

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 1 May 2013

Public Authority: Commissioner of the Metropolitan Police Service

Address: New Scotland Yard
Broadway
London
SW1H 0BG

Decision (including any steps ordered)

1. The complainant requested information about the amount of overtime paid by the Metropolitan Police Service ('MPS') and any monies received for overtime for each of the last five financial years. MPS refused to provide the requested information on the basis that it estimated that the cost of compliance with the request would exceed the appropriate limit under section 12(1) of FOIA. The Information Commissioner (the 'Commissioner') has investigated and has found that MPS correctly relied on section 12(1) in refusing to provide the requested information. He does not require MPS to take any further steps.

Request and response

2. On 31 October 2012 the complainant wrote to MPS and requested information in the following terms:

"Under the FOIA 2000, please can you tell me:

- 1) *The annual amount of overtime paid by the Metropolitan Police for each of the last 5 financial years. Please break this down by the amount paid to freelancers, administrative officers and frontline officers,*
- 2) *Has the Metropolitan Police received any money for overtime work for any of the last 5 financial years. If so, who, how much, and when?*

I would prefer to receive this information electronically and in a spreadsheet not a pdf format.

If one part of the request can be answered sooner than others, please send that information first followed by any subsequent data.

If FOI requests of a similar nature have already been asked could you please include your responses to those requests. If you need any clarification then please email me.

Under your section 16 duty to provide advice and assistance I would expect you to contact me if you find this request unmanageable in any way so we can negotiate how best to proceed."

3. MPS responded on 16 November 2012. In relation to question 1 of the request, MPS said that it did not hold recorded information in the categories submitted by the complainant.
4. For question 1, MPS provided advice and assistance in accordance with section 16 of FOIA and gave the complainant the amount of overtime paid by MPS in the last five years, broken down by police officers, police staff and PCSOs.
5. In relation to question 2 of the request, MPS refused to provide the information on the basis of the exclusion in section 12(1) of FOIA, because the cost of compliance would exceed the cost limit.
6. The complainant requested an internal review on 16 November 2012, stating that he accepted MPS's response to the first part of his request and that he therefore wished the review to focus only on the second part. He added an additional point at this stage, namely "*To know it [overtime] is about £300mn shows there must be some record – it would lapse accounting [sic] for this not to be recorded for the last 5 years*".
7. On 5 December 2012 MPS provided the outcome of its internal review. The review upheld its original decision. MPS was unable to offer any further advice and assistance because it said that even if the time period were narrowed it would still require a manual read of thousands of invoices.

Scope of the case

8. The complainant contacted the Commissioner on 24 December 2012 to complain about the way his request for information had been handled.

He confirmed to the Commissioner that he wished the investigation to focus only on part 2 of the original request, namely:

"2) Has the Metropolitan Police received any money for overtime work for any of the last 5 financial years. If so, who, how much, and when?"

I would prefer to receive this information electronically and in a spreadsheet not a pdf format."

9. The Commissioner has considered whether MPS properly applied section 12(1) of FOIA to this part of the request.

Reasons for decision

Section 12 – Exceeding the appropriate cost limit

10. Section 12(1) of FOIA states:

"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."

11. The Fees Regulations provide that the cost limit for non-central government public authorities is £450. This must be calculated at the rate of £25 per hour, providing an effective time limit of 18 hours. If a public authority estimates that the time spent on complying with a request would exceed 18 hours, or £450, section 12(1) provides that the request may be refused.
12. A public authority can only take certain activities into account when assessing whether compliance with a request would exceed the cost limit. These activities are:
- a. determining whether it holds the information;
 - b. locating a document containing the information;
 - c. retrieving a document containing the information; and
 - d. extracting the information from a document containing it.
13. The Commissioner asked MPS to provide a detailed reasonable estimate of the time taken and costs that would be incurred by providing the information falling within the scope of the request. He also asked it to provide a detailed explanation as to how it had investigated, assessed and calculated those costs.
14. MPS told the Commissioner it had telephoned the complainant on receipt of the Commissioner's investigation letter to attempt to resolve his

complaint informally. Following a useful discussion which centred on the way MPS holds overtime information, and an issue which the complainant raised around MPS having previously been able to provide details of Virgin expenditure on MPS overtime for an investigation into a television set-box 'scam', the complainant maintained that he wished to keep the request in the format and scope as originally asked.

15. MPS' Financial Services department provided the following information and background in relation to estimating the time it would take to provide the requested information. It said that MPS receives approximately £300m of income per annum from a variety of external sources which it records on its system against a series of account codes to identify the income source; however, there is no account code to specifically record income resulting from overtime working.
16. MPS said that it is easier in some case than others to determine whether overtime costs were part of an invoice; for example, the contract with a named Airport Authority ensures that the full costs of any overtime incurred are recovered. Records are kept which identify how much overtime has been worked at that airport and must therefore have been reclaimed. MPS advised that this information could probably be obtained within two hours by direct contact with the officer responsible for preparing claims at this airport, so this information could be provided within the cost limit.
17. In other areas, however, it is more complex to determine whether overtime costs were part of an invoice. MPS outlined an example using its account code for 'Operational Receipts' which covers receipts from unplanned and unbudgeted operational events. In 2011, receipts of £38m were recorded against this code with 1,167 billing document entries where invoices were raised. It said that the only way to determine whether the invoice might include an overtime charge is to individually examine each entry. Using this example, if it only took one minute to examine the 1,167 billing documents, that would equate to 19 hours work (thereby exceeding the cost limit) in that account alone.
18. MPS explained that in reality it would take longer than a minute to examine the billing documents because MPS often uses published 'Special Service Rates' when raising charges against those who use its services. These rates include an amount to cover potential overtime costs incurred (either by the officer performing the special service, or by other offices 'backfilling' the duty vacated by the first officer) but charges remain the same irrespective of whether overtime is actually worked or not. Different rates apply depending on the period in question (such as bank holidays or with less than five days' notice) such that it is mostly the case that overtime costs are not specifically identified on invoices where special service rates are used.

19. MPS outlined to the Commissioner a detailed example of what would be involved in checking whether invoices raised under its cost code for Operational Receipts contain any overtime payments, using a billing document which showed an invoice to Government Communications Bureau for Escort Duty. This sets out charges made under the special service rates for a number of police officers working a number of hours.
20. It said that, even if it telephoned the relevant contact point to find out which officers were involved in the charged service; examined local records to determine whether those officers claimed for overtime on that day; and, if overtime were worked, calculated how much of the claim relates to overtime, this would not determine whether overtime was worked backfilling for officers carrying out special services as this is not specifically recorded.
21. MPS advised that even if it excluded the issue of whether overtime involved backfilling, it estimated that obtaining information on this one example alone would take the following time:
 - a. determining whether the information is held – examination of accounting records, establishing the contact point and discussion with the source of invoice – 10 minutes;
 - b. locating the information or document which may contain the information – source to locate the duty state/rate which applies – 5 minutes;
 - c. retrieving and extracting the information or document – examination of the duty state to determine the officers involved, examination of local overtime records to determine whether officers undertook overtime, returning the information to the contact and calculating the overtime element of the charge made – 30 minutes.
22. It would therefore take an estimated 45 minutes to obtain the information for this one invoice, with a further 1,166 billing documents to examine in just the same way for the account code for Operational Receipts. This meant that it would take potentially 874 hours (123 working days) to obtain the information. The MPS has around 24 account codes to examine in this way.
23. As part of his complaint, the complainant asserted "*Accounting must record how overtime is charged and I am simply asking for the pure data to sift through myself*". Given the way overtime expenditure is recorded and stored within MPS, the Commissioner is satisfied that such an eventuality is not feasible.

Conclusion

24. On the basis of the above, the Commissioner is satisfied that MPS has correctly applied section 12(1), as compliance with the request would exceed the appropriate cost limit. MPS was therefore correct to apply the exclusion in section 12(1) of FOIA to part 2 of the complainant's request.

Advice and assistance

25. If the public authority estimates the cost of determining whether the information is held as being above the appropriate limit, it is not required to conduct searches but should consider providing advice and assistance. In this case, the Commissioner is satisfied that MPS provided advice and assistance in accordance with section 16 of FOIA.

Other matters

26. The complainant also stated as part of his complaint, "*This year there has been significant interest in Virgin's payment of the Met's overtime bill for an investigation into a television set-box scam and how much this type of funding equates to private policing...As proved by the revelation about Virgin's payment of overtime, this information is recorded...*". The Commissioner asked MPS to comment on this point.
27. In reply, MPS confirmed that it had received £5,000 from Virgin Media towards the cost of a commercial fraud operation in Redbridge. It undertook further searches during the Commissioner's investigation and located a previous disclosure about specific agreements signed by MPS' Commercial Partnership team in regard to the Virgin Media agreement which it considered pertinent to this request. MPS has provided this information to both the complainant and the Commissioner.

Right of appeal

28. 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

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

29. 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.
30. 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
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