

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

### **Decision notice**

**Date:** 6 September 2019

**Public Authority:** Chief Constable of Derbyshire Constabulary  
**Address:** Police Headquarters  
Butterley Hall  
Ripley  
Derbyshire  
DE5 3RS

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

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1. The complainant has requested information about whether Derbyshire Constabulary is, has or would ever pay child rapists for information. Derbyshire Constabulary explained that it was neither confirming nor denying whether it held any information by virtue of section 12(2) (Exceeding the appropriate limit) of the FOIA.
2. The Commissioner's decision is that Derbyshire Constabulary is entitled to rely on section 12(2) of the FOIA to neither confirm nor deny whether it holds the requested information. She also considers that Derbyshire Constabulary has complied with section 10(1) (Time for compliance) of the FOIA.
3. The Commissioner does not require Derbyshire Constabulary to take any steps as a result of this decision.

### **Background**

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4. On 14 June 2018, the complainant wrote to Derbyshire Constabulary (the constabulary) and requested information in the following terms:

*"I've been having sleepless nights for the last few months, following the handing over of £10k to a child rapist by the Northumberland force. I*

*want to lie on my death bed knowing I've done all I can to be good to my fellow beings, so the idea of my taxes being used to fund a child rapist, frankly, abhorrent.*

*I pay my council tax to fund the Derbyshire force, so my question is – can I get an assurance from the Derbyshire force to confirm they never have, have no current plans, and would not consider in the future, handing my hard earned taxes over to a child rapist?”*

5. The constabulary responded on 24 August 2018. It did not consider the request was valid as it required a yes or no answer and therefore dealt with the request as business as usual and provided a response.
6. The complainant submitted a further request, which is the subject of the present complaint.

## **Request and response**

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7. On 24 August 2018, the complainant wrote to the constabulary and requested information in the following terms:

*“Let me be more direct this time, and I am expecting a response to my questions in a yes or no fashion - I have a right, as a taxpayer, to be told the truth.*

*- are Derbyshire Constabulary currently paying any known child rapists for information or any other assistance*

*- has Derbyshire Constabulary ever paid a known child rapist in the past for information or any other assistance*

*- would Derbyshire Constabulary agree to paying a child rapist in the future for information or other assistance (I think you've probably already answered this, but I'd like you to specifically confirm or otherwise that you would do so).*

*Just 'Yes' or 'No' to each question please.”*

8. On the same day, the constabulary asked the complainant for the following clarification:

*“In respect of the remaining questions I am more than happy to record as an FOI request and respond accordingly if you wish. Please let me know and I will action. However, I require the following clarification:*

*The original request concerned a specific investigation conducted by Northumbria Police in to child sexual exploitation which resulted in a total of 17 men and one woman being convicted of, or admitting, charges that range from rape to inciting prostitution and supplying drugs. Are your questions limited to the use of such individuals to such cases or, as inferred, to any 'information or any other assistance' which could cover anything."*

9. The complainant responded on 21 September 2018. He explained that he wanted his request to be dealt with under the FOIA and his three questions to be answered directly with yes or no responses.
10. The constabulary responded on the same day and explained that it was refusing to confirm or deny whether it held the requested information as to do so would exceed the appropriate cost limits under section 12(2) of the FOIA.
11. Following an internal review the constabulary wrote to the complainant on 22 November 2018, upholding its original decision.

### **Scope of the case**

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12. The complainant contacted the Commissioner on 11 December 2018 to complain about the way his request for information had been handled. He explained that he considered that the constabulary was hiding behind the FOIA to avoid disclosing the requested information. He also explained that the constabulary had failed to meet the 40 day limit when responding to his request, several times.
13. The Commissioner will consider whether the constabulary applied section 12(2) appropriately. She will also consider the length of time taken by the constabulary to deal with the request.

### **Reasons for decision**

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#### **Section 12: Cost of compliance exceeds appropriate limit**

14. Section 1(1) of the FOIA states:  
"Any person making a request for information to a public authority is entitled –  
(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and  
(b) if that is the case, to have that information communicated to him."

15. Section 12 of the FOIA states:

*"(1) 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.*

*(2) Subsection (1) does not exempt the public authority from its obligation to comply with paragraph (a) of section 1(1) unless the estimated cost of complying with that paragraph alone would exceed the appropriate limit."*

16. This limit is set in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the Fees Regulations) at £600 for central government departments and £450 for other public authorities. The Fees Regulations also specify that the cost of complying with a request must be calculated at a flat rate of £25 per hour. This means that the appropriate limit will be exceeded if it would require more than 24 hours work for central government, legislative bodies and the armed forces and 18 hours work for all other public authorities. In the present case the appropriate time limit is 18 hours.

17. In estimating whether complying with a request would exceed the appropriate limit, regulation 4(3) of the Fees Regulations 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, or a document containing it.

18. Section 12 provides that public authorities are only required to estimate the cost of compliance with a request. The Commissioner considers that the estimate must be reasonable and has followed the approach set out by the Information Tribunal in *Randall v Information Commissioner and Medicines and Healthcare Products Regulatory Agency* (EA/2006/004, 30 October 2007) which states that a reasonable estimate is one that is *"sensible, realistic and supported by cogent evidence"*.

19. Section 12(2) requires a public authority to estimate the cost of confirmation or denial, rather than provide an exact calculation.

20. The Commissioner must therefore consider whether the cost estimate provided by the constabulary is reasonable. If it is, then section 12(2) is engaged and the constabulary is not obliged to confirm or deny whether it held the requested information at the time of the request.

## Aggregation of requests

21. Multiple requests within a single item of correspondence are considered to be separate requests for the purpose of section 12. In the present case this means that there are three requests to be considered. If they relate to the same overarching theme, public authorities can aggregate two or more separate requests in accordance with the conditions laid out in the Fees Regulations. Any unrelated requests should be dealt with separately for the purposes of determining whether the appropriate limit is exceeded.
22. In the Commissioner's guidance<sup>1</sup> on exceeding the cost limits, she explains that:
- 'Regulation 5(2) of the Fees Regulations requires that the requests which are aggregated relate "to any extent" to the same or similar information. This is quite a wide test but public authorities should still ensure that the requests meet this requirement.*
- A public authority needs to consider each case on its own facts but requests are likely to relate to the same or similar information where, for example, the requestor has expressly linked the requests, or where there is an overarching theme or common thread running between the requests in terms of the nature of the information that has been requested'.*
23. The Fees Regulations wording of "relate, to any extent, to the same or similar information" makes clear that the requested information does not need to be closely linked to be aggregated, only that the requests can be linked.
24. Although the constabulary did not address this point, having reviewed the wording of the complainant's request, the Commissioner is satisfied that there is an overarching theme. This is because the three requests refer to information regarding possible payments to child rapists.

## Would confirmation or denial exceed the appropriate cost limit?

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<sup>1</sup> [https://ico.org.uk/media/for-organisations/documents/1199/costs\\_of\\_compliance\\_exceeds\\_appropriate\\_limit.pdf](https://ico.org.uk/media/for-organisations/documents/1199/costs_of_compliance_exceeds_appropriate_limit.pdf)

25. The constabulary explained to the complainant that in order to determine whether any information pertinent to his request is held, would require reviewing information contained on one database and cross referencing that information against other databases. It also explained that the database containing details of covert human intelligence sources (CHIS) was designed to record information for management purposes and not specifically to undertake searches. This meant that records relating to CHIS would need to be extracted individually and cross referenced with other databases to determine whether that data is captured by the request.
26. The constabulary also explained to the Commissioner that in order to confirm or deny if the requested information is held, relevant staff would, as a minimum, have to cross check each individual's profile against the police national computer (PNC) to determine their disposal histories at the time of their use.
27. The constabulary explained that it considered that a breakdown of the volume of information it would need to search and the estimated time it would take to do this, was sensitive information. However, it provided the Commissioner with an explanation regarding the volume of information it would have to search and the estimated time it would take to do this
28. The constabulary confirmed that no sampling exercise was undertaken in its assessment. It explained that its determination was based on the system knowledge, expertise and experience of the unit manager.
29. The constabulary also confirmed that the approach described above was the quickest method of gathering the requested information, if held.

## **Conclusion**

30. The Commissioner notes the complainant's comment that as a taxpayer, he deserves to be told the truth. However, in cases where a request has been refused on the grounds of cost, the Commissioner must decide whether or not the cost estimate provided was reasonable.
31. The Commissioner has considered the constabulary's estimate, including the information provided by it in relation to the volume of information it would have to search and the estimated time it would take to do this. She considers that, given the volume of information held, a sampling exercise would not have been helpful or practical in this particular case.
32. Having considered the cost estimate provided in this case, the Commissioner considers that it is a reasonable one.

33. The Commissioner therefore considers that section 12(2) is engaged and that the constabulary does not have to confirm or deny whether it holds any of the requested information.

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

34. Section 16(1) of the FOIA provides that a public authority is required to provide advice and assistance to any individual making an information request. In order to comply with this duty a public authority should advise the requester as to how their request could be refined to bring it within the cost limit. However, the Commissioner accepts that where a request is far in excess of the cost limit, it may not be possible to provide any useful advice.
35. The constabulary explained that when responding to FOIA requests, it considers its duty under section 16 to provide advice and assistance to an applicant making a request for information. This includes helping the applicant to refine a request so that it can be answered within the appropriate costs limit.
36. It pointed out that it had contacted the complainant for clarification and that the complainant was insisting on yes or no responses.
37. The Commissioner has considered the circumstances in this case. She does not consider that the constabulary could have offered any advice and assistance, because of the large volume of information that it would have had to examine and the time it would take to do this, in order to confirm or deny whether it held any information.
38. The complainant has also complained about the length of time taken by the constabulary to deal with his request.

### **Procedural issues**

39. In the present case, the Commissioner notes that the constabulary requested clarification of the request.

### **Section 1 – Access to information**

40. Section 1(3) of the FOIA provides that where an authority informs the requester that it requires clarification, it is not obliged to comply with the request until the requester supplies the requested clarification.



41. In her guidance on clarifying a request,<sup>2</sup> the Commissioner explains that a public authority should ensure that there is no undue delay in requesting clarification. If the requester subsequently provides enough detail to enable the public authority to identify and locate the information, it must respond to the clarified request within a new 20 working day time limit with the 'clock' starting the day after it receives the required clarification.
42. The Commissioner notes that in this case, the constabulary contacted the requester on the day it received his request and explained what clarification it required. The complainant provided his clarification on 21 September 2018 and the constabulary responded to his clarified request on the same day.
43. The Commissioner therefore considers that the constabulary has complied with section 1(3) as it asked for clarification on the day it received the original request.

## **Section 10 - Time for compliance**

44. Section 10(1) of the FOIA provides that a public authority must respond to a request promptly and in any event no later than 20 working days after the date of receipt.
45. The Commissioner considers that as the constabulary has complied with section 10(1) as it responded to the requester's clarified request on the day it received the requested clarification.

## **Other matters**

46. The complainant requested an internal review on 1 October 2018. The constabulary responded on 22 November 2018.
47. Part VI of the section 45 Code of Practice (the code) makes it good practice for a public authority to have a procedure in place for dealing with complaints about its handling of requests for information.
48. While no explicit timescale is laid down in the code, the Commissioner has decided that a reasonable time for completing an internal review

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<sup>2</sup> <https://ico.org.uk/media/for-organisations/documents/1162/interpreting-and-clarifying-a-request-foia-eir-guidance.pdf>



should normally be within 20 working days of receipt of the request for review. In exceptional circumstances it may be reasonable to take longer but in no case should the time taken exceed 40 working days.

49. The Commissioner notes that the constabulary did not provide her with any reasons regarding exceptional circumstances. She is concerned that it took almost two months for it to complete the internal review.

### **Yes or no responses**

50. The Commissioner also notes that the complainant wanted the constabulary to respond with "yes or no" responses.
51. The Commissioner considers that a request in the form of a question will be a valid request, provided it describes distinguishing characteristics of the requested information. She also considers that many of those who ask questions just want a simple answer, not all the recorded information held by a public authority. The Commissioner acknowledges that it can be frustrating for a requester to receive a formal response under the FOIA stating that a public authority holds no recorded information, when this does not answer their simple question.
52. However, under the FOIA, requesters have the right to all the relevant recorded information a public authority holds, although some requesters may be frustrated if a public authority takes a less formal approach and fails to provide recorded information.
53. The Commissioner considers that the best way round this is usually to speak to the requester, explain to them how the FOIA works and find out what they want.
54. Furthermore, the Commissioner considers that although the FOIA requires a public authority to provide recorded information, this does not prevent it from providing answers or explanations as well, as a matter of normal customer service.

### **Right of appeal**

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55. 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@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)

56. 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.
57. 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**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**