

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 25 August 2016

Public Authority: Chief Constable of West Mercia Police
Address: West Mercia Police Headquarters
Hindlip Hall
Worcester
WR3 8SP

Decision (including any steps ordered)

1. The complainant requested information relating to incidents of harassment of West Mercia Police (WMP) solicitors. WMP stated that it was unable to establish whether it held the requested information within the cost limit and cited section 12(2) of the FOIA.
2. The Commissioner's decision is that WMP cited section 12(2) correctly so it was not obliged to confirm or deny whether it held the requested information.

Request and response

3. On 17 March 2016 the complainant wrote to WMP and requested information in the following terms:

"Please supply me, under the Freedom of Information Act, the following information. I would like the information for the past three years;

1) Number of incidents of harassment, risk to the safety of West Mercia Police solicitors from dissatisfied complainants.

2) Number of incidents which have been reported by West Mercia Police solicitors and those which have been investigated by Police.

3) How many cases have there been of warnings, cautions, arrests and prosecutions against dissatisfied complainants because of harassment, risk to the safety of West Mercia Police solicitors."

4. WMP responded on 18 April 2016. It refused the request on cost grounds under section 12 of the FOIA.
5. The complainant responded on 20 April 2016 and requested an internal review. WMP responded with the outcome of the review on 11 May 2016, which was to uphold the refusal under section 12.

Scope of the case

6. The complainant contacted the Commissioner on 14 May 2016 to complain about the refusal of her information request. The complainant indicated that she did not agree that complying with her request would exceed the cost limit.
7. When making her complaint to the ICO, the complainant included "*the delay*" amongst her grounds for complaint. However, as the refusal notice was sent within 20 working days of receipt of the request and the internal review was completed within less than one month, the Commissioner is aware of no undue delays having occurred.
8. West Mercia Police and Warwickshire Police have a shared team responsible for processing information requests made to either force. This arrangement does not alter that these two forces are separate public authorities for the purposes of the FOIA. When contacting the ICO the complainant was specific that her complaint concerned West Mercia Police and this case has been progressed on the basis that it concerns that force.
9. In correspondence with the complainant WMP was not specific about whether it relied on section 12(1), or section 12(2). During the investigation of this case WMP confirmed to the Commissioner that it relied on section 12(2) and this is the section covered in the analysis below.

Reasons for decision

Section 12

10. Section 12(2) provides that a public authority is not obliged to confirm or deny whether requested information is held if it estimates that to do so would incur costs in excess of the appropriate limit. In other words, if the cost of establishing whether the requested information is held would be excessive, the public authority is not required to do so.
11. The appropriate limit is set at £450 for non-central government public authorities by the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the fees regulations). The fees regulations also provide that a cost estimate must be calculated at the rate of £25 per hour, giving an effective time limit of 18 hours, and specify the tasks that can be taken into account when forming a cost estimate as follows:
 - determining whether the information is held;
 - locating the information, or a document containing it;
 - retrieving the information, or a document containing it; and
 - extracting the information from a document containing it.
12. Section 12(2) requires a public authority to estimate the cost of confirmation or denial, rather than to formulate an exact calculation. The question for the Commissioner here is whether the cost estimate by WMP was reasonable. If it was, then section 12(2) was engaged and WMP was not obliged to confirm or deny whether the requested information was held.
13. Turning to the description of its cost estimate given by WMP, it stated that the information requested by the complainant was not held centrally and that this meant it would be necessary to search its records in order to establish whether it held information within the scope of the request. It stated that it had searched its Operational Information System (OIS) using key words to locate entries most likely to be relevant to the request. The search terms used and the number of records that these revealed were as follows:

Harassment force solicitor - 183

Harassment solicitor - 1752

Force solicitor - 266

Complaint solicitor - 548

Threat force solicitor - 72

West Mercia Police solicitor – 9649

14. WMP provided evidence in the form of screenshots of its database. These showed that the initial search screen gives brief details of each record, with it being necessary to access each individual record to view its full details. WMP gave an estimate of an average of one minute per record for this process.
15. The Commissioner's view is that it would not be necessary to access each record to ascertain whether it may be relevant to the request. Her view is that it would be evident in a large majority of cases from the summary on the search screen whether it may contain information relevant to the request and that it would only be necessary to access the full record in a minority of cases. This means that her view is that an average of one minute per record is an over estimate.
16. She does, however, accept that the process of establishing whether information relevant to the request is held on the OIS is likely to be extremely time consuming. Even given the truncated average time per record, the volume of records that it would be necessary to search through means that, in the Commissioner's view, that process would take time in excess of the limit.
17. WMP stated that it had considered alternative means to establish whether it held information falling within the scope of the request, including enquiries with its legal department and with an individual solicitor. It stated that these were not successful and that the search of its OIS described above would be the most efficient means to comply with the request.
18. When requesting an internal review, the complainant asserted that WMP should have asked each of its solicitors whether they were able to answer the questions posed in her information request. Whilst the FOIA does not provide a right to a requester to specify the action a public authority should take to comply with their request, as noted above WMP did approach a solicitor to ascertain whether they held information within the scope of the request. In any event, the recollection of an individual would not be covered by the FOIA if it was not held in recorded form.
19. Turning to the conclusion, the Commissioner accepts first that the requested information is not held by WMP in a ready collated form. There is no evidence to dispute the representations from WMP that it would take time for it to establish whether it holds the requested information and the complainant's request does not describe information that the Commissioner would expect a police force to typically hold

separately from, or as a distinct category within, its other records relating to harassment cases.

20. As to whether the Commissioner accepts the representations from WMP on the process that it would be necessary for it to carry out in order to comply with the request, as noted above she does not accept that it would be necessary to access every record to establish its relevance. In relation to the majority of records, the relevance or otherwise of the record should be clear from the summary on the search screen.
21. As also noted above, however, she does accept that the volume of records means that even that shortened process would be extremely time consuming. On the basis of the representations and evidence given by WMP, the Commissioner accepts that it was reasonable for it to estimate that the time it would take to establish whether it held the information requested by the complainant would exceed 18 hours. Her conclusion is, therefore, that section 12(2) was cited correctly and so WMP was not obliged to confirm or deny whether it held the requested information.

Section 16

22. 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 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.
23. In this case WMP advised the complainant in the refusal notice that the volume of records it would be necessary to search in relation to this request meant that it was not possible for it to advise on any means that the request could be refined to bring it within the limit.
24. The Commissioner recognises that often in cases where a public authority is unable to establish whether it holds the requested information within the cost limit, it can be difficult to give any meaningful advice and assistance on refining the request. In this case she accepts that no breach of section 16(1) occurred through the lack of

advice and assistance, but would stress to WMP that it should give meaningful consideration to a means to evade the cost limit in every case in which it cites section 12, including those in which subsection 12(2) is relied upon.

Right of appeal

25. 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>

26. 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.
27. 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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