

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 22 March 2022

Public Authority: Commissioner of Police of the Metropolis
Address: New Scotland Yard
Broadway
London
SW1H 0BG

Decision (including any steps ordered)

1. The complainant requested details of hate crimes that took place in the Metropolitan Police Service area between 23 June and 23 August 2016.
2. The Commissioner decided that the Metropolitan Police Service had applied correctly the section 12(1) (cost of compliance) FOIA exemption. He also decided that the Metropolitan Police Service had engaged positively with the complainant and had provided reasonable advice and assistance in line with the requirements of section 16(1) FOIA.
3. The Commissioner did not require the Metropolitan Police Service to take any steps.

Request and response

4. On 12 February 2021 the complainant made the following request for information to the Metropolitan Police Service ('MPS').

"Can you please provide me with a random sample (n = 385) of the details of all hate crimes (not hate incidents) that took place between June 23 and August 23 2016? As a template for what I want, please see the FOI release below:

https://eur02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.met.police.uk%2FSysSiteAssets%2Ffoi-media%2Fmetropolitan-police%2Fdisclosure_2018%2Fjanuary_2018%2Finformation-rights-unit---information-supplied-for-non-crime-hate-incidents&data=04%7C01%7CMPSPDataOffice%40met.police.uk%7C6f25938944324aa07ef008d8cf6807f0%7Cf3ee2a7e72354d28ab42617c4c17f0c1%7C0%7C0%7C637487393001492781%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Iik1haWwiLCJXVCi6Mn0%3D%7C1000&sdata=%2BFbNhdtGbCBS5e2LJFbOacYYYkxTZnsCLIEUc oDbmD4%3D&reserved=0

Specifically, I would like the columns: type of hate crime (race, disability, sexuality etc.), details of crime, type of location in which it occurred. Please redact any personal identifying information but not any specific details of language used etc.”

5. MPS replied on 15 March 2021 and refused to provide the requested information, citing the section 14(1) (vexatious requests) FOIA exemption. MPS did, however, confirm that the information requested was held.
6. During the Commissioner’s investigation MPS ceased to rely on the section 14(1) FOIA exemption but instead refused the request relying on the section 12(1) (cost of compliance) FOIA exemption.

Scope of the case

7. The complainant contacted the Commissioner on 9 April 2021 to complain about the way his request for information had been handled. He said that it was unreasonable for MPS not to disclose this data, since another police force had granted a similar request. He added that MPS had divulged similar information in the past. He believed it was in the public interest for this information to be shared. He did not believe MPS should withhold information based on a judgement of its accuracy.

8. In his determination, the Commissioner considered the evidence and representations provided by the parties and entered into discussion with both. He also had regard for his own guidance¹.
9. In his investigation, the Commissioner considered MPS's application of the section 12(1) FOIA exemption and whether MPS had complied with its duty to provide advice and assistance as required by section 16(1) FOIA.

Reasons for decision

Section 12 – cost of compliance exceeds appropriate limit

10. Section 12(1) FOIA states:

“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 appropriate limit is set in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ('the Fees Regulations') at £450 for public authorities such as MPS. The Fees Regulations also specify that the cost of complying with a request must be calculated at a flat rate of £25 per hour. This means that MPS may refuse to comply with a request for information if it estimates that it will take longer than 18 hours of staff time to comply.
12. In estimating whether complying with a request would exceed the appropriate limit, regulation 4(3) states that a public 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 which may contain it;
 - retrieving the information, or a document which may contain it; and
 - extracting the information from a document containing it.

Section 12(1) FOIA states that public authorities are only required to estimate cost, and are not required to give a precise calculation of the

¹ https://ico.org.uk/media/for-organisations/documents/1199/costs_of_compliance_exceeds_appropriate_limit.pdf

estimated costs. However, the Commissioner considers that the estimate must be reasonable. The Commissioner follows the approach set out by the Information Tribunal in the case of *Randall v Information Commissioner and Medicines and Healthcare Products Regulatory Agency* (EA/2007/0004, 30 October 2007) which stated that a reasonable estimate is one that is "...sensible, realistic and supported by cogent evidence".

The MPS position

13. MPS told the Commissioner, by way of background, that relevant information was held in two data fields, 'Case Method' and 'Details of Investigation'. MPS officers used these to record the detail of investigations.
14. The complainant had said he had provided MPS with a link to a previous 2018 FOI disclosure. However, MPS said that while in the past it might have provided some information, it did not disclose information from the Class Method field for the following reasons:
 - Class Method field entries were recorded when an officer first recorded an incident and previous analysis had shown that those entries did not always accurately represent the details of an incident;
 - experience had shown that data extracted from the Class Method field could be highly misleading;
 - the information was often sensitive personal data and needed to be reviewed manually, and;
 - the staff time needed to redact the exempt information in the Class Method field would be disproportionate given that the extracted information might be misleading.
15. MPS explained that a summary of a crime was contained within the free text field of the Details of Investigations pages of a crime report. The requested information could not be extracted easily from it by automatic means. There could be more than one summary entered on a crime report as the investigation of the crime progressed. Limiting searches to just the Class Method field could not accurately or fully answer information requests.
16. MPS said it had taken a random sample of 385 crimes within the scope of the request. To enable a review of each crime report, MPS had used the crime reference numbers. Within the whole sample of 385 records, 46 reports were found to have an identical crime reference number to that of at least one other crime record. This could happen where

different offences had been committed against more than one victim at the same incident.

17. In order to estimate the time it would take to provide a description of each crime, MPS had taken from the sample of 385 records a sub-sample of **100** records. Each of the 100 crime records had been reviewed manually. In most of the cases reviewed, the free text 'Class Method' field did not provide sufficient detail and the Details of Investigation field needed to be read manually as well.
18. MPS said that a member of police staff would need to read through **541** Details of Investigations pages for the 100 case sub-sample. If this task was repeated for all 385 crime records, at an average of 5.4 pages for each crime report, some **2,079** pages would need to be read, to provide an accurate summary of how each offence occurred. MPS said that, as a reasonable estimation, if it took on average just one minute to read each page to locate and extract how each crime occurred, that would equate to over **34 hours** for just that aspect of the work to be undertaken. In addition, information concerning details of a recorded offence could also be contained within paper records such as an officer's pocket book or in individual case files.
19. MPS added that analysis of the 100 case sub-sample showed that some of the records only mentioned words such as 'public order', 'criminal damage' or 'assaulted' and so did not provide the information requested.

The complainant's position

20. The complainant said that he regarded MPS's position as flawed in saying that compliance would need 34 hours in total. He said that MPS's case hinged on a quality control exercise that MPS had carried out. He had requested information and MPS had then decided to carry out a procedure which, MPS then concluded, was too time consuming to carry out. He considered MPS's procedure to be unnecessary.
21. The complainant added that he had not requested an accurate account but rather disclosure of the raw data written in MPS's records. MPS had unfairly decided what it considered to be accurate and was therefore able to be divulged. In his view, it was not for MPS to make that judgement.
22. In the complainant's view, there was no reason why the relevant 'Class Method' and the 'Details of Investigation' fields ought to contain the same data since they were different things. He understood that the Details of Investigation field was used by police officers to record the detail of their investigation, not what was initially reported, which was the basis for the record of a hate crime. He said that 'how a crime

occurred' was vastly different from what was reported. If the 'Class Method' field was inaccurate, he wondered why MPS bothered with it?

23. The complainant said that a previous MPS disclosure to him in 2018 of a much larger sample of 2,500 records showed that 'Class Method' data could be assembled quickly and without comparison with the 'Details of Investigation' data, within a time frame of 18 hours. The MPS time estimate was excessive due to MPS's quality control exercise. He said that disclosure of the 2018 sample had led to embarrassing headlines for MPS in the national press and suggested that MPS had an interest in avoiding publishing information the public had an interest in knowing.
24. The complainant said that MPS has offered, as a compromise, to disclose 100 cases; these were ones that MPS saw as 'reliable'. However, that undermined the validity of his request and was not reassuring. He did not accept that MPS's records were inaccurate and added that another police force had complied with a similar request.

The Commissioner's decision

25. The Commissioner's guidance² says that cost estimates must be reasonable:
 - "21. 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.
 22. What amounts to a reasonable estimate can only be considered on a case by case basis. However, the Information Tribunal in the case of Randall v Information Commissioner and Medicines and Healthcare Products Regulatory Agency (EA/2006/0004, 30 October 2007) said that a reasonable estimate is one that is "...sensible, realistic and supported by cogent evidence."
26. MPS may refuse to comply with a request for information if it reasonably estimates that it would take longer than 18 hours to comply.
27. When dealing with a FOIA complaint to him, it is not the Commissioner's role to decide what information MPS should hold, or say how it should hold it. He is not concerned with how MPS holds information, or the business reasons for holding information in the way that it does. His role

² https://ico.org.uk/media/for-organisations/documents/1199/costs_of_compliance_exceeds_appropriate_limit.pdf

is simply to decide whether or not the requested information can, or cannot, be provided to the complainant within the appropriate cost limit, ie whether or not MPS has demonstrated that the work involved in providing the information for the period specified by the complainant would be likely to exceed 18 hours, and thus the £450 cost limit. It is not necessary for MPS to have complied with as much of the request as it could until that limit was reached. It is only necessary for MPS to show that the work needed would exceed 18 hours, and that its estimate is reasonable.

28. The Commissioner observed that the complainant's request for information stressed that 'details' were required (the word occurs in the first line of the request and in two other places within it).
29. MPS carried out what the complainant described as "a quality control exercise" of the Class Method and Details of Investigation field records to ensure that information disclosed from it under FOIA is reasonably accurate and reliable. It was also necessary for it to do this in order to ensure it was providing what the complainant had requested (ie details of hate crimes, as opposed to other crimes). The Commissioner recognised that for MPS to disclose information that it regarded as unreliable would be to mislead the public since any FOIA disclosures are available to 'the world', ie to any member of the general public, and not just to the complainant. The Commissioner therefore accepted that the work MPS say would be involved in validating the data was necessary and he did not agree with the complainant's hypothesis that it could be omitted in order to bring MPS's compliance with the request to 18 hours work or less.
30. The complainant said that 'from memory' he understood that MPS had disclosed 2500 comparable records in 2018. MPS told the Commissioner it was unable to comment as it did not appear now to hold a record of the methodology used. The complainant commented, with supporting evidence, that the 2018 disclosure had led to some adverse publicity for MPS and he argued that MPS therefore had an interest in not making further such disclosures. He said that would not be in the public interest. However, in the context of the section 12 FOIA exemption, there is no requirement for MPS or the Commissioner to conduct a public interest balancing test and the Commissioner has not done so.
31. The complainant provided MPS and the Commissioner with an example of a disclosure made by another, smaller, police force serving a largely rural area in the north of England. He opined that MPS ought to be able to do something similar. While noting the attractions in this line of reasoning, the Commissioner recognised that the MPS context is very different. MPS is a significantly larger force, serving a major capital city population rather than the mixed rural and city population of the

comparator force. The Commissioner understands from MPS that the recording systems of the force the complainant wished to use as a comparator did not appear to be the same as those currently used by MPS.

32. Taking account of the foregoing, the Commissioner is satisfied that MPS was entitled to rely on the section 12 FOIA exemption to refuse the request as doing so would exceed the appropriate limit.

Section 16 – advice and assistance

33. Section 16 FOIA states:

“(1) It shall be the duty of a public authority to provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made, requests for information to it.”

34. In general, where section 12(1) FOIA is cited, in order to comply with this duty, the Commissioner normally expects a public authority to consider how best to advise the requester to refine the request to try and bring it within the cost limit.
35. In this matter, MPS conducted a sampling exercise of 100 cases selected from the random sample of 385 cases that it had extracted from the relevant database. The Commissioner accepted that the sub-sample of 100 cases, while helpful in itself (and all that MPS considered it could offer within the cost limit), is unlikely to be acceptable as a substitute for the random sample size of 385 cases requested.
36. The Commissioner saw that MPS had extracted the information requested, apart from the records contained within the Class Method field, and had offered to disclose that. In addition, during the Commissioner’s investigation, MPS provided the complainant with the remainder of the requested information which could be located and extracted within the cost threshold and explained to the complainant how the information was held and why compliance with the request would exceed the appropriate limit. The Commissioner saw no fault on the part of either party in these actions not having led to the matter being resolved.
37. In summary, the Commissioner found that MPS had engaged positively with the complainant and had provided reasonable advice and assistance as required by section 16(1) FOIA. He did not require MPS to take any further steps.

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: 0300 1234504

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

Dr Roy Wernham
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