

Freedom of Information Act 2000 (Section 51)

Information notice

Date: 6 July 2020

Public Authority: Commissioner of the Metropolitan Police Service

Address: New Scotland Yard
Broadway
London
SW1H 0BG

Section 51

Under section 51 of the Freedom of Information Act 2000 (the "Act"), which is set out below, the Information Commissioner (the "Commissioner") has the power to serve a notice on a public authority requiring it to furnish her with any information she requires to enforce the requirements of the Act.

51. – (1) If the Commissioner –

(a) has received an application under section 50, ...

she may serve the authority with a notice (in this Act referred to as "an information notice") requiring it, within such time as is specified in the notice, to furnish the Commissioner, in such form as may be so specified, with such information relating to the application, to compliance with Part I or to conformity with the code of practice as is so specified.

Application under section 50

1. The Commissioner has received an application under section 50, reference FS50896578, for a decision whether a request for information made by the complainant to the Metropolitan Police Service ("MPS") on 29 July 2019, has been dealt with in accordance with the requirements of Part I of the Act.

Nature of complaint

2. On 29 July 2019, the complainant made the following request for information under the FOIA:

"1) Please state the number of serious incidents and or 'never events' that occurred within your police force's forensics department in each of the last five calendar years, and the current calendar year to date.

2) Please provide a copy of all fields of the serious incidents database, including the date of the incident, the kind or category of incident that occurred, any free text description of what happened, and the outcome of the incident (whether any disciplinary action took place, or whether training was required by staff).

3) Please provide a copy of your force's guidance on handling serious incidents and or never events within its forensics department".

3. On 9 August 2019, the MPS wrote asking him for clarification as follows:

"We don't recognise the term "never events" and in relation to "serious incidents", it is also not clear on the type of incident you are referring to. Does it relate to Health & Safety for example?"

4. On 18 August 2019, the complainant clarified as follows:

"By never event, I mean an event that should never occur in a regulated environment.

By serious incident, I mean events that have a negative impact so significant that they warrant investigation.

I don't know what exact terminology your force uses for these kinds of events, so if you could advise how you categorise these kinds of incidents within your force under your section 16 duty to provide advice and assistance, I would be very grateful, and am happy to amend my request accordingly".

5. On 21 August 2019, the MPS responded. It refused to provide the requested information and cited section 12 (cost of compliance) of the Act.
6. On 23 August 2019, the complainant submitted the following refined request:

"I am happy to reduce the scope of my request to ensure a response can be provided within the cost limit. Please provide a response to the following:

1) Please state the number of non-conformances recorded in your forensic quality management system in each of the last five calendar years, and the current calendar year to date. Please provide all fields in your forensic quality management system database for these non-conformance incidents that would not require redaction.

2) For the period April 1st 2019 to August 23rd 2019, please provide all fields in your forensic quality management system for non-conformances incidents, redacting personal details and identifying case details where required.

This should include the date of the incident, the kind or category of incident that occurred, any free text description of what happened, and the outcome of the incident (whether any disciplinary action took place, or whether training was required by staff).

For question 2, please note, redaction time is not includable for cost calculation purposes under FOIA section 12. However, taking the 18 hour time limit as a guide, and assuming around 240 records to redact based on the figure of incidents given for 2018-19, this would allow a rough time of 2.5 minutes per incident. As such, providing details for this limited period is highly unlikely to be unduly burdensome under section 14. In addition, any repeated names could also be removed rapidly through a find and replace search, and any fields that contain mostly personal details could be removed in bulk without the need for redaction time, making it even more unlikely that section 14 would be triggered.

3) Please provide a copy of your force's guidance on handling non-conformances within your forensics department".

7. On 16 October 2019, with a letter dated 14 October 2019, the MPS responded. It disclosed some information but withheld the remainder citing sections 40(2) and 30(1)(a) of the Act.
8. On 6 November 2019, the complainant requested an internal review of the response to parts (1) and (2) of the request.
9. The MPS sent the outcome of its internal review on 3 December 2019 in which it revised its position. It maintained reliance on sections 30(1)(a) and 40(2) of the Act in respect of part (2) of the request. It further advised that it considered the request to be vexatious under section 14(1) of the Act, on the basis of it being burdensome and likely to cause

a disproportionate or unjustified level of disruption, irritation or distress to comply with it.

10. On 9 December 2019, the complainant wrote to the Commissioner to complain about the response.
11. On 13 February 2020, the Commissioner wrote to the MPS raising various queries to assist with her investigation of that complaint. At the time of writing this notice, she has received no response.

Information required

12. In view of the matters described above the Commissioner hereby gives notice that in the exercise of her powers under section 51 of the Act she requires that the MPS shall, within 30 calendar days of the date of this notice, furnish the Commissioner with a copy of the following information.
13. The MPS is required to respond to the email which the Commissioner sent to it on 13 February 2020, namely:

"Background

It would be helpful if you could provide some general information about the system the complainant refers to, and your understanding of the terminology used, for background information in any decision notice.

Section 14 – vexatious and repeated requests

The complainant's grounds of complaint in respect of section 14 are as follows:

"On section 14, the Met has argued that the cost of redacting its non-conformance database would be unduly burdensome on the authority. I respectfully disagree with their cost calculation of 71 hours, estimated on the basis of each line taking two minutes per line to redact.

Two minutes seems to be a considerable overstatement, as I cannot see how it would take more than 30 seconds to redact each line properly, which would bring the request within 18 hours. In many cases, lines will not need redacting, and this would further reduce the cost burden.

I also note recent ICO decision notices have established that while the 18 hour cost limit under section 12 is often used as a

ballpark for cost calculations of section 14 burden, that this is a rough guide, and the commissioner has ruled in a number of cases that slightly higher costs than this are still not unduly burdensome. Thus, even if the cost was slightly higher than this, there is no reason that this would therefore be unduly burdensome (say 24-30 hours for example)".

Please can I have your views on these when responding.

Please will you provide screenshots of the database concerned to show the type of information held and an unredacted sample of 20 entries which are caught within the scope of the request to help demonstrate the burden envisaged.

In determining whether a request is vexatious, the ICO believes that the key question which public authorities need to consider is whether complying with the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress. Where this is not clear, public authorities should weigh the impact on the authority and balance this against the purpose and value of the request. Where relevant, public authorities will need to take into account wider factors such as the background and history of the request.

The ICO has published [guidance](#) on applying section 14(1) of FOIA which includes information on how to apply to this balancing exercise. You are strongly advised to review this guidance before responding to this letter.

*As this guidance explains, when determining whether section 14(1) has been applied correctly the ICO will primarily look for evidence that the request would have an **unjustified** or **disproportionate** effect on the public authority.*

Therefore, in light of this please explain why in the circumstances of this case the MPS relied on section 14(1) to refuse the request. Your response should include:

- *Details of the detrimental impact of complying with the request;*
- *Why this impact would be unjustified or disproportionate in relation to the request itself and its inherent purpose or value;*
- *And, if relevant, details of any wider context and history to the request if the MPS believes that this background supports its application of section 14(1). Please provide any relevant documentary evidence / background evidence to support such a claim.*

Section 30 – investigations and proceedings

The complainant's grounds of complaint in respect of section 14 are as follows:

"On section 30, this information is forensic quality management data, rather than information about the investigative process into crimes, and as such this exemption does not seem to apply.

Even if it could be said to tangentially apply in part, the police force has argued that the public interest lies in withholding this information, because its release could interfere with police investigations. However, the force has not provided any direct line of causation as to why this would be the case. For example it claims that "the text description of the error in some cases is specific to a particular investigation", but gives no reasoning as to how this could actually identify this case the the public in practical terms given the information that could allow for jigsaw investigation would likely be limited to the Met Police internally. It additionally argues that information about police investigation tactics could be revealed, but does not provide any causal arguments as to how forensic quality management data could include this kind of information, or why it could not simply be redacted if it appeared extraordinarily in some line.

The response fails to take into proper account the clear public interest in openness and accountability, particularly when police forensics have not met the high standards required. It is clearly in the public interest to know what, if anything, has gone wrong in this area, and what, if anything, the impact could have been on the operations of the force, and any human cost of these failures. As such, the public interest clearly lies in the release of this information".

Please can I have your views on these when responding.

With regard to section 30(1)(a) please confirm the nature of the investigation and explain why the withheld information relates to this specific investigation. Please also clarify whether this investigation was complete at the time of the request.

Please explain why the withheld information is needed by the MPS to fulfil the investigatory functions set out in 30(1)(a). Please add any further public interest arguments which you would like to rely on.

... Having revisited the request, you may decide to apply a new exemption. We will consider new exemptions but it is your responsibility to tell the complainant why the new exemption applies and to provide me now with your full submissions in relation to that exemption.

For the avoidance of doubt, you should now do the following.

- *Consider whether to change your response to the information request, and let us know the outcome.*
- *Send us the sample information requested.*
- *Send us your full and final arguments as to why you think the exemptions apply.*
- *Answer all of the questions in this letter”.*

Failure to comply

14. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of the Act, and may be dealt with as a contempt of court.

Right of appeal

15. There is a right of appeal against this information notice to the First-tier Tribunal (Information Rights). Information about the appeals process can be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0870 739 5836

Email: grc@Justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

16. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this information notice is sent. If Notice of Appeal is served late the Tribunal will not accept it unless it is of the opinion that it is just and right to do so by reason of special circumstances.

Signed

Carolyn Howes
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
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