

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 19 June 2024

Public Authority: Chief Constable of West Midlands Police
Address: Lloyd House
Snow Hill Queensway
Birmingham B4 6AT

Decision (including any steps ordered)

1. The complainant requested information relating to vehicle loss and recovery during a specified timeframe. West Midlands Police relied on section 12 of FOIA (cost of compliance) to refuse the request.
2. The Commissioner's decision is that West Midlands Police was entitled to refuse to comply with the request in accordance with section 12(1). The Commissioner also finds that it complied with its obligations under section 16 (duty to provide advice and assistance) of FOIA.
3. The Commissioner requires no steps to be taken as a result of this decision.

Request and response

4. On 8 February 2024, the complainant wrote to West Midlands Police and requested information in the following terms:

"I ask to be provided:

1. the records for theft of a motor vehicle from 01/01/2023 to 31/01/2024 (inclusive) month on month i.e. the number of vehicle thefts notified each month, in Excel format, detailing:

- a. the make and model of the vehicle

- b. the vehicle categorisation i.e. car, HGV, moped etc
 2. whether the vehicles concerned have been recovered".
5. On 13 February 2024, they additionally requested:
- "Please could you add a column to the spreadsheet response for the age of the vehicle. To be clear, I am only seeking characters 3 and 4 of the VRM; the two numbers (the age identifier. For example, 51 represents September 2001. The age identifier changes every six months in March and September.
- Where the plate does not conform to this process, please either leave blank or display the 3rd and 4th characters".
6. West Midlands Police responded on 22 February 2024, citing section 12 (cost of compliance) of FOIA. It did, however, as a gesture of goodwill, provide the complainant with information it had obtained prior to realising that the fees limit would be exceeded.
7. In response to further correspondence, West Midlands Police wrote to the complainant on 26 February 2024. It stated that it considered it had already responded to the queries raised by the complainant.

Scope of the case

8. The complainant contacted the Commissioner to complain about the way their request for information had been handled. They were dissatisfied with West Midlands Police's failure to provide information and to provide it in a useable format.
9. In the course of their correspondence with the Commissioner the complainant raised issues which are outside the scope of the Commissioner's remit. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part I of FOIA.
10. The analysis below considers West Midland Police's application of section 12 of FOIA to the requested information. He has also considered whether it provided advice and assistance, so far as it would be reasonable to expect it to do so.
11. The Commissioner has addressed the complainant's concern, about the manner in which they were provided with some information by West Midlands Police, in 'Other matters' at the end of this notice.

Reasons for decision

Section 12 cost of compliance

12. 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").
13. Under section 12(3), different public authorities can have different cost limits. For some, generally central government, the limit is £600. For all other public authorities, the limit is £450. The cost limit in this case is £450.
14. The Fees Regulations also specify that the cost of complying with a request must be calculated at the rate of £25 per hour. This means that West Midlands Police may refuse the request for information under consideration if it estimates that it will take longer than 18 hours to comply with it.
15. 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.
16. 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".
17. The task for the Commissioner here is to reach a conclusion as to whether the cost estimate made by West Midlands Police was reasonable; in other words whether it estimated reasonably that the cost of compliance with the request would exceed the limit of £450, that

section 12(1) therefore applied and that it was not obliged to comply 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.
19. The Commissioner is mindful that the request in this case is a multi-part request. In his published guidance, he recognises that a public authority can aggregate two or more separate requests. He also recognises that multiple requests within a single item of correspondence are separate requests for the purpose of section 12.
20. In this case, he is satisfied that West Midlands Police was entitled to aggregate the requests for the purposes of determining whether the cost of compliance would exceed the appropriate limit.

Would the cost of compliance exceed the appropriate limit?

21. West Midlands Police told the complainant that its data was not organised in such a way as to allow it to provide the requested information within the appropriate limit.
22. In support of its view that it would exceed the 18 hours limit to comply with the request, West Midlands Police referred to the part of the request relating to vehicle recovery. It told the complainant:

“Question 2 exceeds the 18 hours as we would have to find this information in the incident summary. There are 16009 records, at 5 minutes per record this would equate to 1334 hours of work”.
23. Furthermore, it told the complainant:

“In relation to your additional request, we are unable to provide this information. The only way we could check is by reading each incident summary which would exceed the 18 hours”.
24. In correspondence with the Commissioner, West Midlands Police confirmed that there are 16009 recorded thefts in scope of the request. It acknowledged that, even if the estimate was reduced to just 30 seconds per record, it would still take over 100 hours effort to comply with the request.
25. When dealing with a complaint to him under FOIA, it is not the Commissioner’s role to make a ruling on 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, the Commissioner's role is simply to decide whether the requested information can, or cannot, be provided to a requestor within the appropriate costs limit.

26. In essence, therefore, this case turns on whether the estimate provided by West Midlands Police was reasonable.
27. From the evidence he has seen, the Commissioner is satisfied that, even if West Midland Police's estimate of the time taken, per record, to locate and retrieve the information, was excessive, West Midlands Police has demonstrated that it would vastly exceed the appropriate limit to locate, retrieve and extract the requested information.
28. Section 12(1) does therefore apply and West Midlands Police is not required to comply with the request.

Section 16(1) – advice and assistance

29. Section 16(1) of FOIA sets out a duty for a public authority to provide advice and assistance to anyone who has made, or is thinking of making, a request for information.
30. Where a public authority claims that section 12 of FOIA is engaged it should, where reasonable, provide advice and assistance to help the requestor refine the request so that it can be dealt with under the appropriate limit, in line with section 16 of FOIA.
31. The Commissioner's guidance¹ addresses the question of whether a public authority needs to provide advice and assistance when citing section 12.
32. He considers it good practice for the public authority:

“... to adopt a constructive approach, aimed at putting the applicant in a position whereby they understand the costs involved in dealing with their request. They can then use that knowledge to make a fresh request which targets the information of most interest to them and which you can deal with within the appropriate limit”.

¹ <https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/section-12-requests-where-the-cost-of-compliance-exceeds-the-appropriate-limit/#invalidate>

33. The Commissioner acknowledges that the request in this case was a multi-part request. He also acknowledges that West Midlands Police told the complainant which parts of the request meant that the cost of compliance with the whole request exceeded the appropriate limit. He also notes that it told the complainant how many incident summary records there are within the time period specified in the request.
34. While not expressly stated in terms of section 16 advice and guidance, the Commissioner is satisfied that the information West Midlands Police provided in its estimate is sufficient to give the complainant an understanding of the costs involved in dealing with the various parts of their multi-part request.
35. It follows that he is satisfied that West Midlands Police met its obligations under section 16 of FOIA.

Other matters

36. FOIA recognises that requesters may want to receive information in different ways.
37. In this case, the complainant expressed their preference, at the time of making their request, for having the information communicated by a particular means. The Commissioner acknowledged that they were dissatisfied with the information that West Midlands provided, information they specifically stated was provided as a gesture of goodwill.
38. In his guidance², the Commissioner states:

“Section 11 is about how you should provide information you are releasing under FOIA. It is relevant when you have identified information you are going to provide in response to a request under FOIA. Section 11 is not relevant if you are not providing the information because to comply with the request would exceed the appropriate limit, or the request is vexatious or repeated, or the information is exempt under Part II of FOIA”.

² <https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/means-of-communicating-information-section-11/>

39. In light of his decision above that section 12 applies, the Commissioner has not found it necessary to consider how West Midlands Police provides the information in response to an FOIA request. West Midlands Police was under no obligation to provide any information in response to this request.

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.

Michael Lea
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF