

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 14 November 2023

Public Authority: Chief Constable of Warwickshire Police
Address: Police Headquarters
Leek Wootton
Warwick
CV35 7QA

Decision (including any steps ordered)

1. The complainant has requested information about the policing of protests in the area. Warwickshire Police disclosed some information, but refused to provide specific arrest information, citing section 12(1) (Cost of compliance exceeds appropriate limit) of FOIA.
2. The Commissioner's decision is that Warwickshire Police was entitled to rely on section 12(1) to refuse the request for that information.
3. However, by failing to respond to the request within the statutory 20 working day time for compliance, Warwickshire Police breached sections 1(1)(a) and (b), and section 10 of FOIA.
4. The Commissioner requires no steps as a result of this decision.

Request and response

5. On 22 May 2023, the complainant wrote to Warwickshire Police and requested information in the following terms:

"Cost of Policing Protest 2021 to 2022

...

- 1) What is the breakdown of costs associated with the policing of protests in your area
 - 2) What arrests were made during this time?
 - 3) How were those arrests classified please?
 - 4) What continued professional development training has the Chief Constable received on Environmental Crime?
 - 5) What was the last date of any training on Environment Crime?
 - 6) Who provided the training?"
6. Following several requests for clarification, Warwickshire Police responded on 19 July 2023. It explained that all the recorded information it held about its policing of protests in Warwickshire, during the stated period, related to oil protests at Kingsbury. It answered questions (1), (2), (5) and (6) of the request. It said that no information was held in respect of question (4).
7. For question (3), it said that the requested information was not held in a readily retrievable format and compliance would exceed the appropriate costs limit, set out under section 12(1) of FOIA. By way of advice and assistance, it provided a link to information on its website about the Kingsbury oil protests, which included information about some of the arrests made.
8. Following an internal review, Warwickshire Police wrote to the complainant on 14 August 2023. It maintained that section 12(1) of FOIA had been correctly applied to question (3).

Scope of the case

9. The complainant contacted the Commissioner on 14 August 2023 to complain about Warwickshire Police's decision to apply section 12(1) of FOIA to refuse question (3) of the request.
10. The analysis below considers whether Warwickshire Police was entitled to rely on section 12(1) of FOIA to refuse question (3).
11. The timeliness of Warwickshire Police's response has been considered under sections 1 and 10 of FOIA.

Reasons for decision

Section 12 – Cost of compliance exceeds appropriate limit

12. Warwickshire Police applied section 12(1) of FOIA to refuse question (3) of the request.
13. Section 12(1) states that a public authority is not required to comply with a request for information if it estimates that the cost of doing so would exceed the appropriate cost limit.
14. This 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 Warwickshire Police. The cost must be calculated at a flat rate of £25 per hour. This means that Warwickshire Police may refuse a request for information if it estimates that it will take longer than 18 hours to comply with it.
15. When calculating the estimate, the Fees Regulations state that a public authority can only take into account the costs it reasonably expects to incur in:
 - determining whether it holds the information;
 - locating the information, or a document containing it;
 - retrieving the information, or a document containing it; and
 - extracting the information, or a document containing it.
16. The Commissioner considers that the costs estimate must be reasonable. A reasonable estimate is one that is “...sensible, realistic and supported by cogent evidence”¹.
17. Warwickshire Police said the information specified in question (3) was not held in a way which would allow it to be retrieved readily. The activities that would be involved in identifying whether it was held, and in locating, extracting and retrieving it would exceed the cost limit under section 12 of FOIA. It estimated that the total time required to meet the request would breach the 18 hour limit allowed for under FOIA.

¹ The approach set out by the Information Tribunal in the case of *Randall v Information Commissioner and Medicines and Healthcare Products Regulatory Agency* (EA/2007/0004, 30 October 2007)

18. Warwickshire Police explained that although custody records are held for every arrest, they are not searchable by reference to the event being policed. To obtain accurate information on the classification of each arrest made at the Kingsbury oil protests, it would be necessary to review every arrest made during the period specified, to check whether it related to the Kingsbury protests.
19. It said it did hold a separate spreadsheet of information about the policing of the Kingsbury oil protests, including some arrest information, but this record:

“...was not compiled for the purposes of constituting a comprehensive record of this policing operation but for broader Force budgeting, resourcing and reporting purposes and therefore it should not be expected that detailed information on individual arrests should have been recorded on it.”
20. It explained that, within this spreadsheet, some arrests had been recorded but did not have any offence listed. Others did not have any offence listed, but contained a description of the circumstances leading to the arrest.
21. A dip sample was taken of six records which did have an offence listed and it was found that, of these, three did not have the correct or complete reasons for the arrest (ie the offence listed did not correspond with the custody record or Police National Computer ('PNC') record for the arrest).
22. Warwickshire Police considered that in order to provide accurate information on arrest classifications, it would be necessary to consult the custody and/or PNC record for each individual arrest. It said:

“This was scoped by measuring the above examples which, in two cases (where the arrest station was on [sic] Warwickshire), involved:

 - Taking the custody reference from the sheet and entering it into the system.
 - Reading the 'reason for arrest' section and identifying specific reasons. (However, in some cases, for example where 'Other not listed PNC recordable' is stated as reason for arrest, then it is necessary to read the proceeding free text 'circumstances' section to identify the specific offence/s).
 - Document the results.

This was scoped at 3.5 minutes per record (minimum).

In 58 cases the arresting station was not on [sic] Warwickshire and, in those cases, it would be necessary to check each individual on PNC, rather than the Warwickshire custody system. One case was scoped which involved:

- Entering the individual's surname and first/middle names and date of birth into the 'Name Enquiry' page on PNC.
- Confirming that the correct individual had been located.
- Navigating to the 'Arrest Summary' page.
- Ascertaining the date that the individual was arrested (from the POC sheet) and search for a corresponding arrest date on PNC.
- Navigating to the 'Disposal History' page to determine the corresponding offence titles.
- Document the results.

This was scoped at 6.5 minutes per record; however, it should be noted that this was a simple record with minimal arrests in the summary. In the event that an individual has had a history of multiple arrests, then the summary would run into pages and pages and it would take far longer to locate the correct arrest/information.

An estimate of the time was therefore calculated as follows:

268 records x 3.5 minutes per record (minimum) = 938 minutes

58 records x 6.5 minutes per record (minimum) = 377 minutes

938 minutes + 377 minutes = 1315 minutes = 22 hours (minimum)

(It should also be noted the spreadsheet is not complete as it only cites 321 arrests whereas the business area advised there were 326 arrests in total)."

23. In conclusion, Warwickshire Police said:

"...it is my view that the time estimates provided by the decision maker are ambitious/optimistic given the number of records to be checked, and that it is entirely possible that reviewing the records to ensure an accurate response could take far longer in practice than has been estimated; this is particularly true when noting that a significant number of the records relate to arrests/custody records from other Force areas."

The Commissioner's decision

24. When dealing with a complaint to him under FOIA, it is not the Commissioner's role to make a ruling on what information a public authority should hold, or how it should hold it. He is not concerned with how a public authority deploys its resources, on how it chooses to hold its information, or the strength of its business reasons for holding information in the way that it does as opposed to any other way. Rather, in a case such as this, the Commissioner's role is simply to decide whether or not the requested information can, or cannot, be provided to a requestor within the appropriate cost limit.
25. The Commissioner's job here is to determine whether Warwickshire Police has demonstrated that the work involved in providing the information specified in question (3) would be likely to exceed 18 hours, and thus the £450 cost limit established under the Fees Regulations.
26. Warwickshire Police has provided an estimate that compliance with the request would require at least 22 hours work. It has explained that its estimate is derived from a sampling exercise in which it carried out the work that would be necessary.
27. The Commissioner considers this estimate to be credible, based on the way in which information is held. Having considered the search strategy adopted and the specific estimates provided by Warwickshire Police, as set out above, the Commissioner's conclusion is that Warwickshire Police has estimated reasonably and cogently that the costs involved in complying with the request would exceed the £450 limit established by the Fees Regulations, perhaps significantly so.
28. The Commissioner's decision is therefore that Warwickshire Police was entitled to apply section 12(1) of FOIA to refuse to comply with question (3) of the request.

Section 16 – Advice and assistance

29. Section 16(1) of FOIA provides that a public authority is required to provide advice and assistance to any individual making an information request where it would be reasonable to do so.
30. In general, where section 12(1) is cited, 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 possible to provide any useful advice.
31. Warwickshire Police provided information about the way in which arrest records were held and told the complainant that it was unable to suggest a way that she could pare down the request so that it could be

handled within the fees limit. It provided a link to information on its website about its policing of the protests, which contained some information about arrests made.

32. The Commissioner accepts that Warwickshire Police tried to explain how the requested information is held on its systems. Based on the wide-ranging scope of this request, he concludes that there was no easy way for it to suggest how the complainant could refine it such that it would return the requested information within the cost limit. He therefore finds there was no failure to comply with section 16.

Procedural matters

Section 1 – General right of access

Section 10 - Time for compliance

33. Section 1(1)(a) of FOIA states that a person who asks for information is entitled to be informed whether the information is held. If it is held, section 1(1)(b) states that the person is entitled to have that information communicated to them.
34. Section 10(1) of FOIA states that on receipt of a request for information a public authority should respond within 20 working days.
35. In this case, the complainant made her request for information on 22 May 2023 and Warwickshire Police responded on 19 July 2023, which was outside of the 20 working day limit. Warwickshire Police attributed the delay to the need to clarify certain points with the complainant, and to the complexity of the request.
36. Under section 1(3) of FOIA, where reasonable, a public authority may ask for clarification of a request, and may 'stop the clock' while waiting for the requester to respond. However, the Commissioner notes that the first request for clarification was to ask for the period covered by the request, which was in fact clearly specified in its heading. There followed two further, separate requests for clarification, one of which ("...is Q4 just in relation to the Chief Constable?") appears similarly unnecessary, as the meaning of question (4) seems unambiguous.
37. Even excluding the time the clock 'stopped' while awaiting the complainant's replies to these questions, it still took Warwickshire Police 32 working days to respond to the request. The Commissioner does not consider that the complexity of the request justified that delay.
38. By failing to respond to the request within the 20 working day time for compliance, Warwickshire Police breached sections 1(1)(a) and (b), and 10(1) of FOIA.

Reference: IC-251438-Y9G3

39. The Commissioner has made a separate record of these breaches for monitoring purposes.

Right of appeal

40. 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

41. 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.
42. 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

Samantha Bracegirdle
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