

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 10 April 2017

Public Authority: Chief Constable of Avon and Somerset
Constabulary

Address: Force Headquarters
PO Box 37
Valley Road
Portishead
Bristol
BS20 8QJ

Decision (including any steps ordered)

1. The complainant requested copies of emails and correspondence between the force medical advisor and named organisations sent and received including specified dates in 2015. Avon and Somerset Constabulary (the 'Constabulary') refused to disclose this information under section 12(1) of FOIA as it estimated that the cost of compliance with the request would exceed the appropriate limit.
2. The Commissioner's decision is that the Constabulary applied section 12(1) of FOIA correctly and so it was not obliged to comply with the complainant's information request. No steps are required.

Background

3. From her own internet research the Commissioner is aware that the subject matter of these requests relates to police injury on duty pensions. In addition there have been a number of requests on it submitted via *WhatDoTheyKnow.com*.

Request and response

4. On 25 August 2016 the complainant wrote to the Constabulary via *WhatDoTheyKnow.com*¹ and requested information in the following terms:

"On 30th October 2015 @ 16:01 force medical advisor Dr David Bulpitt sent an email to the Home Office Police & Workforce Capability Unit.

This email started with: "As promised, a second email just to keep you informed".

Please provide me with copies of the following

- 1. The first email that was sent and referred to in the subsequent one, as above stated.*
 - 2. All Copies [sic] of all correspondence and e-mails between Dr Bulpitt and the GMC regarding the email topic covered in the conversation with the Home Office Police & Workforce Capability Unit reference and mentioned in the above stated email dated 30/10/2015 as well as in the HO reply on the 03/11/2015 and Dr Bulpitt's response on the 04/11/2015."*
5. The Constabulary responded on 23 September 2016. It refused to provide the requested information citing section 12 of FOIA (cost of compliance exceeds appropriate limit).
6. The complainant requested an internal review on 11 October 2016. The Constabulary provided the outcome of its internal review on 3 November 2016 and maintained its original position.

Scope of the case

7. The complainant contacted the Commissioner on 9 November 2016 to complain about the way her request for information had been handled.
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¹https://www.whatdotheyknow.com/request/force_medical_advisor_contact_wi#incoming-891037

She asked the Commissioner to consider that the Home Office had previously provided some of this information to another requester and she submitted copies to the Commissioner as evidence that such emails were readily retrievable. Whilst the Commissioner has reviewed these documents, she can only consider whether the Constabulary itself has properly handled the request under consideration in this notice, not how a different public authority handled a similar request.

8. Therefore, the Commissioner has considered whether the Constabulary is entitled to rely on section 12(1), the cost exclusion, in relation to this request.

Reasons for decision

Section 12 – cost of compliance

9. Section 12(1) of 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.
10. 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.
11. When estimating whether disclosing the requested information would exceed the appropriate limit, a public authority may take into account the costs it reasonably expects to incur in disclosing the information. The estimate must be reasonable in the circumstances of the case. It is not necessary to provide a precise calculation.
12. The Regulations allow a public authority to charge the following activities at a flat rate of £25 per hour of staff time:
 - determining whether the 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; and
 - extracting the information from a document containing it.
13. Section 12(4) of FOIA allows a public authority to aggregate the cost of compliance with multiple requests in certain circumstances. Analysis of the application of section 12 in relation to this case has therefore been as follows:

- Has the complainant made one request with multiple parts or multiple requests in one letter?
 - If the latter, can any of the requests be aggregated?
 - Would compliance with the request exceed the appropriate limit?
 - Has the complainant made one request with multiple parts or multiple requests in one letter?
14. During the investigation, the Constabulary said it had considered the two parts of the request together. Section 12(4) can be engaged where one person makes two or more requests. It allows for the aggregation of these requests for the purpose of calculating costs in circumstances which are set out in Regulation 5 of the Fees Regulations. This Regulation provides that multiple requests can be aggregated where two or more requests relate, to any extent, to the same or similar information.
15. Given the effect of section 12(4), the Commissioner first considered whether the complainant's request of 25 August 2016 constituted a single request with multiple elements or multiple requests. The Information Tribunal considered a similar issue in *Fitzsimmons v ICO & Department for Culture Media and Sport* [EA/2007/0124]².
16. Taking the Tribunal's decision in *Fitzsimmons* into consideration, the Commissioner would characterise the complainant's request as containing more than one request within a single item of correspondence.

Can all parts of the request be aggregated?

17. Having established that the complainant has made two requests in a single letter, the Commissioner went on to consider whether those requests could be aggregated for the purpose of calculating the cost of compliance.
18. The Commissioner notes that both parts of the request relate to the same subject matter. The Commissioner has therefore concluded that it is reasonable for them to be aggregated for the purpose of calculating the cost of compliance because they follow an overarching theme.

²<http://informationrights.decisions.tribunals.gov.uk//DBFiles/Decision/i242/Fitzsimmons.pdf>

19. Having reached this conclusion, the Commissioner will next consider the application of section 12(1). This removes the public authority's obligation to provide requested information where the cost of identifying, locating, retrieving and extracting the requested information exceeds the appropriate limit.
20. The Constabulary said it had interpreted the request as being for 'ALL' correspondence and emails between Dr Bulpitt and the GMC (in relation to the email topic covered in the conversation with the Home Office Police and Workforce Capability Unit) as opposed to only those the complainant had specifically provided dates for.
21. The Constabulary told the Commissioner that it had spoken with Dr Bulpitt to ascertain whether the three emails specifically referred to had been retained separately; he confirmed they had not and said he regularly deletes emails due to the volume he receives. He also did not recall the "*first email*" that the complainant asked for in the first part of her request.
22. The Constabulary explained that the information requested is not necessarily held centrally, for example, emails may be saved into computer folders or on desktops (although, as above, Dr Bulpitt has confirmed this was not the case with the three emails specified). It advised that hard copy correspondence could also be held anywhere in the organisation. Additionally, Dr Bulpitt also has some manual files that would need to be examined to identify cases in scope as these may contain relevant correspondence; the Commissioner understands that these hard copy files would be for those who have been injured on duty or ill health retired.
23. The Constabulary confirmed that Outlook is used for emails and stated:

"...we can search on certain criteria and this was considered. Therefore the next exercise I undertook was a vault search of all emails retained on the server. We searched for all emails sent and received by Dr Bulpitt. The search identified 1212 emails that Dr Bulpitt had sent, and a further 1162 emails that were received."
24. The officer responsible said she had not been able to refine the search further as she was not aware of the specific email addresses of any specific recipient or sender in the GMC or Home Office, nor could she refine by email subject because this may have differed. She told the Commissioner that: "*to accurately identify ALL emails and correspondence each 2374 emails would need to be reviewed.*" In addition, the officer said another factor was her ability to accurately identify the requested information amongst the emails because of her limited knowledge of the subject matter.

25. The Commissioner also notes the Constabulary's comments in its internal review where it states: "*Some of the records may not be held by the Constabulary for the purposes of the Act because they were not made by Doctor Bulpitt in his role as medical advisor to the Constabulary*". She acknowledges that this may require further deliberation.
26. The Constabulary said that if it took a minute to review each email then this task would take 39 hours, and that to manage this request within the 18 hours limit each review would need to take under 30 seconds. It said it was: "*confident that this task would take longer than this.*"
27. The Commissioner contacted the Constabulary to make some further enquiries; she now understands that the 'vault' holds all emails sent and received by the Constabulary, which also includes emails deleted by the user. These are retained for a rolling 12 month period from the date of creation and there is no additional back up. The Constabulary explained that should an email need to be retained longer than 12 months then a user can save it elsewhere, but confirmed that it would not be retained on Outlook for longer than 12 months.
28. Deletion is by means of an automated process. As a matter of good practice, police officers and staff are encouraged to regularly weed their mailbox on a regular basis. As a result many emails are not retained for the full 12 months unless there is a good policing or business reason to do so.
29. The Constabulary confirmed that the 2374 emails in this case are the total of all the emails identified including the deleted emails, and that none of these emails are 'backed up' elsewhere. Following the Commissioner's query, the Constabulary has confirmed that the search 'list' of emails appears in date order so it is able to see the age of the emails still held.
30. The Commissioner has considered the arguments submitted by the Constabulary and is satisfied that its estimate is reasonable. She accepts that even at 30 seconds per email the cost limit would be exceeded as this would equate to just under 20 hours' work. She has also considered that emails vary in length and can be part of a 'chain' rather than being individual emails which would be likely to necessitate more time to review.
31. It is of further note that the calculations submitted by the Constabulary focus only on Dr Bulpitt's emails. The Commissioner is satisfied that the Constabulary has provided a reasonable estimate of the volume of work required to respond to the request in respect of emails alone. She further notes that the request also asks for "*all correspondence*" as well as the emails which will clearly add to the volume of work required.

However, as the estimate for the email search has already exceeded the cost limit, she is satisfied that the Constabulary did not need to conduct any further searches for the additional information.

32. Finally, it is a matter of fact that, due to the Constabulary's approach to the retention and deletion of emails, it is now the case that any emails sent or received before March 2016 will have been deleted unless the user has saved them elsewhere. This will necessarily include the three emails that the complainant has referred to, which Dr Bulpitt has confirmed he has not retained, unless they form part of a more recent email chain.

Conclusion

33. From the information provided, the Commissioner has concluded that the Constabulary was entitled to rely on section 12 in relation to this request.

Section 16 - advice and assistance

34. If a public authority estimates that the cost of determining whether or not information is held would be above the appropriate limit, it is not required to conduct searches but should consider providing advice and assistance with a view to helping the requester bring his/her request under the cost limit.

35. In this case, the Constabulary recognised its duty to offer the complainant advice and assistance. As part of its response to the request it said:

"You could refine your request by submitting specific dates and recipients details (specific email addresses) to enable us to filter the search, although I appreciate you may not know this detail."

36. Although the complainant did not choose to refine her request in any way, the Commissioner is satisfied that the Constabulary took steps to address its obligation to provide advice and assistance and so she finds no breach of section 16(1) in this case.
37. The Commissioner also notes that the complainant was advised that emails are only normally retained for a 12 month period from the date of creation in the internal review.

Other matters

38. Having carried out her own checks on Outlook to determine whether and how emails could be searched, which is used in her own office, the Commissioner found that both the 'Inbox' and the content of any 'Folders' can be searched using any search term. Therefore, she asked the Constabulary to revisit the 2374 emails it had identified and suggested some potentially relevant search criteria including 'Home Office', 'GMC', 'pensions', 'pension review' and 'pension review issues'.
39. The Commissioner undertook this exercise purely to ascertain whether further search criteria can be applied through Outlook, and potentially what impact that could have on the numbers of emails in scope.
40. In response, the Constabulary advised that it had carried out a search using the above criteria and identified that 858 emails would need to be reviewed. The figure of 858 emails is only accurate as of the recent search and this figure may have been much higher at the time of the request. It also said that given its 12 month rolling deletion of Outlook emails, the retained emails now only date back as far as March 2016.
41. Whilst the Commissioner is satisfied that further refinements can be made to searches of Outlook emails, and that the overall numbers in scope can potentially be reduced by relevant criteria, she is mindful that the complainant did not take up the Constabulary's advice and assistance to refine her request. It is not for the Commissioner to determine which search criteria the complainant may wish to use so she has not included these alternative refinements as part of her investigation.

Right of appeal

42. 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: www.justice.gov.uk/tribunals/general-regulatory-chamber

43. 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.
44. 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
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