

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 30 August 2023

Public Authority: Police Service of Northern Ireland

Address: 65 Knock Road
Belfast
BT5 6LE

Decision (including any steps ordered)

1. The complainant requested information from the Police Service of Northern Ireland ("PSNI") relating to reports about street preachers in Belfast City Centre. The PSNI refused to comply with the request citing section 12 (cost limit) of FOIA.
2. The Commissioner's decision is that the PSNI was entitled to refuse to comply with the request in accordance with section 12(1) of FOIA. The Commissioner also finds that the PSNI complied with its obligations under section 16 to offer advice and assistance.
3. The Commissioner does not require the PSNI to take any steps.

Request and response

4. On 9 June 2023 the complainant made the following request for information to the PSNI:

"Could you please provide the following information under FOI broken down per year for the dates between 1 January 2018 and present:

1. The number of reports that the PSNI have received relating to street preachers in Belfast City Centre (categorised by hate

speech, breach of the peace, noise complaint, public nuisance etc.)

2. Details of actions taken by the PSNI in dealing with these cases (number of fines issued etc.)."
5. The PSNI responded on 15 June 2023. It stated that the cost of complying with the request would exceed the cost threshold of £450. In accordance with this finding, the PSNI issued a section 12 refusal notice in reply to the complainant's request for information. The PSNI suggested that the complainant may wish to submit a refined request.
6. The PSNI upheld its initial application of section 12 of FOIA via internal review on 27 June 2023. It clarified that it did hold information within the scope of the complainant's request, however the time it would take to carry out the other activities such as extracting the information would be well over the time limit as set out in section 12 of FOIA.

Scope of the case

7. The complainant contacted the Commissioner on 27 June 2023 to complain about the way their request for information had been handled. The complainant disagrees with the PSNI's application of section 12 of FOIA.
8. The Commissioner considers the scope of this case to be to determine if the PSNI has correctly cited section 12(1) of FOIA in response to the request. The Commissioner has also considered whether the PSNI met its obligation to offer advice and assistance, under section 16 of FOIA.

Reasons for decision

Section 12 – cost of compliance

9. 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 limit" as set out in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ("the Fees Regulations").
10. Section 12(2) of FOIA states that subsection (1) does not exempt the public authority from the obligation to comply with paragraph (a) of section 1(1) (the duty to inform an applicant whether it holds information of the description specified in the request) unless the

estimated cost of complying with that paragraph alone would exceed the appropriate limit. The PSNI relied on section 12(1) in this case.

11. 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 PSNI is £450.
12. 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 PSNI.
13. 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.
14. 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.
15. 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.
16. 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.

Would the cost of compliance exceed the appropriate limit?

17. As is the practice in a case in which the public authority has informed the complainant that it holds the information, the Commissioner asked the PSNI to provide a detailed estimate of the time/cost taken to provide the information falling within the scope of this request.
18. In its submission to the Commissioner the PSNI stated that the detail sought by the complainant was not readily searchable electronically on its systems. It would require electronic searches as well as manual review to locate and retrieve as well as extract any information held. It explained that the parameters of the search that would be required in this instance would firstly require a search of PSNI's electronic system (Niche). A police officer or staff member would then need to search all instances under the 'Central Ward' (most likely to cover all of the Central Business District of Belfast or 'City Centre') as well as searches using the broad category of Anti-Social Behaviour'. Niche does not hold a separate category for 'Street Preacher'. Once that information is identified, a manual review would then be required to ascertain the nature of the incident and to determine if it was within the scope of the request as relating to 'Street preachers'.
19. In the PSNI's initial refusal notice to the complainant it explained that for one year alone there were over 3000 incidents returned relating to Anti-Social Behaviour for this area. Its internal review response set out further detail of the steps required. It estimated that to search the year 2022 alone at a total of 3184 files x 2- 5 mins (to review each record) equates to at least 106 hours. It also stated to the Commissioner that it had carried out a dip sampling exercise to support its cost estimates in this case. From 1st January -31st June 2023, 1390 incidents were returned relating to 'ASB' and the Central Ward area. Of these 1390, an experienced member of staff, familiar with PSNI records and systems, selected 50 random incidents for dip sampling. It took the staff member 3 hours to complete this exercise. This has suggested to the PSNI that it had underestimated the timings in its initial cost estimate. If the staff member worked at the same pace non-stop for 18 hours, they would have reviewed 300 records. As above in 2022, 3184 records were identified for that year alone.
20. The Commissioner considers that the PSNI estimated reasonably that it would take much more than the 18 hour limit to respond to the request. The PSNI was therefore correct to apply section 12(1) of FOIA to the complainant's request.

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

21. 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).
22. The Commissioner notes that the PSNI stated to the complainant that they could consider submitting a refined request, which the Commissioner understands the complainant did and which is being dealt with separately. The PSNI also provided general guidance to the complainant around the reporting of some of the issues mentioned e.g. noise levels, hate speech etc. The Commissioner is therefore satisfied that the PSNI met its obligations under section 16 of FOIA.

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

Right of appeal

23. 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@justice.gov.uk

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

24. 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.
25. 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

Deirdre Collins
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