

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 22 February 2024

Public Authority: Chief Constable of Cambridgeshire Constabulary

Address: Constabulary Headquarters
Hinchingsbrooke Park
Huntingdon
Cambridgeshire
PE29 6NP

Decision (including any steps ordered)

1. The complainant has requested information from Cambridgeshire Constabulary (the Constabulary) relating to fraud reports.
2. The Commissioner's decision is that the Constabulary was entitled to rely on section 12(1) when refusing to provide the requested information.
3. The Commissioner also finds that the Constabulary did not comply with its section 16 obligation to offer advice and assistance.
4. The Commissioner requires the Constabulary to take the following steps to ensure compliance with the legislation.
 - Provide the complainant with appropriate advice and assistance to help them submit a request that falls within the appropriate limit.
5. The Constabulary must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Background

6. The complainant made the original request for information in the following terms:

"I am asking about your approach with regard to the disclosure of information where Cambs police possess information that would rise to a suspicion of fraud – this is a general question albeit arising from a specific event.

Please provide

1. The procedure / policy Cambs police adopt when possessing information that an allegation of crime may be tainted by fraud, likely an attempt to deceive an insurer

and

2. Since 01/01/2020, the number of pre-emptive disclosures Cambs police have made - which will fall to the old and new MoU but not necessarily exclusively

and

3. Any information that would address you approach to fraud in general (policies/directives)

- a. whether you have a fraud unit/tam
- b. the staffing of the – number and rank."

7. The Constabulary relied on section 12 of FOIA to refuse this request.

Request and response

8. On 6 July 2023, the complainant wrote to the Constabulary and, referring to their earlier request, requested information in the following terms:

"1. how is this information recorded and held

2. what software do you use

3. what fields can be searched

4. what reports can be generated

5. how is it not held in a readily retrievable format

6. how many MoU requests have you received since 01/01/2020

7. how are appendix D requests paid for, invoiced and accounted for – to include any nominal code used
 8. what is the procedure for disclosure other than Appendix D or E i.e. under 'F'; what rank may submit this, whose authority/endorsement must be sought, what is the follow-up process and how many have resulted in prosecutions?
 9. How many insurance fraud prosecutions have [been] initiated by your constabulary, other than by ActionFraud referral
 10. How are such fraud matters recorded – software, fields that can be searched, reports that can be generated etc. – as above.”
9. The Constabulary responded on 3 August 2023. It refused to provide the requested information. It advised that complying with the request would exceed the appropriate limit and therefore it relied on section 12 of FOIA to refuse the request.
 10. On 11 August 2023, the Constabulary completed its internal review. It upheld its original position.

Scope of the case

11. The complainant contacted the Commissioner on 19 September 2023 to complain about the way their request for information had been handled.
12. The Commissioner considers that the scope of his investigation is to consider whether the Constabulary was entitled to refuse this request under section 12(1).

Reasons for decision

Section 12 – cost of compliance

13. 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”).
14. 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 Constabulary 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, meaning that section 12(1) effectively imposes a time limit of 18 hours for the Constabulary.
16. 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.
17. 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.
18. 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.

Would the cost of compliance exceed the appropriate limit?

19. 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 Constabulary to provide a detailed estimate of the time or cost needed to provide the information falling within the scope of this request.
20. In its submission to the Commissioner, the Constabulary focused its response on the cost of complying with the sixth question, which related to the number of Memorandum of Understanding ('MoU') requests

received since 1 January 2020. It explained that it does not record this information centrally and would therefore need to manually review each record to establish if the requested information could be retrieved.

21. The Constabulary stated that whilst manually reviewing each record may not sound like a large amount of work, all insurance company requests are classified under one case type, this classification is "insurance." The requested information would be logged under this classification; however it would also be logged alongside a number of other insurance types, eg Motor insurance Bureau.
22. The Constabulary explained that there were 635 records for the requested time period. It conducted a sample exercise of ten records and it took just over two minutes to locate the requested information.
23. The Constabulary concluded that at a rate of 2 minutes per record, it would take over 21 hours to collate the requested information for just question 6 alone.
24. The Commissioner considers that the Constabulary's estimate of the cost of complying with the request is reasonable and that responding to the request would exceed the appropriate limit. The Constabulary was therefore entitled to apply section 12(1) of FOIA to refuse the complainant's request.

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

25. 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).
26. 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.
27. The Commissioner notes that the Constabulary explained that it could not provide any meaningful advice and assistance to reduce the scope.

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

It explained even if the complainant were to reduce the time period of the request, the work involved with the request would still likely exceed the cost limit.

28. The Commissioner is not persuaded that the complainant could not reduce the cost of complying with their request by reducing the time parameters – albeit that a large reduction might be required. He also notes that the Constabulary has failed to identify any parts of the request that it might be able to answer without exceeding the cost limit.
29. The Commissioner is therefore satisfied that the public authority did not comply with section 16 of FOIA when dealing with this request.
30. The public authority must now provide reasonable advice and assistance, to the complainant, to help them refine their request.

Right of appeal

31. 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

32. 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.
33. 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

Roger Cawthorne
Team Manager
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Wycliffe House
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