

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 19 September 2017

Public Authority: Independent Police Complaints Commission
Address: 90 High Holborn
London
WC1V 6BH

Decision (including any steps ordered)

1. The complainant has requested from the Independent Police Complaints Commission information regarding the previous experience of its casework and investigations staff in the Criminal Investigations, Scientific and Forensic Departments of any police constabulary. The Independent Police Complainants Commission refused the request on the basis that compliance would exceed the prescribed limit under Section 12 of the FOIA.
2. The Commissioner's decision is that the Independent Police Complaints Commission has successfully applied Section 12 of the FOIA and also that it has not breached Section 16 of the FOIA.
3. The Commissioner does not require the public authority to take any steps to ensure compliance with the legislation.

Request and response

4. On 12 January 2017 the complainant wrote to the Independent Police Complaints Commission (IPCC) and requested information in the following terms:

"Could you tell me how many IPCC staff in casework department and in investigations department, those who review and investigate complaints into police staff conduct and who investigate criminal incidents though making lines of enquiries, collecting and analysing evidence have previously been

1. *a member of staff in Criminal Investigation Department referred to as the CID of any police constabulary?*

2. *a member of staff in Scientific Support or Forensic Department of any Police constabulary”?*
3. The IPCC responded on 6 February 2017. It stated that there were a total of 468 staff in the Casework and Investigations departments and in order to determine whether the requested information was held and if so, to locate, retrieve and extract it, would require a search of each of their employee files. The IPCC estimated that this search would take significantly longer than the 18 hours prescribed under Section 12 of the FOIA.
4. On 9 February 2017, the complainant requested an internal review quoting various Articles from the European Convention on Human Rights. He suggested that it would be very easy to reduce the time to obtain the requested information by emailing the relevant caseworkers/investigators with a link to a web-based online yes or no survey questionnaire to ask if they had ever worked in CID/Scientific Support/Forensics.
5. Following an internal review the IPCC wrote to the complainant on 21 February 2017. It stated that to email all caseworkers and investigators asking them to complete an electronic survey to compile the requested information would constitute the creation of new information. It pointed out a public authority was not obliged under the FOIA to create new information. The IPCC therefore upheld its original decision to apply Section 12 of the FOIA. However, in order to be 'open and transparent' it said that within its Operations department, of 712 employees, 77 were ex-police civilians and 100 were ex-police officers.
6. On 2 March 2017 the complainant responded. He said that there was a business need for the IPCC to keep a record of the requested information and therefore on a balance of probabilities, it held the raw data or the building blocks upon which to produce it. He therefore argued that emailing a web-based voting questionnaire to staff would not be creating new information but merely pooling the raw data already held.
7. The IPCC responded on 5 March 2017 and stated it was satisfied that it had responded to the complainant's original and internal review requests in line with the FOIA.

Scope of the case

8. The complainant contacted the Commissioner on 9 March 2017 to complain about the way his request for information had been handled. In particular, he said that he was unhappy with the IPCC's decision to refuse his request under Section 12 of the FOIA.

Reasons for decision

Section 12 of the FOIA – cost of compliance exceeds the appropriate limit

9. Section 12(1) of FOIA states that:

"Section 1(1) does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit".

10. In other words, Section 12 of the FOIA provides an exemption from a public authority's obligation to comply with a request for information where the cost of compliance is estimated to exceed the appropriate limit.

11. This limit is set in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 at £600 for central government departments and £450 for all other public authorities. 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 in this case

12. In estimating whether complying with a request would exceed the appropriate limit, Regulation 4(3) states that an 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 from a document containing it.

13. The four activities are sequential, covering the retrieval process of the information from the public authority's information store.

14. Section 12 explicitly states that public authorities are only required to estimate the cost of compliance with a request, not give a precise calculation. In the Commissioner's view, an estimate for the purposes of Section 12 has to be 'reasonable': she expects it to be sensible, realistic and supported by cogent evidence.

15. In response to the Commissioner's question regarding the search criteria considered and applied to justify its decision to apply Section 12 of the FOIA, the IPCC explained that there were two methods available.

Search by employees in the casework and investigations departments

16. The first was to search by employees in the casework and investigations departments. The IPCC said this search would bring up all the files relating to them on the system. It said there were eight categories within an employee file and it would need to open each of the categories to see if the information was in there. For example, the information may have been disclosed in the pre-employment stage as part of an answer to a sift question, or it may have been disclosed in the interview stage as part of an answer to an interview question, or it may have been disclosed on the register of conflicts etc. The IPCC would need to go into each of the eight categories and open each document in there to check if the information had been disclosed. It pointed out that it would need to go through this process 468 times for each member of staff in casework and investigations departments.
17. Applying the above search criteria the IPCC checked an actual staff file it considered to be of average size and representative of the total and found that it took nine minutes to locate, retrieve and extract the requested information. Based on this figure, the IPCC estimated that it would take 4,212 minutes or 70.2 hours to comply with the request which would far exceed the prescribed limit of 18 hours (or £450 at £18 per hour).

Search on all the documents within the client database

18. The second search criteria would be a key word search on all the documents within the client database. However, the IPCC pointed out that it would not be able to restrict this to just the casework and investigations employees as the complainant had requested. The key word search would pull back every document for all 1,018 employees in the business. The IPCC would then need to go into each document and search to see if the information within it fell in scope of the complainant's request and then check if that particular employee was in the casework or investigations department.
19. The complainant suggested to the IPCC that it would be possible to obtain the requested information within the prescribed limit by emailing an electronic questionnaire or survey to all the employees in the casework or investigations departments.
20. The IPCC responded to this suggestion by stating that this in effect would be creating new information which was not something it was obliged to do under the FOIA. The complainant disputed this and suggested that as the information already existed in various places, the completion of the survey would not be creating new information. It would merely be pooling the raw data that was already held.

21. The complainant also believes the IPCC would be able to obtain the requested information by using automatic retrieval processes.

The Commissioner's view

22. The Commissioner has noted that the IPCC's test search of a representative staff file took nine minutes. She therefore accepts that if each and every file takes this long to search, the prescribed limit will be exceeded by some considerable amount. Even if it takes a third of this time (namely three minutes) to search each file, the prescribed limit will still be exceeded by some margin. (For example, 3 minutes x 468 files, 1,404 minutes or 23.4 hours.)
23. The Commissioner agrees with the IPCC that by emailing an electronic questionnaire or survey to all of the relevant staff for completion would effectively be creating new information. Having regard to her Guide to Freedom of Information¹ the Commissioner agrees that the creation of this new information would not be something the IPCC was obliged to do under the FOIA. Specifically in her guidance to public authorities, the Commissioner states;

"The Act does not cover information that is in someone's head. If a member of the public asks for information, you only have to provide information you already have in recorded form. You do not have to create new information or find the answer to a question from staff who may happen to know it".

24. Taking all the above in to account, the Commissioner accepts that the IPCC has correctly engaged Section 12 of the FOIA and is therefore entitled to refuse the request on this basis.

Section 16 – Advice and assistance

25. Section 16 sets out that a public authority has a duty to provide advice and assistance, in so far as it is reasonable to do so, to persons who propose to make, or have made requests for information.
26. In this case the IPCC explained to the complainant how the information was held and why its location, retrieval and extraction would exceed the prescribed limit. Although the IPCC has been unable to assist with

¹ <https://ico.org.uk/for-organisations/guide-to-freedom-of-information/refusing-a-request/>

narrowing the request sufficiently to allow disclosure of any information, the Commissioner recognises that, on this occasion, this has not been practicable as the information requested is already quite specific.

27. However, the Commissioner notes that in its internal review response to the complainant dated 21 February 2017 the IPCC in an attempt to be 'helpful, open and transparent' made the complainant aware that of the 712 members of staff in the in its operation department, 77 were ex-police civilians and 100 were ex-police officers.
28. The Commissioner therefore dos not believe the IPCC has breached Section 16 of the FOIA.

Right of appeal

29. 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: 0300 1234504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

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

30. 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.
31. 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

Jon Manners
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