

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 19 November 2021

**Public Authority:** Chief Constable of Hertfordshire Constabulary  
**Address:** Hertfordshire Constabulary Headquarters  
Stanborough Road  
Welwyn Garden City  
Hertfordshire  
AL8 6XF

### Decision (including any steps ordered)

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1. The complainant has requested information from Hertfordshire Constabulary ("the Constabulary") regarding injury awards pursuant to the Police (Injury Benefit) Regulations 2006.
2. The Commissioner's decision is that the Constabulary was entitled to apply section 12 of the FOIA – exceeds appropriate limit, and that it has complied with the requirement of section 16 of the FOIA – advice and assistance.
3. The Commissioner does not require the public authority to take any further steps.

### Request and response

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4. On 18 September 2020, the complainant wrote to the Constabulary and requested information in the following terms:

*"I am interested in information relating to injury awards pursuant to the Police (Injury Benefit) Regulations 2006 SI 2006/932.*

*1. How many individuals currently receive injury awards from your force?*

2. *For each of the three years 2017/18, 2018/19 and 2019/2020 please provide the number of police officers granted an injury award.*
  3. *For each of the three years 2017/18, 2018/19 and 2019/2020 please provide the amount paid to all those in receipt of injury awards.*
  4. *For each of the three years 2017/18, 2018/19 and 2019/2020 please provide the number of reviews carried out of injury awards.*
  5. *For each of the three years 2017/18, 2018/19 and 2019/2020 please provide the number of reviews that resulted in the level of pension:*
    - i. remaining unchanged;*
    - ii. increasing; and*
    - iii. reducing.*
  6. *For each of the three years 2017/18, 2018/19 and 2020 please provide the number of individuals contacted regarding a review who did not answer the questionnaire sent to them in connection with their review.*
  7. *Please provide a copy of the questionnaire sent to those in receipt of injury awards regarding their review.*
  8. *Please provide the number of officers in receipt of an injury award (include those who were awarded injury benefit by another force) who currently work for your force, if any."*
5. On 18 October 2020, the complainant provided the following clarification of their request:
- "8. Please provide the number of officers in receipt of an injury award (include those who were awarded injury benefit by another force) who currently work for your force, if any."*
- The word "officers" in the request refers to former officers granted injury awards, not officers currently working for you who were previously granted injury awards. In other words, I am interested in former officers granted injury awards who currently serve in any role e.g. staff."*
6. The Constabulary responded on 24 November 2020 and provided some information within the scope of the request, but refused to provide a response to point 2 and point 8 of the request, advising that to obtain this information, it would exceed the appropriate amount set out in section 12 of the FOIA.

7. Following an internal review the Constabulary wrote to the complainant on 14 January 2021. It stated that it upheld its original reliance on section 12 of the FOIA, as to obtain the remainder of the requested information it would exceed the appropriate amount.

## **Scope of the case**

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8. The complainant contacted the Commissioner on 25 January 2021, to complain about the way their request for information had been handled.
9. 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**

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### **Section 12 – cost of compliance**

10. 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.

11. 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.”*

12. 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.
13. 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.
14. 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*<sup>1</sup>, the Commissioner considers that any estimate must be "*sensible, realistic and supported by cogent evidence*".

#### The Constabulary's position

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

*"...some of the information requested is only held in a centrally recorded, easily retrievable format on the Constabulary's legacy HR system which was decommissioned in June 2019, with no flag or searchable field existing on the Constabulary's current HR system."*

16. The Constabulary went on to explain that it was not possible for it to provide a way to refine the request, as even if the date range was reduced, it would still require hundreds of records to be checked manually.
17. In response to the Commissioner's investigation, the Constabulary advised that there are over 1900 police officers and that it would need to open each individual's record and read it to determine if they were or were not granted an injury award. It stated that this takes between three and five minutes per record and that, even if every record only took three minutes to read, it will equate to 95 hours, which exceeds the appropriate limit.
18. The Constabulary also confirmed again, that there is no other way to search for the requested information on the legacy system and advised that the information is not held elsewhere, either by someone else or on behalf of the Constabulary.

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

19. The Constabulary clarified that for the year 2018/19 and 2019/20, no information is held.

#### The Commissioner's conclusion

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.<sup>2</sup>
21. The Commissioner accepts that the Constabulary are unable to use search terms to locate the information due to the requested information being stored in a legacy system.
22. She also accepts the Constabulary's estimate that it would take approximately three to five minutes to search each record and find the requested information manually. As there are over 1900 records, the Commissioner is satisfied that this would exceed the appropriate limit of 18 hours. She considers that even if the time to search the records was half that, it would still exceed the appropriate limit.
23. 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**

24. 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."*

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<sup>2</sup> [https://ico.org.uk/media/for-organisations/documents/1199/costs\\_of\\_compliance\\_exceeds\\_appropriate\\_limit.pdf](https://ico.org.uk/media/for-organisations/documents/1199/costs_of_compliance_exceeds_appropriate_limit.pdf)

25. 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.
26. 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 to help them reframe or refocus their request with a view to bringing it within the costs limit".*
27. 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"*.
28. The Constabulary advised the complainant that after speaking with the Payroll and Human Resources Departments, the information was stored in a system that does not have a searchable function and, therefore, it is not possible to suggest a way to refine the request, as even with a reduced timeframe, hundreds of records would need to be checked manually.
29. The Commissioner accepts that due to the way in which the information is stored by the Constabulary, and due to the length of time it would take to search each record manually, the request could not be meaningfully refined to allow the information to be provided within the cost limit. As such, the Commissioner is satisfied that there was no breach of section 16(1) of the FOIA.

## Right of appeal

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

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

31. 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.
32. 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 .....**

**Michael Lea**  
**Team Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**