

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 19 May 2016

**Public Authority:** Commissioner of the Metropolitan Police Service

**Address:** New Scotland Yard  
Broadway  
London  
SW1H 0BG

### Decision (including any steps ordered)

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1. The complainant has requested statistics covering ethnicity and misconduct / dismissal. The Metropolitan Police Service (the 'MPS') advised that to comply with the request would exceed the appropriate limit at section 12(1) of the FOIA. The Commissioner's decision is that the MPS was entitled to rely on section 12(1), however, he finds that it breached section 10(1) of the FOIA in that it failed to provide a response to the request within the statutory time for compliance. No steps are required.

### Request and response

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2. On 23 November 2015, the complainant wrote to the MPS and requested information in the following terms:

*"I would like to know the following information covering a 4 year period.*

*1. How many black and Asian members of staff (in comparison to white members of staff) have been have been [sic] accused of Misconduct/ Gross misconduct. Also how many of those (in comparison to white staff members) have been dismissed (gender/age to be specified). If possible TP/Metcall CC records to be included separately.*

*2. How many Black and Asian members of staff with disabilities (in comparison to white staff members) have been given sanctions/accused of misconduct and/or dismissed from the Met Police (age and gender to be specified). If possible TP/Metcall CC records to be included separately.*

*3. How many black staff members have been dismissed or left the met in comparison to white and Asian staff. (age details). If possible TP/Metcall CC records to be included separately.*

*4. What proportion of black staff in comparison to Asian and whites have been employed and promoted (age details) If possible I would also like to know the above figures for the MET (and TP/ MetCC in particular)".*

3. The MPS responded on 14 January 2016. It explained that to comply with the request would exceed the cost limit at section 12(1) of the FOIA, particularly in respect of part 4 of the request. It provided advice as to what it may be able to provide which the complainant did not accept.
4. Following an internal review the MPS wrote to the complainant on 20 January 2016. It maintained its position.

### **Scope of the case**

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5. The complainant contacted the Commissioner on 20 January 2016 to complain about the way her request for information had been handled. Following some further queries she confirmed that her grounds of complaint were as follows:

*"1. they did not respond to my request until approximately 34 days later.*

*2. they did not provide full or partial information. They claimed it was not cost effective*

*3. This was not the first time they used this excuse for withholding information and they should have been able to inform me of the rejection within 20 days or less.*

*4. The information requested was a matter of public record, as government departments especially the Home Office required this information (at least annually).*

*5. If public record already collated why would it take 10, 18 or even 24 man hours to obtain the information.*

*6. Why are they not able to provide the latest collated information they have and give me an option as to whether [sic] or not it is acceptable. Why automatically refuse to give information.*

*7. When the MPS does acknowledge my request (without providing the information), they insist on starting the information request process all over again and you have to wait another 20 days or more. I view this as a delaying tactic to discourage staff from requesting information".*

6. The Commissioner will consider points (1), (2), (3) and (6) below. He queried her comments at points (4) and (5), which refer to the information being a "public record", and asked her to further explain what she meant by this if she wished him to consider it; no explanation was received so these elements will not be further commented on. In respect of point (7), he also queried whether this referred to a later information request which had been made on 14 January 2016, and, if so, advised her that it was still within the statutory 20 working day time limit for providing a response; no further comment was received so this will also not be further considered.
7. The Commissioner also notes that, following negotiation and refinement, the MPS provided disclosure in respect of a differently worded request. However, the complainant insisted on a decision notice in respect of this earlier request.

## **Reasons for decision**

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### **Section 10 – time for compliance**

8. Section 1(1) of the FOIA states that:

*Any person making a request to a public authority is entitled –  
(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and  
(b) if that is the case, to have that information communicated to him.*

9. Section 10(1) of the FOIA states that a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.
10. The request was made on 23 November 2015 and the MPS did not respond until 14 January 2016. This falls outside the twenty working day limit for responding so the Commissioner finds that there was a breach of section 10(1).

## Section 12 – the appropriate limit

11. 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 MPS is £450. 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 18 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.

12. 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 MPS was reasonable; if it estimated reasonably that the cost of compliance with the request would exceed the limit of £450, section 12(1) applied and it was not obliged to comply with the request.

13. To back up its position, the MPS explained to the Commissioner that as a starting point it had initially considered part (1) of the information request. As evidence, it provided the Commissioner with tabulated figures of the records it had retrieved and explained:

*"From the data at Part 1, it can be seen that as a minimum this will include, 6,760 members of the MPS, albeit this relates to both staff and police officers. If this is restricted to police staff alone, thereby reflecting the wording of the request this number falls to 2,134 members of staff".*

14. In respect of part (2) of the request it added:

*"In order for the 'disability' issues to be identified ... professional standards, who hold data on individuals in respect of misconduct, would need to provide Human Resources Directorate the identities of those staff proceeded against in order that files/records can be examined to identify any recorded disability: That is the identities behind the data at Part 1".*

15. The MPS had then liaised with its Human Resources section about dealing with that part of the request and was advised as follows:

*“There are potentially two ways the MPS could determine whether those individuals were or were not disabled:*

*The first is dependent on self declaring: If they (staff) had self-declared as disabled (via the MyDiversity Details bit of MetHR self service), someone within the specialist HR analytics team, Strategic HR may be able to cross-reference the two lists.*

*Alternatively, and this is probably the only way the MPS could have confidence in the data being obtained and potentially released, that a list of names and pay numbers could be provided to Occupational Health, and we could pull the medical files of each such individual and examine them to see if we are aware that they suffer from a medical condition that is likely to be considered a disability within the meaning of the Equality Act.*

*My estimate would be that it would take approximately 20 minutes to review each medical file. So it would only take 50-odd files for this aspect of this question alone to push us over the 18 hour limit”.*

16. In extrapolating these figures, the MPS estimated that with a minimum 2,134 potential files to examine, the time taken would be far in excess of the 18 hours stipulated by the FOIA and therefore determined that part (2) of the request alone would take the request beyond the appropriate limit.
17. The Commissioner is satisfied that the MPS has provided a cogent explanation for why compliance with the request would exceed the appropriate cost limit. He is satisfied by its explanation and that it would be only be able to gather the requested information using the method suggested. It is evident that to do so would be a time consuming process.
18. For these reasons, the conclusion of the Commissioner is that the cost estimate made by the MPS was reasonable. Section 12(1) therefore applied and the MPS was not obliged to disclose the requested information.

## **Section 16**

19. Section 16(1) of the FOIA provides that all public authorities are under a duty to provide advice and assistance to any person who has made or who intends to make an information request to it. The Commissioner’s

published guidance on section 12<sup>1</sup> sets out the following minimum advice and assistance that a public authority should provide to a requester when refusing a request on cost grounds:

- either indicate if it is not able to provide any information at all within the appropriate limit; or
- provide an indication of what information could be provided within the appropriate limit; and
- provide advice and assistance to enable the requester to make a refined request.

20. In this case, the Commissioner notes that in its refusal notice, advice on refining the request was given, suggesting that parts (1) and (3) of the request could be complied with but that parts (2) and (4) would exceed the limit; the complainant declined to amend her request when asking for an internal review. In view of this, the Commissioner's finding is that the MPS complied with its duty to provide advice and assistance.

## Other matters

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21. The delay in responding to this request will be logged as part of ongoing monitoring of the MPS's compliance with the FOIA.
22. In her grounds of complaint the complainant asks: "*Why are they not able to provide the latest collated information they have and give me an option as to whether [sic] or not it is acceptable. Why automatically refuse to give information*".
23. It is important to note that a public authority only has to comply with the written request, seeking clarification if necessary, and providing the recorded information that it holds. Clarification was not needed on this occasion, and, as determined above, advice and assistance was provided, so the MPS was not under any duty to offer alternative suggestions which may or may not have assisted the complainant.

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<sup>1</sup>[https://ico.org.uk/media/1199/costs\\_of\\_compliance\\_exceeds\\_appropriate\\_limit.pdf](https://ico.org.uk/media/1199/costs_of_compliance_exceeds_appropriate_limit.pdf)

## Right of appeal

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24. 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: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

25. 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.
26. 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** .....

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