that several of these areas are able to run operations on a daily basis.

30. The public authority went on to add that further information may be held by other areas such as:

"Territorial Policing (All 32 London Borough's) and Specialist Operations Directorate, (Protection Command [three units], Security Command [three units] and the Counter Terrorism Command). Therefore, the Specialist Operations commands and

London Boroughs bring a minimum 39 additional contact points for searches to be made in regard to this request."

31. It is the Commissioner's opinion that a public authority is not obliged to search for, or compile, some of the requested information before refusing a request that it estimates will exceed the appropriate limit. Instead, it can rely on having cogent arguments and /or evidence in support of the reasonableness of its estimate.
32. The Commissioner considers the explanations given by the public authority to the complainant, coupled with the additional information it has provided to him above, to be reasonable.
33. The Commissioner accepts that the request covers a wide range of information which would clearly involve contact with thousands of the public authority's staff. Using the complainant's terminology, there is no "aggregated record" which would contain the requested information, despite what he may expect.
34. The Commissioner readily concludes that it would exceed the appropriate limit to comply with this information request.

Section 16 – advice and assistance

35. In first refusing the request, the public authority advised the complainant:

"Under Section 16 of the Act (duty to assist), an authority is required to offer an applicant the opportunity to redefine their request within the cost limit. Unfortunately ... I am unable to suggest any practical way in which your request may be modified in order to bring it within the 18 hours stipulated by the Regulations.

NB A public authority is not obliged to assist an applicant in redefining a request to within the time/cost limit, if there is no probability of achieving this.

This was confirmed in Decision Notice 50194062".

36. As referred to previously, when asking for an internal review the complainant suggests that contacting those in positions of 'surveillance oversight' might reduce the onus of the request. However, the explanation from the public authority identifies that there are many departments which may hold information and thousands of staff would need to be contacted who may not even work within the department which has initiated the surveillance.

37. The Commissioner also notes the complainant's comment: "*If I were to refine the request I would do it based organisation(s) involved in the joint effort*". He considers this to be merely an aside by the complainant, rather than an actual instruction to the public authority, as he does not state that this is what he wants it to do. In any event, such a refinement would not, in the Commissioner's view, have made any difference to the request exceeding the appropriate limit.
38. In the Commissioner's view the public authority is aware of its duties under section 16 and it has considered ways to advise and assist the complainant. Unfortunately, on this occasion, it was unable to offer any suggestions. He finds no breach.

Right of appeal

39. 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: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

40. 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.
41. 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

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