

## **Freedom of Information Act 2000 (FOIA)**

### **Decision Notice**

**Date:** 2 February 2015

**Public Authority:** Police Service of Northern Ireland

**Address:** 65 Knock Road  
Belfast  
BT5 6LE

#### **Decision (including any steps ordered)**

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1. The complainant has requested information relating to items of evidence that had gone missing, or been lost or stolen. The Police Service of Northern Ireland (PSNI) claimed that compliance with the request would exceed the appropriate limit and therefore refused the request under section 12 of the FOIA. The Commissioner's decision is that PSNI was entitled to rely on section 12, and he does not require any steps to be taken.

#### **Request and response**

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2. The Commissioner understands that on 29 May 2014 the complainant requested the following information from PSNI:  
*"The breakdown of items of evidence that have gone missing, been misplaced, lost or stolen, in police district A over the past three years co-related with the type of alleged crime or type of investigation the evidence was connected to."*
3. PSNI issued a refusal notice to the complainant on 30 June 2014. This stated that the cost of complying with the request would exceed the appropriate limit under section 12 of the FOIA.
4. The complainant requested an internal review on 11 July 2014 and PSNI advised her of the outcome on 12 August 2014. PSNI upheld its refusal on the basis of section 12 of the FOIA.

## Scope of the case

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5. On 21 August 2014 the complainant contacted the Commissioner to complain about the way her request for information had been handled.
6. The complainant indicated that she wished to challenge PSNI's reliance on section 12 to refuse her request. She was also unhappy because she had phrased this request following advice from PSNI. The complainant had submitted an earlier request that PSNI refused under section 12. PSNI advised the complainant to narrow her request to a particular district, but when she did so PSNI refused her revised request on the grounds of section 12.
7. Therefore the scope of the case is to decide whether PSNI was entitled to refuse the complainant's request of 29 May 2014, and whether PSNI provided appropriate advice and assistance under section 16 of the FOIA.

## Reasons for decision

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### Section 12 – cost of compliance

8. Section 12(1) of the FOIA provides that an 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, known as the cost limit. Section 12 of the FOIA should be considered with the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004. If an authority estimates that complying with a request may cost more than the cost limit, it can consider the time taken 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.
9. Regulation 4(4) states that the authority should calculate the cost of complying with a request by multiplying the time estimated by £25 per hour. If the authority considers that complying with the request would therefore cost more than the appropriate limit, it is not obliged to

comply with the request. In the case of PSNI, a limit of £450 applies, which equates to 18 hours.

10. PSNI confirmed to the Commissioner that there was no policing requirement to collate or generate information of the description specified in the request. Therefore compliance with the request would necessitate a manual search of records held on NICHE, PSNI's records management system. PSNI explained that such a search would require the following steps:
  - i) Search the NICHE system for the timeframe specified to obtain an inventory of all items of evidence (ie exhibits) logged during this timeframe.
  - ii) Check each record for each item of evidence to identify the type of crime or investigation, and obtain the relevant Occurrence Entry Log (OEL) reference.
  - iii) Check each relevant OEL to ascertain if there is an entry relating to the item not being found when the officer looked for it.
11. PSNI estimated that the police district specified by the complainant held approximately 28,000 items of evidence logged for the three year time period described in the request. Checking the OEL log could take anything between 1 minute and 10 minutes, but even at 1 minute the search would take around 470 hours. This obviously far exceeds the appropriate limit of 18 hours.
12. The Commissioner asked PSNI whether this search was the only way of obtaining the requested information, and whether NICHE could be searched electronically. PSNI said that NICHE did allow electronic searches, but there was no specific search facility for lost or missing items. As the requested information was not routinely collated for any policing, business or management purpose, PSNI could only obtain it by conducting a search via NICHE. No other business areas or departments of PSNI would hold the requested information. PSNI also confirmed that it had no specific policy or service procedure governing how it dealt with cases where evidence was believed missing, misplaced, lost or stolen. If an item of evidence was missing or could not be located this would only be recorded on NICHE and no central records were kept.
13. The Commissioner has considered whether PSNI's estimate is reasonable. In doing so he has taken into account the way relevant information is held, and notes that it is not currently collated or generated. Therefore the Commissioner accepts that a bespoke search would need to be conducted. Given the extent of the records held, the

Commissioner accepts that the process of retrieving records from NICHE and extracting relevant information is likely to be time-consuming. The most conservative estimate from PSNI equates to 470 hours, and the Commissioner accepts that the search could take significantly longer. Therefore the Commissioner accepts PSNI's argument that compliance with the complainant's request would exceed the cost limit set out at section 12(1) of the FOIA.

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

14. Where section 12(1) is applied by a public authority, section 16 imposes a duty to provide advice and assistance to an applicant in order to help them access at least some of the information they seek. In these circumstances the Commissioner would expect a public authority to consider ways in which an applicant could refine their request to enable it to be brought under the costs threshold.

15. PSNI confirmed to the Commissioner that the complainant had submitted a similar request for information in 2012:

*"An annual breakdown over the past three years of the list of "evidence" items that have gone missing or been stolen. Please include in the annual breakdown a description of each of the items, documents etc and when it was reported stolen/missing."*

16. At internal review stage this request was refused under section 12, and PSNI's internal review letter dated 11 February 2013 stated:

*"In accordance with the s.16 duty to provide advice and assistance as to how you may refine your request to bring it within the appropriate limit it may be possible for you to refine your request to certain policing districts. As you may be aware the PSNI is divided into seven policing Districts "A" through to "H"."*

17. The Commissioner is mindful that the request that is the subject of this complaint was made over a year after PSNI issued the internal review letter quoted above. The Commissioner does not consider PSNI's letter of 11 February 2013 to be particularly helpful since it does not provide any indication of the information that could be provided under the appropriate limit. It merely states that the complainant could refine her request, and provides information about PSNI's structure. There is no practical advice on how to make a successful request and the Commissioner understands the complainant's frustration on this point.

18. The complainant has not provided the Commissioner with any evidence that she contacted PSNI to discuss how she could successfully refine her request. The Commissioner notes that the request that is the subject of

this decision notice was submitted well over a year after the previous internal review letter. The Commissioner does not consider that PSNI's letter dated 11 February 2013 meets the requirements of section 16 of the FOIA in respect of the request it related to. However, the Commissioner cannot require PSNI to take any further action in relation to that earlier request since it was made well over a year before the request which is the subject of this notice. If the complainant is of the view that the letter of 11 February 2013 was, in effect, providing advice and assistance to her as someone wishing to make a request, then she ought to have contacted PSNI sooner to discuss the matter, rather than simply submitting a request in May 2014.

19. In any event, the Commissioner notes that PSNI's internal review letter dated 12 August 2014 more adequately deals with the question of whether the request could be refined. PSNI explained at this stage that, owing to the way information was held on NICHE it was unable to suggest how a successful request could be constructed. Given the Commissioner's findings above he accepts PSNI's argument in this regard. The Commissioner would stress that this in itself would not prevent the complainant from contacting PSNI to discuss the information she sought, as the duty to provide advice and assistance extends to those wishing to make a request. Ultimately though the Commissioner remains of the view that applicants must be prepared to engage meaningfully with public authorities in order to get best use of the FOIA.

## Right of appeal

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20. 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 123 4504  
Fax: 0870 739 5836

Email: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)  
Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

21. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Tribunal website.
22. 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 .....**

**Alexander Ganotis**  
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**Information Commissioner's Office**  
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