

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 6 March 2013

**Public Authority:** The Chief Constable of Derbyshire Constabulary  
**Address:** Constabulary Headquarters  
Butterley Hall  
Ripley  
Derbyshire  
DE5 3RS

#### Decision (including any steps)

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1. The complainant has requested information about complaints and claims for damages. Some information was provided but the remainder was withheld under section 12, the appropriate limit. The Information Commissioner's decision is that the public authority was entitled to rely on the appropriate limit to refuse compliance with the remaining parts of the request. He does not require any steps to be taken.

#### Background

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2. This request can be followed on the '*what do they know*' website<sup>1</sup>. The complainant has made a similar request to a number of other police forces. These can also be found on this site.

#### Request and response

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3. On 25 August 2012, the complainant wrote to the public authority and requested information in the following terms:  

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<sup>1</sup> [http://www.whatdotheyknow.com/request/complaints\\_167](http://www.whatdotheyknow.com/request/complaints_167)

*"I Request to know the following information under the freedom of information act*

*I Request to know how many complaints were made against Derbyshire Constabulary between the 1st of January 2011 and 1st of January 2012*

*I Request to know how many Claims for damages were issued in the county court against Derbysshire [sic] Constabulary*

*I Request to know how much was spent by Derbyshire Constabulary in defending these cases for example in counsel fee's [sic] and solicitor fee's [sic]"*

4. The public authority responded on 12 September 2012. It advised that to comply with all parts of the request would exceed the cost limit and provided an explanation. Mindful of its duty to provide advice and assistance it went on to provide a response in relation to the first part of the request only as it was able to do so in isolation without exceeding the limit.
5. The complainant asked for an internal review stating:

*"Almost every other police force has provided this information I don't see why Derbyshire police is any different to others"*
6. Following an internal review the public authority wrote to the complainant on 9 October 2012. It maintained its position.

### **Scope of the case**

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7. On 14 October 2012 the complainant contacted the Information Commissioner to complain about the way his request for information had been handled. He advised that he believed the public authority was "duty bound" to release the information he had requested.
8. The Information Commissioner will therefore consider the application of section 12 to the latter two parts of the request.

## Reasons for decision

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### Section 12 – cost of compliance

9. Section 12(1) 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 limit.
10. When considering whether section 12(1) applies, the authority can only take into account certain costs, as set out in The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ('the Regulations').
11. Paragraph 4(3) of the Regulations states:

*"In a case in which this regulation has effect, a public authority may, for the purpose of its estimate, take account only of the costs it reasonably expects to incur in relation to the request in-*  
*(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."*

12. The Regulations state that the appropriate cost limit is £600 for central government, legislative bodies and the armed forces, and £450 for all other public authorities. The cost limit in its case is £450, which is equivalent to 18 hours' work.
13. Section 12 of the FOIA makes it clear that a public authority only has to estimate whether the cost of complying would exceed the appropriate limit. It is not required to provide a precise calculation.
14. When initially refusing his request the public authority explained to the complainant:

*"The specific date that a claim for damages is issued by the County Court is not recorded within any bespoke system within the Constabulary. Given that there is often a considerable time difference (months/years) between a claim being received and the date issued the only way to obtain the information required would be to conduct a manual search of each claim for 2011/12 as well as the preceding six years. At a conservative estimate of 5 minutes per claim this would equate to a considerable amount of time well above the approved national threshold".*

15. In subsequent correspondence with the Information Commissioner the public authority further explained that:

*"... as the specific date that a claim for damages is issued by the County Court isn't recorded on any bespoke system within the force but on the file itself the only way to extract the required data would be to manually check each claim for the period required, 2011/12, and the preceding six years. The rationale for this was, and still is, that our Legal department retains files for six years plus current; seven years in total (the limitation is 6 years and this means that we avoid the risk that we destroy a file and find that someone has issued proceedings on a claim we had thought had been successfully repudiated).*

*The above, coupled with the fact that in practice as there is often a considerable time difference between a claim being received and the date issued, months or years, meant that to accurately extract the required data meant searching not only those file for 2011/12 but for the preceding six years as well. At a conservative estimate of five minutes per file, based on the experience of a member of the Legal team, I argued that this would incur significant costs well above the threshold of 18 hours and applied a Section 12 exemption.*

*My rationale for this at the time was based on my knowing that for 2011/12 alone there had been a total of 164 such claims received. At five minutes per file this equated to just under 14 hours which, when aggregated over seven years took the time well over the 18 hours allowed.*

*In addition to the above and not supplied to [the complainant] was the following. In 2009 the Constabulary introduced a computerised case management system for legal actions. That said this is a very basic system with limited capabilities. For example whilst it allows the Legal Department to count the number of claims it has received it does not allow for a search across these to show on how many files compensation was paid out. Additionally given the fact that not all documents are scanned in it cannot be used to extract data relevant to this FOI application. From installation to date there are a total of 751 claims for compensation recorded (inclusive of the 164 mentioned above) which works out at an average of 187 claims per annum. Pre 2009 such claims were not recorded on an earlier case management system which is no longer available and this would require a search of all archived files to retrieve those*

*that are applicable. Whilst I am not aware of the overall number of such files I do know they are in their thousands.*

*Through out the period of this application I have been checking the 'What Do They Know' website and have noted that the majority of other forces have provided a response either in part or full that [the complainant] has found satisfactory. Unfortunately I cannot comment on the systems in operation within these forces only that operated within Derbyshire".*

16. The Information Commissioner understands that the public authority does not record the information it holds in a way which would easily allow for it to answer this request. He notes that it has located numbers of claims, as explained above, and that it would need to consider each one individually to gather the requested information.
17. The Information Commissioner also notes that the complainant has had some information provided by other police forces. However, it is important to understand that forces have different information systems. Therefore, although other forces may be able to provide information it does not follow that they can all provide similar responses.
18. Having considered the estimates provided the Information Commissioner finds that they are realistic and reasonable. He therefore accepts that to provide the information would exceed the appropriate limit.

## **Section 16 – advice and assistance**

19. Section 16(1) of the FOIA provides that a public authority is required to provide advice and assistance to any individual making an information request. In general where section 12(1) is cited, 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, albeit that the Information Commissioner does recognise that where a request is far in excess of the limit, it may not be practical to provide any useful advice.
20. In this case the public authority has tried to explain to the complainant how its information is held and why compliance would exceed the limit. He also notes that in its refusal, in an attempt to assist the complainant, it provided him with a response to the first part of his request as it was able to do so within the limit. He agrees that this was good practice and showed compliance with section 16.

21. The Information Commissioner also notes that, as part of its complaints procedure, the public authority also offered the following to the complainant:

*"The quickest and easiest way to have the decision looked at again is to telephone the case officer that is nominated at the end of your decision letter. That person will be able to discuss the decision, explain any issues and assist with any problems".*

This again afforded an avenue for the complainant to obtain further advice and assistance if he so wished.

22. Consequently the Information Commissioner finds that the public authority met its obligations in respect of section 16.

## Right of appeal

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23. 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: 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)

24. 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.
25. 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  
Water Lane  
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SK9 5AF**