

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 18 September 2019

Public Authority: Chief Constable Kent Police
Address: Kent Police Headquarter
Sutton Road
Maidstone
Kent
ME15 9BZ

Decision (including any steps ordered)

1. The complainant requested information relating to child abuse allegations at a specified children's home between 1976 and 1981. Kent Police responded and initially said that it did not hold any information beyond that released in response to an earlier related request.
2. During the course of the Commissioner's investigation, Kent Police revised its position and said that it could neither confirm nor deny on cost grounds (section 12(2) of FOIA) whether it holds the requested information.
3. The Commissioner's decision is that Kent Police was entitled to rely on section 12(2) to neither confirm nor deny whether it held the requested information. She also finds that it complied with its section 16 advice and assistance obligations. She does not require Kent Police to take any steps as a result of this notice.

Background - previous request

4. The complainant originally submitted an information request on 9 April 2019, which was similar to the request being considered here. This was handled by Kent Police outside the FOIA. It said this was because it related to the complainant personally as a victim of crime. It also said:

"...the officer provided [the complainant] with his own crime reports, and stated that no other reports had been made that he could find. Clearly this was not a response under FOIA, since no personal data would have been released to [the complainant] under the legislation."

5. Kent Police provided its response, outside the terms of the FOIA, on 9 April 2019. It provided a crime reference number which related to the complainant himself, but said no other information was held. It explained that any records going back to the 1970s and early 1980s would not have been retained.
6. Kent Police also provided the following explanation to the Commissioner about that request:

"... [The complainant's] personal data was not provided to him under FOI. It was provided to him as a courtesy by the officer in the case when [the complainant] requested a copy. Had it been requested under FOIA, we would have applied an NCND ('neither confirm nor deny' response)".

7. The complainant wrote to the Commissioner about how this request had been dealt with. The Commissioner noted that the response had not been in line with the terms of the FOIA. She was satisfied that it constituted a valid FOIA request in accordance with section 8 of FOIA and she asked Kent Police to provide a valid response under the FOIA, albeit this was likely to be different to the response it had provided to him personally.
8. In the interim, on 26 June 2019, the complainant contacted the Commissioner stating that he required the requested information for the named individual plus *"any other people reported to Kent Police."* The Commissioner explained that this constituted a new request and advised the complainant to submit this to Kent Police, which he did so on 2 July 2019 (this is the request being considered in this notice).
9. Kent Police provided its FOIA response to these two requests, on 5 July 2019 and said that no information was held.

Request and response

10. On 2 July 2019 the complainant wrote to Kent Police and requested information in the following terms:

"I ... request under the FOIA additional information about any crime reference numbers, reports & alligations [sic] of child

abuse at [location redacted] by [name redacted] or any other people reported to Kent Police during me living their [sic] between 1976-81."

11. Kent Police responded on 5 July 2019. It stated that no information was held.

Scope of the case

12. The complainant contacted the Commissioner on 8 July 2019 to complain about the way his requests for information had been handled. He remained dissatisfied following receipt of the FOIA response of 5 July 2019.
13. The Commissioner contacted the complainant to explain that the complainant's request of 2 July 2019 constituted a new request, because it was a different and broader request to that complained about originally. She said that she was able to consider complaints about both requests and that this would necessitate two separate but linked investigations. Following a written exchange, the complainant asked the Commissioner to investigate only his most recent request (ie that of 2 July 2019 as set out in paragraph 10 of this notice).
14. The Commissioner has exercised her discretion and accepted this complaint without the need for an internal review.
15. As part of her initial enquiries, the Commissioner queried the searches which Kent Police had made to try and locate any information held. This resulted in Kent Police revising its position from 'information not held' and instead citing section 12(2) of FOIA, ie that the cost of ascertaining whether or not any information may be held would exceed the cost limit. It advised the complainant accordingly on 24 July 2019.
16. The complainant remained dissatisfied and asked the Commissioner to investigate Kent Police's reliance on section 12(2) of FOIA in relation to his request of 2 July 2019.
17. The Commissioner has considered whether Kent Police was entitled to rely on section 12(2) in relation to this request.

Reasons for decision

Section 12 – cost of compliance exceeds the appropriate limit

18. Section 12 of FOIA states that:

"(1) 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."

19. 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."

20. Section 12(2) provides that a public authority is not obliged to confirm or deny whether requested information is held if it estimates that to do so would incur costs in excess of the appropriate limit. In other words, if the cost of establishing whether information of the description specified in the request is held would be excessive, the public authority is not required to do so.

21. The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the 'Fees Regulations') set the appropriate limit at £450 for Kent Police; they also specify that the cost of complying with a request must be calculated at the rate of £25 per hour, meaning that the appropriate limit for Kent Police equates to 18 hours.

22. 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:

- a. determining whether it holds the information;
- b. locating the information, or a document containing it;
- c. retrieving the information, or a document containing it; and
- d. extracting the information from a document containing it.

23. Section 12(2) requires a public authority to estimate the cost of confirmation or denial, rather than to formulate an exact calculation. The question for the Commissioner here is whether the cost estimate by Kent Police was reasonable. If it was, then section 12(2) was engaged and Kent Police was not obliged to confirm or deny whether the requested information was held.

Application of section 12(2)

24. Kent Police has told the Commissioner that records from 1976 to 1981 (ie the period requested by the complainant) would have been held manually and stated:

"In terms of searching manual data, it is not possible to search manual records without a date. [The complainant's] date range of 5 years would amount to many thousands of records which would all be required to be manually reviewed. This would engage the cost exemption at S.12".

25. In relation to the manual records held, Kent Police also advised the Commissioner as follows:

- *"Records are not recorded by venue, they are recorded by URN i.e. custody number, crime report number, casefile number – therefore it is not possible to perform a search on the address of the home.*
- *Sometimes contents of boxes may contain names or victims – it is a long shot/nearly impossible – however, the list of potential offender names, of which there were three, were run through TranSearch to see if the name appeared anywhere in our system, with no results. TranSearch is a data base where we are in the process of sorting through all boxes holding manual files and adding the contents to TranSearch to enable better control of our manual files. This does not account for the possibility that there were other individuals who worked in the home between the years 1976-1981 who might have been mentioned by other victims, if they exist.*
- *It is extremely difficult to provide an overview of how long it takes to review a box, however, the records management team estimate that it takes between 1 hour and 2 days, depending on the contents of the box. Assuming that there might be information held in the 52000 boxes that Kent Police has not yet transferred onto the TranSearch system, and basing it on the lowest possible time of 1 hour per box, this would amount to 52000 hours, or 6 years to identify if any data is held in relation to [the complainant's] request."*

26. Kent Police told the Commissioner the following:

"I can confirm that no historic data reported before digital recording was put onto the system. Digital recording started on the 01/10/1996."

27. The Commissioner understands that digital records were initially held by Kent Police on a system known as 'Genesis', later replaced by 'Athena'. Kent Police has confirmed that the "back records" held on Genesis were transferred to Athena and that no historical manual records were uploaded onto either system.

28. However, Kent Police has explained that:

"...if a victim made the allegation after Kent Police introduced digital recording, the data would have been held on the digital system".

29. The Commissioner is satisfied that the above explains why the complainant was able to secure his information in relation to his previous related request (see 'Background' section of this notice).

30. Kent Police said it had also undertaken a search of its digital records for records held of victims/alleged victims, from the time period 1976-1981, who have contacted Kent Police since the introduction of digital recording in October 1996. It provided the following details:

*"Performing the relevant search on date range
Limiting the search to the area of [location redacted]
Results 155*

1 minutes and 2 seconds

*Performing the relevant search on date range
Limiting the search to the area of [location redacted]
Results 210*

38 seconds

Total: 2 minutes (rounded)

Note – the policing boundaries changed so it is possible that there are other policing divisions that will need to be searched. There is no facility to reduce the number of returns as although there are keywords, most of these are not filled in and therefore each crime report will need to be assessed.

Total Results: 365

Reviewed returned results

Relating to [location redacted] – Results 155, 16 of which were found not to be relevant (1 minute 18 seconds). Total remaining 139

Relating to [location redacted] - Results 210, 17 of which were found not to be relevant (1 minute 33 seconds). Total remaining 193.

Once the search is completed, each crime is opened, an investigation report is generated, read, and the relevance is identified. Relevant data is put into a separate document for later collation. This cannot be automated.

To provide a snapshot I chose the top 10 crime reports that were listed and performed the above actions.

10 Crime reports opened, assessed for relevance – none matched the requirements laid out by [the complainant]. None gave any indication on the summary, or MO [modus operandi].

17 minutes and 43 seconds.

Total/crime report: 2 minutes (rounded)

The estimate to identify the relevant data held on Athena: 332 x 2 minutes = 11 hours and 4 minutes."

31. Kent Police explained that Athena cannot be searched by free text, but that the system allows for:

"...searches on dates committed, crime type, and location. However, it is also possible to separate searches on an individual, and a separate search on a location. If either brings back a result it is then possible to identify if any investigations are linked either to the person, or to the location."

Conclusion

32. The Commissioner must decide whether or not the cost estimate given by Kent Police was reasonable.
33. Whilst no sampling exercise is required in the circumstances of this case, the Commissioner notes that some initial searches have been undertaken by Kent Police of as a way of estimating how long actual searches would take. In view of the wording of the request and the age of the information, which is likely to be held manually if at all, she is satisfied that the work undertaken by Kent Police to ascertain its estimate is adequate as the request itself is so broad.
34. The Commissioner therefore considers this estimate to be a reasonable one. She therefore concludes that section 12(2) is engaged and that Kent Police was not obliged to confirm or deny holding any of the requested information.

Section 16 – duty to provide advice and assistance

35. Section 16(1) of 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.

36. In this case, Kent Police advised the complainant as follows:

"Ordinarily under Section 16 of the Act we would be required to offer advice and assistance in order to try and bring a request within cost, however in this case we can see no reasonable way to do so."

37. Having considered Kent Police's submissions as to how information potentially in scope of the request is held, the Commissioner is satisfied in this case that Kent Police met its section 16 obligations.

38. However, the Commissioner does note that, according to its estimate, Kent Police would be able to search its electronic systems within the cost limit. This would therefore be a possible option were the complainant to decide to make a refined request.

Other matters

39. The Commissioner would remind Kent Police to ensure that it recognises future requests submitted in accordance with section 8 of FOIA, and responds to them under the FOIA.

Right of appeal

40. 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

41. 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.
42. 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

Carolyn Howes
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF