

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 7 October 2024

Public Authority: Chief Constable of Cumbria Constabulary
Address: Carleton Hall
Penrith
Cumbria
CA10 2AU

Decision (including any steps ordered)

1. The complainant has requested information about the policing of an annual event. Cumbria Constabulary refused the request, citing section 12(1) (Cost of compliance exceeds appropriate limit) of FOIA.
2. The Commissioner's decision is that Cumbria Constabulary was entitled to rely on section 12(1) to refuse the request.
3. The Commissioner does not require further steps as a result of this decision.

Background

4. The request refers to Appleby Horse Fair, an annual gathering of Romani people and Travellers, in Appleby-in-Westmorland. Cumbria Constabulary told the Commissioner it is a major event, involving extensive policing and a multi-agency approach¹.

¹ <https://applebyfair.org/mascg>

Request and response

5. On 12 June 2024, the complainant wrote to Cumbria Constabulary and requested information in the following terms:

“It has been indicated that the licensee / manager of Fair Hill Appleby pays for policing of Fair Hill for the duration of the event

I would like to understand what service is provided eg how many police are paid to police this hill as part of this arrangement, is it 24 hours policing, do the police patrol the hill, what is their role, where are they stationed & how much does the licensee / manager of Fair Hill pay for this service?

I would like this information for 2022, 2023 & 2024 events, as a yearly amount please

In addition to this what do the other sites and market fields pay?

Also how are these figures calculated?”

6. Cumbria Constabulary responded on 5 July 2024. It refused to comply with the request, citing section 12(1) of FOIA. It said that it was aggregating the costs of responding to this request with those of three other related requests from the complainant that it had responded to in the preceding 60 working days.
7. The complainant disagreed that the requests could be aggregated or that compliance would exceed the costs limit. She requested an internal review on 8 July 2024.
8. Cumbria Constabulary provided the outcome of the internal review on 15 August 2024. It upheld its decision to aggregate the requests, on the grounds that each was made in the complainant’s name. It also said that compliance with the current request alone would exceed the appropriate limit as the requested information was not held in an easily accessible form.

Scope of the case

9. The complainant contacted the Commissioner on 18 August 2024 to complain about the way her request for information had been handled, saying:

“The police say thay [sic] don’t have the information easily accessible. But I disagree with this as they have already advised that the private individual pays so thay [sic] must have calculated the amount to

invoice them for the service. So it is easily accessible and they should already have it.”

10. The analysis below considers whether Cumbria Constabulary was entitled to rely on section 12(1) of FOIA to refuse to comply with the request.

Reasons for decision

Section 12 – Cost of compliance exceeds appropriate limit

11. 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.
12. 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 Cumbria Constabulary. The cost must be calculated at a flat rate of £25 per hour. This means that Cumbria Constabulary may refuse a request for information if it estimates that it will take longer than 18 hours to comply with it.
13. 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.
14. The Commissioner considers that the costs estimate must be reasonable. A reasonable estimate is one that is “...sensible, realistic and supported by cogent evidence”².
15. Cumbria Constabulary told the Commissioner that it was satisfied that its decision to aggregate several requests was correct, and that the

² 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)

cumulative costs of dealing with all the requests exceeded the appropriate limit.

16. The Commissioner's guidance on section 12³ states that, when estimating the cost of compliance, a public authority may include the costs of complying with two or more related requests if the conditions laid out in regulation 5 of the Fees Regulations are satisfied. Those conditions require that the requests are:
 - made by one person, or by different persons who appear to the public authority to be acting in concert or in pursuance of a campaign;
 - relate, to any extent, to the same or similar information; and
 - be received by the public authority within any period of 60 consecutive working days.
17. Cumbria Constabulary noted that the complainant had been submitting requests for information to it about Appleby Fair since 2022. Four requests had recently been received within a period of sixty working days (14 April 2024, 10 June 2024, 11 June 2024 and 12 June 2024 (this request)). It said the requests all sought information relating to the policing of Appleby Fair and therefore they relate to the same, or similar, information. They were each made in the name of the complainant, albeit from a variety of contact addresses.
18. Cumbria Constabulary said that it had complied with the first three requests, with the time taken to deal with them estimated to be "a minimum of five hours".
19. It said the current request asked for information which was not held centrally. While it holds information at a granular level from which it could answer the request, the work involved in locating, retrieving and extracting that information would far exceed the appropriate cost limit.
20. Cumbria Constabulary provided the Commissioner with a breakdown of the factors which render the request complex and wide ranging in scope (including the number of officers who policed the event, and a description of the particular arrangements for policing the event). The Commissioner will not reproduce them here, as they include operational information which may engage the exemption at section 31 (Law

³ <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/>

enforcement) of FOIA. However, he can say that Cumbria Constabulary confirmed that it holds no central record of where officers were at the fair, at any one time. Officers move around as required, according to the needs of the situation and as directed by supervision. The number of officers at one location is therefore not static. They may be deployed to any location, only being in one area from a few minutes to several hours.

21. To provide just the requested information about "how many police are paid to police this hill" would itself exceed the appropriate cost limit referred to in section 12(1). It would be necessary to:

- Review records to establish which officers were on duty at any time by inspecting deployment plans and the police duty system.
- Contact each individual officer and ask them to provide any recorded information they hold of the time they spent at Fair Hill.
- Require each officer to check their personal records (pocket notebook) to provide the time they spent on Fair Hill.
- Receive and collate this information.

22. Cumbria Constabulary estimated that in view of the number of officers involved, the above actions would take a minimum of 75 hours to complete (at a cost of £1875). It provided the Commissioner with its calculation of this estimate – for the reasons cited above, the Commissioner will not reproduce the calculation here as it will reveal operational information which may engage section 31 of FOIA. Cumbria Constabulary said the estimate was compiled by someone who had "carried this [process] out many times".

23. Cumbria Constabulary further noted:

"This request asks for the same information to be provided over a three-year period. To accurately answer this request the same process of contacting officers will need to be carried out for each of the other years requested. Different officers will have been on duty in different years. This will further increase the total time taken."

24. It said that although it had included the earlier requests for the purposes of aggregation, it had, at the time, taken a decision to respond to those requests in an effort to "supply the applicant with as much assistance and information as possible in a spirit of cooperation". However, it was satisfied that the extensive work involved in complying with the latest request now justified engaging the provisions of section 12(1).

The Commissioner's decision

25. 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, 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.
26. The Commissioner's job here is to determine whether Cumbria Constabulary has demonstrated that the work involved in providing the information would be likely to exceed 18 hours, and thus the £450 cost limit established under the Fees Regulations.
27. Cumbria Constabulary has provided an estimate that compliance with just part of this request would require at least 75 hours work (at a cost of £1875). It has provided a calculation of its estimate, which was compiled by someone with extensive experience of collating responses to requests for information and is familiar with the work that would be necessary.
28. The Commissioner considers this estimate to be credible, based on the fact that the information is not held centrally and would have to be collated in several steps and from multiple officers. Having considered the search strategy adopted and the specific estimates provided by Cumbria Constabulary, the Commissioner's conclusion is that it has estimated reasonably and sensibly that the costs involved in complying with the request would exceed the £450 limit established by the Fees Regulations, perhaps significantly so. He is satisfied that its estimate is supported by cogent evidence.
29. The Commissioner's decision is therefore that Cumbria Constabulary was entitled to apply section 12(1) of FOIA to refuse to comply with the request.
30. For the avoidance of doubt, the Commissioner is also satisfied that Cumbria Constabulary has shown that the requirements of regulation 5 are met and that it was entitled to include the approximately five hours work in its total calculation of the costs of compliance. The effect of this is arbitrary in this case, in view of his decision that compliance with just part of the current request would exceed the appropriate limit.

Section 16 – Advice and assistance

31. 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.
32. 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.
33. In this case, Cumbria Constabulary said:

“Advice or assistance were not directly provided in respect of this request. The volume of information requested, and the excessive time needed to make it difficult to provide to provide [sic] specific advice. Within the internal review an extensive explanation of time needed was provided.”
34. Based on the wide-ranging scope of this request, the Commissioner is satisfied that there was no easy way for Cumbria Constabulary 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.

Right of appeal

35. 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

36. 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.
37. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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