

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 21 June 2023

Public Authority: Chief Constable of Hampshire Constabulary
Address: Tower Street
Winchester
S023 8ZD

Decision (including any steps ordered)

1. The complainant has requested information from Hampshire Constabulary ("the public authority") in relation to traffic offence/reports. The public authority refused to provide the information, citing section 12(1) of FOIA – cost exceeds the appropriate amount.
2. The Commissioner's decision is that the public authority was entitled to apply section 12(1) of FOIA. However, he is not satisfied that it has met its obligation under section 16 of FOIA – advice and assistance.
3. The Commissioner does not require the public authority to take any steps as a result of this decision notice.

Request and response

4. On 27 February 2023, the complainant wrote to the public authority and requested information in the following terms:

"I recently spoke to your collision assessment team about not getting updates on outcomes of some driving incidents I had reported using your website.

They have indicated there is limited resource allocation to enable them to process, and provide feedback for, the number of online submissions they are getting. In particular, they said:

"> The department that reviews these cases is resourced for 14,000 incidents per year but is currently receiving 23,000 reported incidents per year."

"> This department takes ownership of all reports of traffic offences that are not attended by a front line police unit. This includes online reports, other incidents and collisions that are not considered life threatening at the time of report. By necessity these reports, including online submissions, are largely dealt with by automated process. Where we have capacity to process non collision reports they will be dealt with under the terms set out here: HantsSNAP dash / helmet cam submissions"

From your Hants Snap page:

"> A trained decision maker will assess the footage and determine if any offences have been committed. Where action is proportionate and there is sufficient evidence to successfully prosecute the case at Court, the incident will most likely be dealt with via the fixed penalty system.

"> By completing the online form and uploading your footage, you will have provided enough evidence to enable the police to review the incident and take the appropriate action. One of the following outcomes will take place after your report has been reviewed: Formal action, Warning in writing, No further action"

My follow up questions to clarify details of the quoted figures were unanswered. In light of your colleagues' responses, and the information available on the Hants Snap Page, please provide answers to the following questions:

Based on this quote from your colleagues:

"This department takes ownership of all reports of traffic offences that are not attended by a front line police unit. This includes online reports, other incidents and collisions that are not considered life threatening at the time of report."

How many reports did you receive in total in this department in 2022?

How many reports came from your online portal?

The 9000 reported incident deficit: how many of these are made up of submissions through your website?

From all reports made on your website last year, how many resulted in formal action or warning letters taken against the (assuming it was) driver?"

5. The public authority responded on 3 April 2023. It stated that it was refusing to provide the requested information, citing section 12(1) of FOIA – cost exceeds the appropriate limit.
6. Following an internal review the public authority wrote to the complainant on 12 April 2023. It stated that it upheld its original position.

Scope of the case

7. The complainant contacted the Commissioner on 17 May 2023, to complain about the way their request for information had been handled.
8. The Commissioner considers that the scope of this complaint is to determine if the public authority was correct to rely on section 12(1) of FOIA. He will also consider if the public authority has provided advice and assistance as required under section 16 of FOIA.

Reasons for decision

Section 12 – cost of compliance

9. Section 12(1) of the 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 limit" as set out in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ("the Fees Regulations").
10. The appropriate limit is set in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 at £600 for central government, legislative bodies and the armed forces and at £450 for all other public authorities. The appropriate limit for the public authority is £450.
11. 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 for the public authority.
12. 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.
13. 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 in the case of *Randall v Information Commissioner & Medicines and Healthcare Products Regulatory Agency EA/2007/0004*, the Commissioner considers that any estimate must be “sensible, realistic and supported by cogent evidence”. The task for the Commissioner in a section 12 matter is to determine whether the public authority made a reasonable estimate of the cost of complying with the request.
 14. Section 12 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 whether there is a public interest in the disclosure of the information.
 15. Where a public authority claims that section 12 of 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 of FOIA.
 16. In this case, the public authority explained that it does not hold the information in a retrievable format. It advised that it receives around 15,000 traffic reports online each year and to provide information relating to the outcomes, it would require a manual review of each report, which would take approximately 10 minutes to extract the relevant data and, therefore, would greatly exceed the cost limit.
 17. The public authority explained to the Commissioner that there is not an internal mechanism to identify which reports were made via the website or other mechanisms and, therefore, to extract such data would require a manual review.
 18. The public authority went on to explain that it did not carry out a sampling exercise due to the thousands of cases. It advised that even if it only took 1 minute for each record, it would still exceed the cost regulations.

19. The Commissioner is satisfied that the public authority's arguments are justified, as it has explained how it would have to obtain the requested information. He is also satisfied that it has provided a reasonable cost/time for obtaining the information due to the way in which it is stored.
20. The Commissioner notes that the complainant has advised that other police forces have given the requested information to them. Whilst this may be the case, not all of the forces will use the same systems for recording information and/or they may have different ways of storing such information.
21. The Commissioner's decision is that the public authority was correct to apply section 12(1) of FOIA to the request.

Section 16(1) – The duty to provide advice and assistance

22. Section 16(1) of FOIA provides that a public authority should give advice and assistance to any person making an information request. Section 16(2) clarifies that, providing an authority conforms to the recommendations as to good practice contained within the section 45 code of practice¹ in providing advice and assistance, it will have complied with section 16(1).
23. The Commissioner notes that the public authority advised him that due to the nature of this request, it could not practically see how it could have provided advice and assistance. The public authority added further that it would not even have the capability to check one month within the cost limit.
24. The Commissioner acknowledges the public authority's explanation for not offering advice and assistance directly to the complainant. However, it is a requirement under FOIA to provide advice and assistance (even to advise to change to a significantly smaller timeframe or to explain that it is not feasible to answer even a substantially refined request) and, as this has not been offered via either the initial response or the internal review outcome, section 16 of FOIA has been breached. Given the impracticality of this request being answered even for a refined timeframe, the Commissioner does not consider it necessary for the public authority to correspond further with the complainant on the matter. He does, however, remind the public authority to be mindful of its section 16 obligations in future refusal notices.

¹ <https://www.gov.uk/government/publications/freedom-of-information-code-of-practice>

Right of appeal

25. 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

26. 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.
27. 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
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