

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 10 January 2018

Public Authority: Dyfed Powys Police

Address: Dyfed Powys Police Headquarters
PO Box 99
Llangunnor
Carmarthen
SA31 2PF

Decision (including any steps ordered)

1. The complainant has requested various information in respect of a case Dyfed Powys Police had referred to the Crown Prosecution Service but which the CPS had decided not to proceed with. Dyfed Powys Police refused the request by virtue of section 12(1) of the FOIA on the basis that the cost of complying would exceed the appropriate limit. The Commissioner's decision is that Dyfed Powys Police was not entitled to rely on section 12 of the FOIA and that in failing to provide meaningful advice and assistance, breached section 16(1) of the FOIA.
2. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - issue a fresh response to the complaint which does not rely on section 12 of the FOIA.
3. The public authority 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

4. On 24 July 2017, the complainant wrote to Dyfed Powys Police (DPP) and requested the following information in respect of a case that was no

longer active as the Crown Prosecution Service ('the CPS') decided not to proceed against named individual A:

"1. any correspondence – be it written or electronic – that Dyfed Powys Police has received from [named individual B], [named job title and organisation], in relation to a complaint of harassment made against [named individual A], over the past 24 months.

2. any records of meetings or interviews held with [named individual B] [named role and organisation], over the past 24 months, in relation to the complaint of harassment made by him against [named individual A].

3. An estimate of the number of staff that have worked on the investigation, and the number of hours spent on it. I'd also like an estimate of the cost.

4. any correspondence – be it written or electronic – received from [named individual B] [named role and organisation], since the decision from the Crown Prosecution Service not to proceed against [named individual A].

5. any correspondence – be it written or electronic – received from the Crown Prosecution Service in relation to the decision not to proceed with the prosecution against Mrs Thompson."

5. DPP responded on 16 August 2017. It confirmed that it holds the information specified in the request, but refused to provide it by virtue of section 12(1) of the FOIA on the basis that compliance would exceed the appropriate limit.
6. Following an internal review DPP wrote to the complainant on 12 September 2017 confirming that it was upholding its original decision.

Scope of the case

7. The complainant contacted the Commissioner on 17 September 2017 to complain about the way his request for information had been handled. He was not satisfied with DPP's reliance on section 12(1), informing the Commissioner that he considered it is in the public interest for this information to be released.
8. The Commissioner considers that the scope of her investigation is to determine whether DPP was correct to rely on section 12 (1) in respect of this request, and whether it complied with the requirements of section 16(1) of the FOIA to provide advice and assistance to the complainant.

Reasons for decision

Section 12 – cost of compliance exceeds the appropriate limit

9. Section 12 of the FOIA states that:

"Section 1(1) does not oblige a public authority 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 Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the 'Regulations') sets the appropriate limit at £450 for the public authority in question. Under these Regulations, a public authority can charge a maximum of £25 per hour for work undertaken to comply with a request. This equates to 18 hours work in accordance with the appropriate limit set out above.

11. A public authority is only required to provide a reasonable estimate or breakdown of costs and in putting together its estimate it can take the following processes into consideration:

- (a) determining whether it holds the information,
- (b) locating the information, or a document which may contain the information,
- (c) retrieving the information, or a document which may contain the information, and
- (d) extracting the information from a document containing it.

12. DPP informed the complainant that the cost of providing him with the information in respect of his whole request was estimated at a minimum of 125.4 hours and therefore in excess of the 18 hour appropriate limit.

13. It added that due to the fact that there is no bespoke code or category for recording on its systems whether it had received information relevant to his request, in order to provide an accurate and definitive response in respect of questions one, two, four and five, it would need to contact each and every individual employed within the force over the relevant period to identify and establish whether any such information is held, and if held, to retrieve and collate any such information.

14. It further informed the complainant that there were a total of 1881 personnel employed within the force, estimated that it would take a minimum of one minute for each of the personnel to research electronically to identify whether any such information is held. Based on these figures, it calculated that a search in respect of items one, two, four and five would each take an estimated 31.35 hours giving a total estimate of 125.4 hours.

15. In relation to question three, it informed the complainant that due to the fact that there has been no specific Operational Code name attached to this particular investigation, and subsequently no specific cost code allocated, all time and monies spent on the investigation would not be specifically recorded but would be regarded as normal routine duties as part of their operational function.
16. It concluded that to provide a definitive and accurate response to this particular question, it would be necessary to identify and establish all personnel who would have had any working involvement with the investigation, to then identify the number of hours worked by each individual, and to identify their individual rates of pay. It added that it was evident that such an exercise would incur a time estimate in excess of 18 hours in addition to the 125.4 for items one, two, four and five of the request.
17. The complainant contacted DPP following receipt of its response stating that he found its justification for rejecting his request slightly baffling and found it hard to believe that it does not have a central database or central email server for correspondence that can be searched at a minimum cost. He did not accept that the only way to complete this request would be to make enquiries with over 1800 individual members of staff.
18. The Commissioner contacted DPP in respect of its estimate outlined in paragraphs 12 to 16 of this notice, stating although she has no knowledge of its record keeping, it seems reasonable to assume that a file of evidence would have been prepared by DPP to forward to the CPS. She added that it also seems reasonable to assume that such a file would contain records of any meetings or interviews, and correspondence (both electronic and hard copy) from named individual B and the CPS both pre and post the decision of the CPS not to proceed with the prosecution.
19. The Commissioner added that she also considered it a reasonable assumption that only a small number of DPP personnel would have had any involvement in this case and that the process of ascertaining those personnel would be relatively straightforward and not particularly onerous in terms of time. On this basis, the Commissioner pointed out that a search conducted by a much more defined number of personnel, as outlined in its estimate for all personnel would significantly reduce the time and cost of complying with the request.
20. The Commissioner asked DPP to confirm whether such a file does in fact exist, and if so, to revisit the request with a view to determining

whether the information can in fact be provided within the appropriate limit.

21. She added that in the event that no such file exists, to provide evidence in support of the estimate provided to the complainant in its original response.
22. Specifically, in relation to item three, the Commissioner pointed out that DPP had not provided a particular estimate of the time required to fulfil this aspect of his request other than to say that it would be in excess of the appropriate limit of 18 hours. The Commissioner therefore asked DPP to provide details and evidence of the time necessary to comply with this item, broken down for each process identified.
23. Finally, she pointed out that as with items one, two, four and five of the request, the process of identifying the relevant personnel may in fact be relatively straightforward, and may be helped by reference to any file DPP may hold in respect of its referral to the CPS.
24. DPP initially contacted the Commissioner by telephone confirming that it had applied section 12 to the request on the basis that it asked for all correspondence and was very broad. The Commissioner explained to DPP that a public authority is not required to conduct a search of all of its records, but is expected to conduct a reasonable and proportionate search. She further added that contacting each of DPP's employees individually appears disproportionate.
25. DPP confirmed that there was probably a file or even two, but still considered it necessary to contact all employees to be certain they had identified all information falling within the scope of the request.
26. The Commissioner queried whether this was in fact necessary, pointing out that not everyone will have had any dealings or correspondence with named individual B in respect of this matter, adding that a reasonable and proportionate approach would be to contact those key individuals who had had involvement in the matter.
27. It was agreed that the most appropriate way forward was to establish whether in fact there was a file(s) in respect of this case and to establish the key individuals involved with it.
28. Following this telephone conversation, DPP subsequently wrote to the Commissioner confirming that in relation to this particular request, that DPP's Crime Management Reduction Department (CMRD) and Human Resources Department were contacted, where it was identified that in order to provide a definitive and accurate response to this particular

request would exceed the appropriate time limit as outlined in its original response to the complainant.

29. In response to the Commissioner's comments that a case file of evidence pertinent to the request may be held, DPP considered that the applicant has not sought a copy of the file, but any correspondence be it written or electronic, which it argued is far wider than the file.
30. DPP further informed the Commissioner that any file of evidence would contain evidential information relative to the preparation of the case file for submission to the CPS and would be based on facts pertinent to the case. It added that the file would not necessarily contain all correspondence held by DPP relevant to the complainant's request and this may be held in other areas such as Police Officer note books, emails as well as Police Staff email accounts.
31. It therefore concluded that the case file would not provide a definitive and accurate response in respect of the request.
32. In respect of question three of the request, DPP informed the Commissioner that to identify and review all Police Officer and Police Staff involvement in respect of time and costs in respect of this file would again exceed that cost threshold as not all the personnel who would have had any involvement with the file would necessarily be recorded within the case file. It further added, that based on the Commissioner's own guidance, once one part of the request exceeds the threshold, the whole of the request is subject to section 12.
33. DPP therefore concluded that:

*"...due to the fact that the wording of the request is to seek **any and all correspondence** [DPP's emphasis] held by the Authority and not to a particular case file (the major content of which would not be deemed to be correspondence as such), it is the opinion of Dyfed-Powys Police that the force cannot confirm that all information relative to this particular request has been retrieved from the organisation as to do so would exceed the fees/time threshold and Regulations."*
34. The Commissioner notes that in the same letter, DPP later confirmed that it holds a case file of evidence in respect of this matter, containing approximately 33 documents, totalling approximately 310 pages. DPP further confirmed that in addition to the case file, there are 15 emails and a pocket book entry not included in the case file but identified from the investigating officer, however, the investigating officer is unable to confirm whether or not all correspondence has been captured within the case file.

35. DPP considers that although the aforementioned documents are retrievable within the appropriate limit, all of these documents contain personal information as well as investigative information. It has therefore stated that as a result of a brief initial examination of the documentation, it would be subject to exemption by virtue of section 40(2) - (personal information, Section 30(1) - Investigations and Proceedings Conducted by Public Authorities, Section 31(1) - Law Enforcement, and possibly Section 42(1) Legal Professional Privilege.
36. The scope of the Commissioner's investigation has not extended to the exemptions cited above as she has neither had sight of the information itself, and such an investigation is not necessary when a public authority is relying on section 12(1) of the FOIA.
37. Having considered the responses provided by DPP, the Commissioner is not persuaded by its continued reliance on section 12(1) in respect of this complaint. She considers that the key issue here is with DPP's insistence that it provides a '*definitive and accurate*' response. However, as pointed out in paragraph 24 of this notice, a public authority is only required to conduct a 'reasonable and proportionate' search of its records. In the Commissioner's view, contacting every individual DPP employee is unnecessary as it is neither reasonable nor proportionate.
38. The Commissioner considers that a reasonable and proportionate search would be to start with the case file identified by DPP and referred to in paragraph 34 of this notice. From this file, DPP have clearly identified the investigating officer who has provided further information which may be relevant to the request. DPP's insistence that the request is broader than the case file is not acceptable as although the file is likely to contain information not relevant to the request, it is highly likely to contain key documents for, and from the CPS in relation to this matter including key items of correspondence relevant to the request.
39. The Commissioner would also point out that even if she had been satisfied that a search as claimed by DPP was in fact necessary, that it has not provided the necessary evidence in support of its 125.4 hour estimate in respect of items one, two, four and five.
40. With respect of item three, the Commissioner can confirm that she is aware of her own guidance in relation to multi-part requests and section 12. However, as it had not (and has not) been established that section 12(1) is engaged in respect of any or all of the other questions within the request, asking DPP for a more detailed estimate in respect of question three was entirely consistent with her guidance on this matter.
41. The Commissioner therefore considers that DPP were not entitled to rely on section 12(1) to refuse to comply with this complaint.

Section 16 – duty to provide advice and assistance

42. Section 16(1) of the FOIA provides that a public authority should give advice and assistance to any person making an information request, so far as it would be reasonable to do so. Paragraph 14 of the section 45 Code of Practice takes this further and explicitly states that where a public authority is relying on section 12 of the FOIA that it:
 43. *"...should consider providing an indication of what, if any, information could be provided within the cost ceiling. The authority should also consider advising the applicant that by reforming or re-focusing their request, information may be able to be supplied for a lower, or no fee."*
 44. The Commissioner notes that DPP's refusal notice did inform the complainant that he:

"...may wish to refine and resubmit your request so that it reduces the time ...to fall within the 18 hours, however, having due regard to the times estimate provided...it is unlikely that refining your request will fall under the 18 hours as the same method and format will hve to be undertaken."
45. However, as has been established, DPP has confirmed that a file prepared for the CPS exists, containing some relevant information and helping to identify other information relevant to the request. In the Commissioner's view, DPP's should have made reference to this file, outlining the information it contains, and the additional information which it identified referred to in paragraph 34 of this notice.
46. It could further have informed the complainant that whilst it might not provide a 'definitive and accurate' response, that a public authority is only required to provide a 'reasonable and proportionate' search. Whether or not the exemptions DPP has specified are engaged, would be up to the complainant to either accept or appeal, and where appropriate, for the Commissioner to investigate.
47. DPP's failure to refer to this information therefore represents a breach of section 16(1) of the FOIA.

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

**Catherine Dickenson
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