

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 18 September 2019

Public Authority: Chief Constable of North Yorkshire Police
Address: Police Headquarters
Alverton Court
Crosby Road
Northallerton
North Yorkshire
DL6 1BF

Decision (including any steps ordered)

1. The complainant has requested information about the costs incurred by North Yorkshire Police (NYP) in defending itself against a particular legal claim. NYP said that it was not obliged to comply with the request on the grounds that doing so would exceed the cost limit established under section 12(1) of the FOIA.
2. The Commissioner's decision is that NYP was entitled to rely on section 12(1) of the FOIA to refuse to comply with the request. However, she found that it breached section 10 (time for compliance) and section 16 (advice and assistance) of the FOIA in its handling of the request.
3. The Commissioner requires no steps to be taken as a result of this decision.

Request and response

4. On 22 November 2018 the complainant wrote to NYP and requested information in the following terms:

"How much is the total cost spent on defending claim number [redacted]

These costs should include;

The money for Serjeants Inn which include both

- i) All of [name redacted]'s work*
- ii) All of [name redacted]'s work*
- iii) Any admin workers costs*

And all of the money for Weightman's which include

- iv) All of [name redacted]'s work, both written and oral hearing attendances*
- v) Any admin workers costs*

And all of the costs; by in house lawyers of North Yorkshire Police which include

- vi) [name redacted] including pre-action protocol work*
- vii) [name redacted] including any consideration time*
- viii) Any admin work*

I remind you of the Tribunals findings on a Request identical to this in Neil Wilby v Office for Police and Crime Commissioner of North Yorkshire."

5. NYP responded on 21 December 2018. It said that it was not obliged to comply with the request, as compliance with part of it would exceed the cost limit at section 12(1) of the FOIA. It advised the complainant that he may wish to submit a revised request for, *"the total amount invoiced by named companies in a specific matter."*
6. Following an internal review, NYP wrote to the complainant on 1 March 2019. It reiterated that part of the request was for information which was not held in an easily retrievable format due to the nature of NYP's recording systems. It said compliance with the request would therefore exceed the appropriate limit under section 12 of the FOIA and it upheld the application of that section to refuse the request. It noted that:

"...parts of your request contain information which would be reasonably retrievable by North Yorkshire Police and I would therefore like to invite you to refine your request to one which would not exceed the appropriate limit."
7. However, it did not explain what information might be reasonably retrievable or how the request might be refined.

Scope of the case

8. The complainant contacted the Commissioner on 19 March 2019 to complain about the way his request for information had been handled. He was unhappy with several aspects of the response:
 - He felt that the requested information should be easily retrievable and therefore that section 12(1) was not engaged.
 - He believed that NYP failed to provide meaningful advice or assistance with regard to submitting a refined request.
 - He complained that NYP failed to respond to the request, and conduct the internal review, promptly.
9. The analysis below considers NYP's application of section 12(1), and its compliance with section 10(1) (time for compliance) and section 16 (advice and assistance) of the FOIA. The Commissioner has commented on the time it took to conduct the internal review in the "Other matters" section at the end of this decision notice.

Reasons for decision

Section 1 – general right of access

Section 10 - time for compliance

10. Section 1(1) of the FOIA states that an individual who asks for information is entitled to be informed whether the information is held and, if the information is held, to have that information communicated to them.
11. Section 10(1) of the FOIA states that on receipt of a request for information a public authority should respond to the applicant promptly and within 20 working days.
12. The complainant submitted his request on 22 November 2018 and NYP replied on 21 December 2018, which was 21 working days after the day of receipt. By failing to respond to the request within 20 working days of receipt, NYP breached sections 1(1) and 10(1) of the FOIA.
13. The Commissioner uses intelligence gathered from individual cases to inform her insight and compliance function. This aligns with the goal in

her draft "Openness by design"¹ strategy to improve standards of accountability, openness and transparency in a digital age. The Commissioner aims to increase the impact of FOIA enforcement activity through targeting of systemic non-compliance, consistent with the approaches set out in her "Regulatory Action Policy"².

Section 12(1) – Cost of compliance exceeds appropriate limit

Section 12(4) – aggregation of related requests

14. Section 12(1) of the FOIA allows a public authority to refuse to comply with a request for information if it estimates that the cost of compliance would exceed the 'appropriate limit', as defined by the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ("the Fees Regulations").
15. The appropriate limit is set in the Fees Regulations at £450 for police forces.
16. The Fees Regulations also specify that a cost estimate must be calculated at the rate of £25 per hour of staff time. This means that the appropriate limit will be exceeded if compliance with the request would require more than 18 hours work by NYP.
17. In estimating whether complying with a request would exceed the appropriate limit, the Fees Regulations state that a public authority may 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.
18. The four activities are sequential, covering the information retrieval process of the public authority.
19. A public authority does not have to make a precise calculation of the costs of complying with a request; instead only a reasonable estimate is

¹ <https://ico.org.uk/media/about-the-ico/consultations/2614120/foi-strategy-document.pdf>

² <https://ico.org.uk/media/about-the-ico/documents/2259467/regulatory-action-policy.pdf>

required. The Tribunal has previously said³ that a reasonable estimate is one that is "...sensible, realistic and supported by cogent evidence". The Commissioner considers that a realistic estimate is one based on the time it would take to obtain the requested information from the relevant records or files as they existed at the time of the request, or up to the date for statutory compliance with the request.

Aggregation of requests

20. Multiple questions 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 several requests to be considered. However, where requests relate to the same overarching theme, a public authority may 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.

21. In the Commissioner's guidance⁴ 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".

22. 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.

³ Randall v Information Commissioner and Medicines and Healthcare Products Regulatory Agency (EA/2006/0004, 30 October 2007)

⁴ https://ico.org.uk/media/for-organisations/documents/1199/costs_of_compliance_exceeds_appropriate_limit.pdf

23. Although NYP 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 individual questions all refer to information about legal costs incurred by NYP in defending a particular claim. Therefore, NYP was entitled to aggregate the costs of dealing with each question.

Would compliance with the request exceed the appropriate cost limit?

24. NYP declined to comply with the request because it estimated that doing so would exceed the appropriate limit.
25. Section 12(1) requires a public authority to estimate the cost of compliance with a request, rather than to formulate an exact calculation. The question for the Commissioner to determine is therefore whether the cost estimate by NYP was reasonable. If it was, then section 12(1) of the FOIA was engaged and NYP was not obliged to comply with the request.
26. NYP explained to the Commissioner that it estimated that it would be possible to comply with points (i) - (vii) of the request within the cost limit. However, due to the way it records and holds data, information about the cost of any additional administration work (point (viii) of the request) was not held in an easily retrievable format, and would push the overall cost of compliance with the request beyond the appropriate cost limit.
27. NYP explained that in order to comply with the request, it would be necessary to manually check all relevant departments within the force to see if any department members had carried out any work applicable to the specific claim. It said that at least 13 departments had carried out administration work regarding the claim. It would be necessary to ascertain from each department whether any records were held of the time spent on the case in question and to ascertain whether records were held of each member of staff's hourly rate to enable NYP to cross reference the data. The process was further complicated by the fact that not all of these departments have time recording procedures and therefore time would need to be spent establishing whether there were records from which the time could be calculated.
28. Commenting on the particular case which the complainant had cited as providing a precedent for disclosure, NYP said that the request in that case had not been for the cost of administration work conducted by the public authority. Therefore, it said the two cases were not, as the complainant had claimed, identical.
29. NYP provided the Commissioner with a breakdown of the tasks that would be involved in carrying out the work listed in paragraph 17,

together with an estimate of the time necessary to conduct each task. It estimated that the total time needed would be 23 hours, which exceeds the 18 hours permitted under the fees regulations.

The Commissioner's conclusion

30. The complainant is of the view that the information he has requested should be easily retrievable. However, when dealing with a complaint to her under the FOIA, it is not the Commissioner's role to make a ruling on how a public authority deploys its resources, on 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. On that point, the Information Tribunal in the case of *Johnson / MoJ* (EA2006/0085)⁵ has commented that the FOIA:

"... does not extend to what information the public authority should be collecting nor how they should be using the technical tools at their disposal, but rather it is concerned with the disclosure of the information they do hold".

31. With that point in mind, the Commissioner considers the cost estimate provided to her by NYP to be cogent, and quite conservative in terms of the time it has estimated for carrying out certain tasks. However, she notes that four hours have been allocated for, *"Retrieval of data from individuals no longer in Force"*. If the data being retrieved is not held by NYP itself as recorded information, then it falls outside of the scope of the request, and an allowance for it should not be included in the overall estimate of the time needed to comply with the request. However, even if that is the case, excluding those four hours would still result in the appropriate limit being exceeded.
32. While the appropriate limit has only been exceeded by a short time, public authorities are nevertheless entitled to refuse to comply with requests which they estimate would exceed the appropriate limit by any amount whatsoever.
33. NYP declined to comply with the whole of the request on the basis that compliance with part of it would exceed the appropriate limit. The

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<http://informationrights.decisions.tribunals.gov.uk//DBFiles/Decision/i90/Johnson.pdf>

Commissioner is satisfied that it was entitled to take this approach. Her guidance makes it clear that where a public authority believes it could comply with some, but not all, of a request without exceeding the appropriate limit, it should nevertheless refrain from complying with just part of the request. Instead, the request in its entirety should be refused and the requester given appropriate advice and assistance as to how they might submit a refined version, which may be complied with without exceeding the appropriate limit. The Commissioner has commented further on this in the following section.

34. On the matter of the decision by the Information Tribunal in the case which the complainant deemed to be identical to his request, the Commissioner has viewed the decision in question⁶. She agrees with NYP that the request in that case was for the total amount billed to a firm of solicitors. It did not include a request to know in-house administrative costs. The Commissioner therefore disagrees with the complainant that the requests are identical.
35. Taking all the above into account, the Commissioner considers that NYP has demonstrated that its cost estimate was reasonable and thus that it was not required to comply with the request by virtue of the provisions of section 12(1) of the FOIA.

Section 16 – advice and assistance

36. Section 16(1) of the FOIA provides that -

"It shall be the duty of a public authority to provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made, requests for information to it."

37. 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 appropriate cost limit.
38. In its refusal notice, NYP explained that information about its in-house administration work was not held in an easily retrievable format:

"Due to the nature of our recording systems the information requested is not in an easily retrievable format. In order to provide the cost of any administration work done in house on any legal cases,

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<http://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i2105/Wilby,%20Neil%20EA-2017-0076.pdf>

it would be necessary to manually check with any relevant department around the organisation to see if any department members had carried out any work applicable to the specific case (eg Legal, Finance, Civil Disclosure etc), then see if any records were held of time spent on the case, and finally ascertain whether records were held of each member of staff's hourly work rate to enable the decision maker to cross reference the data. This research and collation of data would understandably take a large amount of time, therefore exceeding the cost threshold under the Act."

39. NYP stated to the Commissioner that it estimated that it could comply with parts (i) – (vii) of the request within the appropriate cost limit. However, it told the complainant:

"Pursuant to Section 16 of the Act I am required to offer you advice and assistance with regard to refining your request to within the 'appropriate limit' (time/cost limit). You may wish to request the total amount invoiced by named companies in a specific matter."

40. The Commissioner finds the advice NYP offered the complainant to be rather vague and imprecise. In view of the fact that NYP was able to identify to the Commissioner the precise parts of the request it estimated it could comply with, she finds it unreasonable that it did not advise the complainant in similar terms. As such, she finds that NYP did not fully comply with its obligations under section 16 of the FOIA.
41. Since this decision notice contains precise information as to how the request might be refined, the Commissioner does not require NYP to take any steps in that regard.

Other matters

42. Although they do not form part of this notice the Commissioner wishes to highlight the following matters of concern.

Internal review

43. The Commissioner cannot consider the amount of time it took a public authority to complete an internal review in a decision notice because such matters are not a formal requirement of the FOIA. Rather they are matters of good practice which are addressed in the code of practice issued under section 45 of the FOIA.
44. Part VI of the section 45 Code of Practice states that it is desirable practice that a public authority should have a procedure in place for dealing with complaints about its handling of requests for information, and that the procedure should encourage a prompt determination of the

complaint. The Commissioner considers that these internal reviews should be completed as promptly as possible. While no explicit timescale is laid down by the FOIA, the Commissioner considers that a reasonable time for completing an internal review is 20 working days from the date of the request for review. In exceptional circumstances it may take longer but in no case should the time taken exceed 40 working days; it is expected that this will only be required in complex and voluminous cases.

45. In this case, the complainant asked for an internal review of his request on 26 December 2018 and NWP provided the outcome of the internal review on 1 March 2019, 45 working days later. The Commissioner considers that in failing to conduct an internal review within the timescales set out above, NYP has not conformed with the section 45 code.
46. The Commissioner would refer NYP to her comments in paragraph 13, above.

Right of appeal

47. 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
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

48. 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.
49. 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

Samantha Bracegirdle
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Wycliffe House
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SK9 5AF