

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 10 December 2021

Public Authority: Chief Constable of Hampshire Constabulary
Address: Mottisfont Court
Tower Street
Winchester
SO23 8ZD

Decision (including any steps ordered)

1. The complainant requested information from Hampshire Constabulary ("the Constabulary") relating to the forms used by officers to request examination of digital devices.
2. The Commissioner's decision is that the Constabulary was entitled to refuse to comply with the request under section 12(1) of the FOIA, and that it has complied with its obligations under section 16(1) of the FOIA to provide adequate advice and assistance to the complainant.
3. The Commissioner does not require the public authority to take any further steps.

Request and response

4. On 14 March 2021, the complainant wrote to the Constabulary and requested information in the following terms:

"1. Please provide copies of any forms officers must complete to request the examination of the contents of digital devices e.g. laptops and phones. If no forms are used and details are instead input on a computer, please provide relevant screenshots."

2. Please provide all guidance available to officers to assist them in requesting the examination of the contents of digital devices.

3. Please provide the name of the department responsible for examining the contents of digital devices and state the number of staff it employs (WTE).

4. If your force uses portable devices that allow officers to download the contents of people's digital devices, please state the number of such devices you have.

5. For the year 2019/20, please provide the total number of examinations of digital devices you carried out.

6. For 2019/20, please provide the number of digital devices earmarked for download recorded as lost either before or after examination, if any."

5. The Constabulary responded on 14 April 2021, citing section 12(1) FOIA to refuse the disclosure of the requested information.
6. The Constabulary upheld their response at internal review on 17 May 2021. However, under section 16 (advice and assistance) of the FOIA, they stated a new request, limited to points 1-3, may enable them to comply with a request for information.

Scope of the case

7. The complainant contacted the Commissioner on 22 May 2021 to complain about the way their request for information had been handled.
8. The Commissioner considers the scope of this case is to determine if the public authority has correctly cited section 12(1) of the FOIA in response to the request.

Reasons for decision

Section 12 – cost of compliance exceeds the appropriate limit

9. Section 1(1) of the 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."

10. Section 12(1) of the 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."

11. The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ("the Regulations") sets the appropriate limit at £450 for the public authority in question. Under the Regulations, a public authority may charge a maximum of £25 per hour for work undertaken to comply with a request. This equates to 18 hours work in accordance with the appropriate limit set out above.

12. A public authority is only required to provide a reasonable estimate, rather than a precise calculation, of the cost of complying with the request, and in putting together its estimate it can take the following processes into consideration:

- 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.

13. A public authority does not have to make a precise calculation of the costs of complying with a request; instead, only an estimate is required. However, it must be a reasonable estimate. In accordance with the First-Tier Tribunal decision in the case of *Randall v IC & Medicines and Healthcare Products Regulatory Agency EA/20017/0004*¹, the Commissioner considers that any estimate must be "*sensible, realistic and supported by cogent evidence*".

14. Where a public authority claims that section 12 of the FOIA is engaged it should, where reasonable, provide advice and assistance to help the

¹<https://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i136/Randall.pdf>

applicant refine the request so that it can be dealt with under the appropriate limit, in line with section 16(1) of the FOIA.

The Constabulary's position

15. The Constabulary informed the Commissioner that when the request was initially received, work was undertaken to confirm if the information was held. It explained that in order to specifically answer question 5, they would need to search their Case Management System (CMS) where submissions are held, and determine the exact number of devices per submission, this they estimate at between 1 and 4 devices. This information would then need to be cross referenced with the case notes on each case to check if the item was actually examined and not rejected. Given there were 2327 submissions, the number of devices could be between 2327 and 9308 devices needing cross referencing before any further necessary checks were made.
16. The Constabulary explained that it became apparent that the work involved to obtain the initial information would exceed the cost limit. It advised that it would take approximately 5 minutes to review each record which equates to a minimum of 193 hours. If the time taken could be reduced to 1 minute, that would still equate to a minimum of 38 hours.
17. The Constabulary also explained to the Commissioner in some detail how it would have to obtain the information that was not held centrally in their CMS and the time it would take to do this.

The Commissioner's conclusion

18. Paragraph 6.6 of the FOI Code of Practice states:

"Public authorities do not have to search for information in scope of a request until the cost limit is reached, even if the applicant requests that they do so. If responding to one part of a request would exceed the cost limit, public authorities do not have to provide a response to any other parts of the request."²

² [CoP FOI Code of Practice - Minor Amendments 20180926 .pdf \(publishing.service.gov.uk\)](#)

19. In the circumstances of this case, as the Constabulary has found that complying with part of the request would exceed the cost limit, they are not obliged to respond to the remainder of the request in its entirety.
20. The Commissioner's guidance states that whilst a public authority may search up to or even beyond the appropriate limit of its own volition, there is no requirement for a public authority to do so. For more information, see paragraph 28 onwards of the Commissioner's guidance on costs of compliance exceeds appropriate limit.³
21. During the investigation, the Constabulary provided the Commissioner with a detailed explanation of what it would need to do to obtain the requested information. The Commissioner accepts that the Constabulary's estimates are reasonable and that it would exceed the appropriate limit to obtain the information.
22. The Commissioner therefore considers that the Constabulary estimated reasonably that the request could not be answered within the cost limit, and as such, the Constabulary is entitled to rely on section 12(1) of the FOIA to refuse the request.

Section 16(1) – duty to provide advice and assistance

23. Section 16 of the 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."

24. The Commissioner's view is that, where a public authority refuses a request under section 12(1) of the 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.

³ https://ico.org.uk/media/for-organisations/documents/1199/costs_of_compliance_exceeds_appropriate_limit.pdf

25. In this case, the Constabulary advised the complainant at review stage, that if he narrowed the scope of his request to points 1 - 3, it may be able to comply with a request for information.
26. The Commissioner has considered the advice and assistance provided to the complainant by the Constabulary, and Paragraph 6.9 of the FOI Code of Practice advises that helping an applicant narrow the scope of their request may include suggesting that the subject or timespan of the request is narrowed.
27. The Commissioner considers that the advice and assistance the Constabulary offered the complainant was adequate. The Commissioner is therefore satisfied that the Constabulary has complied with its obligations under section 16(1) of the FOIA in its handling of this request.

Right of appeal

28. 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

29. 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.
30. 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

Phillip Angell
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