

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 30 June 2021

Public Authority: Chief Constable of Northamptonshire Police
Address: Wootton Hall
Northampton
NN4 0JQ

Decision (including any steps ordered)

1. The complainant requested from Northamptonshire Police information about its receipt and handling of Subject Access Requests ("SARs") in the years 2018, 2019, and 2020. Northamptonshire Police refused the request as it considered that complying with it would exceed the cost limit under section 12 of the FOIA.
2. The Commissioner's decision is that Northamptonshire Police was entitled to rely on section 12(1) of the FOIA (cost limit) to refuse to comply with this request. However, the Commissioner also finds that Northamptonshire Police has not complied with its duty to provide advice and assistance under section 16 (advice and assistance) of the FOIA.
3. The Commissioner requires Northamptonshire Police to take the following steps to ensure compliance with the legislation.
 - Provide advice and assistance to the complainant on refining his request.
4. Northamptonshire Police must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 5 October 2020, the complainant wrote to Northamptonshire Police and requested information in the following terms:

"Please can you provide for me the following statistics around your receipt and handling of Data Subject Access Requests under the GDPR/Data Protection Act 2018.

[1] How many requests have you received each year for the period of 2018, 2019 and 2020.

Of those and by year, how many have you responded to within one month, two months, three months or longer.

[2] In addition, please could you let me have the Name, Job Title of your DPO along with their Qualifications that make them a suitably knowledgeable person to hold that role, and the number of staff in the team(s) that support them in that role.

Should there still be a time issue, please provide the DPO details and 2020 data first, working backwards for 2019 and 2018 respectively until the time limit is reached."

6. Northamptonshire Police responded to the request on 28 October 2020. It refused to provide the majority of the requested information because it considered that complying with the request would exceed the cost limit under section 12 of the FOIA. However, "as a gesture of goodwill", it did provide information in relation to point 2 of the request. It stated that the information at point 2 of the request, "was retrieved or available before it was realised that the fees limit would be exceeded". It provided to the complainant the name and job title of the DPO, the number of staff supporting this role and information regarding qualifications.

7. In its response to the requester, Northamptonshire Police stated:

"You may wish to refine and resubmit your request so that it reduces the costs shown above and is then within the 'appropriate limit' shown above. The force is under no obligation under the Freedom Of Information Act 2000 to work up until the cost threshold is engaged."

8. On 28 October 2020 the complainant wrote to Northamptonshire Police and requested an internal review.
9. Following an internal review Northamptonshire Police wrote to the complainant on 26 November 2020. It upheld its original decision but provided further explanation as follows:

"The current recording system used to log requests does allow us to record all key dates from receipt through to closure. Unfortunately the reporting element within that system does not allow for closure dates to be broken down to the extent requested. To achieve this

level of reporting would require each record to be opened manually and note taken of the due date and closure date. This is not a replication of the monthly reporting to NPCC and therefore is not held in a retrievable format. Due to the process and number of records that would need to be accessed to retrieve the data requested, the threshold to which we are required to work to would be exceeded."

Scope of the case

10. The complainant contacted the Commissioner on 26 November 2020 to complain about the way his request for information had been handled. He raised the following concerns:

"I made a FOI request to ascertain the number of Data Subject Access Requests received and responded to by Northamptonshire Police during 2018, 2019 and 2020 up until the date of the request. I am aware that Northamptonshire Police have provided to the National Police Chiefs Council, summary statistics for the period September 2019 to September 2020. The force has responded indicating that they do not hold the information in any reasonably retrievable form. I believe this is either a clear and obvious breach of the forces obligations under the DPA2018 and GDPR, or a clear and obvious breach of the forces obligations under the Freedom of Information Act."

11. The scope of this investigation and decision notice is to determine whether Northamptonshire Police was entitled to rely on section 12(1) of the FOIA (cost limit) in order to refuse to comply with this request.
12. The Commissioner will also consider whether Northamptonshire Police has fulfilled its obligations under section 16 of the FOIA (advice and assistance).

Reasons for decision

Section 12(1) – cost of compliance exceeds the appropriate limit

13. Section 1(1) of the 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."*

14. Section 12(1) of the FOIA provides 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."

15. The appropriate limit in this case is £450, as laid out in section 3(2) of The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ("the Fees Regulations"). This must be calculated at the rate of £25 per hour, providing an effective time limit of 18 hours' work.

16. 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 from a document containing it.

17. A public authority does not have to make a precise calculation of the costs of complying with a request; instead, only an estimate is required. However, it must be a reasonable estimate. In accordance with the First-Tier Tribunal decision in the case of *Randall v IC & Medicines and Healthcare Products Regulatory Agency EA/20017/0004*¹, the Commissioner considers that any estimate must be *"sensible, realistic and supported by cogent evidence"*.

Northamptonshire Police's position

18. In Northamptonshire Police's response to the complainant it stated that the requested information is not held in any reasonably retrievable form. It explained that:

"the only means of establishing information of the nature you are requesting would be by way of manual examination of each record. Due to the nature of our recording systems the information requested, is not in an easily retrievable format. Our

¹ <https://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i136/Randall.pdf>

information retrieval process generally relies on a computer ran report which captures any information recorded upon the surface of a record or within specified fields. Where relevant information is held deeper in the record, or outside of a specified field, a manual assessment is usually required to retrieve that information. Whether a response was within two/three months or longer is not a specified field."

19. Northamptonshire Police also explained that it held 437 records. It estimated that it would take a minimum of 5 minutes to search each of these records and therefore estimated that complying with this request would take over 36 hours. It stated that at £25 per hour, as per the appropriate limit set by the Fees Regulations, that responding to the request would exceed the limit of £450. However, it did provide information in relation to the second part of the complainant's request as a gesture of goodwill.
20. In its internal review response, Northamptonshire Police reiterated that its current recording system used to log requests allows it to record all key dates from receipt through to closure. However, it further explained that the reporting element within its systems does not allow for closure dates to be broken down to the extent requested. In order to achieve that level of reporting, it explained that it would require each record to be opened manually and note taken of the due date and closure date for the request.
21. In response to the Commissioner's investigation, Northamptonshire Police explained that the information requested in the first part of the complainant's request is held centrally on a recording system but that the system it uses does not allow it to automatically collate or export information about when each request was closed and how late it was. As such, Northamptonshire Police would need to manually review each relevant case record in order to retrieve the information and respond to the request.
22. Northamptonshire Police further explained that it does record monthly snapshot statistics for the ICO of the SARs it receives. It explained that these statistics record *"the number of open requests, the number which are overdue, number dealt with in the month, number dealt with within the statutory deadline."* However it clarified that, *"there is no reporting requirement for how late each request is when closed. Therefore we do not record this information."*
23. Northamptonshire Police confirmed that a sampling exercise had been undertaken, where, *"records were pulled up and a sample opened to establish the time it would take to collate the information"*. However, Northamptonshire Police stated that it did not keep a record of how many cases were sampled or how long it had taken to locate, retrieve

and extract the requested information from each of the records sampled as part of its sampling exercise. As a result, it was unable to provide this information to the Commissioner to support its application of section 12.

24. Northamptonshire Police has explained that:

"To locate and retrieve and extract the information requested from each record would require us to open the recording database, to select the section, sub-application, category and date period from 2018 to 2020 and select Closed On Time to No. This will then produce a list of all requests received and booked on to the system. We would then need to double click on each record to open it up and to extract the date due and date closed information. Once recorded for every record we would then need to calculate whether it was closed within two months, three months or longer."

25. Northamptonshire Police added that, *"although the number of actions required to detail the information may appear minimal the speed at which the database responds must be taken in to account"*.

Northamptonshire Police advised that the database system it uses for recording SARs is an older system and that it is exploring options for upgrading the existing database to a newer release. It also stated that it has been impacted by decreased connectivity speeds as a result of home-working due to the Covid-19 pandemic and this has resulted in tasks taking an increased amount of time.

26. Further, Northamptonshire Police explained that due to the system fields on the database system it uses being mainly manual input, the database user has to manually select 'No' when closing cases which are not closed on time and that *"this does result in user error"*. As a result, Northamptonshire Police stated in its response to the Commissioner's investigation that to *"ensure accurate information is provided would require the manual examination of 1,073 records which would of course increase the number of hours required to respond"* from its original estimate of just over 36 hours.

27. As a result of this increase to its calculation of the number of records which need to be reviewed in order for it to respond to the request, the Commissioner understands Northamptonshire Police's estimate as follows: 1,073 (number of records) x 5 minutes each (minimum) = 89.42 hours at £25 per hour for it to respond to the request.

The Commissioner's conclusion

28. The Commissioner considers Northamptonshire Police's reasoning to be persuasive. Northamptonshire Police has explained that it would need to manually review each relevant case record to extract the date the request was closed on and that it would then need to manually calculate how late this request was in order to respond to the first part of the

complainant's request as the system it uses does not allow it to automatically capture or extract this information.

29. Additionally, Northamptonshire Police has also explained that, due to the functions of the system it uses, and the presence of user error within the recording of cases closed on time, it would actually need to review 1,073 records rather than the 437 it originally estimated to ensure that its response was accurate.
30. Even if Northamptonshire Police's estimate of 5 minutes for the minimum time required to retrieve and extract the information from each record was grossly overestimated, it is reasonable to estimate that the request would still exceed the appropriate limit of 18 hours. For example:

1,073 (number of records) x 1.5 (90 seconds per record) = 26.825 (hours).

31. Therefore, the Commissioner's view is that Northamptonshire Police estimated reasonably that the time required to comply with this request would exceed the 18 hours set out by the Fees Regulations. It is the Commissioner's view that Northamptonshire Police was entitled to rely on section 12(1) of the FOIA to refuse to comply with the complainant's request.

Section 16 – advice and assistance

32. Section 16 of the FOIA states:

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

(2) Any public authority which, in relation to the provision of advice or assistance in any case, conforms with the code of practice under section 45 is to be taken to comply with the duty imposed by subsection (1) in relation to that case."

33. The Commissioner's view is that, where a public authority refuses a request under section 12(1) of the FOIA, it must comply with the section 45 Code of Practice will fulfil its duty under section 16(1).
34. Paragraph 2.10 of the section 45 Code of Practice states:

"Where it is estimated the cost of answering a request would exceed the 'cost limit' beyond which the public authority is not required to answer a request (and the authority is not prepared to answer it), public authorities should provide applicants with advice and assistance to help

them reframe or refocus their request with a view to bringing it within the costs limit".

35. In addition, paragraph 6.9 states that *"public authorities should consider what advice and assistance can be provided to help the applicant reframe or refocus their request with a view to bringing it within the cost limit."*
36. In its initial response to the complainant, Northamptonshire Police advised him that he may wish to refine and resubmit his request to bring it within the appropriate limit.
37. In response to the Commissioner's investigation, Northamptonshire Police stated it was unable to provide further advice and assistance to the complainant for the first part of his request. Northamptonshire Police stated, *"it was obvious we would not be able to provide the information requested or anything meaningful in relation to figures within cost as the requestor required annual figures for a three year period."*
38. Northamptonshire Police also stated that while it was unable to provide advice and assistance, it did, as a gesture of goodwill provide, *"information to answer questions in relation to our DPO name, job title along with their qualifications that make them a suitably knowledgeable person to hold that role, and the number of staff in the team(s) that support them in that role."*
39. The Commissioner considers that Northamptonshire Police has not taken sufficient steps to offer advice and assistance in an attempt to bring the first part of the complainant's request within the appropriate limit. The Commissioner considers that Northamptonshire Police could have advised the complainant of the way in which he could refine his request for example, by one year rather than three years of data that were originally requested. She therefore considers that Northamptonshire Police has not complied with its obligations under section 16 of the FOIA.
40. The Commissioner is not satisfied that Northamptonshire Police complied with its statutory obligation under section 16 to provide advice and assistance. Northamptonshire Police is therefore required to take the step outlined at paragraph three above.

Right of appeal

41. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

42. 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.
43. 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

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