

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 5 March 2018

Public Authority: Police Federation of England and Wales
Address: Federation House
Highbury Drive
Leatherhead
Surrey
KT22 7UY

Decision (including any steps ordered)

1. The complainant has requested details of costs incurred in respect of 5 cases from the Police Federation of England and Wales (the "PFEW"). The PFEW initially refused the request citing section 40(2) (personal information) of the FOIA. During the Commissioner's investigation it revised its position advising that some of the information was not held and that it would exceed the appropriate limit at section 12(1) to comply with the remainder of the request. The Commissioner's decision is that it was entitled to do so. She also finds no breach of section 16 (advice and assistance). No steps are required.

Request and response

2. On 1 May 2017 the complainant wrote to the PFEW and requested the following information:

"Please provide a breakdown of PFEW expenditure in the following 5 cases in regards counsel fees and solicitors fees and other associated disbursements.

1. PC [name removed] v [name removed] (MP) 2014 (defamation trial). reported as £938,000+ of costs spent by the PFEW in the media and confirmed by your Chair [name removed] when giving evidence to the HASC.

2. *DI [name removed] unsuccessfully v Northumbria Police (2004) (libel and slander) 4 week trial and costs reported in the media as being £750,000.*

3. *DCI [name removed] ([name removed] case) (2005) £1,000,000+ costs reported in the media.*

4. *DC [name removed] v Journalist [name removed] (2007) and his publishers [name removed] £1,000,000+ costs reported in the media.*

5. *2008– 2016 the federation funded officers [names removed]. This concerning one incident on [date removed] (minor assault and public order offences), 4 week trial at Kingston Crown Court in 2009. Linked High Court civil action ending in 2016 in which the federation funded [name removed] QC to lead the defence, costs believed to be £1,000,000+ incurred”.*

3. The PFEW responded on 19 May 2017. It confirmed holding information but refused to disclose it citing section 40(2) of the FOIA as its basis for doing so. It told the complainant that it did not offer an internal review procedure and advised him of his right to complain to the Commissioner.
4. On 10 November 2017, during the Commissioner’s investigation, the PFEW revised its position. It advised the complainant that it did not hold any information in respect of parts (2) and (4) of the request. In respect of the remainder, it advised that to comply with it would exceed the appropriate limit at section 12(1) of the FOIA. It also cited sections 40(2) (personal information) and 42(1) (legal professional privilege) of the FOIA although it was not clear what information this related to.

Scope of the case

5. The complainant initially contacted the Commissioner on 26 May 2017 to complain about the way his request for information had been handled. The Commissioner required further details from him and asked him to provide his grounds of complaint. The complainant advised that he believed the requested information was disclosable and that any names could be redacted. (The Commissioner would like to note that she thinks it unlikely that redaction could be feasible as all the parties are actually named within the original wording of the request).
6. Following the PFEW’s revised response, in which it instead relied on section 12(1) of the FOIA to forego disclosure, on 13 November 2017 the Commissioner contacted the complainant again for his views. He responded saying that, from personal experience, he was aware of how the PFEW held its files and that:

"The PFEW case files are set up in such a manner that it is possible to swiftly and effectively review the expense made per case and the cost reserves set and increased per case, that is the purpose of the case management system".

He added:

"... even if the overall claim would exceed 18 hours of work, then the PFEW should and i would like them to conduct this exercise on the cases of [name removed] and [name removed] only, which on their estimates would fall within the acceptable time limit. I would also be prepared to pay to obtain this material at a reasonable cost if this was the only barrier remaining to the disclosure.

I suggest that even if your suggestion to them was to focus only on [name removed] and [name removed] which would fall within 18 hours work , they would then seek another reason not to disclose the material or to draw out this process so i can not access this material in the short term. It would therefore be very helpful to obtain absolute clarity on whether for example an identical request for the material in the case of [name removed] alone would have resulted in disclosure under the FOI and if not why?"

7. The Commissioner explained to the complainant that she was unable to consider a revised request and that if he wished to concentrate on the two named cases only then he would personally need to submit a revised request to the PFEW for it to consider. She also suggested that, even if the PFEW was able to comply with that request within the cost limit, then it may well apply exemptions at that stage - this was suggested as the PFEW had already alluded to the possibility of other exemptions applying. She further advised that, if necessary, she would be able to consider the application of any such exemptions as a separate complaint.
8. The Commissioner also explained to the complaint that, whilst he might be prepared to pay for work to be undertaken, whether it wished to do so or not was for the PFEW to determine and she could not require it to do so.
9. The complainant did not disagree with the PFEW's position that no information is held in respect of parts (2) and (4) of the request so the Commissioner has not further considered these in her investigation. The Commissioner will therefore consider the application of section 12(1) to the parts (1), (3) and (5) of the request.

Reasons for decision

Section 12 – cost of compliance exceeds appropriate limit

10. Section 12(1) 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.
11. When considering whether section 12(1) applies, the authority can only take into account certain costs, as set out in The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ('the Regulations'). These are:
 - (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. The Regulations state that the appropriate cost limit is £600 for central government, legislative bodies and the armed forces, and £450 for all other public authorities. The cost limit in this case is £450, which is equivalent to 18 hours' work.
13. Section 12 of the FOIA makes it clear that a public authority only has to estimate whether the cost of complying would exceed the appropriate limit. It is not required to provide a precise calculation. The task for the Commissioner here is to reach a conclusion as to whether the cost estimate made by the PFEW was reasonable; whether it estimated reasonably that the cost of compliance with the request would exceed the limit of £450, that section 12(1) therefore applied and that it was not obliged to comply with the request.
14. The PFEW confirmed to the Commissioner that the estimates it provided to her were based upon the quickest method of gathering the requested information. It said:

"This method involves going through the Claims Database (rather than searching manual files – this information is not held in manual files), which is the only system on which the relevant information is stored for each and every individual named in the FOI request. The estimates take into account the work which would be required, namely:

 - (i) *engaging in a search of all the e-mails on that Database for each individual named in the FOI request, in order to identify the relevant documents, i.e. the invoices; and*

(ii) extracting the relevant information from those invoices by:

- a) separating out the full cost breakdown for the work streams; and itemising*
- b) Solicitors fees costs;*
- c) Counsels' fees;*
- d) disbursements*

Furthermore, we confirm that, in relation to each individual ... complying with the request would involve a significant search of emails on the claims database system which is the only system available to store the information".

15. The PFEW provided the Commissioner with screen shots of the system used to assist with her understanding of how the information is held.
16. The requested information is recorded within solicitor's invoices which are in turn centrally held on the PFEW's Claims Management System ("CMS").
17. To find the relevant legal case on the CMS requires an initial search by either entering the officer concerned's surname and force or the case's unique reference number where known. Once the required case has been found and accessed it is then possible to view the number of invoices raised against that case by viewing the 'dispersals' screen of the CMS.
18. The invoices themselves are provided to the PFEW either electronically or as a paper invoice. The 'dispersals' screen on each case will list the date, reference number and total of each invoice related to that case. However, the invoices can be either electronic or paper and they are accessed differently according to which type they are.
19. For the electronic invoices it is possible to access a further breakdown of their content by 'clicking' on each individual invoice within the 'dispersals' section of the database.
20. This is not the case for the paper invoices which are scanned onto the CMS and stored as a .pdf file. As with electronic invoices, the 'dispersals' section displays a total amount as well as a date and reference number for each paper invoice, but the actual bill cannot be accessed from this screen. Scanned paper bills are held within the 'correspondence' section of the case, which stores all correspondence chronologically. It is therefore possible to either ascertain the date of an invoice on the dispersals screen and then search for it in the 'correspondence' section or just to scroll down through all the correspondence and look for any invoices – they cannot be filtered out. Once located in the 'correspondence' section, 'clicking' on the invoice will display a scanned copy of that invoice.

21. Every invoice contains a list of fees being charged, which will include the requested counsel fees, solicitors fees and associated disbursements, as appropriate. The Commissioner was advised that: "*[i]n legal terminology disbursement's equate to expert fees which are in addition to solicitors fees*" and that these could be a: "*counsel fee, medical expert fee or forensic analysis fee etc*". It confirmed that it would be possible to separate and identify specific counsel fees to other experts but this would incur time to consider each disbursement entry on the invoice in order to determine whether it related to counsel fees or other disbursements.
22. In respect of case (3) the Commissioner has also been advised that this is an "*exceptional*" one on the following basis:

"The claim was opened in 2001 on an older style CMS (case management system). The data from that case was migrated from the old CMS to the new CMS in 2010. The reference starts with an old ME code which means 'Multiple Elements', this basically means under this one claim reference there are separate cases, in this particular matter there is a libel action (which is the matter the FOI predominantly would like data from), a criminal investigation and a negligence claim. Each element has separate solicitors instructed and the file has reference to another officer involved in some or all of the elements mentioned".
23. Any invoice on the CMS which has been provided as an electronic bill can be manipulated to some extent by filtering the required figures and creating a .csv file which can then be exported into a spreadsheet. However, whilst this may allow solicitors' fees to be separated and calculated fairly easily because of how they are itemised on these bills, any extraction of counsel fees from the rest of the disbursements will require a detailed reading in order to determine which are relevant. This is the case for parts (1) and (5) of the request.
24. Any invoice on the CMS which has been provided as a paper invoice will have been scanned onto the system and saved as a .pdf file. The content of each invoice can be viewed on the system but cannot be further manipulated. This means that any data on such invoices will need to be manually extracted and either input onto a spreadsheet or recorded in some other way. This is the case for part (3) of the request.
25. Each invoice is paid off individually and there is no further breakdown of the costs required for PFEW business purposes, ie the invoice is simply paid without different budgets being used for different charges such as solicitor fees, counsel fees or other disbursements.

Number of records to be checked and cost estimate

26. During her investigation the Commissioner was advised as follows:

- Part (1) of the request has 52 electronic invoices.
- Part (3) of the request has 62 scanned invoices.
- Part (5) of the request has 73 electronic invoices.

27. The PFEW also advised the Commissioner that it would need to allow for: "... *contingency time to deal with any anomalies that may occur during the extraction and inputting onto the spreadsheet, and have added 20% to cover this which would add an additional 4 hours @ £25 per hour = £100*". The Commissioner does not agree that this is a reasonable addition to the calculation of costs for the purposes of section 12(1). Whilst extraction is an acceptable part of the process for estimating costs, contingencies and inputting costs are not.

Sampling

Electronic invoices

28. Having located one of the legal cases, an expert CMS user at the PFEW initially considered an invoice from one of the electronic cases. It took 2 minutes 51 seconds to access and select data from one of the electronic invoices, extract these as a .csv file and then export the total figures onto a spreadsheet to ensure it was in a usable format in order to comply with the request. The user advised that this process would take the same amount of time for each invoice held, whatever their size, as they would need to be dealt with individually. The Commissioner considers this to be reasonable.

29. The PFEW then provided the following estimate in respect of going through all the disbursements costs and separating out those which related solely to counsel fees "... *I can confirm the effort for the ebills to extract the data and separate counsel fees from solicitors fees would be approx. 5 minutes per bill...*"

30. For the 125 electronic invoices this process would therefore equate to 7.51 minutes per invoice, ie 15.6 hours to undertake the work needed to locate, retrieve and extract the requested information from the electronic invoices.

Scanned invoices

31. Unlike with the electronic data it is not possible to manipulate the data on these invoices in any way. Therefore, after accessing the invoice on the system the figures will need to be manually located and extracted.

32. In respect of these invoices, as explained above, the case in question contains three different cases, ie a libel case, a criminal case and a negligence case. The PFEW advised that there is no indication on either the 'dispersals' section or in the 'correspondence' section that identifies which of these cases the invoice refers to. It is therefore necessary to view each individual scanned invoice to identify which case it relates to. As mentioned above, the case relevant to this request is the libel case.

33. The expert at the PFEW advised the Commissioner:

"... It took me nearly 3 hours yesterday in my attempt to separate the libel costs from the other work streams in the [name removed] case and I had to abandon the task due to the inordinate amount of time it was taking. This task would need to be completed prior to itemising the individual accounts".

34. The PFEW provided the Commissioner with a sample of 10 invoices from the case for her to view.

35. Having received these samples, the Commissioner asked the PFEW to conduct the tasks that would be necessary to comply with the request in order to provide an accurate cost estimate. In doing so, the expert at the PFEW advised that it took 50.38 minutes to complete the task.

36. For the 62 scanned invoices this process would therefore equate to 5.04 minutes per invoice, ie 5.2 hours to undertake the work needed to locate, retrieve and extract the information requested from the scanned invoices.

Conclusion

37. The work required to locate, retrieve and extract the information is estimated as follows:

- Electronic invoices 15.6 hours
- Scanned invoices 5.2 hours
- Locating the libel case invoices 3 hours

This equates to 23.8 hours.

38. Having considered how the information is held by the PFEW and the work that would be required in order to extract the information and provide it in a way which would satisfy the request, ie a breakdown of solicitors' fees costs, counsels' fees and disbursements, the Commissioner is satisfied that the work that would be required would exceed the cost limit.

Section 16 – advice and assistance

39. 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.
40. 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.
41. Where a public authority has satisfied the requirements of the section 45 Code of Practice; it will be deemed to have complied with section 16.
42. The PFEW advised the Commissioner that it believed it had complied with its section 16 duties on the following basis:

"A breakdown of time was provided.

Having identified the amount of time each case would take to obtain the required information, a link was provided to the guidance on the ICO website which explains all the required information relating to the exemption and options available; it indicated that another request could be made. However, it was also pointed out that, in addition to the exemption under S.12, we would be relying on other exemptions.

In addition to the above, we made it clear that we would be exempting the request under Section 40(2), as per the original response. However, we have provided the applicant with a more thorough explanation. We stated that we have also exempted the request under Section 42(1)..."

43. The Commissioner notes that the PFEW did provide the complainant with a breakdown of its costs and links to the relevant guidance on her website. It also implied that any narrowed request is likely to be refused on the grounds of further exemptions. Although it only provided a very

basic breakdown of costs to the complainant, she does however note that each of the 3 cases fell individually within the cost limit. Therefore, it would have been apparent to the complainant that he could have limited his request to a single case in order not to exceed the limit. Accordingly, the Commissioner finds no breach of section 16(1).

Right of appeal

44. 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

45. 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.

46. 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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