

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 19 October 2010

Public Authority: Devon & Cornwall Constabulary
Address: Force Headquarters
Middlemoor
Exeter
EX2 7HQ

Summary

The complainant submitted a request to the Devon & Cornwall Constabulary for information relating to proceedings taken against a police officer in the first half of 2002. The public authority refused the request under section 12(1) of the Act as it estimated that the cost of compliance would exceed the 'appropriate limit' of 18 hours. The Commissioner finds that the cost of compliance would exceed the 18 hour limit and therefore section 12(1) of the Act was applied correctly.

The Commissioner's Role

1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

The Request

2. On 5 October 2009 the complainant requested the following information:

'I am only interested in the proceedings taken against [redacted] in the first half of 2002'.

3. The public authority responded on 29 October 2009 and refused to confirm or deny whether it held information falling within the scope of the request. The public authority cited the exemption provided by section 12(1) as grounds for the refusal. The public authority further advised that it would be unlikely to comply with the request even if the scope of the request was refined.
4. The complainant responded on 8 February 2010 and requested that the public authority carry out an internal review of its handling of the request. The public authority responded with the outcome to the review on 5 March 2010. The refusal decision was upheld.

The Investigation

Scope of the case

5. On 11 March 2010 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant advised that the information was required as background information for his application to the Criminal Case Review Commission.
6. The Commissioner's investigation has concentrated on establishing whether the decision to apply section 12(1) to the information referred to in the request is correct.
7. The Commissioner has also considered whether the public authority fulfilled its duty to provide advice and assistance to the complainant, in accordance with section 16 of the Act.

Chronology

8. The Commissioner contacted the public authority on 23 March 2010 and again on 7 April 2010 with a view to establishing the indexing and archiving system employed by the authority as well as the extent of the searches undertaken.
9. The public authority responded on 1 April 2010 and reiterated what it had informed the complainant following the internal review of the original decision.
10. The public authority again wrote to the Commissioner on 29 April 2010 and provided him with details of archiving, indexing and the extent of the searches undertaken.

Analysis

Substantive Procedural Matters

Section 12-Cost of compliance exceeds appropriate limit

11. The Commissioner has considered whether the decision to refuse the request under section 12(1) of the Act was correct. Section 12(1) 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."

12. The Regulations prescribe the 'appropriate limit' as being £600 for Central Government and £450 for other public authorities, with a rate of £25 per hour for all public authorities. The appropriate limit is set out in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulation 2004. For the public authority to legitimately cite section 12 in this case, therefore, it needs to demonstrate that the time needed to comply with the request exceeds 18 hours.

13. Section 12(2) of the Act provides that:

"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"

14. Regulation 4(3) of the Regulations provides that the following factors can be taken into account when formulating a cost estimate:

- (a) determining whether it holds the information,
- (b) locating the information, or a document which may contain the information
- (c) retrieving the information, or a document which may contain the information, and
- (d) extracting the information from a document containing it.

15. The Tribunal considered the issue of what constitutes a reasonable estimate in the case of *Alasdair Roberts v the Information Commissioner [EA/2008/0050]* and made the following comments:

- *"Only an estimate is required"* (ie. not a precise calculation);

- The costs estimate must be reasonable and only based on those activities described in regulation 4(3);
 - Time spent considering exemptions or redactions cannot be taken into account;
 - Estimates cannot take into account the costs relating to data validation or communication;
 - The determination of a reasonable estimate can only be considered on a case-by-case basis; and
 - Any estimate should be "*sensible, realistic and supported by cogent evidence*" as per the Tribunal's findings in *Randall v Information Commissioner and Medicines and Health Care Product Regulatory Agency (EA/2007/0004)*.
16. The public authority advised that in order to complete the request it would need to contact everyone in the Force. It would mean searching through all file stores from top to bottom and possibly conducting a physical search of all buildings owned by Devon & Cornwall Constabulary. It argued that the search would take longer than 18 hours to complete. It further advised that according to Force Policy and Procedure in relation to retention of documents, files covered by the request would only have been kept for 6 years and in all likelihood would have been destroyed. It has however not been able to confirm whether the destruction of documents had indeed taken place.
17. The internal review was conducted by an independent reviewer who made the following comments:
- It has been established that a comprehensive system to link disciplinary records to the storage system within the Central File does not exist for this period.
 - The Constabulary's Records management policy requires that disciplinary records are destroyed after six years, although it is accepted that some records from 2002 do still exist.
 - On reference to the manager of the file store it was estimated that to check each receptacle to establish if the full disciplinary file is still held would take in the region of 40 hours of work.
18. The Commissioner wrote to the public authority on 7 April 2010 to seek clarification on how its records are usually archived and indexed, details of the searches undertaken as well as information on destroyed documents.
19. The public authority explained that the Professional Standards Department (PSD) recorded various matters as follows, any of which could relate to the information:

- Complaints against police
 - Misconduct
 - Miscellaneous
 - Direction & Control
20. It explained that each of these files is indexed from the start of the year so that for example complaint files from 2010 would be recorded as PSD/CO/01/10, the next PSD/CO/02/10 and so on throughout the year. As the files come in for finalisation they are retained in the PSD offices for approximately a year, due to the frequency of having to go back to a file and gather information from it. After a period of time all the files are placed into boxes in complaint order number and forwarded to Central File and Record Facility (CFRF) for storage. The boxes are numbered consecutively from 1 up to whatever number was reached that year. At this point the Force misconduct database CENTURION is also updated to this effect. This should then indicate to PSD where any particular file is at a particular time. The public authority did concede that a comprehensive system to link disciplinary records to the storage system within the Central File did not exist for the period of the request.
21. The public authority has acknowledged the weaknesses in the process of how professional standard files were held by the Force. The Commissioner has taken into account the fact that the poor standard of records management would have meant that the public authority would take longer to conduct its searches. Whilst the Commissioner does not agree with the premise that everyone in the Force would need to be contacted, he is also of the view that extensive searches as described by the public authority would need to be instigated in order to comply with the request. It is the view of the Commissioner that the process of locating, examining and extracting any relevant information would in all likelihood take well in excess of the 18 hours allocated.
22. The public authority advised that the request was in fact a revised request. The original request had already been refused on the grounds of cost (section 12). On receipt of the original request efforts were made by the PSD to locate the appropriate files by contacting CFRF with all relevant file reference numbers. These checks did not locate any related files. Further checks were carried out which identified that the request was in fact related to a criminal investigation known as 'Operation Headway'. CFRF confirmed that there were 13 A3 boxes held within the facility that related to 'Operation Headway'. A search through one of the 'Operation Headway' box files that was contained within one of the 13 A3 boxes identified two items of interest. These were:

- A report from the Chief Inspector within PSD to [redacted], directing him to hand over any papers in his possession by a specific date;
 - Document numbered D279 which details the material sent to the Major Incident Room in relation to the case.
23. The searches of 1 of the 13 boxes took approximately 3 hours to identify these documents alone. The public authority pointed out that these documents were located not because they were stored by reference number, but a search of the operational electronic database (HOLMES) indicated some documents were retained in the original case papers and that the individual searching the box file recognised names of previous PSD staff members.
24. The Commissioner accepts that whilst the original request was not considered by him, the searches undertaken to comply with that request are indicative of the searches that would need to be carried out for the current request. The searches took approximately three hours to identify two items of interest and would have taken considerably longer had names not been recognised by the searching officer. By extrapolating the search time which could possibly even have to include *"all file stores from top to bottom and possibly conducting a physical search of all buildings owned by Devon and Cornwall Constabulary"* for the current request, the Commissioner is of the opinion that a reasonable estimate for such an exercise would be well in excess of the 18 hours allocated.
25. The public authority confirmed that previously the CFRF did not hold an actual destruction register. It did however confirm that a previous member of the PSD staff did have a destruction list but that the requested information was not documented by case reference or operation name on the relevant list. The public authority made the assumption that the requested information had not been destroyed but due to the fact that they did not hold a destruction register it was unable to confirm whether this indeed was the case.
26. Having considered the explanation provided by the public authority, the Commissioner is satisfied that to determine whether the information in question is held would exceed the appropriate limit provided in section 12(1) of the Act. Furthermore the Commissioner is not convinced that the requested information could be located at all as there is a distinct possibility that it would have been destroyed under the Constabulary's Record Management policy.
27. The public authority has made it clear to the complainant that had it been able to locate the information it still would in all probability be

withheld under exemptions for disclosure, specifically section 30 (investigations and proceedings) and section 40 (personal information). The Commissioner has not gone on to consider these points as he is satisfied that the location of the material would exceed the cost limit in the first place.

Section 16-Duty to provide advice and assistance

28. The Commissioner has considered whether the public authority fulfilled in its duty to provide advice and assistance to the complainant, in accordance with section 16 of the Act. Section 16(1) 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."

29. The public authority did advise the complainant, in respect of the original complaint, that as searches had so far proved fruitless, it is unlikely that a narrowed down request would meet with success. The Commissioner concurs with this view and concludes that as a result of incomplete indexing, the provision of advice and assistance would not have been beneficial in this instance as the public authority would still have needed to carry out a search of all the relevant boxes in order to establish if the information was held.

The Decision

30. The Commissioner's decision is that the public authority dealt with the request for information in accordance with the Act.

Steps Required

31. The Commissioner requires no steps to be taken.

Other matters

32. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern.

33. The Commissioner believes that incomplete indexing and the lack of a destruction register were significant contributing factors to the appropriate limit being exceeded in this case. The Commissioner is aware that the matter is currently being reviewed by the Head of the Professional Standards Department and the File Store Manager of the public authority. It has also been brought to the attention of the Commissioner that under the current CFRF Manager, all staff are now required to obtain written authorisation for destruction and on receipt of authorisation such documentation is retained. As part of the review process, the Commissioner believes that the public authority's practice fell short of that set out in the Code and that it should consider re-indexing the relevant records in order to conform to the section 46 Records Management Code of Practice (<http://www.justice.gov.uk/guidance/docs/foi-section-46-code-of-practice.pdf>) and improve its ability to respond to requests under Act.
34. The public authority did not provide a breakdown of the costs to the complainant indicating the likely order of time and cost that could be required to respond to the request for information; although it is not a statutory requirement, it would have been good practice. The Tribunal offered support for this approach in the case of Gowers and the London Borough of Camden in which it said that a public authority **should** demonstrate how their estimate has been calculated: "...a public authority seeking to rely on section 12 should include in its refusal notice, its estimate of the cost of compliance and how that figure has been arrived at, so that at the very least, the applicant can consider how he might be able to refine or limit his request so as to come within the cost limit...". However in the present case where the information request is already very specific, all of the searches set out in this Notice would still had to have been carried out.

Right of Appeal

35. 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,
Arnhem House,
31, Waterloo Way,
LEICESTER,
LE1 8DJ

Tel: 0845 600 0877

Fax: 0116 249 4253

Email: informationtribunal@tribunals.gsi.gov.uk.

Website: www.informationtribunal.gov.uk

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.

Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this Decision Notice is sent.

Dated the 19th day of October 2010

Signed

**Alexander Ganotis
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Legal Annex

Section 12(1)

Section 12(1) 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.”

Section 12(2)

Section **12(2)** provides that –

“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.”

Section 16(1)

Section 16(1) 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”.