

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 24 August 2017

**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 numbers of police officers who were employed with pre-existing drink driving convictions from the Metropolitan Police Service (the "MPS"). The MPS advised that to confirm or deny whether or not it holds any information would exceed the cost limit at section 12(2) of the FOIA. The Commissioner's decision is that the MPS was entitled to rely on section 12(2) and she also finds no breach of section 16(1) (advice and assistance). No steps are required.

### Request and response

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2. Following an earlier request which was refused on the grounds of cost of compliance, on 8 March 2017 the complainant wrote to the MPS and requested information in the following terms:

*"Please confirm the number of Police officers employed by the MPS since 12/01/2015 with drink driving convictions".*

3. This request was further clarified on 10 March 2017 as being for police officers:

*"Employed since the date with an existing conviction, not convicted whilst employed by the MPS.*

*My aim is to establish how many officers with drink drive convictions have been employed since the detailed date".*

4. On 15 March 2017 the MPS responded. This request was also refused on cost grounds.
5. Following an internal review the MPS wrote to the complainant on 27 March 2017. It maintained its position.

### **Scope of the case**

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6. The complainant contacted the Commissioner on 31 March 2017 to complain about the way his request for information had been handled. The Commissioner required further information from him which was provided on 12 July 2017.

7. The complainant asked the Commissioner to consider the application of section 12(2) to the request. His grounds of complaint were as follows:

*"1) Lack of modernisation of IT systems does not give an automatic right to decline – manual/paper systems will largely fall outside of the cost parameters for the MPS*

*2) Data held for a policing purpose – convictions of serving officers within data parameters (dates) is relevant to the evidential chain and court proceedings.*

*3) Reasonableness of response – The request focuses on issues of transparency. This is data that should be reviewable within the parameters for a FOI request.*

*4) The internal review of the request has been conducted within the parameters set by the MPS – these parameters are set the MPS priorities and not sufficient to comply with the act."*

8. The Commissioner initially explained the following to the complainant:

*"Please understand that the FOIA only gives a right of access to recorded information. We cannot require a public authority to update or change its systems. We also cannot comment on whether or not a public authority 'should' be able to provide information within the appropriate limit. I am only able to consider whether or not the time estimate given by the MPS is 'reasonable' and whether to comply with your request would take more than the 18 hours prescribed. If it would, then the MPS will not be required to comply with your request".*

9. The Commissioner also advised that she was not sure what the complainant meant in his final bullet point. She advised that there is no statutory time limit for internal reviews specified in the FOIA - her view is that they should ideally be conducted within 20 working days but up to a maximum of 40 working days is acceptable.

10. In responding to this query the complainant advised:

*"Essentially, the MPS have looked at their system in place and think this is acceptable, I don't think it is. This may not be in direct conflict with the act, but retaining a manual system of such size will mean it will never fall within the act under the prescribed hours.*

*I would suggest that being able to interrogate convictions of warranted officers is in the public interest. I struggle to believe there isn't a list somewhere which can be then compared against the start date of their employment".*

11. 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 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.

12. The Commissioner will consider the application of section 12(2) below. Other points raised by the complainant are commented on in "Other matters" at the end of this notice.

## Reasons for decision

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### Section 12 – cost of compliance exceeds appropriate limit

13. 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.

14. The appropriate limit is set at £450 for the MPS by the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the fees regulations).

15. 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.
16. 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 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.
17. The MPS has explained that the MPS and national vetting policy states that it will not clear any applicants (ie they will be refused) if they have been convicted of drink driving within the previous 10 years. This therefore means that no individual should be accepted by the MPS as a police officer if they have a drink drive conviction within 10 years of their application. However, if any individual had a drink driving conviction prior to this 10 year time frame then they could theoretically 'clear' that element of the vetting process in trying to become a police officer.
18. It concluded that if it searched every individual recruited for the time period covered by the request it should not find any officer with a drink drive conviction unless it was more than 10 years old. In order to confirm this the MPS advised that it would have to manually search the Human Resource ("HR") record of each individual recruited during the relevant period.
19. Accordingly, the MPS advised that it had contacted the HR department to establish the number of police officers that had been recruited by the MPS from 12 January 2015 to 15 March 2017. The HR department had confirmed that the MPS had recruited 5187 police officers (3816 salaried police officers and 1371 police officers in the Metropolitan Special Constabulary) over this period. It explained that:

*"... when a police officer is recruited by the MPS, each officer is the subject of a police vetting check which includes a criminal record check. The results of this check are recorded upon the MPS vetting system (Warrantor). Warrantor is not capable of producing management information upon the number of police officers that were recruited between set dates with a criminal record. Rather, a*

*member of staff has to individually check each officer's vetting record on Warrantor. The result of each check will then have to be recorded. The MPS Vetting and Referencing Unit has estimated that reviewing a police officer's vetting record on Warrantor and recording the result, would take a member of staff between 3-4 minutes per record. To review 5187 vetting records would accordingly take a member of staff spending 3-4 minutes per record, between 259 hours and 346 hours to complete and would therefore exceed the cost threshold set out in the Fees Regulations as follows: -*

*3mins x 5187 vetting records = 15561 ÷ 60minutes = 259 hours  
4mins x 5187 vetting records = 20748 ÷ 60minutes = 346 hours".*

20. 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. The Commissioner therefore concludes that section 12(2) is engaged and the MPS was not obliged to confirm or deny holding any of this information.

### **Section 16 – advice and assistance**

21. 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.
22. In this case the MPS has explained to the complainant about how the information is held and why confirmation or denial would exceed the limit. Although it has been unable to assist with narrowing the request sufficiently to allow disclosure of any information, the Commissioner recognises that, on this occasion, this has not been practicable. The policing systems have been designed for policing purposes and the information that the complainant requires is not readily accessible as it is not something which is required by the MPS in the format that has been requested.

### **Other matters**

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23. In further correspondence with the Commissioner the complainant has expressed disappointment with the MPS not being able to interrogate its systems in order to provide what he has requested – although he also

states: *"I accept that the FOIA has no control over areas of the public authority modernising"*. He has advised the Commissioner that:

*"My issue is that Londons largest employer, the MPS, with over 40,000 employees is not able to interrogate for what is a reasonable enquiry.*

*The reality here is if I had asked for the ethnicity of staff – I'm sure this wouldn't have been a problem. I have asked for police officers employed with pre existing convictions within a specific time period. The principle of the FOIA is that of transparency. I don't believe this is being adhered to and by keeping a huge area as paper based, which is never going to fall within the parameters with over 40,000 employees... this permits a carte blanche response from the MPS unless it is challenged.*

*What I envision the MPS returning with is some manner of 'work around' which I what I [sic] was seeking to achieve prior to reporting matters to yourselves, particularly given that the act requires a degree of assistance by the public body".*

24. The Commissioner has already advised the complainant that these are matters outside her jurisdiction. The FOIA cannot require a public authority to change its systems, although the Commissioner may make an adverse comment if she believes there is evidence of particularly poor record handling. In this case the MPS has advised the complainant that it has no requirement to collate the specific information that has been requested, although it will be recorded on a personal file where appropriate. The Commissioner therefore notes that, if it does become necessary to locate conviction data about an individual officer, this will be accessible within their HR record. However, this will only be available on an individual basis, and no general statistics are recorded or required by the MPS for its own use. She does not therefore consider there to be any evidence of poor records management on this occasion.
25. Additionally, as concluded above, although the complainant is hoping for a 'work around', unfortunately the data he is requesting is simply not available within the cost limit. The MPS could not identify a way of further refining the request to provide any relevant material, and neither can the Commissioner, based on how the data is held.

## Right of appeal

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26. 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)

27. 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.
28. 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**