

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

### **Decision notice**

**Date:** 19 April 2016

**Public Authority:** Chief Constable of North Yorkshire Police  
**Address:** Police Headquarters  
Newby Wiske Hall  
Northallerton  
North Yorkshire  
DL7 9HA

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

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1. The complainant requested information relating to a train accident that occurred at Selby on 28 February 2001. North Yorkshire Police (NYP) responded and said that determining whether this information was held would exceed the cost limit (section 12(2)) of the FOIA.
2. The Commissioner's decision is that NYP was aware without undertaking significant work that it held information within the scope of the request and so was incorrect to rely on section 12(2) of the FOIA. The Commissioner has also found that NYP breached section 17(1) of the FOIA by failing to respond to the request within 20 working days of receipt.
3. The Commissioner requires NYP to take the following steps to ensure compliance with the legislation.
  - Issue a fresh response to the request which does not rely on section 12(2) of the FOIA.
4. NYP 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 pursuant to section 54 of the FOIA and may be dealt with as a contempt of court.

## Request and response

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5. On 1 December 2014, the complainant wrote to NYP and requested information in the following terms:

*"Please could you forward details of the train accident at Selby on 28/2/01, including:*

*\*All data, communications, emails, memoranda or opinions relating to this incident*

*\*The CAD report. The CAD printout should show all the details a dispatcher would see if the incident was viewed. Please could you include the following: The CAD log, screen print and information.*

*\*All the major incident control data and control vehicle if attended etc.*

*\*Dispatchers' notes*

*\*Major incident log and bronze, silver, gold logs*

*\*Incident report forms*

*\*Lessons learnt*

*\*De-brief and any other associated information regarding this incident.*

*For the CAD information please could you include messages i.e. from officers, from ambulance etc."*

6. After a lengthy delay NYP responded on 19 June 2015. It refused the request on cost grounds under section 12(1).
7. The complainant requested an internal review and NYP responded with the outcome of the review on 17 July 2015. The conclusion of this was to withdraw the initial refusal under section 12(1) and find instead that it would exceed the cost limit to confirm or deny whether it held the requested information, hence section 12(2) was cited.

## Scope of the case

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8. The complainant contacted the Commissioner on 20 July 2015 to complain about the way his request for information had been handled. The complainant indicated that he did not agree with the reasoning given for the refusal of his request.

9. The following analysis covers the citing of section 12(2), as well as the breach of the FOIA through the lengthy delay in responding to the request. The Commissioner also comments on the delayed response within the Other matters section below.

## **Reasons for decision**

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### **Section 17**

10. Section 17(1) requires that, where a public authority is refusing a request, it must send a notice to that effect within 20 working days of receipt of the request. NYP failed to respond within this timeframe in this case and, in doing so, it breached section 17(1) of the FOIA.

### **Section 12 – cost of compliance exceeds appropriate limit**

11. Section 12 of the 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 limit.
12. Section 12(2) provides that a public authority is not obliged to confirm or deny whether it holds the requested information if the cost of determining whether it holds that information would, in itself, require work in excess of the cost limit.
13. In this case, the public authority estimates that it would exceed the appropriate limit to confirm whether or not the requested information is held, hence it relies on section 12(2).
14. The appropriate limit in this case is £450, as laid out in section 3(2) of the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the fees regulations). This must be calculated at the rate of £25 per hour, providing an effective time limit of 18 hours' work.
15. When estimating whether confirming or denying if it holds the requested information would exceed the appropriate limit, a public authority may take into account the costs it reasonably expects to incur in determining whether it holds the information. The estimate must be reasonable in the circumstances of the case. It is not necessary to provide a precise calculation.
16. NYP provided a breakdown of four activities it stated that it would need to undertake to determine whether the information requested is held. NYP explained that the four activities included searching three to five storage boxes, searching a 20'x8'x8' storage crate, liaising with officers

involved in the incident and searching an electronic system called the "Holmes" system.

17. In NYP's explanation of the activity involved in searching three to five large storage boxes it stated the following:

*"As this incident was such a significant and complex one, there is information held in a number of places around the force, and unfortunately it is not held in a structured way... This is based on advice received from officers and administrative staff who have had involvement in the incident or have knowledge of file storage and locations."*

18. The fact that NYP states that there is information held in a number of places around the force is evidence to the Commissioner that it is aware that relevant information is held, albeit in an unstructured way.

19. In its submission, NYP also provides an explanation about why a large storage container would need to be included within its search. In doing so it again indicated that it was aware that relevant information was held.

*"...we have been advised by a colleague that this contains evidence and information relating to this incident. We have been advised that there is a wide range of information in this container including parts of the car involved in the incident as well as a range of other items and information."*

20. NYP further explained that it would be necessary to undertake the task of liaising with officers who were involved in the incident, again suggesting that it was aware that it held relevant information.

*"For any officers who were involved, which is likely to be a significant number given the scale of the incident, they would then need to search their personal electronic records and paper filing systems. It is understood that information of this nature held locally is unlikely to be held in structured filing systems and so due to the complexity and age, we estimated a time of 1-2 hours to cover contacting officers, liaising with officers who reply to confirm they were involved about what information they may hold, and for them to carry out the manual electronic and paper records searches."*

21. The Commissioner's view is that there are two grounds for questioning whether NYP was not aware of whether it held any information falling within the scope of the request. First, the request is, in summary, for all information held by NYP relating to the Selby train crash; a major incident that occurred within the NYP jurisdiction within the recent past. The Commissioner would consider it reasonable to expect that NYP

would hold a significant volume of information relating to that incident, and that NYP would be aware without having to carry out searches that it held this information.

22. Secondly, any remaining doubt about whether NYP was aware that it held relevant information was extinguished by the descriptions provided by NYP for its cost estimate. As highlighted above, NYP stated that *"as this incident was such a significant and complex one, there is information held in a number of places around the force"* and *"we have been advised by a colleague that this [storage container] contains evidence and information relating to this incident"*.
23. The overall impression of the Commissioner is that this may be a case where section 12(1) was possibly appropriate; NYP was aware that it held information within the scope of the request, but it would have taken significant time to establish exactly what and where, and to collate it for release. He considers it clearly the case, however, that citing section 12(2) was not appropriate.
24. For these reasons the conclusion of the Commissioner is that it would not have exceeded the cost limit for NYP to confirm or deny whether it held information within the scope of the complainant's request. Section 12(2) did not, therefore, apply and NYP is now required to issue a fresh response that does not rely on section 12(2).

### **Other matters**

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25. As well as the finding above that NYP breached section 17 of the FOIA, the Commissioner wishes to note here his concern at the severity of the delay. NYP must ensure that it responds to all information requests, including those which may cover a large amount of information, within 20 working days of receipt. A separate record of the delay in this case has been made and this issue may be revisited should evidence from other cases suggest that this is necessary.

## Right of appeal

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26. 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: 0870 739 5836

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

Website: <http://www.justice.gov.uk/tribunals/general-regulatory-chamber>

27. 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.
28. 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 .....**

**Ben Tomes**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**