

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 17 September 2024

**Public Authority:** Police Service of Northern Ireland  
**Address:** Police Headquarters  
Brooklyn  
65 Knock Road  
Belfast  
BT5 6LE

#### **Decision (including any steps ordered)**

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1. The complainant has requested information in respect of wildlife crime reports.
2. The above public authority ("the public authority") relied on section 12(1) of FOIA (cost of compliance) to refuse the request.
3. The Commissioner's decision is that the public authority was entitled to rely on section 12(1) of FOIA to refuse the request.
4. The Commissioner also finds that the public authority complied with its section 16 obligation to offer advice and assistance.
5. The Commissioner also finds that the public authority breached section 10(1) as it failed to respond to the request within the statutory time limit.
6. The Commissioner does not require further steps to be taken.

#### **Request and response**

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7. On 15 January 2024, the complainant requested information on the following terms:

"Request 1

How many potential wildlife crime reports have the PSNI received for 2022-2023, could this please be broken down by year.

Request 2

How many of these reports were related to wildlife crimes against badgers.”

8. On 18 March 2024, the request was refused on the basis of the cost exemption in section 12(1) of FOIA. This position was upheld on internal review on 8 May 2024.

## Reasons for decision

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### Section 12 – cost of compliance

9. The following analysis covers whether complying with the request would have exceeded the appropriate limit.
10. 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”)
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 public authority in this case 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 public authority to deal with a request.
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. 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.

### **The complainant's position**

17. The complainant is of the view that the public authority should be able to comply with this request because it complied with a previous request for the same information for the years 2019 to 2022.

### **The public authority's position**

18. The public authority has explained to the complainant and the Commissioner that the reason it was able to comply with the previous request was because the statistics for 2019 to 2022 were available as part of a specialist project requested by the public authority's lead for the Rural and Wildlife Crime Unit to provide specifically target resources relating to badger baiting at that time. The report was researched and compiled by an analyst and was available when the complainant's previous FOIA request was received. Such reports are not undertaken as routine business within the public authority and no such report has been carried since, which means that the statistical information for 2022 to 2023 is not readily available as was the case for the complainant's previous request.
19. The public authority also explained that wildlife crimes are not recordable offences as per the Home Office guidelines and therefore the information is not easily accessible, nor is it a requirement for PSNI to hold such information. The public authority referred the

Commissioner to page 9 of the National Wildlife Crime Unit Strategic Assessment Report 2022<sup>1</sup>.

20. As is the practice in a case in which the public authority has informed the complainant that it holds the information, the Commissioner expects the public authority to provide a detailed estimate of the time/cost taken to provide the information falling within the scope of this request.
21. Following the Commissioner's request to do so, a sampling exercise of some of the crime reports potentially in scope was conducted by the public authority.
22. The public authority explained that a team member of the Wildlife and Animal Welfare Department undertook initial system searches on a PSNI computerised database for both 2022 and 2023. For 2023 it was discovered that there was a total of 5078 calls to service.
23. The public authority explained that the team member then proceeded to use key words to search within these reports, these included 'badger,' 'baiting,' 'sett disturbance' and 'sett destruction.' As a result of the key word search, 183 reports were identified. A dip sample of five of these reports were then manually examined to determine if they related to wildlife crimes against badgers. This search took approximately five minutes per report, equating to 15.25 hours to search through one database (183 x 5 minutes = 15.25 hours).
24. A further dip sample of five reports, within a second PSNI computerised database which contained more detail, was undertaken to search for specific links to an outcome of badger baiting as a 'crime report.' These searches again took approximately five minutes per report as they needed to be manually examined which would equate to another 15.25 hours for all records on that database to be searched.
25. The public authority explained to the Commissioner that a third database search would then be required to cross-reference the reports. The public authority estimated that such searches would again take approximately five minutes (another 15.25 hours for the 183 reports).
26. Therefore, the public authority estimated that it would take approximately  $15.25 \times 3 = 47.25$  hours to check and cross reference

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<sup>1</sup> [strategic assessment - 2022 \(nwcu.police.uk\)](https://www.nwcu.police.uk/strategic-assessment-2022)

each of the reports potentially in scope of the request for 2023 within the three relevant databases.

27. For 2022, the public authority discovered that there was a total of 5443 calls to service. The public authority applied the principles used for the 2023 search and estimations were calculated based on a dip sample of five reports across three relevant databases. On this basis the public authority estimated that it would take approximately 49.75 hours to check each of the reports for 2022 within the three relevant databases.
28. Therefore the public authority estimated that searching 2022 and 2023 reports to comply with the request would take  $45.75 + 49.75 = 95.75$  hours.
29. The Commissioner is satisfied by the public authority's explanation and the estimate provided. Even if the public authority has over-estimated the work involved, if the estimate were reduced by half, this would still far exceed the 18-hour limit in section 12(1) FOIA.
30. Furthermore, the Commissioner is satisfied that the public authority has conducted a suitable sampling exercise which demonstrates the validity of the estimate.
31. Therefore, it is the Commissioner's view that complying with the request would exceed the cost limit and so the public authority was entitled to rely on section 12(1) of FOIA to refuse the request.
32. To the extent that any information in scope is environmental, the request would be exempt under the equivalent exception of regulation 12(4)(b) of the Environmental Information Regulations 2004.

## **Procedural matters**

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### **Section 16 – advice and assistance**

33. Section 16 of FOIA requires public authorities to provide reasonable advice and assistance to those making, or wishing to make, information requests.
34. When a public authority refuses a request because the cost of compliance exceeds the appropriate limit, it should explain, to the requester, how they could refine their request such that it would fall within that limit. In rare cases, it will be appropriate for the public authority to explain to the requester why their request cannot be meaningfully refined.

35. In this case, the public authority informed the requester in its initial response:

“In compliance with Section 16 of the Act and unfortunately due to the nature of how this information is stored, we are unable to offer refinement of this request.”

36. On internal review the public authority provided the complainant with further detail as to why an appropriate refinement of the request could not be suggested.
37. The Commissioner is therefore satisfied that the public authority did comply with section 16 of FOIA when dealing with this request.

### **Section 10 – time for compliance**

38. Under section 10(1) a public authority must comply with section 1(1) promptly and within 20 working days following the date of receipt of a request.
39. In this case the request was submitted on 15 January 2024 and the public authority did not respond until 13 March 2024. The Commissioner therefore finds that the public authority breached section 10(1) of the FOIA in failing to respond to this request within the statutory timescale.

## **Right of appeal**

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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](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://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**