

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 19 July 2022

Public Authority: Chief Constable of Dyfed Powys Police

Address: Police Headquarters

PO Box 99

Llangunnor

Carmarthen

SA31 2PF

Decision (including any steps ordered)

1. The complainant requested information from Dyfed Powys Police ("DPP") relating to reports and enforcement action for vehicles exceeding the length restriction on a particular road in Fishguard. DPP refused to comply with the request citing section 12 (cost limit) of FOIA.
2. The Commissioner's decision is that DPP was entitled to refuse to comply with the request in accordance with section 12(1) of FOIA. The Commissioner also finds that DPP complied with its obligations under section 16 to offer advice and assistance.
3. The Commissioner does not require DPP to take any steps.

Request and response

4. On 11 November 2021, the complainant made the following request for information to DPP:

"1. Please provide details of reports of vehicles exceeding the length restriction on the A487 in Lower Town, Fishguard for the past 5 years, broken down by month and year.

2. Please provide details of the number of occasions enforcement action has been taken against drivers and operators of these vehicles for the past 5 years broken d by month and year.
3. Pleas provide details of whether that enforcement action taken was as a result of a complaint or initiated by a patrolling officer.”
5. DPP responded on 2 December 2021. It stated that it held information within the scope of the request, but that the cost of complying with the request would exceed the cost threshold of £450 for public authorities. In accordance with this finding, DPP issued a section 12 refusal notice in reply to the complainant’s request for information. DPP offered the following advice and assistance to the complainant, advising that the complainant could reduce the time period specified in the request to try and meet the threshold and provided a breakdown of the time needed to collate the information by year. It did, however, also advise that it would still be difficult to obtain the information in a refined request as the same method and format would be required.
6. DPP upheld its initial application of section 12 of FOIA via internal review on 21 December 2021.

Scope of the case

7. The complainant contacted the Commissioner on 31 December 2021 to complain about the way their request for information had been handled. The complainant disagrees with DPP’s application of section 12 of FOIA.
8. The Commissioner considers the scope of this case to be to determine if DPP has correctly cited section 12(1) of FOIA in response to the request. The Commissioner has also considered whether DPP met its obligation to offer advice and assistance, under section 16 of FOIA.

Reasons for decision

Section 12 – cost of compliance

9. Section 12(1) of FOIA states that a public authority is not obliged to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the “appropriate limit” as set out in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (“the Fees Regulations”).
10. Section 12(2) of the FOIA states that subsection (1) does not exempt the public authority from the obligation to comply with paragraph (a) of

section 1(1) (the duty to inform an applicant whether it holds information of the description specified in the request) unless the estimated cost of complying with that paragraph alone would exceed the appropriate limit. DPP relied on section 12(1) in this case.

11. The appropriate limit is set in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 at £600 for central government, legislative bodies and the armed forces and at £450 for all other public authorities. The appropriate limit for DPP is £450.
12. The Fees Regulations also specify that the cost of complying with a request must be calculated at the rate of £25 per hour, meaning that section 12(1) effectively imposes a time limit of 18 hours for DPP.
13. Regulation 4(3) of the Fees Regulations states that a public authority can only take into account the cost it reasonably expects to incur in carrying out the following permitted activities in complying with the request:
 - 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.
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 in the case of *Randall v Information Commissioner & Medicines and Healthcare Products Regulatory Agency EA/2007/0004*, the Commissioner considers that any estimate must be "sensible, realistic and supported by cogent evidence". The task for the Commissioner in a section 12 matter is to determine whether the public authority made a reasonable estimate of the cost of complying with the request.
15. Section 12 is not subject to a public interest test; if complying with the request would exceed the cost limit then there is no requirement under FOIA to consider whether there is a public interest in the disclosure of the information.
16. Where a public authority claims that section 12 of FOIA is engaged it should, where reasonable, provide advice and assistance to help the requester refine the request so that it can be dealt with under the appropriate limit, in line with section 16 of FOIA.

Would the cost of compliance exceed the appropriate limit?

17. As is the practice in a case in which the public authority has informed the complainant that it holds the information, the Commissioner asked DPP to provide a detailed estimate of the time/cost taken to provide the information falling within the scope of this request.
18. In its submission to the Commissioner, DPP stated that the information requested for the first question alone could not be collated within the cost limit. It explained that there is no specific category to record reports of vehicles exceeding length restrictions and therefore such reports would be recorded under the categories of either 'T-Other' or 'T-RTC'. As these categories would be used to record various types of reports, an individual interrogation of all reports within the two categories that fall within the relevant locations would be required. Further to this, it explained that there would be a requirement to also interrogate reports under the category of 'X-Repeat' to cover when multiple people have called in about the same incident.
19. DPP also explained that, although the location could also be used to narrow down the number of results that require interrogation, there are numerous location markers on its STORM system as there are location markers set up for different stretches of roads within the area requested and this would require multiple search queries in order to find all of the relevant incidents.
20. DPP stated that responses to the second and third questions could not be determined without the response to the first question being retrieved as these questions are all relevant to each other.
21. In its submission to the Commissioner, DPP also provided the following estimates of the time required to obtain the requested information for question one:
 - "2016 – 6 traffic incident records x 10 minutes per record = 1 hour
 - 2017 – 58 traffic incident records x 10 minutes per record = 9.7 hours
 - 2018 – 36 traffic incident records x 10 minutes per record = 6 hours
 - 2019 – 27 traffic incident records x 10 minutes per record = 4.5 hours
 - 2020 – 26 traffic incident records x 10 minutes per record = 4.3 hours
 - 01/01/2021 – 30/11/2021 – 27 traffic incident records x 10 minutes per record = 4.5 hours

Total time estimate to complete whole request (180 traffic incident records x 10 minutes per record) = 30 hours.”

22. The Commissioner considers that DPP estimated reasonably that it would take more than the 18 hours or £450 limit to respond to the first question of the request and noted that it would take even longer to respond to the other two questions. By definition, were the other two questions factored in as well, the cost estimate may well be noticeably higher. The Commissioner is also mindful that the necessity for manual searches adds to the time needed to reply to this request.
23. DPP was therefore correct to apply section 12(1) of FOIA to the complainant's request.

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

24. Section 16(1) of FOIA provides that a public authority should give advice and assistance to any person making an information request. Section 16(2) clarifies that, providing an authority conforms to the recommendations as to good practice contained within the section 45 code of practice¹ in providing advice and assistance, it will have complied with section 16(1).
25. The Commissioner notes that DPP advised the complainant that they could reduce the time period specified in the request to try and meet the cost threshold and provided a breakdown of the time needed to collate the information by year. It did, however, also advise that it would still be difficult to obtain the information in a refined request as the same method and format would be required. The Commissioner is therefore satisfied that DPP met its obligations under section 16 of FOIA.

¹ <https://www.gov.uk/government/publications/freedom-of-information-code-of-practice>

Right of appeal

26. 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

27. 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.
28. 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
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