

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 26 May 2020

Public Authority: Chief Constable of Hampshire Constabulary
Address: Police Headquarters
Romsey Road
Winchester
Hampshire
SO22 5DB

Decision (including any steps ordered)

1. The complainant requested information, in a four-part request, relating to meetings Hampshire Police held with the Hampshire Police and Crime Commissioner, together with details of complaints / allegations, associated correspondence and actions taken. Hampshire Constabulary provided some of the requested information. It refused to provide the remainder citing section 12(1) of FOIA, as to do so would exceed the appropriate cost and time limit.
2. The Commissioner's decision is that Hampshire Constabulary is not obliged to comply with the request under section 12(1) of FOIA. She finds that Hampshire Constabulary did not comply with its section 16 of FOIA obligations, in that it did not provide advice and assistance to the complainant in relation to how he might refine his request with a view to bringing it within the cost limit. However, the additional explanation provided in this decision notice means that it is no longer required to do so.
3. No steps are required to ensure compliance with the legislation.

Request and response

4. On 14 October 2019, the complainant wrote to Hampshire Constabulary and requested information in the following terms:

"RFI (1)

Please find enclosed a copy of the letter dated 30 September ..., that I received from the Hampshire Police and Crime Commissioner, Mr Lane.

This letter confirms that you had 26 meetings with Mr Lane during 2018. For each and everyone [sic] of those meetings, please provide the following information:

- 1. The purpose of the meeting*
- 2. The record of the meeting*
- 3. The agenda for the meeting*
- 4. The minutes of the meeting*
- 5. Those present at the meeting*
- 6. The actions arising from each meeting*
- 7. A copy of all documents/emails/letters/telephone transcripts arising from the meeting*

RFI (2)

In respect of responses 5/6 from the above letter:

Please supply a copy of all correspondence/conversations between you and Mr Lane, HPCC, in respect of the 708 complaints/1178 allegations made against Hampshire Constabulary in 2018.

RFI (3)

In respect of RFI (2), please advise what instructions/actions you have taken in respect of the complaints/allegations above, and the actions you have taken in response to the fact that no disciplinary actions were taken/instigated in respect of them, and that no response/explanation was given to those making the complaints.

RFI (4)

Please supply a hard copy of all the complaints/allegations made against Hampshire Constabulary during 2018."

5. Hampshire Constabulary responded on 11 November 2019. For RFI (4) it stated that the information requested was not held in a retrievable format. It cited section 12(1), the cost of compliance exemption. In this case, Hampshire Constabulary chose to provide some information, by way of assistance, in respect of RFI (1), it responded to parts 1 and 5 and said no information was held in respect of the remainder.
6. The complainant requested an internal review on 13 November 2019 asking for further details about Hampshire Constabulary's reliance on

section 12(1) of FOIA. The complainant also raised a number of points relating to the information it had provided for RFI (1) of his request.

7. Following an internal review, Hampshire Constabulary wrote to the complainant on 9 December 2019. It upheld its original position in relation to section 12(1). By way of further assistance, it explained why no formal records are kept for PCC (Police and Crime Commissioner) meetings.

Scope of the case

8. The complainant contacted the Commissioner on 16 December 2019 to complain about the way his request for information had been handled. He asked the Commissioner to consider Hampshire Constabulary's reliance on section 12(1) and what he referred to as its "*glib claims for cost estimates*".
9. The Commissioner has considered whether Hampshire Constabulary was entitled to rely on section 12(1) to refuse to comply with the full request.
10. She has also considered whether Hampshire Constabulary has fulfilled its obligations under section 16 of FOIA.

Reasons for decision

Section 12(1) – cost of compliance exceeds the appropriate limit

11. Section 1(1) of FOIA states that:

"(1) Any person making a request for information to a public authority is entitled –

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him."

12. Section 12(1) of 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."

13. The Fees Regulations set the appropriate limit at £450 for Hampshire Constabulary; they also specify that the cost of complying with a request must be calculated at the rate of £25 per hour, meaning that the appropriate limit for Hampshire Constabulary equates to 18 hours.
14. In estimating whether complying with a request would exceed the appropriate limit, regulation 4(3) states that an authority can only take into account the costs it reasonably expects to incur in:
 - a. determining whether it holds the information;
 - b. locating the information, or a document containing it;
 - c. retrieving the information, or a document containing it; and
 - d. extracting the information from a document containing it.

Can all parts of the request be aggregated?

15. Section 12(4) of FOIA can be engaged where one person makes two or more requests. It allows for the aggregation of these requests for the purpose of calculating costs in circumstances which are set out in Regulation 5 of the Fees Regulations. This Regulation provides that multiple requests can be aggregated where two or more requests relate, to any extent, to the same or similar information.
16. Given the effect of section 12(4), the Commissioner first considered whether the complainant's request of 14 October 2019 constituted a single request with multiple elements or multiple requests. The Information Tribunal considered a similar issue in *Fitzsimmons v ICO & Department for Culture Media and Sport* [EA/2007/0124]¹.
17. Taking the Tribunal's decision in *Fitzsimmons* into consideration, the Commissioner would characterise the complainant's request as containing multiple requests within a single item of correspondence.
18. Having established that the complainant has made multiple requests in a single request, the Commissioner went on to consider whether those requests could be aggregated for the purpose of calculating the cost of compliance. The Commissioner notes that all parts of the request relate to meetings and any associated complaints / allegations and correspondence, together with any disciplinary action and outcomes. The Commissioner has therefore concluded that it is reasonable for them

¹<http://informationrights.decisions.tribunals.gov.uk//DBFiles/Decision/i242/Fitzsimmons.pdf>

to be aggregated for the purpose of calculating the cost of compliance because they follow an overarching theme.

19. Having reached this conclusion, the Commissioner will next consider the application of section 12(1). In determining whether Hampshire Constabulary has correctly applied section 12 of FOIA in this case, the Commissioner has considered Hampshire Constabulary's rationale provided to her during the investigation.

Handling of request

20. The Commissioner's cost guidance² states:

"As a matter of good practice, public authorities should avoid providing the information found as a result of its searching and claiming section 12 for the remainder of the information. It is accepted that this is often done with the intention of being helpful but it ultimately denies the requestor the right to express a preference as to which part or parts of the request they may wish to receive which can be provided under the appropriate limit.

In practice, as soon as a public authority becomes aware that it intends to rely on section 12, it makes sense for it to stop searching for the requested information and inform the complainant. This avoids any further and unnecessary work for the public authority as it does not need to provide any information at all if section 12 is engaged."

21. In this case, as Hampshire Constabulary was entitled to aggregate all parts of the request, it was not obliged to answer any of it, although she notes that it chose to do so in respect of RFI (1).
22. In the Commissioner's view, whilst noting that Hampshire Constabulary wished to assist the complainant, in responding to this part of the request when it was not required to do so, it contributed to the further questions raised at internal review.

Application of section 12(1)

23. In relation to RFI (4) of the request, (ie a hard copy of all the complaints / allegations made against Hampshire Constabulary during 2018), Hampshire Constabulary advised the complainant that there were 700

² https://ico.org.uk/media/for-organisations/documents/1199/costs_of_compliance_exceeds_appropriate_limit.pdf

complaints in scope of the request. It said that each complaint would have to be located and printed (and subsequently redacted and exempted for personal data which is excluded from the costs calculation), and that to comply would exceed the cost limit of £450.

24. Hampshire Constabulary has told the Commissioner that all complaints are submitted via a form and initially sent to its Professional Standards Department ('PSD'). Subsequently, the complaints are progressed and investigated which involves further exchanges of correspondence, meetings between the Investigating Officer ('IO') and the complainant, logs of those meetings and ultimately a report produced by the IO. Hampshire Constabulary said that the nature of the complaint and allegations can change or evolve as an investigation continues, particularly as those complaining may not have included all relevant parts of their complaint on the original form. For these reasons, Hampshire Constabulary said that in order to respond to the complainant's request for copies of "all" the 2018 complaints / allegations, it would need to review all the case correspondence for each individual complaint in order to determine the course of that particular case and whether the original complaint / allegation changed through the course of the investigation.
25. It said that the records are held as a mix of electronic and paper files, but that the majority are held electronically on the central PSD database. It explained that some files are held in hard copy due to their size and the material seized.
26. Hampshire Constabulary provided an estimate of 30 minutes per complaint based on those held electronically, which it said it can search more readily and quickly than the paper files. It said that that its PSD team had provided this estimate based on its experience of handling and reviewing complaints files with a view to identifying the complaints / allegations throughout the life cycle of a complaint.
27. It further explained:

"We have a SPOC [Single Point Of Contact] who works in our Professional Standards Dept (PSD) who is very familiar with the structure of the complaint files and knows what would be required to extract all of the information that would be regarded as falling within the scope of a request.

In this specific case, she made a determination that as the data requested may be held within a variety of documents held on any one case (initial complaint form, statements, Investigating Officer's meetings, notes or report). It would take on average about 30 minutes to read all the relevant documents on a regular case to determine if any information was relevant to the request.

It was our view that this assessment from an experienced individual who understands the complaint file format and structure was sufficient to arrive at a realistic figure”.

Conclusion

28. From the information provided, the Commissioner is satisfied that Hampshire Constabulary would have to interrogate both electronic and paper records in order to respond to RFI (4) of the complainant’s request. From the explanation provided, she accepts that the nature of a complaint / allegation can change or be added to during the course of an investigation and that Hampshire Constabulary would, therefore, need to check through all the case correspondence on each individual complaint in order to determine if this had occurred.
29. The Commissioner notes that even a vastly reduced estimate of five minutes per file, with 700 complaints in scope, this would equate to 3500 minutes or just over 58 hours, which still exceeds the cost limit.
30. The Commissioner has concluded that Hampshire Constabulary’s estimate is reasonable and that it was entitled to rely on section 12 for this request in its entirety

Section 16 – duty to provide advice and assistance

31. Section 16 of FOIA states:

“(1) It shall be the duty of a public authority to provide advice and assistance, so far as would be reasonable to expect the authority to do so, to persons to propose to make, or have made, requests for information to it.

(2) Any public authority which, in relation to the provision of advice or assistance in any case, conforms with the code of practice under section 45 is to be taken to comply with the duty imposed by subsection (1) in relation to that case.”

32. The Commissioner’s view is that, where a public authority refuses a request under section 12(1) of FOIA, section 16(1) creates an obligation to provide advice and assistance on how the scope of the request could be refined or reduced to avoid exceeding the appropriate limit.
33. The Commissioner notes that Hampshire Police did not provide any sort of breakdown or estimate as to how it considered his request would exceed the appropriate limit. In failing to do so she finds it breached section 16.

34. However, Hampshire Constabulary told the Commissioner that it had tried to disclose some information, albeit outside of the legal provisions of FOIA. Whilst this partial disclosure was not strictly required, as all parts of the request could be properly aggregated, the Commissioner does recognise that some attempt at advice and assistance was made.
35. The further detail about the cost limit now given in this notice means that the Commissioner does not require any further steps to be taken.

Other matters

36. The complainant raised the following as part of his grounds of complaint:

"...My RFI [request for information] is of grave concern to the Public. I trust you will take it seriously, rather than adopting your usual contempt for the Public.

The FOIA was not instigated for nothing – it has a purpose. It was introduced for the benefit of the Public to obtain serious, pertinent facts about public services that historically were hidden from Public scrutiny without any justification.

It is self evident to me and others that the ICO is currently not fit for purpose and desperately needs to be reformed to bring it into line with Public expectations. Your current, unashamed contempt for the public is distasteful and unacceptable".

37. In respect of FOIA, the Commissioner's role is to oversee the legislation and investigate whether or not a public authority has handled its responsibilities under the FOIA appropriately. If the complainant is dissatisfied with the outcome of any investigation he is then entitled to refer his concerns on to the First-tier Tribunal (Information rights) for these to be independently reconsidered.
38. If the complainant is unhappy with the service provided by the ICO then further information about how to make a complaint is available on the Commissioner's website³.

³ <https://ico.org.uk/make-a-complaint/complaints-and-compliments-about-us/complain-about-us/>

Right of appeal

39. 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

40. 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.

41. 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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Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
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SK9 5AF