

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 02 May 2012

**Public Authority:** National Policing Improvement Agency  
**Address:** Fry Building  
2 Marsham Street  
London  
SW1P 4DF

#### Decision (including any steps ordered)

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1. The complainant requested information relating to a National Policing Improvement Agency (NPIA) project called 'Project Lantern'<sup>1</sup>. NPIA refused the request citing section 12(1) of FOIA, but also redacted and disclosed some information outside of FOIA. The Information Commissioner's decision is that NPIA incorrectly relied on section 12(1) and failed to issue a refusal notice in accordance with section 17(1) of FOIA. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation: disclose the requested information or issue a valid refusal notice citing a valid exemption.
2. The public authority 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 (or the Court of Session in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.

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<sup>1</sup> A project to allow police officers to establish a person's identity using two of their fingerprints whilst away from the police station.

## Request and response

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3. On 25 July 2011 the complainant wrote to NPIA and requested the following information relating to 'Project Lantern':

*"1) The final report on the project.*

*2) "Lantern Technical Options paper – evaluation of fingerprint sensor technologies" by Ambika Suman.*

*3) "Lantern performance and sociability report" (CCN014R2 - 20.2-1.0 dated 17 July 2007).*

*4) Any later revision of (3) above provided to NPIA in response to recommendation 4 in "Lantern Project – The Way Forward" (IDT004-0101-project way forward- project board recommendations 080403 v0-1).*

*5) "LANTERN Service Expansion Test Summary Report" (Document ID 4 in section 4.2 of "Contract Change Note 050 IDENT1-LANTERN Service Expansion").*

*6) Any data held by NPIA on the Fingerprint False match Rate (FMR) and False Non-Match Rate (FNMR) achieved in the field during the LANTERN trial".*

4. NPIA responded on 23 August 2011. It stated that it held some of the information falling within the description of the request but that the cost of complying with the request would exceed the cost limits specified in regulations. It went on to say that within the cost limit it would be able to provide a response to questions (1) to (5), and that if the complainant refined his request at question (6) then it might be able to provide a response to this part of his request within the cost limit.

5. On 27 August 2011 the complainant wrote to NPIA and provided a revised version of question (6):

*"6) Any report held by NPIA resulting from an evaluation of the Fingerprint False Match Rate (FMR) and False non-Match Rate (FNMR) achieved in the field during the LANTERN trial".*

6. On 20 September 2011 NPIA wrote to the complainant and informed him that, in respect of part (6) of his request, complying with it would exceed the cost limits under section 12(1) of FOIA. It told him, however, that it believed the majority of the information held 'will be' contained in a report entitled 'Lantern Accuracy Analysis Engineering Report'. In

respect of parts (2), (3), (4) and (6) it provided some information outside of FOIA but stated that it had redacted some of that information.

7. In respect of parts (1) and (5) of the request NPIA informed the complainant that it did not hold the information as no such reports had yet been written.
8. NPIA informed the complainant that if he was dissatisfied with its response he could seek an internal review of its decision in accordance with FOIA.
9. Following a request for an internal review NPIA wrote to the complainant on 30 September 2011. It stated that it had applied section 12(1) to the whole request and not just specific parts of the request. NPIA informed the complainant that most of the information he requested fell within the information it had "*gathered*" and that it had provided the majority of this information "*outside of FOIA*". However, it informed him that the information disclosed outside of FOIA had been redacted of personal, commercial and security information. It went on to say that as the information had been disclosed outside of FOIA that there was no requirement to conduct an internal review.

### **Scope of the case**

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10. The complainant contacted the Information Commissioner to complain about the way his request for information had been handled. He told the Information Commissioner that he had concerns that despite NPIA telling him that that section 12(1) applied to his whole request, it had disclosed information to him, while making redactions of personal, commercial and security information.
11. The complainant told the Information Commissioner that no specific exemptions under FOIA were cited by NPIA in respect of those redactions and it informed him that that information was being disclosed outside of FOIA. He said that he was concerned that having requested a review of NPIA's decision to redact the disclosed information and not cite an exemption – which he believed was required under section 17(1) of FOIA – that it had told him that the disclosed information was not subject to any part of FOIA including a requirement to conduct an internal review.
12. The complainant provided the Information Commissioner with copies of the disclosed information.
13. The Information Commissioner asked NPIA to provide supporting evidence of its handling of the request.

14. Having received arguments from NPIA to support its handling of the request as well as supporting information from the complainant, the scope of the Information Commissioner's investigation focussed on the following:
  - whether NPIA correctly applied section 12(1) in complying with the request; and
  - whether NPIA, in subsequently disclosing some redacted information, correctly handled the request in accordance with section 17(1) of FOIA.
15. The Information Commissioner also considered whether NPIA had complied with its duties under section 16(1) of FOIA.

## **Reasons for decision**

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### ***Section 12 costs***

16. Section 12 of FOIA states that a public authority is not obliged to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate cost limit, which in this case is £600 as laid out in section 3(2) of the fees regulations.
17. The Information Commissioner has published guidance on the subject of applying the fees regulations. The regulations are clear that a public authority can only take into account the costs it reasonably expects to incur in determining whether it holds the information, locating, retrieving and extracting that information. The four activities are sequential and any estimate must be a reasonable one. The calculation is £25 per person per hour.
18. However, when applying the fees regulations under section 12 the Information Commissioner also expects that a public authority should have regard to its duties under section 16 of the FOIA to provide advice and assistance to the requestor as already discussed above.
19. The Information Commissioner is clear that where an authority refuses a request because the appropriate limit has been exceeded, it should, bearing in mind the duty under section 16 of FOIA to advise and assist an applicant, provide information on how the estimate has been arrived at and provide advice to the applicant as to how the request could be refined or limited to come within the cost limit.

20. Where the estimate exceeds the limit there is no obligation for the authority to communicate the information; however, there is still an obligation to confirm or deny whether the information is held unless to do this would in itself exceed the appropriate limit.
21. A public authority does not have to estimate costs in advance and can search up to the cost limit and then refuse to conduct future searches. However, the Information Commissioner must be satisfied that the public authority's decision that the cost estimate is reasonable must be presented with sensible, realistic and cogent evidence.
22. The section 45 code of practice is clear that where a public authority cites section 12 that it should consider providing an indication of what, if any, information could be provided *within* the cost limits.
23. NPIA initially told the complainant that it could not provide a response to part (6) of his request and that he should refine the parameters of his request to perhaps include a type of document or specific type of data sought. It said that this would help to bring it within the cost limit, having already said that it would be able to provide a response in respect of parts (1) to (5). It did not provide any additional advice or assistance to help the complainant narrow his request specifically to bring it within the cost limit.
24. The complainant revised part (6) of the request and NPIA informed him that, although he had revised this part of the request, it could still not comply with it as searching for that information would exceed the cost limit. It did not provide any other advice to the complainant to help narrow the request or explain why it had initially advised that it would be able to provide a response to parts (1) to (5) within the cost limit and why if part (6) were to be revised that it could have brought the request within the limit.
25. NPIA did provide the complainant with an explanation of the searches of various areas that were required to locate information. It said that an electronic search *would not* be sufficiently accurate to find the documents relating to FMR and FNMR, which appears to refer to part (6). It did not provide details that it had carried out any searches or how it had determined an electronic search would not be sufficiently accurate, nor whether any such search was for all of the information in the scope of the request.
26. However, NPIA did inform the complainant that it believed the majority of the requested information "*will be*" contained in a document entitled '*Lantern Accuracy Analysis Engineering Report*'. It then went on to say that, as the cost exemption applied to the *whole* of the request, it was not obliged to provide *any* of the information – but that it was providing

information in relation to parts (2), (3) and (4) of the request "*entirely outside of FOIA*". It then informed the complainant that it did not hold the information at parts (1) and (5) of the request.

27. The Information Commissioner notes that, in its response to a request for an internal review, NPIA told the complainant that most of the information requested fell into the information already gathered, and as he had already refined his request that the majority of that information had been released to him. The Information Commissioner also notes that NPIA told the complainant that he was not entitled to an internal review.
28. The Information Commissioner is confused by NPIA's interpretation of section 12(1). It has clearly informed the complainant that "*most of the requested information fell into the information already gathered*" and that it was disclosing the information (with redactions) outside of FOIA. Yet it had already informed the complainant that it would be too costly to provide the information to the request as a whole. The Information Commissioner understands that, following a search, NPIA had identified some information that fell within the scope of the request and therefore had disclosed it subject to redactions. The Information Commissioner understands the redacted information to be withheld information.
29. The Information Commissioner is not satisfied with NPIA's handling of the request as it originally told the complainant that it did hold some of the information and implied that the requested information at parts (1) to (5) of the request would be disclosed. NPIA then told the complainant it could not provide any of the information as the cost exemption applied to the *whole* of the request; subsequently it told him that it would provide some information outside of FOIA. NPIA later stated that the information requested in parts (1) and (5) of the request was not held but did not clarify whether it reached this position following any searches for information up to and including any cost limit. NPIA was also not clear whether the information which it disclosed outside of FOIA was as a result of any searches carried out to establish whether the information within the scope of the request was held.
30. In its arguments NPIA told the Information Commissioner that it had applied section 12(1) to the whole of the request forming parts (1) to (6) and that what it had "*retrieved*" was the most up-to-date information. It argued that in disclosing that information outside of the FOIA, albeit with minimal redactions, it was its intention to release as much information as possible to help the complainant with later requests.
31. NPIA also argued that "*most*" of the cost limit had been applied to part (6) of the request but that the remaining parts (2), (3) and (4) were

also included as part of the cost limit. It then went on to argue that as the wording of part (6) of the request referred to 'reports' that this could mean that any part of the NPIA could hold information and that, given the timeframe and that some NPIA staff had left the organisation, a search could include millions of documents and emails and 8,000 off-site archive storage boxes. It went on to argue that locating, reading and reviewing such documents would far exceed the cost limit.

32. The Information Commissioner does not accept NPIA's arguments and he considers that NPIA had two opportunities to properly engage with the complainant to help him narrow his request in an attempt to bring it within the cost limit. NPIA agreed that it had too broadly interpreted the word 'reports' in the revised request but yet did not consider that it should revert to the complainant once it realised the scale and cost of the search required.
33. The Information Commissioner has considered whether NPIA has demonstrated that it has made reasonable efforts to determine, locate, retrieve and extract any information falling within the scope of the request and he is not convinced. He has taken into account that NPIA did not make sufficient effort to assist and advise the complainant to narrow the wording of his initial request particularly in respect of part (6). He has also taken into account the confusion over which parts of the request were considered during any searches and that having disclosed some information to the complainant that NPIA was not clear whether this was subsequent to any search up to the cost limit and excluding the redacted information. He has also noted the exact and specific wording of parts (2), (3) and (4) and fails to understand how such named documents could not be readily located.
34. Having considered the arguments put forward by NPIA the Information Commissioner is not convinced that section 12(1) is engaged.

### ***Section 16 - Advice and assistance***

35. The Information Commissioner having determined that section 12(1) is not engaged has also considered the general principles of advice and assistance in the overall handling of the request.
36. Section 16(1) of FOIA deals with the duty of a public authority to provide advice and assistance where it is reasonable to expect to do so, to a person making a request.
37. Under section 1(3) of FOIA a public authority that reasonably requires further information in order to identify and locate the information requested, having informed the applicant of the requirement, is not

obliged to comply with section 1(1) of the FOIA. However, if relying on section 1(3) then section 16 is automatically triggered.

38. The section 45 code of practice also covers the topic of clarifying a request and is clear that a request must adequately specify and describe the information sought. Authorities, as far as is practicable, are required to provide assistance to the requestor to enable them to more clearly describe the information sought. Authorities should be prepared to explain why this is the case. The code of practice outlines that an authority might provide assistance in a number of ways, including providing an outline of the type of information available, access to indexes or catalogues of information or to provide a general response followed by an indication of other information that may be available.
39. NPIA offered advice and assistance during the initial handling of the request. When acknowledging receipt of the request NPIA told the complainant that it could provide a response in respect of parts (1) to (5) of his request but that complying with part (6) of the request would exceed the cost limits. Accordingly, it told the complainant that if he revised part (6) of his request that it may be able to respond to this part of the request as well. NPIA did not ask the complainant to revise parts (1) to (5).
40. The Information Commissioner notes the wording of the initial response in which NPIA stated that it held some of the information requested and that it could provide a response to parts (1) to (5) of the request. However, it is not clear whether this was because it had searched up to and including the cost limit, or that the information was held, was reasonably accessible and could be disclosed. Having made an objective reading of the response the Information Commissioner understands the response to mean that the information at parts (1) to (5) were held for the purposes of section 1(1) of the FOIA and would be disclosed. In respect of part (6) of the request the Information Commissioner understands that NPIA considered the cost limits for compliance and believed that if part (6) were revised it could disclose the information within the cost limit.
41. Following contact with the Information Commissioner NPIA accepted that it could have been clearer in its correspondence with the complainant. It accepted that when it told the complainant that it could provide a response it did not intend this to mean that it held the information and that it believed that it had corrected this in its later response.
42. In respect of offering specific advice and assistance to refine or narrow part (6) of the request NPIA argued that it had been difficult to narrow what the complainant wanted as he had asked for 'any data'. It accepted



that it had not been clear enough in its initial response but that the information that it had disclosed outside of the FOIA was done so as an aid to revising any subsequent request. It said it had done this as a gesture of goodwill and as a way to help him make future requests.

43. The Information Commissioner accepts the NPIA's position that it could have done more to assist the complainant in refining his request in respect of part (6) of the request. However, he does not accept its position that the information it did disclose outside of the FOIA could be considered as a way to aid the complainant in refining any subsequent requests and notes that this position was not stated to the complainant at any point. In any case the Information Commissioner notes that this falls far short of what is required under section 16 and the code of practice.

### ***Section 17 Refusal of request***

44. Section 17(1) of FOIA states that a public authority which in relation to any request for information, is to any extent relying on a claim that any provision of part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which;

*(a) states that fact,*

*(b) specifies the exemption in question, and*

*(c) states if that would not otherwise be apparent, why the exemption applies.*

45. NPIA initially responded to the request on 23 August 2011 and informed the complainant that subject to some clarification it was relying on section 12(1) of FOIA. Following that clarification NPIA wrote to the complainant on 20 September 2011 and told him that it was relying on section 12(1) in respect of part (6) of the request. However, it also informed him that in respect of parts (2), (3), (4) and (6) of the request it was providing some redacted information outside of FOIA and that it had considered the redactions as if it had been applying exemptions under FOIA.
46. The Information Commissioner has now considered whether, in the circumstances of redacting the information, albeit as 'outside' of the FOIA, NPIA correctly issued a refusal notice in accordance with section 17(1) of FOIA.
47. NPIA argued that complying with the whole request engaged section 12(1) and that was why it had refused the request as it exceeded the

cost limit. However, it also stated that the information it had gathered, redacted and disclosed fell within the majority of the information requested and that it had disclosed this as a gesture of goodwill. It stated that it was not obliged to disclose it having argued that section 12(1) was engaged. It stated that the redactions were of a personal, commercial and security nature and that it had followed the principles of FOIA in making those redactions.

48. The Information Commissioner does not accept NPIA's arguments as it clearly told the complainant that it disclosed the information as it believed the majority of what he was looking for was contained within it. NPIA then redacted that information and used descriptors similar to exemptions in FOIA; personal, security and commercial.
49. The Information Commissioner does not agree that on making an objective and reasonable reading of the request and response that redacting the information could be considered as being outside of FOIA. Whilst the Information Commissioner encourages public authorities to proactively disclose information, in this case he finds that NPIA failed to cite a reliance on exemptions when withholding the redacted information, and therefore did not issue a valid refusal notice.
50. The Information Commissioner having found that NPIA did not issue a valid refusal notice finds that it breached section 17(1)(a) for failing to state that it was relying on an exemption, section 17(1)(b) for not specifying the exemption (only by its descriptor, not by the section), and section 17(1)(c) for not explaining why the redacted information was withheld.

### ***Section 10 Time limit***

51. As NPIA failed to provide a valid refusal notice within the time specified in FOIA for complying with section 1(1), it also breached section 10(1) of FOIA.

## Right of appeal

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52. 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: 0116 249 4253

Email: [informationtribunal@hmcts.gsi.gov.uk](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

53. 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.
54. 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** .....

**Jon Manners**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
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**Wilmslow**  
**Cheshire**  
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