

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 27 June 2016

Public Authority: Crown Prosecution Service
Address: Rose Court
2 Southwark Bridge
London
SE1 9HS

Decision (including any steps ordered)

1. The complainant requested information relating to anti-fracking protests that had taken place at Barton Moss, Manchester. The Crown Prosecution Service (CPS) refused the request on cost grounds under section 12(1) of the FOIA.
2. The Commissioner's decision is that the CPS cited section 12(1) correctly so it was not obliged to comply with the request.

Request and response

3. On 22 May 2015 the complainant wrote to the CPS and requested information in the following terms:

"I am seeking information on the anti-fracking protests which took place at Barton Moss, Greater Manchester in 2014 and 2015. I would be grateful if you would provide me with the following information:

1. *The total number of people arrested at the Barton Moss site.*
2. *The grounds for these arrests. A collective list of offences will be sufficient.*
3. *The total number of people charged with offences.*
4. *The outcomes of those charged. A collective list will again be sufficient.*

5. A list of bail conditions imposed on arrestees."

4. The CPS responded on 22 May 2015. It stated that it would not be able to answer the request within the cost limit and cited section 12(1) of the FOIA.
5. The complainant requested an internal review on 27 May 2015. The CPS did not provide an internal review response and so the complainant made a complaint to the Commissioner.

Scope of the case

6. The complainant contacted the Commissioner on 16 September 2015, to complain about the failure by the CPS to respond to their internal review request.
7. The Commissioner wrote to the CPS on 22 September 2015 asking it to provide an internal review decision to the complainant. The CPS failed to do this.
8. The Commissioner therefore decided to investigate the CPS's application of section 12(1) of the FOIA without waiting any longer for the CPS to complete the review.

Reasons for decision

Section 12 – cost of compliance

9. Section 12(1) provides that a public authority is not obliged to comply with a request where it estimates that the cost of doing so would exceed the appropriate limit, which for the CPS is £600. The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the "fees regulations") provide that the cost of a request must be calculated at the rate of £25 per hour, providing an effective time limit of 24 hours. The fees regulations also specify the tasks that can be taken into account when forming a cost estimate as follows:
 - Determining whether the requested information is held.
 - Locating the information, or a document which may contain the information.
 - Retrieving the information, or a document which may contain the information.

- Extracting the information from a document containing it.
10. A public authority is required to estimate the cost of a request, rather than form an exact calculation. The task for the Commissioner here is to reach a conclusion as to whether the cost estimate made by the CPS was reasonable; if it estimated reasonably that the cost of compliance with the request would exceed the limit of £600, section 12(1) applied and it was not obliged to comply with the request.
 11. Section 12(4) of the FOIA states that:

“The Secretary of State may by regulations provide that, in such circumstances as may be prescribed, where two or more requests for information are made to a public authority-

 - (a) by one person, or*
 - (b) by different persons who appear to the public authority to be acting in concert or in pursuance of campaign, the estimated cost of complying with any of the requests is to be taken to be the estimated total cost of complying with all of them”.*
 12. In other words, when a public authority is estimating whether the appropriate limit is likely to be exceeded, it can include the costs of complying with two or more requests if the conditions laid out in the Fees Regulations can be satisfied.
 13. Regulation 5(2) of the Fees Regulations requires that the requests which are to be aggregated must relate *“to any extent”* to the same or similar information. It follows that any unrelated request should be dealt with separately for the purposes of determining whether the appropriate limit is exceeded.
 14. The Commissioner’s guidance¹ on requests where the cost of compliance exceeds the appropriate limit acknowledges that public authorities can aggregate two or more separate requests. It also recognises that multiple requests within a single item of correspondence are separate requests for the purpose of section 12. This was confirmed by the

¹ https://ico.org.uk/media/for-organisations/documents/1199/costs_of_compliance_exceeds_appropriate_limit.pdf

Information Tribunal in the case of Ian Fitzsimmons v ICO & Department for Culture, Media and Sport (EA/2007/0124, 17 June 2008.)

15. The Commissioner considers that requests are likely to relate to the same or similar information where, for example, the requester has expressly linked the requests, or where there is an overarching theme or common thread running between the requests in terms of the nature of the information requested.
16. In this case, the CPS has aggregated all five requests as they were received in a single item of correspondence. The Commissioner also notes that there is a common thread running through these requests as they all relate to anti-fracking protests at Barton Moss. The Commissioner is therefore satisfied that the CPS was entitled to aggregate the requests when considering whether complying with them would exceed the appropriate limit.
17. In the CPS's initial response to the complainant's request it stated that it does not maintain a central record of all offences prosecuted that arose from the Barton Moss anti-fracking protests in 2014 and 2015. It explained that to locate the information within the scope of the request would require a manual review of all prosecutions handled by the CPS in Greater Manchester over the relevant time period.
18. The CPS stated to the Commissioner that CPS records cannot be disaggregated by a specific event/s and it therefore would not be possible for it to identify centrally which cases were relevant. In its submission to the Commissioner, the CPS explained that the data it holds is capable of being searched by offence or by CPS Area. It explained that this could potentially assist in narrowing down the number of case files. It also explained, however, that each of these case files would need to be manually reviewed in order to collate the requested information.
19. The CPS stated that information in relation to point four of the complainant's request was held. However, the CPS stated that it cannot state to a sufficient degree of accuracy which offences would have been charged as a result of the relevant protests in 2014 and 2015. This meant that the CPS could not search for the requested information by reference to particular offences.
20. The CPS explained that in 2014 it prosecuted 66,267 offences and in 2015 prosecuted 59,016 offences, all of which reached a first hearing at magistrate court. The CPS explained that in order for it to identify the relevant cases it would need to carry out a manual review to establish whether the prosecution was as a result of the Barton Moss Anti-Fracking demonstrations.

21. In addition to the manual review of each case file in order to establish whether it related to the Barton Moss anti-fracking protests, the CPS explained that further analysis would need to be completed to ascertain whether each file contains information capable of addressing the more detailed questions posed.
22. This gives a total of 125,283 case files that it would be necessary to review to comply with the request. This would require 5,220 files to be reviewed per hour in order to comply with the request without exceeding the cost limit.
23. The Commissioner wrote to the CPS asking whether it would be necessary to search every case from the whole of 2014 and 2015 in order to comply with the complainant's requests and why it believed that there was no way to restrict this timeframe. The CPS responded to the Commissioner explaining that the Police and Crime Commissioner's Independent Panel on the Policing Protests and Demonstrations dated October 2014 states the following:

"The protest at Barton Moss began in November 2013 and lasted until the exploratory work completed in April 2014. Protest activity had different elements: a camp on Barton Moss Road, daily protests when deliveries were being made to the site, weekend rallies at the site, and a demonstration in Manchester City Centre. As the following articles demonstrate the fracking protests at Barton Moss occurred over a prolonged period of time..."

24. The CPS explained to the Commissioner that it is likely a file could be submitted to the CPS for consideration in relation to an offence committed at the fracking protests a significant period of time after the events themselves. The CPS explained that because of this, it believed that it would be necessary to cover the whole of 2014 and 2015 in its searches.
25. The Commissioner wrote to the CPS asking it to explain how its system is structured in such a way that it cannot locate the information requested without going through every case from a certain time period.
26. The CPS explained that it can only disaggregate its data by either CPS Prosecuting Area or by Principle Offence Category. It stated that its system is unable to search for individual police operations or charges resulting from an incident at a specific geographical site.
27. The Commissioner has no reason to doubt the figures the CPS have provided and accepts that the CPS would need to search 125,283 criminal case files in order to comply with the request.

28. The Commissioner accepts the CPS's statement in which it explains it is unable to carry out an automated search for information relating to the Barton Moss protests. The CPS explains that it cannot search for individual police operations or charges resulting from an incident at a specific geographical site, this therefore includes information relating to the Barton Moss protests. The Commissioner therefore accepts that it would be necessary for the CPS to manually review each case file from the North West CPS Area to comply with the request.
29. Having accepted that it would be necessary for the CPS to review 125,283 files in order to comply with the request, the remaining question is whether the time that would take would be in excess of the limit. Whilst there is no evidence to show the size of each case file or how long reading each case file to locate and collate the requested information would take, the Commissioner accepts that the number of files means that it would be impossible to review them all within 24 hours. The Commissioner is therefore satisfied that the CPS would not be able to comply with point four of the complainant's request within the appropriate limit.
30. As the Commissioner is satisfied that point four of the complainant's request exceeds the appropriate cost limit and he has found that all of the requests can be aggregated for the purposes of forming a cost estimate, the Commissioner's conclusion is that the CPS was not required to comply with the complainant's requests as section 12(1) of the FOIA applied.

Section 16 - advice and assistance

31. 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.
32. The CPS position in this case was that it was not possible for it to provide any useful advice on refining the request. The Commissioner notes that the cost estimate that he has accepted as reasonable was far in excess of the limit and so it would have been difficult for the CPS to give any meaningful advice on refining the request.

Other matters

33. The Commissioner notes that the complainant requested an internal review from the CPS on the 22 September 2015. The CPS failed to provide the complainant with an internal review decision.

34. The CPS must ensure that it has an appropriate procedure in place to enable it to carry out internal reviews promptly. The Commissioner has made a separate record of this delay and this issue may be revisited should evidence from other cases suggests that this is necessary.

Right of appeal

35. 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

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

36. 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.
37. 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
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