

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 25 May 2023

Public Authority: Chief Constable of Cleveland Police
Address: Police Headquarters
Bridge Street West
Middlesbrough
TS2 1AB

Decision

1. The complainant requested information relating to alleged historical child abuse at Kerklevington Detention Centre ("KDC") from the late 1960s to the early 1980s.
2. The Commissioner's decision is that the Chief Constable of Cleveland Police ("the Police") was entitled to apply section 12(1) of FOIA, and he is satisfied that the Police met its obligations under section 16(1) to offer advice and assistance. No steps are required.

Request and response

3. On 10 February 2023, the complainant made the following request via WhatDoTheyKnow:

"1. With regards to your ongoing investigation into historical child abuse at Kerklevington Detention centre from the late 1960's to the early 1980, under the freedom of information act I would like to know what percentage of the total amount of victims that have now made a complaint to the Cleveland about abuse where transported to the detention centre by the Humberside Police.

2. As all the victims where transported to Kerklevington detention centre by members of the police force, who then escorted them to the reception area where many where brutally

beaten in front of the police officers, I would like to know how many police officers reported this child abuse to the appropriate authorities from 1960 to 1980.

3. Could you provide me with the number of complaints made against police officers, if any, who transported the child to the detention centre and then escorted the child to the reception area for failing to report assaults on children that happened in there presents.

4. Could you please provide me with the police code of ethics that were in force the 1960 to 1980.

5. Could you please provide information with regards to the duration of the investigation, the number of police officers working within the investigation and the funding of the operation.”

4. On 13 March 2023, Cleveland Police refused the request on the basis of the cost exemption in section 12 of FOIA and subsequently provided the outcome of an internal review on 20 April 2023, which upheld its position.

Reasons for decision

Section 12 – cost of compliance exceeds the appropriate limit

5. Section 12(1) of FOIA 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 cost limit.
6. The appropriate cost limit is set in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (“the Fees Regulations”) at £450 for public authorities such as the Police.
7. 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) FOIA effectively imposes a time limit of 18 hours for the Police to deal with this request.
8. Regulation 4(3) of the Fees Regulations states that a public authority can only take into account the cost it reasonably expects to incur in carrying out the following permitted activities in complying with the request:

- 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.
9. A public authority does not have to make a precise calculation of the costs of complying with a request; instead, only an estimate is required. However, it must be a reasonable estimate. In accordance with the First-Tier Tribunal decision in the case of *Randall v IC & Medicines and Healthcare Products Regulatory Agency* (EA/20017/0004), the Commissioner considers that any estimate must be "sensible, realistic and supported by cogent evidence".
10. Section 12 FOIA is not subject to a public interest test; if complying with the request would exceed the cost limit then there is no requirement under FOIA to consider the public interest.
11. Where a public authority claims that section 12 FOIA is engaged it should, where reasonable, provide advice and assistance to help the requester refine the request so that it can be dealt with under the appropriate limit, in line with section 16 FOIA.

The Police's position

12. In its initial response, the Police explained that because the majority of the information relating to the investigation was held in paper form, a manual trawl would be required to ascertain whether any of the information requested was held, which would take in excess of 18 hours to complete. The Police stated that it was aware of its duty to provide advice and assistance in accordance with section 16 FOIA but was unable to offer any suggestion on how the complainant could refine their request.
13. In its internal review, the Police upheld its position as regards section 12(1) but provided the complainant with the following information outside of FOIA:

"I can inform you that the investigation began in 2014 and has been funded by Cleveland Police. The Code of Ethics is relatively new to the Police Service and was only introduced around 2014. You may be referring to Police Misconduct Regulations, which is separate to the Code of Ethics."

Would the cost of compliance exceed the appropriate limit?

14. The complainant did not accept that it would take the Police more than 18 hours to comply with their request and complained to the Commissioner.
15. The Commissioner asked the Police to provide a detailed estimate of the time/cost taken to provide the information falling within the scope of this request. The Commissioner requested that the Police conduct a sampling exercise.
16. In its submission to the Commissioner the Police explained that, at the Commissioner's request, it had carried out a sampling exercise and explained the process it had undertaken.
17. The Police explained that the starting point used in its sampling exercise was to research a victim on its master spreadsheet to obtain the "Niche" reference number ("Niche" is the Police's own records management system). The reference number was then searched on Niche and the victim record researched to try to establish the victim's address at the time of sentence to KDC or charging court. The next step was to log in to the Police National Computer ("PNC") and research the specific victim on the PNC to establish the charging court. If the charging court was Humberside, the file was then researched to read the victim's statement, questionnaire, police report to establish whether transportation by the police to KDC was mentioned.
18. The Police stated that the sampling exercise took around 9 minutes and that there are 755 records to search and that therefore 755 records x 9 minutes per search equates to 6795 minutes, or 113.25 hours to thoroughly research each victim to establish whether they were transported to KDC by police officers from Humberside alone.
19. The Police also explained to the Commissioner that not all victims specified in their statements who transported them to KDC from court or police stations. Some transportations were conducted by court staff or social workers as well as police forces.
20. Based on the information provided, the Commissioner accepts that the Police would need to manually review the 755 victims' records in order to extract the specific information that the complainant has requested.
21. The Commissioner considers that, even if it only took 5 minutes to review each file and extract the relevant information, that would still be over 60 hours' work.
22. It is the Commissioner's view that the Police estimated reasonably that it would take more than the 18 hours / £450 limit to provide the

information requested. The Police was therefore correct to apply section 12(1) of FOIA to the complainant's request.

Section 16(1) - advice and assistance

23. Section 16(1) of FOIA provides that a public authority is required to provide advice and assistance to any individual making an information request. Section 16(2) clarifies that, providing an authority conforms to the recommendations as to good practice contained within the section, it will be taken to have complied with its obligations.
24. The Commissioner accepts that due to the wide nature of the request, and due to the length of time it would take to search and manually review each record, the request could not be meaningfully refined to allow the information to be provided within the cost limit. As such, the Commissioner is satisfied that there was no breach of section 16(1) of FOIA.

Right of appeal

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

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.

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

Michael Lea
Team Manager
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SK9 5AF