

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 25 June 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 complaint-related information from the Metropolitan Police Service (the "MPS"). Having initially cited exemptions to the request, it was revised by the complainant and the MPS subsequently advised that to comply with it would exceed the appropriate limit at section 12 of the FOIA. The complainant did not consider that the MPS had provided him with adequate advice and assistance about his request, as required under section 16 of the FOIA.
2. The Commissioner's decision is that the MPS complied with its duty under section 16 of the FOIA. No steps are required.

Request and response

3. On 22 March 2019, the complainant wrote to the MPS and requested information in the following terms:

"I would like to know annual figures for the number of complaints to the Met police about the use of covert cameras to spy on individuals

-Could this data go back to the start o [sic] 2012

-I would like the data to be provided in Excel format

-I would like the data to be up to date as possible".

4. On 2 August 2019, the MPS asked for clarification of the request as follows:

"Please clarify what you mean by complaints about members of the public using cameras on one another or if you also mean complaints against the Met for using cameras as part of covert surveillance. The use of covert surveillance as an investigative tool is publically [sic] acknowledged by the Home Office and a code of practice is set out at the below link:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/742041/201800802_CSPI_code.pdf

Are you only referencing the use of cameras, not any other covert equipment?"

5. The request was revised on 2 August 2019 as follows:

"Thanks for getting in touch and asking me whether [sic] I would like my FOI request to cover all types of covert devices used by the Met.

Sounds like a good idea.

How about doing complaints for all covert equipment... and if possible with a breakdown showing different types of equipment like cameras, listening devices etc...?"

6. On 27 November 2019, the MPS responded and refused to confirm or deny that the requested information was held. It cited sections 23(5), 24(3) and 31(3) of the FOIA as its basis for doing so.
7. On 8 December 2019, the complainant requested an internal review and again revised his request as follows:

*"-I would like to know annual figures for the number of complaints to the Met police about the use of covert devices
-Could this data go back to the start of [sic] 2012
-I would like the data to be provided in Excel format
-I would like the data to be up to date as possible*

By giving me this data the Met would not have to acknowledge that it uses covert devices.

It would just have to acknowledge that it receives complaints from members of the public that allege [sic] that it uses covert devices".

8. The MPS sent the outcome of its internal review on 24 December 2019. It revised its position and said that to comply with the request would exceed the appropriate limit at section 12 of the FOIA.

Scope of the case

9. On 16 March 2020, the complainant submitted some correspondence to the Commissioner with no covering email and no grounds of complaint.
10. On 3 June 2020, the Commissioner wrote to the complainant requiring his grounds of complaint as it was unclear whether or not he disagreed with the citing of section 12 of the FOIA or something else.
11. On 4 June 2020, the complainant responded, saying:

"1) I agree that the way of answering my FOI the way that they are proposing would exceed the cost limit

2) I feel that the explanation ... (about the structure of the DPS complaints database) was not a satisfactory excuse for giving zero advice.

3) Simple advice on how to narrow the request can be given and has not been provided

4) This would include providing information on the structure of the DPS complaints database that would help me to narrow my search".

12. The Commissioner will therefore consider whether or not the MPS provided adequate advice under section 16 of the FOIA below.
13. 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

Section 16 – advice and assistance

14. 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. In general, where section 12(1) 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.
15. The complainant has specifically raised concerns that the MPS has not complied with its obligations under section 16 of the FOIA.
16. In its internal review the MPS explained the following to the complainant:

"As advised to you previously, the use of covert surveillance as an investigative tool is publically [sic] acknowledged by the Home Office. You have asked for complaints where the use of a covert camera was a feature. Complaints concerning covert surveillance cameras could encompass a variety of scenarios. There is not a flag, marker or specific field to easily identify this type of complaint recorded on the Directorate of Professional Standards (DPS) complaints database. The information requested cannot be retrieved by automatic means.

A keyword search could be used but this would not provide an accurate and complete response as keyword searches alone are usually subject to a number of caveats and/or are insufficient to extract all relevant information due to the need to:

eliminate 'false positives' i.e. irrelevant records are incorrectly identified as relevant

identify 'false negatives' i.e. relevant records that are incorrectly identified as irrelevant

This is due to the fact that the same information can be described using different keywords or abbreviations. Keywords may also identify irrelevant records in circumstances where the keywords have been used in a different context or are part of a larger string of text. For example, the information you have request could be described by a number of phrases. You have used the term 'spy' but 'surveillance' 'covert' 'camera' 'recording device' etc. are also terms that may be relevant to your request.

Additionally, keyword searching is not a recommended way to produce meaningful data as searching in this way can produce erroneous results as the same keyword may appear multiple times in the same record.

Enquiries to identify records not captured by a keyword search may be open ended, exceed the appropriate cost limit and/or be disproportionate depending upon the scope of the request. You [sic] request requires us to search 8 years' worth of data.

To answer your request fully, each complaint allegation would have to be reviewed to determine if it fell within the scope of your request. For 2018/19, there were 5480 public complaints which comprised of 10,388 allegations. It would be an onerous task to determine what information is held relevant to your request”.

17. By way of advice and assistance it added:

“Due to the explanation provided above, I am unable to provide you with any practical way of redefining your request. Even if your request were limited to a very narrow time frame, it is likely that other FOIA exemptions would apply. (For example, Section 40 – personal information).

It should be noted that allegations are an interpretation of officer/staff behaviour at an incident.

On each occasion that an allegation of misconduct is made about an employee of the MPS, it is recorded, assessed and where appropriate, investigated to determine whether the conduct of that member of staff has fallen below the high standards of behaviour expected by the MPS. An allegation of misconduct does not mean that the employee is guilty of the alleged conduct, nor should any inference of guilt be made”.

18. In responding to her enquiries, the MPS advised the Commissioner as follows:

“[Name redacted] further explained in detail the rationale for exempting the requested information under section 12 as a flag/marker was not available to search for the information being requested on the relevant MPS database and related issues with key word searching.

[Name redacted] explained she was unable to provide [the complainant] with any practical way of redefining his request due to her explanations and even with a narrower period, other FOIA exemptions potentially would be engaged.

In this respect, I note the advice and assistance provided to [the complainant] on the 2/8/2019 and within our internal review response dated 24/12/19. However, due to the rational [sic] noted within the internal review response, we are unable to suggest a practical way in which the request may be modified in order to bring it within the 18 hours stipulated by the regulations. The information being requested by [the complainant] is not recorded in a format that would be easily retrievable, which has made it difficult to offer accurate advice and assistance due to the information being requested.

Section 16 provides an obligation for a public authority to provide advice and assistance to a person making a request, as far as it would be reasonable to do so. In ICO Decision Notice FS50194062, it states

'..if a public authority provides an indication of what, if any, information could be provided within the costs limit it will have complied with the requirements of the Code of Practice and therefore section 16(1) of the Act.'

https://ico.org.uk/media/action-weve-taken/decision-notices/2010/525700/FS_50194062.pdf

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 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.

In relation to the above, it is the opinion of the MPS that it has indeed complied with the guidance contained within Section 45 Codes of Practice, and therefore its duty under Section 16 to provide advice and guidance to the complainant. The MPS considers that it has done so with the clear intention to attempt to assist [the complainant]".

19. In this case, the MPS has explained to the complainant how the information is held and why complying with the request would exceed the cost limit. Although it has been unable to assist with narrowing the request sufficiently to allow disclosure of any information, the Commissioner recognises that, on this occasion, this has not been practicable. Its policing systems have been designed for policing purposes and the information that the complainant requires is not readily accessible as it is not something which is required by the MPS in

the format that has been requested. The Commissioner cannot see any easy way in which the complainant's request could be responded to. Whilst he refers to being provided with "*information on the structure of the DPS complaints database*", the MPS has advised him that what he has requested is not readily available on that database and why. If the complainant wants to ascertain further specific details about the database then this is something he could request in the future, ensuring that his request is for "recorded information" as opposed to being a series of questions.

20. The Commissioner considers that the MPS has tried to explain how it holds its information and has thereby provided adequate advice and assistance to the complainant. Accordingly, she finds that it has complied with its duties under section 16.
21. Based on the wide-ranging wording of this request, the Commissioner concludes that there was no easy way for the MPS to suggest how it might be refined. She therefore finds there was no breach of section 16.

Other matters

22. Although they do not form part of this notice the Commissioner wishes to highlight the following matters of concern.

Making a request

23. The Commissioner has produced guidance for the public which gives suggestions as to how to make a clear information request. This includes some helpful 'dos' and 'don'ts' which she recommends should be taken into account. The guidance can be found on her website¹.

¹ <https://ico.org.uk/your-data-matters/official-information/>

Right of appeal

24. 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

25. 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.
26. 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