

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 5 December 2019

Public Authority: Commissioner of the Metropolitan Police Service

Address: New Scotland Yard
Broadway
London
SW1H 0BG

Decision (including any steps ordered)

1. The complainant has requested stop and search data from the Metropolitan Police Service (the "MPS"). The MPS refused to disclose the requested information advising that the request was vexatious under section 14(1) of the FOIA, on the basis of the oppressive burden in compliance. The Commissioner's decision is that the MPS was entitled to find the request vexatious. No steps are required.

Request and response

2. Following an earlier request, on 14 May 2019 the complainant wrote to the MPS and requested information in the following terms:

"i would like to request:

A list of stop and search data from the start of 2007

-the race of each searched person

-the age of each person searched

-reason why they were searched

-The outcome (arrest/NFA/caution ... etc)

*-the **month** of each search*

-the borough they were searched in

Can i have the information in Excel format".

3. On 10 June 2019 the MPS responded. It refused to provide the requested information on the basis that the request was vexatious under section 14(1) of the FOIA.
4. The complainant requested an internal review on 11 June 2019.
5. The MPS provided an internal review on 1 July 2019 in which it maintained its original position, although it also referred to section 14(2) (repeated request) of the FOIA. It later clarified that it was only relying on section 14(1) of the FOIA.

Scope of the case

6. The complainant contacted the Commissioner on 2 July 2019 to complain about the way his request for information had been handled.
7. During the Commissioner's investigation, on 28 October 2019, the MPS disclosed a significant amount of information to the complainant as a goodwill gesture, including data from 2007 to 2018 inclusive. In doing so it advised him:

"The ages of persons stopped and searched has been provided in age ranges to minimise the risk of identification of individuals and to eliminate the need to review every line of data (4.5 million).

Due to the volume of date, the table has been split into single years and compressed and sent in multiple Emails.

Please note that the months are provided in alphabetical order for each year.

It should be further noted that this request in isolation would have far exceeded the cost threshold for FOIA requests as the initial data for this request (in response to your first FOIA request) took in excess of 18 hours to retrieve and collate".

8. The Commissioner contacted the complainant for his views following this disclosure.
9. In responding, the complainant asked for data for 2019 as this had not been included. The Commissioner advised him that his request had been made in May so any data subsequent to this would be out of the scope of the request; she suggested that he make a fresh request, referring to this one by reference, asking for data in the same format but as current as possible. The complainant subsequently advised that he would send a separate request but that he still wanted the Commissioner to consider any data from 2019 that was covered in his original request.

10. In a further attempt to informally resolve the case, the Commissioner contacted the MPS to ascertain whether it was feasible to provide any data for 2019. In responding the MPS advised:

"The provision of the data was a gesture of goodwill as the information was derived from raw data which took in excess of 18 hours to retrieve.

As previously advised to [the complainant], we have not provided more recent data as this is readily available on the MPS website.

Stop and search data is available for the last 2 years using the following link:

<https://www.met.police.uk/sd/stats-and-data/met/stop-and-search-dashboard/>

The data on the MPS website includes all of the elements of [the complainant]'s request (race, age, reason, outcome, borough). [The complainant] has previously been provided the link to this data.

The provision of the additional data is not a simple task. To put this into perspective, I have been advised that there is generally a download limit of 65,000 rows of data. For 2017, there were in excess of 124,000 rows of data and in excess of 142,000 in 2018.

... We currently receive in excess of 4,000 FOIA requests per year. Roughly a quarter of these requests relate to statistical data derived from MPS databases. Unfortunately, we do not have finite [sic] resources and to produce the raw data for 2019 in order to provide [the complainant] with additional bespoke data would be timely [sic], unfair to other requestors awaiting data and a misuse of resources given that the information can be easily located in the public domain".

11. The Commissioner contacted the complainant for his views and he advised that he remained dissatisfied. He did not accept that it had already taken over 18 hours to extract the information. He also expressed dissatisfaction with the data on the website, saying that the download feature didn't work and that information could not be compared or analysed in any meaningful way via the online interface.
12. The Commissioner will consider whether or not the request is vexatious below.

Reasons for decision

Section 14 – vexatious requests

13. Section 14(1) of FOIA allows a public authority to refuse to comply with a request if it is considered to be vexatious.
14. The term 'vexatious' is not defined in FOIA. The Upper Tribunal (Information Rights) considered in some detail the issue of vexatious requests in the case of the *Information Commissioner v Devon CC & Dransfield* (GIA/3037/2011). The Tribunal commented that vexatious could be defined as the "*manifestly unjustified, inappropriate or improper use of a formal procedure*". The Tribunal's definition clearly establishes that the concepts of proportionality and justification are relevant to any consideration of whether a request is vexatious.
15. In the *Dransfield* case, the Upper Tribunal also found it instructive to assess the question of whether a request is truly vexatious by considering four broad issues: (1) the burden imposed by the request (on the public authority and its staff); (2) the motive of the requester; (3) the value or serious purpose of the request and (4) harassment or distress of and to staff.
16. The Upper Tribunal did, however, also caution that these considerations were not meant to be exhaustive. Rather, it stressed the:

"importance of adopting a holistic and broad approach to the determination of whether a request is vexatious or not, emphasising the attributes of manifest unreasonableness, irresponsibility and especially where there is a previous course of dealings, the lack of proportionality that typically characterise vexatious requests" (paragraph 45).
17. The Commissioner has identified a number of "indicators" which may be useful in identifying vexatious requests. These are set out in her published guidance on vexatious requests¹. In brief, these consist of, in no particular order: abusive or aggressive language; burden on the authority; personal grudges; unreasonable persistence; unfounded accusations; intransigence; frequent or overlapping requests; deliberate intention to cause annoyance; scattergun approach; disproportionate effort; no obvious intent to obtain information; futile requests; frivolous

¹ <https://ico.org.uk/media/for-organisations/documents/1198/dealing-with-vexatiousrequests.pdf>

requests. The fact that a request contains one or more of these indicators will not necessarily mean that it must be vexatious.

18. In the Commissioner's view, section 14(1) is designed to protect public authorities by allowing them to refuse any requests which have the potential to cause a disproportionate or unjustified level of disruption, irritation or distress. This will usually involve weighing the evidence about the impact on the authority and balancing this against the purpose and value of the request. This should be judged as objectively as possible; in other words, would a reasonable person think that the purpose and value are enough to justify the impact on the public authority.
19. In particular, the Commissioner accepts that there may be cases where a request could be considered to be vexatious because the amount of time required to review and prepare the information for disclosure would place a grossly oppressive burden on the public authority. This is the position adopted by the MPS in this case.
20. The Commissioner believes that there is a high threshold for refusing a request on such grounds. This means that a public authority is most likely to have a viable case where:
 - the requester has asked for a substantial volume of information **and**
 - the authority has real concerns about potentially exempt information, which it will be able to substantiate if asked to do so by the Commissioner **and**
 - any potentially exempt information cannot easily be isolated because it is scattered throughout the requested material.
21. It is the MPS's position that to comply with the request in full would be burdensome to the MPS and would require a disproportionate effort.
22. The Commissioner initially notes that, in an attempt to informally resolve the complaint and as a gesture of goodwill, during her investigation, the MPS provided the complainant with stop and search data for the period 2007 to 2018, albeit the data was not provided in the exact format requested. The MPS explained that it had been provided in this way because to do otherwise would be burdensome as it would be necessary to review each line of data (approx. 4.5 million) to minimise the risk of identification of individuals captured by the request (engaging section 40 - personal information - of the FOIA) and to prevent the disclosure of information related to MPS investigations (engaging section 30 - investigations - of the FOIA). Additionally, it advised that it had not provided data for 2019 as current stop and search data is accessible from the MPS stop and search dashboard, which is in the public domain, albeit the data is not in the exact format that the complainant has requested.

23. As the complainant specifically queried the MPS's assertion that it had already exceeded 18 hours work in trying to informally resolve the case, the Commissioner asked the MPS for a further explanation. It advised her:

"There are four different sources on which we would have to run queries and/or manipulate in order to compile the requested data, as none of the systems holds the fields requested across the whole of the period of time requested.

The databases are:

- *Stops Reporting Tool*
- *CRIMINT*
- *The Data Development Team's data feed from CRIMINT (This data feed is the one which supplies the data to Metstats2 which is referred to later)*
- *Previous Excel downloads from CRIMINT collated for other internal and external reports*

To produce the most accurate information available which we currently hold, we would have to produce fresh downloads from Stops Reporting Tool and CRIMINT. There are download limits for each individual query from each of these systems, and downloading time is variable.

CRIMINT was not designed to facilitate the downloading of large volumes of data.

The Stops Reporting Tool is no longer an officially maintained system, so many tables and fields have not been updated from 2016

The following estimates have been provided to me:

- **CRIMINT:** *Finding and downloading a week's worth of data takes 20-30 minutes. A Higher Analyst has advised that an attempt to download a whole month in one go, had to be aborted as it failed to deliver in two hours. CRIMINT records go back to 2010, so obtaining nine years of data in this way would take something in the region of 150 -250 hours, which is why the MPS cannot use it to answer large volume requests of this nature.*
- **Stops Reporting Tool** *has a 65,000 row download limit, so one can do two or three months at a time. Even during periods when stops were being carried out less frequently, 5 months is the maximum we can download. With stops averaging about 22,000 per month, two to three months is the norm. This downloading is a lot*

quicker (5-10 minutes on average). To extract the fields required from 2007 – 2015 would require 35-45 data runs and downloads, giving an estimate of about 5 hours (assuming 40 runs at 7.5 minutes per run).

For each download from either system, an analyst has to edit the dates requested, run the query, initiate the download once the query is run and then manipulate the data in Excel, therefore, it is not a process which can be just set up and left to run on the respective database. It is an iterative process requiring manual intervention each time. We cannot "automatically process" the data.

It should be noted that even without estimating the time for other elements, to locate, extract and format the raw data for 2007-2018 (four and a half million records) previously took an analyst well in excess of the 18 hours FOIA time threshold.

If we used a mixture of downloads from Stops Reporting Tool, the Data Development Team's data feed and the Excel files we have previously compiled for other purposes, we might achieve this within the 18 hour limit. It is not possible to say with any accuracy if this achievable, however, the information would not be 100% accurate, as there have been changes to the source data since the Data Development team data and the Excel files were extracted.

The data could be retrieved in part from Metstats2 (from January 2016), as although it is a limited dataset, it contains all the fields asked for in this request and covers the time period requested. However, some of the data would be subject to review as we would need to identify anything shown as Section 47 Terrorism, then check to see what its current status is on CRIMINT and change it accordingly in the data from Metstats2. There are usually a handful of these each month, where the wrong search reason has accidentally been selected, and subsequently amended. However, Metstats 2 data is "frozen", so it will not have picked up these (or other) changes.

24. As mentioned above, the volume of raw data caught in the scope of the request is approximately 4.5 million rows of data. The MPS explained that to provide the complainant with exactly what he wanted it would necessitate a review of each line of the data as disclosure in full could lead to the identification of individuals and / or the disclosure of information related to investigations; it provided examples to the Commissioner to support this position. The MPS also explained that removal of any exempt information from the data was not an easy task and could not be completed in full by automated means.

25. It also explained that, due to the variables of the request and the date range, the raw data for this request would need to be extracted from two databases, both of which have severe restrictions in terms of volume which can be downloaded in a single transaction; ie the databases were not designed to be used for downloading large volumes of data. Furthermore, it was not possible to simply leave the data enquiry to run as the values need to be amended manually for each batch of data.
26. Regarding the complainant's assertion that the download feature on the MPS's online stop and search dashboard does not function, the MPS advised that this is not the case and confirmed that, at the time of writing, it was functional. It also advised the Commissioner that the procedure for doing this had been explained to the complainant at internal review stage and that instructions on how to do so were provided to him by way of its duty to advise and assist under section 16 of the FOIA. (It added that, if the complainant was still having issues, it would further assist if asked).
27. In further support of its position that the request is vexatious on the basis of oppressive burden, the MPS advised:

"The MPS appreciates that The Freedom of Information Act was designed to give individuals a greater right of access to official information with the intention of making public bodies more transparent and accountable, however, the MPS considers that to comply with [the complainant]'s request in the format requested would be a substantial burden to the MPS as a member of staff within the MPS Information Rights Unit would have to be extracted from their day to day work to review in excess of 4 million rows of data in order to ensure that the MPS complies with its Data Protection obligations in respect of the requested information. Additionally, the physical process of redacting information would be a time consuming task and would likely be conducted by staff within the Information Rights Unit too".

28. It explained that its resources are finite and need to be targeted appropriately saying:

"The opportunity cost of producing bespoke data that is of limited purpose and value to the public at large, is time and resources that would otherwise be spent producing data that is of greater benefit to the wider public and/or policing in general in addition to complying with our FOIA obligations. This argument is enhanced by the fact that the MPS proactively publishes a wide range of Stop and Search data on its website in order to reduce the costs associated with responding to individual stop and search data requests".

29. In respect of context and history, the MPS advised the Commissioner that the complainant has submitted 3 FOIA requests, an Internal Review and an Appeal, all of which essentially deal with the same matter, albeit with small variances. It said that dealing with these had been resource intensive and, having reviewed the email correspondence linked with these requests, it noted that there had been involvement from 6 FOIA Information Managers and 7 Data Analysts (and these figures did not include all the staff involved). The MPS considered this to be a disproportionate amount and use of staff time. The MPS also believed that to provide the requested information in the specific format requested would place a detrimental impact on MPS resources as it would be an onerous and time consuming task to review and redact potentially exempt information.
30. The MPS also considered it had made concerted efforts to try to comply with the request by providing information which would not compromise police investigations and / or breach the rights of individuals.

The Commissioner's position

31. With regard to the first criterion (see paragraph 21), the Commissioner accepts that, given the breadth of the request, seeking as it does stop and search data for more than a twelve year period, a considerable amount of information falls within the scope of the request, ie in excess of 4 million rows of data.
32. With regard to the second criterion, given the subject matter of request, the Commissioner accepts that the MPS's concerns about potentially exempt information being caught by the request, such as personal information (section 40 of the FOIA) and police investigations (section 30 of the FOIA), are legitimate ones.
33. With regard to the third criterion, the Commissioner is satisfied that the MPS has demonstrated that it would be burdensome to it to identify the exempt information and prepare / redact it for publication. This is likely to involve the extraction of staff from a small specialist team for some considerable time. This would involve consideration, and redaction where necessary, of the personal data / investigations identified. Furthermore, the personal data is likely to be 'criminal offence data' as defined under section 11(2) of the Data Protection Act 2018², which recognises such data requires particular protection, thereby making any related considerations more resource intensive.

² <http://www.legislation.gov.uk/ukpga/2018/12/section/11/enacted>

34. The Commissioner is therefore satisfied that the MPS has demonstrated that the three criteria are met and consequently that the MPS has provided evidence to demonstrate that complying with the request would place a grossly excessive burden on it. Nevertheless, the Commissioner will consider whether the purpose and value of the request are enough to justify the impact on the MPS and here she has taken into account the further arguments which have been provided by the MPS.
35. The Commissioner recognises that there is an inherent value in the disclosure of information, given the associated benefits of openness and transparency. She also recognises the general public interest in this subject matter, ie the police use of stop and search, and accepts that there is a legitimate value and purpose in disclosure.
36. However, she further notes that stop and search data is now actively published by the MPS and is therefore available in the public domain to satisfy the public interest, to a large extent.
37. The detrimental impact or burden upon the MPS has been described earlier within this notice. The large amount of data which is caught within the scope of the request is also likely to encompass information that is exempt from disclosure under further exemptions, namely sections 40 and 30 of the FOIA.
38. The MPS has clearly gone to some lengths to assist the complainant by providing a large amount of the requested information, albeit as a goodwill gesture, to try to informally resolve the complaint. Although the data was not provided in exactly the format requested, the Commissioner notes that the complainant did advise her: "*I haven't had long to look through the data so far - but the format does look good from what I have seen so far*". Furthermore, he did not subsequently complain about the format of the data provided, only that he wanted data from 2019 and did not accept the calculations regarding the work involved.
39. Taking all of the factors into consideration, the Commissioner does not agree that the purpose and value of the request is sufficient to justify the burdensome impact on the MPS. She therefore finds that the request is vexatious.

Right of appeal

40. 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@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

41. 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.
42. 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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