

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 23 August 2021

Public Authority: Chief Constable of Cambridgeshire Constabulary
Address: Constabulary Headquarters
Hinchingsbrooke Park
Huntindon
Cambridgeshire
PE29 6NP

Decision (including any steps ordered)

1. The complainant requested from Cambridgeshire Constabulary (“the Constabulary”) information in relation to unlawful cycling on footways and unlawful use of e-scooters. The Constabulary refused the request as it considered that complying with it would exceed the cost limit under section 12 of the FOIA.
2. The Commissioner’s decision is that the Constabulary was entitled to rely on section 12(1) of the FOIA (cost limit) to refuse to comply with this request. However, the Commissioner also finds that the Constabulary has not complied with its duty to provide advice and assistance under section 16 of the FOIA (advice and assistance).
3. The Commissioner requires the Constabulary to take the following steps to ensure compliance with the legislation.
 - Provide advice and assistance to the complainant on refining his request.
4. The Constabulary must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 27 August 2020, the complainant wrote to the Constabulary and requested information in the following terms:

"I wish to apply under the provisions of the Freedom of Information Act 2000 for disclosure of the following information concerning unlawful cycling on footways and unlawful use of e-scooters in the City of Cambridge and its suburbs.

1. Cycling on Footways Not Designated for Dual Use

- a. Does Cambridgeshire Constabulary enforce, consistently and effectively, the provisions of the Highways Act 1835 (as amended) relating to cycling on footways?*
- b. How many on the spot fines were issued to cyclists riding unlawfully on footways and how many prosecutions for dangerous cycling involving unlawful riding on footways were brought in each of the years 2016, 2017, 2018 and 2019?*
- c. How many accidents to pedestrians involving collision with cyclist(s) riding unlawfully on footways were reported in each of the years 2016, 2017, 2018 and 2019? How many were investigated?*
- d. If Cambridgeshire Constabulary does not enforce, consistently and effectively, the provisions of the Highways Act 1835 (as amended), by whose decision does it not do so? Please include the minute number and date.*
- e. What is the time table for investigation and implementation of "an operation alongside their Special Constabulary colleagues and a number of partners, where they are currently looking into this issue, and ways to deal with it in the longer term." Which other organisations are involved?*

(Reference: an email to me on 27 July 2020, on behalf of the Police and Crime Commissioner, from [named person])

2. Use of e-Scooters on Public Highways and Footways

- a. My understanding of the Law on use of e-scooters is that they became lawful on the public highway on 4 July 2020 only in respect of scooters hired from a rental company, and their use on public footways remains unlawful. Privately owned e-scooters may not be used anywhere on the public highway or footway.*

Does Cambridgeshire Constabulary share this understanding? If not, in what respects am I mistaken?

b. Lawful use of e-scooters on the public highway is limited currently to local trials in a small number of areas. Cambridge is not one of them, and therefore all use of e-scooters on public highways and footways remains unlawful here. However, their use has increased visibly since 4 July, including use on the footway.

What is Cambridgeshire Constabulary's policy on enforcement of relevant legislation governing use of e-scooters on the public highway, once they become lawful here, in respect of:

i. Restrictions on the use of privately owned scooters

ii. Possession of a driving licence

iii. Enforcement of the maximum speed limit of 15.5 miles per hour.

c. How many warnings, on the spot fines, or prosecutions for unlawful use of an e-scooter have been brought since 4 July 2020?"

6. The Constabulary responded to the request on 30 September 2020. It refused to provide the majority of the requested information because it considered that complying with the request would exceed the cost limit under section 12 of the FOIA. However, it stated that it was able to provide some of the requested information which it retrieved before the fees limit was exceeded. It disclosed to the complainant a table showing the offences in Cambridgeshire which involved pedal cycles in 2016-2019.
7. On 13 October 2020, the complainant requested an internal review. He said that the information that had been disclosed did not answer his request, stating, "*most of it relates to cycling offences other than those I have asked about*".
8. The complainant contacted the Commissioner on 20 October 2020 to complain about the way his request for information had been handled. On 9 December 2020, the Commissioner contacted the Constabulary and asked it to complete its internal review.
9. Following an internal review the Constabulary wrote to the complainant on 10 December 2020. It stated that it was upholding its original position.

Scope of the case

10. The complainant contacted the Commissioner on 20 October 2020 to complain about the way their request for information had been handled. The complainant raised concerns that the Constabulary did not respond to their request within 20 working days of receipt. They also raised concerns that the information disclosed did not answer their request and that they did not agree with the Constabulary's refusal of the request under section 12 of the FOIA.
11. The scope of this investigation and decision notice is to determine whether the Constabulary was entitled to rely on section 12(1) of the FOIA (cost limit) in order to refuse to comply with this request.
12. The Commissioner will also consider whether the Constabulary has fulfilled its obligations under section 16 of the FOIA (advice and assistance). She will also consider the timeliness of the Constabulary's response to the request.

Reasons for decision

Section 12(1) – cost of compliance

13. 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."

14. Section 12(1) of FOIA provides 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."

15. The appropriate limit in this case is £450, as laid out in section 3(2) of The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ("the Fees Regulations"). This must be calculated at the rate of £25 per hour, providing an effective time limit of 18 hours' work.

16. In estimating whether complying with a request would exceed the appropriate limit, regulation 4(3) of the Fees Regulations states that an authority can only take into account the costs it reasonably expects to incur in:
- determining whether it holds the information;
 - 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.
17. 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*".

The Constabulary's position

17. In the Constabulary's response to the complainant it stated:

"Due to there being no specific offence for E-Scooters to retrieve this information would require reading through hundreds of crime reports as this information you are requesting is not centrally recorded anywhere.

Unfortunately this means it is not possible to suggest a way to refine this request, as even if the date range were reduced it would still require hundreds of records to be manually checked."

18. The Constabulary did disclose some information to the complainant, as detailed at paragraph 6 above. It stated that this information had been retrieved before the fees limit was exceeded. It stated that while it hoped the information was helpful, disclosure of that information did not affect its right to rely on section 12 for the remainder of the request.
19. In response to the Commissioner's investigation, the Constabulary explained that there are no specific offences relating to scooters. It explained that there is, "*currently a trial in Cambridge which has its own rules and even in the trial area only the official rental scooters are*

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

permissible". It further explained that the "escooter" is not an official designation for a vehicle type on its systems, so in order to ascertain whether the requested information was held, it would have to consider the paperwork for each Traffic Offence Report ("TOR") issued between the dates specified in part 2C of the request.

20. The Constabulary has explained that 793 TORs were issued in Cambridgeshire during this timeframe. It explained that the paperwork is stored together with TORs issued by Herts and Beds police instead of being separated out. As such, the Constabulary stated that in order to locate and discover whether a TOR was issued by Cambridgeshire and related to an escooter offence, it would be required to consider 2719 TORs (the amount issued by all three authorities combined).
21. The Constabulary confirmed that a sampling exercise had been undertaken within which it considered a sample of 20 TORs. It explained that it searched each TOR for Cambridgeshire and then searched for whether it mentioned escooter. It confirmed that it took approximately one minute to do this per TOR. It estimated that if this one minute per TOR were multiplied by the number of TORs (2719), it would take over 45 hours to comply with this request.

The Commissioner's conclusion

22. 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

23. 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.
24. 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

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

information, see paragraph 28 onwards of the Commissioner's guidance on costs of compliance exceeds appropriate limit.³

25. The Commissioner accepts that the Constabulary are unable to use search terms to locate the information and that it is reasonable that the requested information is stored with the TORs issued by the other two police forces. However, she considers that one minute seems to be a high estimate to search each TOR. The Commissioner does however, accept that even if it took 30 seconds to search each TOR, the cost limit would be exceeded.
26. 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 – duty to provide advice and assistance

27. 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."

28. The Commissioner's view is that where a public authority refuses a request under section 12(1) of FOIA, compliance with the section 45 Code of Practice will fulfil its duty under section 16(1) to provide advice and assistance on how the scope of the request could be refined.
29. Paragraph 2.10 of the section 45 Code of Practice states:

"Where it is estimated the cost of answering a request would exceed the "cost limit" beyond which the public authority is not required to answer a request (and the authority is not prepared to answer it), public authorities should provide applicants with advice and assistance

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

to help them reframe or refocus their request with a view to bringing it within the costs limit”.

30. In addition, paragraph 6.9 states that *“public authorities should consider what advice and assistance can be provided to help the applicant reframe or refocus their request with a view to bringing it within the cost limit”.*
31. In its initial response to the request, the Constabulary advised the complainant that it was not able to suggest a way to refine the request to bring it within the cost limit. It stated that this was because, even if the date range was reduced, answering the request would still require the Constabulary to manually check hundreds of records. However, as part of its initial response to the request, the Constabulary did disclose some information to the complainant which it considered to be relevant to the request.
32. In response to the Commissioner’s investigation, the Constabulary stated that it had, *“advised the requestor that due to there being no specific crime for what he was after there was no way to refine the request as we would still need to manually read through all the crime reports due to there being nothing searchable. We also provided any information we could which we felt might be relevant without exceeding the 18 hours.”*
33. The Commissioner considers that the Constabulary has not taken sufficient steps to offer advice and assistance in an attempt to bring the request within the appropriate limit. The Commissioner considers that the Constabulary could have advised the complainant of the way in which they could refine their request by confirming which parts of the request it may have been able to respond to within the cost limit. She also considers that the Constabulary could have advised the complainant on how to refine the request e.g. to request the data for one month, rather than the number of months originally requested, and it may have been the case that the request would have then fallen within the cost limit.
34. The Commissioner is therefore not satisfied that the Constabulary complied with its statutory obligations under section 16 to provide advice and assistance. The Constabulary is therefore required to take the step outlined at paragraph three above.

Procedural matters

Section 10 – Time for compliance

35. Section 10(1) of the FOIA states that a public authority shall respond to information requests promptly and, in any event, no later than 20 working days from receipt.
36. The Commissioner notes that the complainant made the request for information on 27 August 2020 and a response was not issued until 30 September 2020. The Commissioner therefore finds that the Constabulary breached section 10 of the FOIA by failing to respond to the request within 20 working days.

Other matters

37. The Commissioner reminds the Constabulary that, although it is not a requirement under the FOIA to provide an internal review, it is best practice for these to be completed within 20 working days of the request.

Right of appeal

38. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

39. 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.
40. 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
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**