

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 4 December 2017

Public Authority: Chief Constable of Dorset Police
Address: Force Headquarters
Winfrith
Dorchester
Dorset
DT2 8DZ

Decision (including any steps ordered)

1. The complainant submitted a multi part request for information relating to motoring offences committed by Dorset Police staff. Dorset Police said that it did not hold some of the information described in the request. It refused the remainder of the request on the grounds that compliance would exceed the costs limit under section 12(1) of the FOIA (cost of compliance exceeds appropriate limit).
2. The Commissioner's decision is that, on the balance of probabilities, Dorset Police did not hold some of the information requested. The Commissioner also found that Dorset Police was entitled to rely on section 12(1) to refuse to comply with the remainder of the request. However, the Commissioner found that Dorset Police breached section 16(1) of the FOIA as it failed to provide sufficient advice and assistance to the complainant.
3. The Commissioner requires Dorset Police to take the following steps to ensure compliance with the legislation.
 - Provide the complainant with relevant advice and assistance as to which questions can be considered within the appropriate limit, and any ways in which questions 10 and 11 may be refined so that they may be considered within the appropriate limit.

4. Dorset Police must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 25 January 2017, the complainant wrote to Dorset Police and requested information in the following terms:

1. How many police officers were prosecuted for breaking the speed limit over the last five years (and a breakdown in years)? This should include those who opted for driver awareness courses and those prosecuted in other counties.

2. How many police staff (including officers, PCSOs, administration and any other staff) were caught speeding over the last five years (including a breakdown in years) and including those who opted for driver awareness courses and those prosecuted in other counties?

3. How many staff who run and operate the driver awareness courses have been prosecuted for speeding in the last five years (and a breakdown of years)?

4. How many staff who run and operate the driver awareness courses have been prosecuted or convicted of any other offences over the last five years (and a breakdown of years)?

5. How many police officers have been disciplined or dismissed due to driving offences (including speeding) over the last five years (and a breakdown in years)?

6. What percentage of speeding offences involved speeds of ten miles an hour or less, above the speed limit. EG - if in a 40mph zone how many offences were for speeds of 50mph or less?

7. What are the total revenues received from speeding offences via the driver awareness courses or fines over the last five years (and a breakdown in years)?

8. These revenues should include the ones received locally in Dorset (and in a separate answer, those sent to the exchequer) And a breakdown in years.

9. What is the cost of attending driver awareness courses over the last ten years (ie how much have they gone up in the last decade).

10. What is the annual Dorset police spend on its vehicles - marked, unmarked and any others in use?

11. I would like copies of all emails and documents pertaining to budgets looking ahead that include anticipated revenues generated by speeding fines and driver awareness courses. These emails and documents should include all those shared with other public bodies.

12. What is the average salary of a Dorset police officer?"

6. Dorset Police responded on 16 February 2017. It refused the request under section 12(1) of the FOIA, stating:

"Dorset Police do not hold the information relevant to your request in a centrally searchable format, and a large amount of the detail you require is held in individual records. As a result we estimate that the manual searches to extract the requested information would exceed our cost limit, which is detailed below."

7. Following an internal review, Dorset Police wrote to the complainant on 4 May 2017. It revised its position slightly. It stated that it did not hold the information requested at questions 6 and 12. For questions 7-11 it stated:

"...we will probably hold some relevant information but your questions do seem to assume that Dorset Police collects revenue from fines I have not rechecked this but my recollection is that this is not the case."

8. For the remaining questions it maintained its position that because it did not hold the data in a centrally retrievable format, compliance would involve searches of multiple locations and would exceed the appropriate costs limit established under section 12 of the FOIA.

Scope of the case

9. The complainant initially contacted the Commissioner on 23 March 2017 to complain about the way his request for information had been handled. He provided the Commissioner with a copy of the internal review on 29 June 2017. He was dissatisfied with Dorset Police's overall response, and also said that he had not received the initial refusal notice within the statutory 20 working day time limit for response.
10. During the course of the Commissioner's investigation, Dorset Police further revised its position. Its final position with regard to the request was as follows:

- Questions 1-4 could not be complied with without exceeding the costs limits at section 12(1) of the FOIA.
 - Questions 5, 6 and 9 of the request could probably be complied with within the costs limits.
 - For question 7, 8 and 12, no relevant information was held.
 - Questions 10 and 11 require further clarification and refinement by the complainant before they could be answered.
11. The Commissioner has considered in this decision notice Dorset Police's compliance with sections 1, 10, 12 and 16 of the FOIA.

Reasons for decision

Section 1 and Section 10 – time for compliance

12. Section 1(1) of FOIA states that (subject to certain exemptions) upon receipt of a request for information, a public authority must confirm or deny whether it holds the information. If it does hold the information, it must disclose it to the requester.
13. Section 10(1) of FOIA provides 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.
14. The complainant submitted his request by email on 25 January 2017. Dorset Police says that it responded within the 20 working day time limit, on 16 February 2017. However, the complainant told the Commissioner he could "*find no record of*" that response, although the Commissioner notes that his complaint to her was accompanied by a copy of it.
15. Dorset Police said that its records showed that the email to which the refusal notice was attached had been sent from its network on 16 February 2017 and it provided the Commissioner with a copy. She notes that the header information supports Dorset Police's claim that the email was sent to the complainant on 16 February 2017, and that this was a reasonable means of communication, given the complainant had submitted his request by email. She is therefore satisfied that the available evidence indicates that Dorset Police did respond within the statutory timeframe for compliance in respect of this request.

Section 1 - extent of information held

16. As set above, section 1 of the FOIA establishes a right to information, if held.

17. Dorset Police said that it does not hold the information requested at questions 7, 8 and 12 of the request. In cases where there is some dispute between the amount of information located by a public authority and the amount of information that a complainant believes might be held, the Commissioner – following the lead of a number of First-tier Tribunal decisions – applies the civil standard of the balance of probabilities. In essence, the Commissioner will determine whether it is likely, or unlikely, that the public authority holds information relevant to the complainant's request.
18. The Commissioner will consider the complainant's evidence and arguments. She will also consider the actions taken by the public authority to check whether the information is held and any other reasons offered by the public authority to explain why the information is not held. She will also consider any reason why it is inherently likely or unlikely that information is not held. For clarity, the Commissioner is not expected to prove categorically whether the information is held, she is only required to make a judgement on whether the information is held on the civil standard of the balance of probabilities.
19. Questions 7 and 8 concern the revenue generated by speeding offences. They ask for the total amount received by Dorset Police, and the Treasury, from its speeding fines and speed awareness courses. Dorset Police explained to the Commissioner that it could not answer these questions as it holds no information about the revenue generated by speeding fines. It explained that all speeding fines are paid by motorists to the National Fixed Penalty Office (which is not part of Dorset Police) and thence remitted to Her Majesties Courts and Tribunals Service. Dorset Police has no involvement in the collection of speeding fines and does not receive the money.
20. The Commissioner notes that Dorset Police's website¹ shows the process for administering speeding fines as follows: an individual will initially be sent a Notice of Intended Prosecution by Dorset Police, on which the identity of the person driving the car must be declared, together with an indication of how they intend to respond to the Notice (payment of fine, speed awareness course or court hearing). The Notice is returned to the central ticketing office at Dorset Police. If the individual opts to pay a fine, this must then be paid to the London, South East and South West Regional Fixed Penalty Office, in Southend. This is in keeping with the

¹ <https://www.dorset.police.uk/help-advice-crime-prevention/road-safety/contact/ticket-enquiries/>

arrangements for administering motoring fines adopted by other police forces.

21. The information declared to Dorset Police on the Notice is not a reliable indicator of the amount of money subsequently remitted to the Treasury as a result of speeding offences in Dorset. For example, an individual could indicate on the Notice that they were going to pay the fine, and then subsequently not do so.
22. There is some suggestion that Dorset Police holds financial information about speed awareness courses (as evidenced by its revised response to question 9 of the request). However, questions 7 and 8 are for the *total* revenue generated by its fines and awareness courses. The Commissioner is satisfied from this that, on the balance of probabilities, Dorset Police does not hold the information requested at questions 7 and 8.
23. Turning to question 12, which was to know the average salary of a Dorset Police Officer, Dorset Police said that it did not hold information from which this request could be answered.
24. Dorset Police told the Commissioner in respect of this question:

"For Q12 an average salary is not recorded and would only be determined by adding together all the current salaries of Officers and dividing by the number of officers.

Under the Freedom of Information Act a public authority is not obliged to calculate or create information in order to comply with a request. The Act only covers information held at the time the request was received."

25. The Commissioner notes that the complainant asked for the average salary of a Dorset Police Officer, without specifying a particular grade of police officer. His request is therefore to know the average of the salaries paid to all Dorset police officers, from Constable all the way to Chief Constable. The Commissioner considers it highly unlikely that Dorset Police would hold this information. While she envisages there might be a business need for Dorset Police to know average salaries across individual grades, she does not consider it likely there would be a business need for knowing the figure for the average salary across all grades, given the disparity in salary scales between grades.
26. The Commissioner is therefore satisfied that that, on the balance of probabilities, Dorset Police does not hold the information requested at question 12. That being the case, Dorset Police was entitled to say that the only way it could comply with the request would be by creating new information, which it was not obliged by the FOIA to do.

27. The Commissioner further notes that Dorset Police discharged its obligation under section 16 of the FOIA, to provide advice and assistance to requesters, by directing the complainant to a page on the Police Federation website which contained a breakdown of the current national pay scales for Constables, Sergeants and Inspectors².

Section 12 – cost of compliance exceeds appropriate limit

28. Section 12(1) of the 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.
29. 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 is calculated at the rate of £25 per hour, providing an effective time limit of 18 hours work.
30. When estimating whether complying with a request for information would exceed the appropriate limit, a public authority may take into account the costs it reasonably expects to incur in complying with the request. The estimate must be reasonable in the circumstances of the case. It is not necessary to provide a precise calculation.
31. The Fees 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.
32. Dorset Police explained to the Commissioner that to locate, retrieve and extract the information in questions 1-4 of the request would exceed the costs limit established at section 12(1) of the FOIA.
33. Between them, questions 1-4 ask for data on police staff of all grades (both civilian and police officers) convicted of speeding offences (and, for driver awareness course staff, other offences), both by Dorset Police and other police forces.

² <http://www.polfed.org/ranks/3277.aspx>

34. Dorset Police explained to the Commissioner that civilian staff and police officers are not subject to the same rules regarding notifying it of speeding offences they have committed. There is no obligation on civilian staff to report details of speeding offences. However, police officers are required to do so and potentially face disciplinary proceedings if they are found to have deliberately and knowingly concealed such information.
35. Dorset Police directed the Commissioner to the explanation it gave to the complainant at internal review:

"Dorset Police employs over 2000 officers and staff. We do not record motoring offences in the same way as we record criminal behaviour. Any officers or staff subject to action in relation to motoring offences will be processed in the same manner as a member of the public; there is no automatic requirement to generate a distinct record identifying the individual concerned as a Dorset Police employee. Motoring offences that might occur in other policing areas may or may not come to the notice of Dorset Police, depending upon a broad range of variables. Police officers are obliged to bring motoring offences, such as speeding, to the notice of the force. This self-reporting does address the difficulties of identifying offences occurring anywhere in the country, both on and off duty.

Some information will therefore be held centrally relating to officers and motoring offences but not necessarily in the level of detail requested in your Q1. Police staff are not subject to the same reporting obligation as officers. So information may be held but identifying what is relevant would require manual searches of all motoring offences and all personnel records, and might still not provide an overall picture to respond to your request. For your questions 2-5³, this means that the broad scope of searches of personnel records and offence records that would need to be checked to try and answer these questions would take over four working weeks on a simplified and optimistic assessment of 5 minutes per member of staff, counting 2000 staff."

36. It added further clarification as follows:

"For Q1 whilst some officers may have self-reported speeding offences to the Professional Standards Department, it could not be guaranteed that those figures would include all offences and therefore provide the

³ Dorset Police subsequently reduced the scope of this response to questions 2 - 4

full answer. In order to provide a full answer, it would be necessary to review every speeding offence over a five year period and determine if the details of any offender matched those of an Officer.

As can be seen from a response to request 2017-298 there were 53,099 tickets issued for speeding offences in 2016 alone and therefore over a five year period the number of offences to review and compare to the names of officers would run in to hundreds of thousands of records.

For Q2 and Q3 staff are not obliged to declare speeding offences so again the comparison of offender details to staff details would need to be undertaken.

From the Force website it can be seen there are over 2600 people employed by Dorset Police that would need to be checked against the speeding offences:

<https://www.dorset.police.uk/news-information/about-dorset-police/facts-about-the-force/>

For Q4 it would again be necessary to compare a list of relevant staff to offenders for all offences over a five year period."

37. Dorset Police's position is therefore that searches of either employee records or offence records, individually, would not be adequate for the purposes of locating and extracting the requested information. It would be necessary to conduct searches of both sets of records, and even then it could not be guaranteed that the required level of detail would be provided.
38. A search of the speeding offence records for 2016 (53,099) would also take in the region of 884 hours to complete (allowing for a very conservative estimate of it taking one minute to search each record). Each of its 2000+ employee records would also have to be searched. Again, allowing for a conservative estimate of one minute to consult each record, gives a total search time of 33 hours. These search times vastly exceed the appropriate limit of 18 hours work by some way.
39. The complainant may think that Dorset Police *should* record the data he has asked for in a readily retrievable format. However, when dealing with a complaint to her under the FOIA, it is not the Commissioner's role to make a ruling on how a public authority deploys its resources, on how it chooses to hold its information, or the strength of its business reasons for holding information in the way that it does as opposed to any other way. Rather, in a case such as this, the Commissioner's role is simply to decide whether or not the requested information can, or cannot, be provided to a requestor within the appropriate costs limit.

40. In this case she is satisfied that Dorset Police has demonstrated that compliance with questions 1-4 would exceed the appropriate limit, and therefore that it was entitled to refuse to comply with them on the basis that section 12(1) of the FOIA was engaged.
41. Having found that compliance with questions 1-4 would exceed the appropriate limit, Dorset Police declined to process the remaining questions 5, 6, 9 10 and 11. It said that it was not obliged to do so, and cited the Commissioner's guidance on searching up to the costs limit.⁴
42. While Dorset Police focussed on the issue of searching up to the costs limit, the Commissioner's guidance also states that when a public authority is estimating whether the appropriate limit is likely to be exceeded, it is entitled to include in its estimate the costs of complying with two or more requests where they are made by the same person, for similar information, within a period of 60 working days. In this context, multiple requests within a single item of correspondence are considered separate requests for the purpose of section 12⁵.
43. Regulation 5(2) of the Fees Regulations requires that for requests to be aggregated they must relate "*to any extent*" to the same or similar information. Requests are likely to relate to the same or similar information where, for example, the requestor 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 that has been requested.
44. The Commissioner is satisfied in this case that the requests at questions 5, 6, 9, 10 and 11 are for similar information to the requests refused under section 12(1) (questions 1-4). They are on the theme of offences committed by police staff, particularly speeding related offences, and any revenue generated from speeding fines. The Commissioner finds that Dorset Police was entitled to aggregate the costs of dealing with those questions when calculating its costs estimate for questions 1-4, and consequently that section 12(1) of the FOIA was engaged in respect of those questions also (this is, in effect, the approach Dorset Police took in its initial refusal notice).

⁴ https://ico.org.uk/media/for-organisations/documents/1199/costs_of_compliance_exceeds_appropriate_limit.pdf

⁵ As confirmed by the Information Tribunal in the case of Ian Fitzsimmons v ICO & Department for Culture, Media and Sport (EA/2007/0124, 17 June 2008).

Section 16 – Advice and assistance

45. Section 16 sets out that a public authority has a duty to provide advice and assistance, in so far as it is reasonable to do so, to persons who propose to make, or have made requests for information. The purpose of section 16 is to ensure that a public authority communicates with an applicant to find out what information they want and how they can obtain it.
46. The Commissioner's guidance on section 12 states that, where reasonable to do so, public authorities should provide advice and assistance to applicants to help them to narrow requests which exceed the costs limit. It says that as a minimum they should:
- either indicate if they are 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 requestor to make a refined request.
47. In its refusal notice, Dorset Police told the complainant that section 12(1) applied to all of the questions, and that while it was happy to discuss with him how the request might be refined so as to fall within the costs limits, it was unable to suggest a refinement. In its internal review, it offered a more detailed explanation for why section 12(1) was engaged, and how its costs estimate had been calculated.
48. During the Commissioner's investigation, Dorset Police changed its position and confirmed to the Commissioner that it believed questions 5, 6, 9 might be answered within the costs limits. It also indicated that with clarification and refinement, questions 10 and 11 might similarly be capable of being addressed within the costs limit.
49. In an effort to resolve the matter informally, the Commissioner invited Dorset Police to consider providing an indication to the complainant of what information, if any, could be provided within the cost ceiling, including by reforming or re-focusing his requests. She also suggested that if any of these questions could be responded to fairly simply, and at minimal cost (eg by the simple running of an electronic report), it would be good practice for Dorset Police to do so.
50. Dorset Police declined to take this action. It said that in view of the fact that the complainant had submitted a formal complaint to the Commissioner, it preferred to await the final, formal outcome of the investigation before taking further action.

51. The Commissioner notes that Dorset Police's final position regarding the request was that questions 5, 6 and 9 might be answered within the costs limit, and that questions 10 and 11 might be refined in a way which would bring them within the costs limit. This contradicts what it told the complainant in the refusal notice. In order to comply with the obligation to provide advice and assistance under section 16, Dorset Police should therefore take the action set out in paragraph 3 of this decision notice.

Right of appeal

52. 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

53. 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.

54. 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

Samantha Bracegirdle
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF