

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 5 May 2023

Public Authority: The Chief Constable of Devon and Cornwall Police

Address: Police Headquarters
Middlemoor
Exeter
Devon
EX2 7HQ

Decision (including any steps ordered)

1. The complainant has made a request for information to Devon and Cornwall Police (the Police) regarding RIPA applications.
2. The Commissioner's decision is that the Police was entitled to rely on section 12 when refusing this request. The Commissioner is also satisfied that the Police has complied with its duty under section 16.
3. The Commissioner does not require further steps.

Request and response

4. On 12 July 2022, the complainant wrote to the Police and requested information in the following terms:
 - "1. the total amount of RIPA applications made for surveillance operations against the requester since 2000.
 2. the dates of each RIPA Application made.
 3. the forces departments to which each application was made.

4. the cost of each application.
5. confirm the total amount of RIPA application made by other [authorities] which are being held by the PA and their identities.
6. confirm whether the cost for a single RIPA application covers the overall cost of an operation, of which such operations (apart from [surveillance]) may include resources such as Covert Human [Intelligence] sources, Actors/Actresses, counter-terrorism, criminal investigation, public safety assessments etc, or whether these [activities] are additional to the cost of the RIPA applications.
7. confirm whether the force makes its RIPA applications on-line or whether they are posted to the authorising authority.
8. confirm the information management system used by the force to monitor, regulate, store and audit all RIPA applications, approvals, rejections, currently in place and from 2000."
5. The Police responded on 19 August 2022. It stated that it could neither confirm or deny whether the requested information was held, as complying with the request would take them over the reasonable cost limit.
6. Following an internal review the Police wrote to the complainant on 6 March 2023. It stated that it was upholding its original decision.

Scope of the case

7. The complainant contacted the Commissioner on 22 February 2023 to complain about the way their request for information had been handled.
8. The Commissioner considers that the scope of his investigation is to consider whether confirming or deny the information is held would take the Police over the reasonable cost of complying.

Reasons for decision

Section 12 – cost of compliance exceeds appropriate cost limit

9. Section 12(1) of the 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."

10. Section 12(2) of the FOIA states that: "Subsection (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."
11. This limit is defined by the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the Fees Regulations) as £600 for central government departments and £450 for all other public authorities. This means that the appropriate limit will be exceeded if it would require more than 24 hours work for central government, legislative bodies and the armed forces and 18 hours work for all other public authorities. In the present case the appropriate cost limit is £450 and the appropriate time limit is 18 hours.
12. Regulation 4(3) of the Fees Regulations states that a public authority can only take into account the costs it reasonably expects to incur in carrying out the following permitted activities in complying with the request and:
 - determining whether the information is held;
 - 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.
13. Section 12 provides that public authorities are only required to estimate the cost of compliance with a request. The Commissioner considers that the estimate must be reasonable and has followed the approach set out by the Information Tribunal in *Randall v Information Commissioner and Medicines and Healthcare Products Regulatory Agency* (EA/2006/004, 30 October 2007) which states that a reasonable estimate is one that is "sensible, realistic and supported by cogent evidence".
14. Section 12(2) requires a public authority to estimate the cost of complying with the request, rather than provide an exact calculation. The Commissioner must therefore consider whether any estimate provided by the Police is reasonable. If it is, then section 12(2) is engaged and the Police does not have to comply with the request.
15. The Police advised that in order to determine if the requested information was held, it would need to search various digital and paper records. It acknowledged that some systems may be able to identify some of the requested information through a keyword search, not all of its systems would.

16. The Police advised that archived digital systems do not have the same search facilities, and therefore those searches would have to be done manually. It advised that an estimate for these searches would take 10 minutes to locate and check each record for relevancy to the request.
17. The Police advised in addition to these electronic searches, paper records are also held in various locations and would need to be manually checked in order to see if they fell into the scope of the request. The Police advised due to the vary in size each report could take between 10 and 30 minutes to review the reports and determine if they fell into the scope of the request.
18. The Police explained that as the request spans over 22 years, it would likely mean that tens of thousands of records would need to be reviewed. It further stated, that even if half of the records only required a manual search, it would still take significantly more than 18 hours to determine if the information falls into the scope of the request. The Police provided the following example, "5,000 records to be checked at a rate of 10 minutes per record would take 50,000 minutes or 833 hours and 20 minutes."
19. The Police advised it did not conduct a sampling exercise as the estimate is based on current work being undertaken to review files held by the Police in relation to this topic. It concluded that it therefore determined no sampling exercise was required.
20. It did however state that there are over 50,000 covert operation linked to thousands of records held digitally. In addition, there are thousands of physical records across multiple locations, a specific number is not known due to these locations being accountable to multiple staff – one room of physical records contains approximately 7,000 physical records.
21. In order to identify how many RIPA applications are held, each of these records would need to be checked to see if they contain an application and then whether it is relevant to the request specifically. Based on the estimated timings provided previously, this would take significantly more than 18 hours to assess.
22. Based on the above reasoning, the Commissioner is satisfied that the Police was entitled to rely on section 12 when refusing to comply with this request.
23. The Commissioner is also satisfied that the Police complied with its duty under section 16, as it did explain to the complainant that it may wish to refine the request and reduce the timeframe.

Other matters

24. Although there is no legal requirement under FOIA for an internal review to be conducted, the Commissioner considers it to be good practice to offer one to each requester.
25. An internal review should be completed within 20 working days, but no more than 40 working days. In the circumstances of this case, the request for internal review was made in August 2022 and was not completed until March 2023. This is an unacceptable delay and the Police should focus on reducing these delays in the future.

Right of appeal

26. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

27. 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.
28. 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

Catherine Fletcher
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