

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 21 August 2017

Public Authority: Commissioner of the Metropolitan Police
Service

Address: New Scotland Yard
Broadway
London
SW1H 0BG

Decision (including any steps ordered)

1. The complainant made 4 multi-limbed information requests to the Metropolitan Police Service (the "MPS"). Having initially found that all the requests were vexatious under section 14(1) of the FOIA the MPS subsequently revised its position. It provided some information and determined that it either didn't hold the remaining information or that it would exceed the cost limit at section 12(2) of the FOIA to establish whether or not it was held; it provided advice and assistance to the complainant who did not revise any part of his requests. The Commissioner's decision is that the MPS correctly concluded that either the information was not held or that section 12(2) applies; she also finds that it complied with its duty to provide advice and assistance under section 16(1) of the FOIA. No steps are required.

Request and response

2. On the dates shown, the complainant wrote to the MPS and requested information in the following terms:

Request 1 - 13 February 2017

- 1) as far as records go back, how many crimes are ignored by the met police*
- 2) as far as records go back, how many 999/101 calls were ignored*

by the met police

3) as far as records go back, how many 999/101 calls were not responded to by the met police

4) as far as records go back, how many crimes as soon as reported are instantly erased from the cris by met police

5) as far as records go back, how many crimes as soon as reported are screened out by the met police

6) as far as records go back how many crimes are met police failing to record

7) as far as records go back how many crimes of childhood bullying are met police ignoring saying its school not police problem

8) as far as records go back how many crimes of asb/neighbour disputes are police ignoring saying its council or civil matter".

Request 2 - 14 February 2017

"1) as far as records go back how many met officers/staff have been convicted of criminal offences.

2) how many officers/staff currently serving with the met have criminal records

3) as far as records go back, how many met officers/staff have been convicted of very serious violent/sexual offences, how many of these are currently serving

4) as far as records go back how many met officers/staff have been convicted of paedophilia related offences, how many are currently serving

5) as far as records go back how many met officers/staff have been convicted of corruption related offences, how many are currently serving

6) as far as records go back, how many met officers/staff have been convicted and/or disciplined for racism related offences, how many are currently serving".

Request 3 - 14 February 2017

"1) How many identities of dead children did the metropolitan police used for undercover policing operations

2) As far as records go back, how many incidences of child abuse has the met been responsible for covering up/turning blind eye to".

Request 4 - 15 February 2017

"1) as far as records go back, how many met officers/staff have been found to fabricate or destroy evidence to incriminate a suspect

2) as far as records go back, how many met officers/staff have been found to trade favours (whether they be financial, sexual or other) in order to manipulate/influence an investigation".

3. On 27 February 2017 the MPS responded. It advised the complainant that it found all 4 requests to be vexatious under section 14(1) of the FOIA.
4. Following an internal review the MPS wrote to the complainant on 13 March 2017. It maintained its position.
5. During the Commissioner's investigation the MPS revisited the requests and revised its position. It provided a response to request 3 part (1). In respect of the remainder it advised that the information was either not held or that to determine whether or not it was held would exceed the cost limit at section 12(2) of the FOIA. It provided advice and assistance to the complainant and suggested some ways in which he might be able to refine parts of his current requests; he declined to do so.

Scope of the case

6. The complainant contacted the Commissioner on 13 March 2017 asking her to consider whether or not the requests were vexatious. Before commencing her investigation the Commissioner required more information from him which was provided on 11 June 2017.
7. As advised above, the MPS revised its position during this investigation. The Commissioner therefore contacted the complainant again to ask for his views. She asked that, if he did not accept any of the reasons given by the MPS, he should explain why he disagreed with them. In his response to her he did not provide any reasons saying only: *"... exceeds costs or don't hold information is not replying at all. that's not providing any information whatsoever"*.
8. No dissatisfaction was expressed regarding the information provided for request 3 part (1) so this has been removed from the scope of the investigation.
9. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the FOIA. The FOIA is to do with transparency and provides for the disclosure of information held by public authorities. It gives an individual the right to access recorded information (other than their own personal data) held by public authorities. The FOIA does not require public authorities to generate information or to answer questions, provide explanations or give opinions, unless this is recorded information that they already hold.

Reasons for decision

Section 1 – general right of access

10. Section 1 of the FOIA states that anyone making a request for information to a public authority is entitled to be informed whether the public authority holds the information, and if so, to have that information communicated to them.
11. The MPS has advised the complainant that information is not held in respect of the following:

Request 1 – parts (1), (2), (4) and (6)
12. The Commissioner is mindful that when she receives a complaint alleging that a public authority has stated that it does not hold the requested information, it is seldom possible to prove with absolute certainty whether the requested information is held. In such cases, the Commissioner will apply the normal civil standard of proof in determining the case and will decide on the 'balance of probabilities' whether information is held.
13. Therefore, the Commissioner has sought to determine whether, on the balance of probabilities, the MPS holds any recorded information within the scope of the request.
14. Firstly, it is of note that although invited to do so, the complainant did not offer any reasons as to why the MPS's position was incorrect or why he believes such information would be held.
15. Accordingly she asked the MPS to explain what enquiries it had made in order to reach its position. In response to these enquiries she was provided with the following details.
16. In respect of request 1 parts (1) and (6), the MPS advised the Commissioner:

"When an incident is reported to police, the incident is assessed to determine whether it concerns the report of a crime. This assessment is completed in accordance with the National Crime Recording Standard (NCRS) and the Home Office Counting Rules (HOCR). Police forces in England and Wales are required to comply with the NCRS and the HOCRs when recording crimes. The MPS does not ignore allegations of crime".
17. In respect of request 1 part (2) it advised:

"The MPS does not ignore emergency or non-emergency calls. Rather, the MPS follows the Association of Chief Police Officer (now the National Police Chiefs' Council) National Call Handling Standards in answering calls from the general public. It should be noted that the MPS takes an average of over 6,000 emergency (999) and over 15,000 non-emergency calls per day".

15. In respect of request 1 part (4) it advised:

"When an incident is reported to police, the incident is assessed to determine whether it concerns the report of a crime. This assessment is completed in accordance with the National Crime Recording Standard (NCRS) and Home Office Counting Rules (HOCR). Police forces in England and Wales are required to comply with the NCRS and the HOCRs when recording crimes. The MPS does not "instantly erase" crime records from the Crime Report Information System (CRIS)".

18. In summarising its position the MPS added:

"Finally, to clarify, if any allegations of crime are made the MPS have a duty to record and investigate even if the victim no longer wishes to support the investigation or take the matter further the MPS are still duty bound to record the matter. The MPS do not ignore allegations of crime or fail to record allegations therefore this information is not held and we are unable to search this information on our systems".

19. The Commissioner has considered the wording of each of these parts of the requests and the explanations given by the MPS. As there is no counter argument from the complainant to consider, and nothing to suggest to the contrary, the Commissioner accepts the simple and reasonable explanations given.

20. Therefore, based on the explanations provided, the Commissioner is satisfied that, on the balance of probabilities, no recorded information within the scope of these parts of the requests is held. She is therefore satisfied that the MPS has complied with the requirements of section 1 of the FOIA.

Section 12 – cost of compliance exceeds appropriate limit

21. The MPS has aggregated the remaining parts of the requests and has advised that to confirm whether or not it holds any of the requested information would exceed the appropriate limit at section 12(2) of the FOIA.

22. Section 12(2) has been cited in respect of the following:

- Request 1 – parts (3), (5), (7) and (8)
- Request 2 – parts (1) to (6)
- Request 3 – part (2)
- Request 4 – parts (1) and (2)

Can the requests be aggregated?

23. Under FOIA, if a public authority receives multiple requests it can consider whether they may be aggregated in accordance with the conditions laid out in the Freedom of information and Data Protection (Appropriate Limit and Fees) Regulations 2004 SI 2004 No. 3244 (the 'fees regulations'). When 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 in regulation 5 of the regulations are satisfied; any unrelated request should be dealt with separately for the purposes of determining whether the appropriate limit is exceeded.

24. To fulfil this criteria requests must be:

- made by one person, or different persons who appear to the public authority to be acting in concert or in pursuance of a campaign;
- made for the same or similar information; and
- received by the public authority within any period of 60 consecutive working days.

25. Clearly the first and last points are met. The Commissioner will therefore consider whether the second point is satisfied.

26. The MPS has aggregated these parts of the requests on the basis that they:

"... relate to the same overarching themes of crimes not investigated by police and police misconduct and therefore the MPS is satisfied that the whole requests can be aggregated for the purpose of the cost threshold".

27. The Commissioner accepts that information where section 12(2) of the FOIA has been cited in requests 1 and 3 all relates to police allegedly ignoring matters, and the remainder in requests 2 and 4 relates to alleged offences or misconduct matters by police staff. Whilst she does not agree that all these parts of the requests can be said to be of one overarching theme she is satisfied that they can be put into these two related themes. She also notes that, in respect of all these items, the complainant has not given any time frame, just stating "*as far as records go back*".

28. 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 information of the description specified in the request is held would be excessive, the public authority is not required to do so.
29. The appropriate limit is set at £450 for the MPS by the fees regulations.
30. 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 24 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.
31. Section 12(2) of FOIA 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 the MPS was reasonable. If it was, then section 12(2) was engaged and the MPS was not obliged to confirm or deny whether the requested information was held.

32. By way of explanation to the complainant the MPS advised:

"In one of your requests, you ask for "As far as records go back how many met officers/staff have been convicted of criminal offences?"

The MPS employs 43,034 police officers and members of police staff. This is made up of 31,075 police officers, 8,732 police staff, 1,464 police community support officers and 2,763 special constables.

In order to answer this request a member of staff would have to establish the number of serving police employees that joined the MPS with a conviction and the number that received a conviction whilst employed by the MPS and have remained in service.

Details of police employees that have joined the MPS with a conviction are recorded upon the MPS vetting system called Warrantor. To establish the number of police employees that were

recruited with a conviction, a member of staff would have to check each serving member of staff's recruitment record on Warrantor. The result of each search would then have to be recorded. The MPS Vetting Unit has estimated that reviewing each staff members' recruitment record and recording the result, would take a member of staff between 3-4 minutes per record. To review 44,034 recruitment records would take a member of staff spending between 3-4 minutes per record which would result in 2201 hours and 2936 hours to complete which exceeds the appropriate limit set of £450/18 hours for public authorities:-

44,034 ÷ 60mins = 733.9 x 3min = 2201 hours

44,034 ÷ 60mins = 733.9 x 4min = 2936 hours."

33. The Commissioner notes that this only covers those staff currently employed at the MPS. As the request seeks the information from "as far as records go back", there will obviously be many thousands of others.
34. Having considered the estimate above, and with a lack of any argument to the contrary from the complainant, the Commissioner considers this estimate to be a reasonable one. It falls within the aggregated requests for alleged offences or misconduct matters by police staff, thereby covering those remaining parts of requests 2 and 4. The Commissioner therefore concludes that section 12(2) is engaged in respect of these and the MPS was not obliged to confirm or deny holding any of this information.
35. The Commissioner will now consider the remaining parts of requests 1 and 3.
36. In respect of request 3 part(2) the MPS advised the Commissioner that:

"... the MPS can interrogate Tribune to determine whether a police employee has been found 'proven' for failing to investigate a incident of child abuse. This could include 'covering up' or 'turning a blind eye to' an offence. Accurately determining whether information is held would take in excess of 18 hours. This is because you would have to interrogate all public complaints and conduct matters (alleged misconduct that does not involve a public complaint) recorded on Tribune where the allegation was a 'failure to investigate'. As the summary field on Tribune is unlikely to state whether the failure to investigate relates to a child abuse investigation, you would then need to recall and review all of the files that fall in this area. This would exceed the 18 hour threshold".

37. When asked for further details the MPS explained that: "Failure to investigate' is a flag we introduced [to Tribune] in 2009/10 to assist it

breaking down the allegation type 'other neglect/failure in duty'". It provided the Commissioner with a table to show how many allegations are recorded as 'other neglect/failure in duty' and of those how many have the flag 'failure to investigate'. From 1994 until 2017 there were 55,123 "other neglect or failure in duty" allegations. The numbers which are logged using the more recently introduced "failure to investigate" flag is 8,983. Clearly the figures from before the flag was introduced will also contain some "failure to investigate" allegations.

38. The MPS further explained that: *"Reading the allegation summaries it still may not be clear if the investigation related to child abuse. For this you would need to re call OG [complaint] files or for the newer cases look at the documents attached to Tribune. This would exceed 18 hours".*
39. The request is open-ended, ie *"as far as records go back"*. The Commissioner is therefore satisfied that to determine whether or not the information requested at part 3(2) if the request is held would involve looking at each of the 8,983 records identified, plus those earlier records which included the "failure to investigate" allegations within the "other neglect or failure in duty" category. She is therefore satisfied that the sheer volume of records which would need to be considered would readily invoke the cost limit in searching to ascertain whether any information is held. As this would be exceeded for this part of the request alone it is not necessary for her to consider the other parts of the requests which have been aggregated with this one.
40. The Commissioner therefore accepts that the MPS was entitled to rely on section 12(2) in respect of the remaining parts of requests 1 and 3.

Section 16 – advice and assistance

41. 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 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, albeit that the Commissioner does recognise that where a request is far in excess of the limit, it may not be practical to provide any useful advice.
42. In the response to the complainant where it first cited section 12(2), the MPS gave a detailed explanation of the types of information which it may be able to provide him with in relation to various parts of his request. The Commissioner considers the detail to have been particularly helpful, with many suggested ways in which it could assist.
43. The Commissioner finds that the MPS complied with section 16.

Other matters

44. After receiving the MPS's response invoking the cost limit, the complainant wrote back to the Commissioner saying:

"... it makes recommendations, it advises on information what can be released and they set out numbered points. can you get onto those morons at scotland yard ... and tell them to release the information that can be released as per their suggestions. I've also copied those met police idiots into this email as well so they are aware".

45. The Commissioner does not handle information requests on behalf of complainants. If the complainant wishes to make a refined request based on the information provided by the MPS he should write to them again, clearly stating what information he is requesting in a temperate manner.
46. The Commissioner would also add that it is not for a public authority to 'second guess' what information might be acceptable to a requester where this differs from what they have requested. It is for the requester to refine their request accordingly if they wish to do so.
47. The Commissioner has published guidelines on suggested ways of making an appropriate information request. These can be found on her website¹.

¹ <https://ico.org.uk/for-the-public/official-information/>

Right of appeal

48. 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

49. 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.
50. 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

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