

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 29 January 2024

**Public Authority:** Chief Constable of Kent Police  
**Address:** Sutton Road  
Maidstone  
Kent  
ME15 9BZ

#### Decision (including any steps ordered)

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1. The complainant requested information from the Chief Constable of Kent Police relating to non-crime hate incidents. Kent Police refused to confirm or deny whether it held information within the scope of the request, citing section 12(2) (cost of compliance exceeds appropriate limit) of FOIA.
2. The Commissioner's decision is that Kent Police was entitled to apply section 12(2) of FOIA. He is also satisfied that Kent Police met its obligation under section 16 to offer advice and assistance.
3. The Commissioner does not require Kent Police to take any further action.

#### Background

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4. The request refers to Non-Crime Hate Incidents (NCHIs). According to the gov.uk website<sup>1</sup>:

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<sup>1</sup> <https://www.gov.uk/government/publications/non-crime-hate-incidents-code-of-practice/non-crime-hate-incidents-code-of-practice-on-the-recording-and-retention-of-personal-data-accessible>

"7. Non-crime hate incidents (NCHIs) are recorded by the police to collect information on 'hate incidents' that could escalate into more serious harm or indicate heightened community tensions, but which do not constitute a criminal offence.

8. NCHI recording stems from the murder of Stephen Lawrence in 1993. The 1999 [Stephen Lawrence Inquiry Report](#) called for Codes of Practice to create "a comprehensive system of reporting and recording of all racist incidents and crimes". NCHI recording has since expanded to cover all the protected characteristics covered by hate crime laws in England and Wales: race, religion, disability, sexual orientation and transgender identity. This data is vital for helping the police to understand where they must target resources to prevent serious crimes which may later occur".

## Request and response

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5. On 4 May 2023, the complainant requested the following information:

"Please provide the number of non-crime hate incidents you recorded in 2019/20, 2020/21 and 2021/22.

Of the non-crime hate incidents you recorded in January and February 2020, please specify how many of the individuals concerned were notified that they had committed a non-crime hate incident."

6. On 16 May 2023, Kent Police replied. It provided some of the requested information and advised it was unable to confirm or deny whether it held the remaining information requested and applied section 12(2) of FOIA to the request.

7. The complainant refined their request on 18 May 2023 in the following terms:

"Of the non-crime hate incidents you recorded in January 2020, please specify how many of the individuals concerned were notified that they had committed a non-crime hate incident."

8. On 12 June 2023, Kent Police advised it was unable to confirm or deny whether it held the remaining information requested and maintained reliance on section 12(2) of FOIA to the refined request.

9. This decision was upheld at the internal review, dated 2 October 2023.

## Scope of the case

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10. The complainant contacted the Commissioner on 4 October 2023 to complain about the way their request for information had been handled.
11. The Commissioner considers the scope of this case is to determine whether Kent Police has correctly applied section 12(2) of FOIA in response to this request. The Commissioner has also considered whether Kent Police met its obligation to offer advice and assistance, under section 16 of FOIA.

## Reasons for decision

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### Section 12(2)

12. Section 12(2) provides that a public authority is not obliged to confirm or deny whether the requested information is held if it estimates that to do so would incur costs in excess of the "appropriate limit" as set out in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004<sup>2</sup> ("the Fees Regulations").
13. In other words, if the cost of establishing whether information of the description specified in the request is held would be excessive, the public authority is not required to do so.
14. The "appropriate limit" is set in the Fees Regulations at £600 for central government, legislative bodies, and the armed forces and at £450 for all other public authorities. Therefore, the "appropriate limit" for Kent Police is £450.
15. The Fees Regulations also specify that the cost of complying with a request must be calculated at the rate of £25 per hour, effectively imposing a time limit of 18 hours for Kent Police to deal with this request.
16. Where section 12(2) is relied upon, 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 activity:
  - determining whether the information is held.
17. Section 12(2) requires a public authority to estimate the cost of confirmation or denial, rather than to formulate an exact calculation. However, it must be a reasonable estimate. In accordance with the First-Tier Tribunal in the case of "Randall v Information Commissioner &

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<sup>2</sup> <https://www.legislation.gov.uk/uksi/2004/3244/contents/made>

Medicines and Healthcare Products Regulatory Agency EA/2007/0004", the Commissioner considers that any estimate must be **"sensible, realistic and supported by cogent evidence"**.

18. The task for the Commissioner here is to determine whether the cost estimate by Kent Police was reasonable. If it was, then section 12(2) was engaged and it was not obliged to confirm or deny whether the requested information was held. In the Commissioner's view, section 12(2) will only be relevant where the public authority is entirely unaware of whether it holds any recorded information within the scope of the request.

**Would confirmation or denial exceed the appropriate limit?**

19. As is the practice in a case in which the public authority has cited the cost limit under section 12(2) of FOIA, the Commissioner asked Kent Police to provide a more detailed estimate of the time and cost of determining whether the requested information was held.
20. Kent Police explained that the information subject of the request is not retrievable via automated means. It said that, in order to determine whether or not an individual who has been reported to have committed a NCHI was informed of the complaint/allegation, this would require the manual review of each complaint/allegation record in its entirety together with substantial cross referencing.
21. Kent Police further advised that the relevant crime report may not record within its log/entries whether an individual reported to have committed a NCHI, was also informed of the complaint/allegation or not. Cross referencing would be required against each associated case and it would need to consider investigative material such as interview records/recordings, body worn video footage, witness statements, pocket notebook entries, daybook entries or through direct liaison with the Investigating Officer/Officer in Case, in order to ascertain whether the party had been informed or not.
22. In their grounds of complaint, the complainant suggested that Kent Police could contact the police officers connected to each allegation and ascertain from them whether or not the party was informed. However, the Commissioner considers that any related response would be incomplete for the following reasons. Officers may have left the force or could have no clear recollection of events from more than two years previous. The officers may not have formally recorded having advised the party, in which case it would not be subject to FOIA. Additionally, the party may have been informed as a result of a different action such as their having made a right of access request or in connection to a different crime or complaint, so contacting the officers as suggested would not give an accurate result. Therefore, emailing any officer who

may have been involved with the initial report would only have the potential to provide a partial response at best.

23. Kent Police further advised that, focusing on crime records only, 88 reports are held for the time period of January 2020. It conducted a scoping exercise on 10 of these reports to estimate the time that it would take to review the related logs/entries.
24. Kent Police stated that the scoping exercise determined that a review period of 50 minutes per report would be required, totalling an estimated 73 working hours for all 88 reports. Kent Police recognised that reports can vary in complexity and length therefore, it estimated that, even if it were to reduce the time required to review each report to an average of 30 minutes, this would still exceed the 18-hour limit at 44 working hours.
25. Kent Police explained that, in addition to the time required to review each report, it would still be necessary to cross reference the information with key internal departments such as Information Management, Legal Services and Professional Standards to determine whether an individual reported to have committed a NCHI, was informed of the complaint/allegation or not. For example, it explained to the complainant that a disclosure may have been made to an individual via a right of access request under the Data Protection Act, so the relevant department would need to be consulted to find out whether such a request had been received and dealt with.
26. Kent Police added that complaints/allegations of individuals committing a NCHI can be recorded alongside other allegations/offences. Therefore, although it may be recorded that an individual was informed of a separate allegation/offence it may not be possible to confirm with accuracy that the individual was also specifically made aware of the NCHI complaint/allegation.
27. As there is no alternative to the manual review methods explained above, the level of work required to even confirm whether any information falling within the scope of the request is held would exceed the appropriate limit.
28. The Commissioner's overall conclusion is that Kent Police has estimated reasonably that to confirm or deny whether it holds the requested information would exceed the appropriate cost limit. Kent Police was therefore correct to apply section 12(2) of FOIA to the complainant's request.

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

29. 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.

30. Section 16(1) of FOIA provides that a public authority should give reasonable 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 practice<sup>3</sup> in providing advice and assistance, it will have complied with section 16(1). The FOIA code of practice states that, where public authorities have relied on section 12 to refuse a request, they should:

“provide applicants with advice and assistance to help them reframe or refocus their request with a view to bringing it within the cost limit.”

31. Kent Police advised that in order to assist the complainant it had provided a response to the first part of his request. Whilst it did not offer advice regarding how it might be further refined to fall within the cost limit, the Commissioner recognises that this is not always practicable. The complainant has already reduced his request from two months to just one month yet this still exceeds the limit. It would be possible to further reduce it to one week in an attempt to refine it sufficiently, but the Commissioner considers this is obvious from the estimates already provided to the complainant.
32. The Commissioner is therefore satisfied that Kent Police met its obligation under section 16 of FOIA.

### **Other matters**

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33. The Commissioner would like to remind Kent Police that although an internal review is not legally required under FOIA, it is still considered to be good practice. An internal review should be conducted within 20 working days, but never more than 40 working days.
34. In the circumstances of this case, the Internal Review was completed well in excess of 40 working days, which the Commissioner considers to be poor practice.

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<sup>3</sup> <https://www.gov.uk/government/publications/freedom-of-information-code-of-practice>

35. Also, as a matter of good practice, Kent Police should have avoided disclosing the information located for part 1 of the request and should instead have informed the applicant that section 12 is engaged for all of the request. It could have then offered advice and assistance to enable the applicant to make a fresh request, targeting the information which they are most interested in from that which could be provided within the limit.

## **Right of appeal**

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36. 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](mailto:grc@justice.gov.uk)  
Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

37. 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.

38. 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 .....**

**Carolyn Howes  
Senior Case Officer  
Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**