

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 6 April 2020

**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 specific information about the Great Train Robbery from the Metropolitan Police Service (the "MPS"). The MPS advised that to comply with the request would exceed the appropriate limit at section 12 (cost of compliance exceeds appropriate limit) of the FOIA. During the Commissioner's investigation it clarified that it was relying on section 12(2) of the FOIA.
2. The Commissioner's decision is that the MPS was entitled to neither confirm nor deny whether it held the requested information in accordance with section 12(2) of the FOIA. She also finds that it complied with its section 16 obligations to provide advice and assistance.

### Request and response

---

3. On 27 May 2019, the complainant wrote to the MPS and requested information in the following terms:

*"In his book 'The Sweeney': The First 60 Years of Scotland Yard's Crime busting Flying Squad 1919-1978' (Pen & Sword Books 2011), former Flying Squad and Serious Crimes Squad officer Dick Kirby states, in respect to the Great Train Robbery, that: 'The Home Secretary was contacted as a matter of urgency – just as quickly, he authorised a number of intercepts on the likeliest 'faces' and*

*these were given priority by Detective Inspector Wilf Pickles, who headed the intercept room at C11 Department.' He concludes the passage by stating that in this way, DCS Butler 'knew who was talking to whom.' Are the intercept transcripts held in one of the few remaining closed files of the robbery and will the Metropolitan police make available these transcripts now that that the subjects of the intercepts are now dead?"*

4. On 23 August 2019, the MPS responded. It refused to provide the requested information citing section 12 of the FOIA, the cost of compliance; it did not cite which limb of section 12 was being relied on. It also advised that it was unable to suggest a way of refining the request in view of the volume of data held, ie 24 boxes "containing thousands of reports".

5. On the same date, the complainant responded advising that he:

*"... would personally be willing to pay the full cost involved, which would mean that there would be no cost to the public purse and / or the Metropolitan police".*

6. On 28 August 2019, the MPS responded and advised that it did not offer this as an option. It suggested it would consider a new request if it could be dealt with within the 18 hour time limit.

7. Following the Commissioner's advice, on 22 November 2019 the complainant requested an internal review.

8. The MPS provided an internal review on 7 December 2019, in which it maintained its position. It explained:

*"The information which you have requested cannot be retrieved by automatic means. We hold a spreadsheet which gives a brief description of each box but none of these gives any indication about the specific information you have requested".*

9. During the Commissioner's investigation, the MPS clarified that it was relying on section 12(2) of the FOIA as it would exceed the cost limit to confirm or deny whether or not the requested information is held.

## **Scope of the case**

---

10. The complainant initially contacted the Commissioner on 26 October 2019 to complain about the way his request for information had been handled. At that time he had not requested an internal review and the Commissioner asked him to do so.

11. Following receipt of the internal review, the complainant wrote to the Commissioner again on 8 December 2019. He did not specify any grounds for complaint, so the Commissioner will consider the citing of section 12, below.
12. 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 concerned with transparency and provides for the disclosure 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.

### **Reasons for decision**

---

13. The Commissioner would like to clarify that although the complainant advised that he would be happy to pay the MPS for the searches to be undertaken, the MPS was not obliged to accept this offer, as this is not a requirement under the FOIA. The MPS may choose to do so of its own volition, but, as it explained to the complainant:

*"...we hold 24 boxes containing information relating to the Great Train Robbery. If a conservative estimate of 2 hours were allowed for a member of staff to go through each box and retrieve and collate the information you have requested, this would mean extracting a member of staff for 7 days to deal solely with your request.*

*MPS resources are finite and need to be targeted appropriately. If we agreed to payment for the work needed for your FOIA request, this would be detrimental to the work conducted by the MPS FOIA team as a whole. To abstract a member of staff to deal solely with your request would have a significant impact on the MPS' compliance with the other FOIA requests that it has a duty to complete within the statutory limits. It is pertinent to note that the MPS is one of the largest public authorities in the UK and regularly receives in excess of 4,000 FOIA requests per year".*

14. The Commissioner understands the MPS's rationale for deciding not to undertake the paid task of searching for the information. She also notes that the searches may not be successful and, even if they were, that other exemptions may apply to any information which may be located.

## Section 12 – cost of compliance exceeds appropriate limit

15. 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.
16. The appropriate limit is set at £450 for the MPS by virtue of the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the fees regulations).
17. 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.
18. 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.
19. The MPS advised the Commissioner as follows:

*"The internal review explained that:*

  - *We hold 24 boxes containing information relating to the Great train Robbery*
  - *A conservative estimate of 2 hours for a member of staff to go through each box and retrieve and collate the information requested would mean extracting a member of staff for 7 days to deal with the request*
  - *Agreeing to payment would be detrimental to the work conducted by the FOIA team as whole*
  - *Abstracting a member of staff to deal with the request would have a significant impact on the MPS compliance with other requests*

*The boxes contained 26 files relating to the Great Train Robbery created between 1963 and 1967 with MEPO reference numbers*

*2/10563- 2/10588. 3 files have been reviewed and assessed as suitable for transfer to the National Archives as open files.*

*In order to comply with the request it would be necessary to locate and retrieve all files relating to Great Train Robbery and then read all of this information in order to determine whether, or the extent to which, information within the scope of the request is held. To the extent that relevant information is held, it would also be necessary to 'extract' information".*

*Application of section 12(2)*

20. The MPS explained the following in respect of its application of section 12(2) of the FOIA to the request:

*"The internal review provided a conservative estimate of 2 hours per box for an individual to go through each box and retrieve and collate the information requested. This would equate to 48 hours which is roughly equivalent to 7 working days...*

*I believe that this was a reasonable estimate as based upon previous experience, it would normally take between 1-2 hours to read a large file or box full of information although the exact amount of time required depends upon the size and nature of the files and information requested. A more conservative estimate of 1 hour per box would still require a minimum of 24 hours to determine whether or not the requested information is held. Put another way, the appropriate cost limit (18 hours or 1,080 minutes) divided by the number of boxes (24) would suggest that 45 minutes per box would be required in order to ascertain whether or not it contained the requested information and/or information relating to the requested information and its location. While it may be possible to view some files within that timescale, on average I would expect that more time would be necessary".*

21. The MPS also advised that Commissioner that it had undertaken a dip sample in response to the complaint. In doing so it explained:

*"The intended methodology was to identify the first and last file in addition to the boxes that would be most likely to hold relevant information based upon metadata associated with the file. The rationale for this methodology was the potential for the first and last files to provide a description or overview of other files that may enable subsequent searches to be more focused. However, the first file has been recorded as missing. This is a significant variable in relation to these requests as the location of the file is unknown and therefore it is not possible to provide a precise timescale as to how long it would take to retrieve this box.*

*The last file which consisted of a 'Summary of lessons learned from the Great Train Robbery' (MEPO 2/10588) was retrieved in addition to 5 files selected based upon metadata indicating that the files contained police reports, statements and correspondence (MEPO 2/10571-2/10575). Due the [sic] files previously having been reviewed with a view to transferring them to the National Archives, MEPO files 2/10571-2/10575 had a Word document associated with it, each consisting of roughly 10 pages describing the contents of the file. The author of these Word documents advised that they had no recollection of seeing the requested information within retained files although it was not possible to be certain that the requested information was not contained within the files due to the volume and nature of the files and the time that had elapsed since the files were reviewed.*

*6 files were viewed with a view to ascertaining whether the requested information or related information was contained within the files. This took a little over 2 hours. However, it is important to note that the files were not read cover to cover and some of the files consisted of multiple parts. Particular attention was paid to the file containing a summary of lessons learned, any indexes and any references to correspondence with the Home Office, DCS Butler or DI Pickles. The files were also skim read to ascertain the nature of the content. The files ranged from 1cm-4.5cm thick and contained handwritten and typed material in addition to booklets with additional information and indexes.*

*There were several examples of correspondence with the Home Office in addition to correspondence and statements relating to DCS Butler. On the basis of this dip sample, I am reasonably confident that the requested information is not contained with these files as the content largely consisted of correspondence between 2 or more parties and statements although without reading each of the files cover to cover it is not possible to assert this with 100% certainty. Manually reading the files in detail would reasonably take 1-2 hours at a minimum to ascertain whether they contain the requested information or else whether they provide any indication as to whether or where the requested information may be held.*

*Included within one of the boxes containing the files was a copy of email correspondence with the applicant dating from 2012 that related to attempts by the MPS to assist the applicant outside of FOIA, with the applicant being advised to provide evidence that certain individuals were deceased in order to assist with a review of the files at the time. 8 files were requested by the applicant which*

*included 5 of the files that were viewed as part of the dip sample conducted in relation to this appeal.*

*The present request is asking for very specific information based upon a comment in an unofficial source written by a former police officer. Because any enquiries to determine whether the requested information is held would require at a minimum reviewing a large volume of hard copy files, the request is analogous to trying to find a needle in a haystack and related enquiries may be open ended to an extent.*

*The estimate has been based upon the quickest method of gathering the requested information. Due to the amount of time that has elapsed since the Great Train Robbery, related information would only be held within archived files. Although files relating to the Great Train Robbery have been identified, there is nothing in the metadata associated with MPS records indicating that the specific information requested is held.*

*The metadata associated with the files that did not form part of the dip sampling exercise suggests that they are less likely to hold relevant information as they appear to relate to correspondence from the public, follow-up reports from other police forces, individuals escaping from prison and press and TV publicity. With this in mind, I believe it would be disproportionate to view these files, especially as the files have previously been reviewed and retained due to their ongoing sensitivity and will be transferred to the National Archives once the sensitivity has sufficiently diminished. Added to this is the fact that one of the files is missing which could still leave open the possibility that the requested information is held by the MPS.*

*A Google search for the relevant passage of the book that is referred to in the request identified the relevant page and text quoted. However, this does not change any of the factors outlined above in relation to the cost of complying with the request".*

22. Having considered the estimate above, the Commissioner finds it to be a reasonable one. She considers that the MPS has gone to some considerable effort to try and locate the requested information and has undertaken the most viable searches in trying to do so.
23. The Commissioner therefore concludes that section 12(2) of the FOIA is engaged and the MPS was not obliged to confirm or deny holding the information requested.

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

24. 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.
25. The MPS advised the Commissioner that consideration had been given as to how it could help the complainant to reframe or refocus his request with a view to bringing it within the cost limit. However, it had concluded that, due to the specific nature of the request, it was unable to suggest any meaningful way of narrowing the scope of the request.
26. The Commissioner considers that the MPS has clearly explained how it holds the relevant information and, in so doing, has provided advice and assistance to the complainant. It has advised that there is a rough schedule of the contents of the boxes held, but that this does not indicate whether or not what has been requested is held in any of them so they would all need to be considered.
27. Whilst it has been unable to offer any specific advice on how to narrow the request on this occasion, the Commissioner is satisfied that the matter has been properly considered. Accordingly she finds that the MPS has complied with its duties under section 16 of the FOIA.

## **Other matters**

---

28. Although they do not form part of this notice the Commissioner wishes to highlight the following matters of concern.
29. Whilst the complainant did not ask the Commissioner to consider timeliness, she notes that it took the MPS nearly 3 months to respond to the request. This clearly exceeds the statutory time for compliance and will be noted for monitoring purposes.
30. The Commissioner will use intelligence gathered from individual cases to inform her insight and compliance function. This will align with the goal in her draft Openness by Design strategy<sup>1</sup> to improve standards of

---

<sup>1</sup> <https://ico.org.uk/media/about-the-ico/consultations/2614120/foi-strategy-document.pdf>



accountability, openness and transparency in a digital age. The Commissioner aims to increase the impact of FOIA enforcement activity through targeting of systemic non-compliance, consistent with the approaches set out in our Regulatory Action Policy<sup>2</sup>.

---

<sup>2</sup> <https://ico.org.uk/media/about-the-ico/documents/2259467/regulatory-action-policy.pdf>

## Right of appeal

---

31. 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](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

32. 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.
33. 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**