

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 20 January 2015

Public Authority: The Chief Constable of Surrey Police
Address: Surrey Police HQ
PO Box 101
Guildford
GU1 9PE

Decision (including any steps ordered)

1. The complainant has requested information about the cost of a specific police operation. Surrey Police said that it could not be provided without exceeding the costs limit under section 12(1) of the FOIA. The Commissioner considers that section 12 of FOIA was applied correctly in this case and he requires no steps to be taken.

Background

2. The request can be followed on the "What do they know" (WDTK) website¹.
3. Surrey Police have confirmed that this remains a 'live' investigation. It also explained to the Commissioner that:

"The matter was referred to the IPCC on 9 December 2013 and it became an IPCC supervised investigation soon afterwards".

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https://www.whatdotheyknow.com/request/total_cost_to_date_of_op_busker

Request and response

4. On 18 September 2014, the complainant wrote to Surrey Police and requested information in the following terms:

"I would like to know the total cost to the taxpayer to date for Operation Busker, and a projected cost for the completed operation.

The information should include:

- 1. Costs for manpower from all departments involved, including the Police Federation, PSD, administration, analysts, Surveillance/search teams and any legal departments.*
 - 2. Any Costs for legal services such as warrants, solicitors etc.*
 - 3. Any costs for the use of specialist equipment such as surveillance equipment. For vehicles used during the operation and any other physical items*
 - 4. Any other costs involved that are not listed above".*
5. Surrey Police responded on 16 October 2014. It confirmed that some of the requested information was held but that to comply with the request would exceed the appropriate limit in section 12(1). It also considered its duty to provide advice and assistance under section 16 but was unable to make any suggestions as to how to refine the request.
6. Following an internal review Surrey Police wrote to the complainant on 29 October 2014. It maintained its position.

Scope of the case

7. The complainant contacted the Commissioner on 10 November 2014 to complain about the way her request for information had been handled. She stated:

"Op Busker has been going on for at least a year, yet they are unable to say how much they have spent on this operation in that time, which I find very odd. They are also reluctant to include the cost of permanently [sic] employed staff, all of whom are paid for by the tax payer."

8. The Commissioner will consider the application of section 12 below.

Reasons for decision

Section 12 – cost of compliance

9. Section 12(1) states that a public authority is not obliged to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit.
10. When considering whether section 12(1) applies, the 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:
 - (a) *determining whether it holds the information,*
 - (b) *locating the information, or a document which may contain the information,*
 - (c) *retrieving the information, or a document which may contain the information, and*
 - (d) *extracting the information from a document containing it."*
11. 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 as the regulations also provide that the cost of a request must be calculated at the rate of £25 per hour.
12. 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. 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. Instead, it must provide an estimate that is sensible, realistic and supported by evidence.

Would compliance exceed the appropriate limit?

13. In its refusal notice Surrey Police explained to the complainant:

"I can confirm that some of the information requested is held, however it cannot be disclosed at this time as the cost of doing so would exceed the fees limit..."

Calculating the cost of an ongoing investigation will invariably exceed the FOI cost threshold. This is because there can be many disparate departments involved in the process. In most cases the staff working on an investigation will be doing so as part of their

normal working day and so no additional cost will be incurred. Some investigations will require ongoing external expertise such as forensic analysis, expert witnesses and so on, the cost of which is not usually know until the investigation is finalised. It is anticipated that at the conclusion of the investigation, a final cost figure will be available for disclosure".

14. When requesting an internal review the complainant raised the following three arguments:

- a) *As all Public Services are responsible for tax payers money, I fail to understand why it would take more than 18 hours work to give the total cost of an investigation. Everyone has to work to budgets, and all the information should be available from the accounts department.*
- b) *Staff that are employed full time by Surrey Police have their wages paid for by the Tax payer therefore to say their salaries do not cost anything is ludicrous. A forcast [sic] of costs to completion must be available otherwise your accounts team would never know where they were.*
- c) *To make it a little simplier [sic], I will accept a resonably [sic] accurate breakdown to give an approximation, however it should be to the nearest £10k.*

15. In response to these arguments Surrey Police advised her that:

- a) *Whilst information will be held by the accounts department it will not be collated until the end of the investigation, as previously advised, information will need to first be collated from many different departments as explained in the response and as explained this will exceed costs do so.*
- b) *Officers/Staff will not necessarily be working on just 1 case and their time will therefore be made up of different activities spread across different investigations so it is not possible to break down costs to show how much of their time was spent on the investigation listed. As this is part of their normal working day it is not collated, therefore it would exceed costs to attempt to extract. As stated in the response however, some investigations will require ongoing external expertise such as forensic analysis, expert witnesses and so on the cost of which is not usually know until the investigation is finalised when the final figure cost will be calculated.*

c) *This information is not held and to attempt to answer would be ca [sic] creation of information which is not the purpose of freedom of information.*

16. It further advised her that: *"It is probable that if the same request were received at the conclusion of the investigation a final cost figure would be available".*

17. During his investigation the Commissioner asked Surrey Police for further details. He was advised that the investigation has involved numerous officers, teams and staff who have not worked on this investigation in isolation, ie their duties have involved other work alongside this case. Therefore, although the complainant is of the view that it should be straightforward to work out the numbers of staff and the hours they have spent on the investigation this is clearly not the case. Surrey Police went on to explain:

"When the initial request was received from [name removed] the decision maker [name removed] contacted our finance department who stated, as with previous requests of this nature, they were not in a position to provide the full break down of figures and could only provide the overtime costs incurred as this could be collated and identified by the operation. [Name removed] then contacted the Investigating Officer in the case ... for further clarification who confirmed that the investigation was live and the information requested would need to be collated from numerous different teams and individuals to answer the questions listed.

This in turn would require a manual review involving both structured and unstructured information to identify costs incurred as the information would not just be held in one format and would need to be searched to accurately provide costings.

This was further complicated by the fact that individuals involved in the investigation would not have been working on just one case during this period therefore information would need to be first be created, relating to the amount of time incurred and then this would need to be turned into an actual figure amount to be provided. This would be done via each officer, team, unit going through their personal records which would include paperwork, emails, phone records and try to ascertain from that the amount of their time spent on the investigation which would then need to be sent to finance to create a figure based on the officer's pay grade".

18. It went on to explain that further enquiries had been made when it was made aware of the complaint to the Commissioner. One of the officers

involved with the Operation had done further work to try and ascertain a further detailed estimate. This officer advised:

"I have stopped calculating at this time as we have already reached over 30 hours and hence spending more time scoping will only cost further resourcing. These calculations have been based on a discussion with representatives of the teams involved or through my own experience of such deployments and techniques. I can complete further scoping as requested but would highlight the fact that the majority of the individuals involved were not working solely on this operation and hence would need to realistically separate their time from this and other responsibilities."

19. Surrey Police added that some of the personnel involved in the Operation were no longer employed by the force so additional work would be needed, including searches through its ICT and Archive Unit to try to retrieve the required information, which would then have to be manually reviewed. It also advised that not all of the teams who would have been involved had yet been approached, such as its Legal Services, the Police Federation and the Car Fleet (regarding vehicle costs).

Conclusion

20. In this case, the Commissioner is satisfied that the explanations given above are both reasonable and adequate and, on that basis, he is satisfied that Surrey Police has demonstrated that it would exceed the appropriate limit to locate and retrieve the requested information. Section 12(1) does therefore apply and Surrey Police is not required to comply with the request.

Section 16 – 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. 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, 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.
22. In this case the public authority has explained to the complainant about how the information is held and why compliance would exceed the limit. In its initial refusal notice Surrey Police advised the complainant:

"When applying S12 exemption our duty to assist under S16 of the Act would normally mean that we discuss with the applicant a way

to refine their request to bring it within the cost limits. This does not appear possible in this case, due to the specific nature of the request”.

23. The Commissioner notes that Surrey Police has properly considered its responsibilities under section 16, although it has not been able to make any suggestions for narrowing the scope of the request to keep it within the cost limit. Considering the wide scope of the information request the Commissioner accepts that there is no easy way for it to do so. He finds no breach of section 16.

Right of appeal

24. 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

25. 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.
26. 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

Jon Manners
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