

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

**Date: 16 December 2010**

**Public Authority:** Chief Constable of Northumbria Police  
**Address:** North Road  
Newcastle upon Tyne  
NE20 0BL

### Summary

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The complainant requested various information concerning the most prolific offender aged 10 to 15 within the area covered by the public authority. Initially, the public authority refused the request under the exemptions provided by the following sections of the Freedom of Information Act: 40(2) (personal information), 44(1) (statutory prohibitions to disclosure), 30(1) and (2) (information held for the purposes of investigations) and 38(1) (endangerment to health and safety). During the Commissioner's investigation, the stance of the public authority changed and it now cited section 12(1) of the Act as it believed that compliance with the requests would exceed the cost limit of £450. The Commissioner finds that it was reasonable for the public authority to estimate that the cost of the requests would exceed the limit and so it was not obliged to comply with these requests. However, the Commissioner also finds that the public authority failed to comply with section 17(5) of the Act in that it did not cite section 12(1) within 20 working days of receipt of the requests.

### The Commissioner's Role

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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

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2. The complainant made the following information request on 21 February 2010:
  - (a) *"For those youths aged 10 to 15, what is the age of the youth within your force area with the largest total number of warnings, reprimands and convictions?"*
  - (b) *"Please list how many warnings, reprimands and convictions s/he has and detail an offence for each one."*
  - (c) *"Where a sentence followed please also describe what it was."*
  - (d) *"If you have any additional method of disposal for youth offences other than warnings and reprimands, please also include this in your response with the relevant offences alongside."*
  - (e) *"Please also provide the name of the town or city where the youth lives."*
3. Following clarification from the complainant that he wished to be provided with information current at the time of the request, the response from the public authority was dated 2 March 2010. The request was refused, with the exemption provided by section 40(2) (personal information) cited.
4. The complainant responded to this on 2 March 2010 and asked that the public authority carry out an internal review. The public authority responded with the outcome of the internal review on 3 March 2010. The conclusion of this was that the refusal of the request was upheld, with the public authority now also citing the exemptions provided by sections 44(1) (statutory prohibitions to disclosure), 30(1) and (2) (information held for the purposes of investigations) and 38(1) (endangerment to health and safety).

## The Investigation

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### Scope of the case

5. The complainant contacted the Commissioner's office on 7 March 2010. The complainant at this stage disputed the exemptions cited by the public authority, suggesting that no individual could be identified

through the information he requested and that the harm predicted by the public authority would not result through disclosure of the requested information.

6. As covered below, during the Commissioner's investigation the public authority altered its stance and now cited section 12(1) as it believed that the cost of compliance with the request would exceed the limit of £450. It now withdrew the exemptions that it had cited previously.
7. Following this alteration in the stance of the public authority, the Commissioner contacted the complainant to ascertain how he wished to proceed. The complainant confirmed at this stage that he wished the Commissioner to continue with his investigation and reach a decision as to whether the cost estimate made by the public authority was reasonable.

### **Chronology**

8. The Commissioner contacted the public authority initially on 28 July 2010. At this stage the public authority was asked to respond with a copy of the withheld information and with further explanations for the exemptions cited.
9. The public authority responded to this on 9 September 2010 and stated that it was now withdrawing its reliance on the exemptions cited previously and that it was now citing section 12(1). It provided some explanation of its reasoning for citing section 12(1), stating that it had now been recognised that the information identified at the time of the refusal notice was not, in fact, relevant to the request. The public authority also contacted the complainant at this stage with a section 12(1) refusal notice, which included some detail as to calculation of the cost estimate and invited the complainant to contact the public authority in order to discuss how his request could be refined to bring the cost of it within the appropriate limit.
10. The Commissioner contacted the public authority again on 15 September 2010 for further detail about the cost estimate. The public authority was also asked to provide a sample of the type of record that it would be necessary to search in order to collate the information falling within the scope of the request.
11. The public authority responded to this on 22 September 2010 and provided further detail about its cost estimate. Copies of sample records were also supplied to the Commissioner's office.

## Analysis

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### Substantive Procedural Matters

#### Section 12

12. The public authority has cited section 12(1), which provides that a public authority is not obliged to comply with an information request where the cost of doing so would exceed the appropriate limit. The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the fees regulations) provide that the appropriate limit is £450 for non-central government public authorities and that the cost of compliance with a request must be calculated at the rate of £25 per hour. This means that section 12(1) effectively provides a time limit of 18 hours.
13. The fees regulations also specify the tasks that may be taken into account when forming a cost estimate as follows:
  - determining whether the information is held;
  - locating the information;
  - retrieving the information;
  - extracting the information.
14. Section 12(2) provides that the cost limit can be cited in relation to the duty imposed by section 1(1)(a) to confirm or deny whether information is held if the cost of compliance with section 1(1)(a) alone is estimated to be in excess of the limit. In this case the public authority has not suggested that it is unaware of whether it holds the information requested, meaning that the cost associated with this request would be incurred through compliance with the duty imposed by section 1(1)(b) to disclose information.
15. Section 12(1) is specific that a public authority is required to *estimate* the cost of compliance with a request, rather than give a precise calculation. The task for the Commissioner here is to reach a decision as to whether the cost estimate made by the public authority is reasonable.
16. The complainant has made five requests and the cost estimate made by the public authority covers these jointly. Regulation 5 of the fees regulations provides that the cost of complying with multiple requests can be aggregated where two or more requests are received within the same 60 working day period and relate to any extent to the same, or similar, information. This provides a wide definition of related requests

and the Commissioner considers it clear that the requests in question here are sufficiently closely linked that it is accurate to characterise these as related in accordance with this definition. It was appropriate, therefore, for the public authority to aggregate these requests for the purpose of its cost estimate.

17. The estimate made by the public authority of the time and cost that would be incurred through compliance with section 1(1)(b) in relation to this request is 300 hours / £7,500, well in excess of the limit. This estimate is based on the requested information being held within the public authority's local database. As already covered above, the public authority has not disputed that this information is held, and the basis of the cost estimate being that the information is held within this database suggests that the public authority is also aware of the location of this information. This indicates that the estimate made by the public authority is based on the time that would be taken in extracting and retrieving the information.
18. The public authority has stated that there are a minimum of 3,600 individuals aged 10 – 15 recorded on its system as having received warnings, reprimands or convictions. This figure is based on this system being capable of returning a maximum result of 300 when a search is carried out for each age and gender group, e.g. males aged 10, females aged 10, etc. The public authority has verified that there are a minimum of 300 individuals within each age and gender group within the scope of the request recorded on its system.
19. On the issue of the work that would be required in order to comply with the request, the public authority has stated that it would be necessary for it to review each of the 3,600 entries in order to gather the information requested by the complainant. The public authority has stated that it is not possible to carry out an automated search of its system to show which 10 – 15 year old has the largest number of warnings, reprimands and convictions. Instead, the public authority states that it would be necessary to view the content of the database entry relating to each individual and to separately record the number of warnings, reprimands and convictions each individual has received. This information would then be ranked in order to provide the information requested by the complainant. The public authority has estimated that this process would take 5 minutes per record.
20. As to whether the process described by the public authority is relevant to the activities set out in the fees regulations, the Commissioner accepts that this description is of the retrieval and extraction of this information. These activities do, therefore, conform to the tasks described in the fees regulations.

21. Turning to whether the estimate of 5 minutes per record is reasonable, the public authority has provided to the Commissioner's office a sample entry relating to a single individual from its database. This sample shows that the entries within this database do not include a summary of the number of warnings, reprimands and convictions that each individual has received. Instead, these entries record each incident in which the individual has been involved and the outcome of this, including if the subject of the entry received a warning, reprimand or conviction. In order to satisfy the complainant's request, therefore, it would be necessary to review each incident recorded in the entry and extract the relevant information.
22. The sample entry supplied is very lengthy and it would clearly take over 5 minutes to review this entry in order to provide the information requested by the complainant. The Commissioner does not believe that this entry will be typical and expects that the large majority of the entries would be significantly shorter than this. This entry does, however, give an indication of the tasks that it would be necessary to perform in order to comply with the complainant's requests. It is also important to recognise that 5 minutes is an estimate of the *average* time that would be required to review each relevant individual's database entry, which allows that the actual time spent on each entry will vary in either direction from this estimate. On the basis of what the sample entry supplied to the Commissioner suggests about the tasks that it would be necessary to undertake in order to comply with the request, the Commissioner accepts that 5 minutes is a reasonable time estimate in relation to each database entry for individuals within the age group specified in the request.
23. As well as the estimate based on retrieving and extracting this information from its database, the public authority was also asked to consider alternative methods of supplying the requested information. The public authority also addressed whether it would be possible to provide this information from the Police National Computer (PNC).
24. In connection with this, the public authority provided a sample copy of a PNC entry. Notably, this entry included a summary screen from which the number of warnings, reprimands and convictions the subject of the entry had received could be quickly and easily extracted. The Commissioner asked the public authority to address this point when estimating the time that it would take to comply with the request via the PNC.
25. The case of the public authority here was that a search of the PNC would, similarly to searches of its own system, necessitate inspecting

- each entry to retrieve and extract the information necessary in order to comply with the complainant's requests. The public authority believes that it would be necessary to view each new entry relating to individuals aged between 10 to 15 for the five years prior to the request. The public authority believed that it would be necessary to do this in order to capture information relating to an individual who was 15 at the time of the request, and so were within the age group specified in the request for the entire five-year period prior to the request.
26. It was not clear to the Commissioner from the explanation provided by the public authority why it would be necessary for it to view records for the years prior to the request. As noted above at paragraph 3, the complainant specified that he wished to be provided with information that was current at the time of the request. As also noted above, the PNC includes a summary screen from which it appeared the information specified in the request could be quickly and easily extracted. However, as covered below at paragraph 29, the public authority has estimated that the cost limit would be exceeded through searching records dating from a single year, meaning that it has not been necessary for the Commissioner to accept that searches of records of previous years would be necessary before he could also accept that section 12(1) does apply. The Commissioner comments further on the issue of the PNC summary screen at paragraph 35 below.
  27. In view of the complainant specifying information current at the time of the request, the Commissioner has considered whether it would be possible to produce by means of an automated search of the PNC a list of all individuals who were aged 10 to 15 at the time of the request and resided within the jurisdictional area of the public authority and who appeared on the PNC. Research carried out by the Commissioner suggests that it is not the case that the PNC allows an automated search with these parameters.
  28. Turning to the cost / time estimate made by the public authority in relation to relevant entries on the PNC for the five years preceding the request, the public authority has estimated that it would take an average of 2 minutes per record to retrieve and extract information from the PNC. On the basis of the sample record provided to the Commissioner's office by the public authority, the Commissioner accepts that two minutes is a reasonable estimate per PNC record.
  29. The public authority has stated that it would be necessary to view 7,630 records for 2009 alone, giving a cost / time estimate that is far above the appropriate limit. The public authority has stated that the

figure of 7,630 records that it is necessary for it to review is based upon research, rather than also being an estimate. Given this, and given the evidence provided by the public authority in the form of a sample PNC record, the Commissioner accepts that it was reasonable for the public authority to estimate that the cost of compliance with the request via the PNC would exceed the appropriate limit.

30. It is notable that internet searches reveal that identical requests have been made to other police forces and that a number of these forces have disclosed at least some of the information requested. This raises the question of why it did not exceed the cost limit for these other forces to comply with identical requests. In response to this the public authority has stated that the IT systems of each police force differ and believes that it will have been possible for other forces to comply with the request without exceeding the cost limit as the search capabilities of the IT systems of these other forces will have enabled the information requested to be extracted quickly and easily. The Commissioner is aware that it is the case that the capabilities of IT systems differ between forces and so accepts this explanation as to why it was possible for other forces to comply with identical information requests.
31. It might also be argued that the citing of exemptions when the request was initially refused indicates that the information requested had been collated at that time. In explanation for the late introduction of section 12(1), the public authority has stated that the information collated at the time of the request and to which the refusal notice related was numbers of arrests, rather than numbers of warnings, reprimands and convictions, and so this information did not conform to the request. Whilst the Commissioner would stress to the public authority that it should ensure that it has identified accurately the information falling within the scope of the request prior to considering whether any exemptions apply to this information, he accepts this explanation from the public authority for the late introduction of section 12(1).
32. The conclusion of the Commissioner is that, for the reasons given above, it was reasonable for the public authority to estimate that the cost of the complainant's requests would exceed the appropriate limit. Section 12(1) provided, therefore, that the public authority was not obliged to comply with section 1(1)(b) in relation to these requests.



## Procedural Requirements

### Section 17

33. In failing to cite section 12(1) within 20 working days of receipt of the request, the public authority did not comply with the requirement of section 17(5).

### The Decision

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34. The Commissioner's decision is that the public authority dealt with the requests for information in accordance with the Act in that it was reasonable for it to estimate that the cost of compliance with the requests would be in excess of the appropriate limit and so section 12(1) provided that it was not obliged to comply with these requests. The Commissioner also finds, however, that the public authority failed to comply with section 17(5) in that it did not advise the complainant that section 12(1) was believed to apply within 20 working days of receipt of the request.

### Other matters

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35. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern. When contacting the complainant on 9 September 2010 with its amended refusal notice, the complainant was advised that he should contact the public authority if he wished to discuss how it may be possible to amend the request so that compliance would be possible within the appropriate limit. The Commissioner is not aware if the complainant did contact the public authority, but would suggest at this stage that the public authority should give particular consideration to what information could be sourced from the PNC without exceeding the appropriate limit. As noted above, the sample record provided by the public authority to the Commissioner's office includes a summary screen that shows details that closely conform to the wording of the request. Given this, it appears that the PNC may be the most likely source of information similar to that sought by the complainant and, if this is the case, should be the focus of efforts to provide useful advice and assistance to the complainant.

## Right of Appeal

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36. 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](mailto:informationtribunal@tribunals.gsi.gov.uk).

Website: [www.informationtribunal.gov.uk](http://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.

37. 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 16<sup>th</sup> day of December 2010**

**Signed .....**

**Jon Manners  
Group Manager**

**Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**

## **Legal Annex**

### **Section 12**

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 17**

Section 17(5) provides that –

“A public authority which, in relation to any request for information, is relying on a claim that section 12 or 14 applies must, within the time for complying with section 1(1), give the applicant a notice stating that fact.”