

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 31 January 2023

**Public Authority:** The Chief Constable of Devon and Cornwall  
Police

**Address:** Police Headquarters  
Middlemoor  
Exeter  
Devon  
EX2 7HQ

### **Decision (including any steps ordered)**

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1. The complainant has requested information from Devon and Cornwall Police ("the Police") in relation to taxpayer costs for several different activities in relation to failed sting operations, the amount of resources used and for all policies, practices and procedures, which are legally applicable to the targeting of the complainant. All of the above are from the period 1997 onwards.
2. The Commissioner's decision is that the Police is entitled to rely on section 12(1) of FOIA to refuse the request. However, as the Police failed to respond to the request within 20 working days, it breached section 10(1) of FOIA.
3. The Commissioner does not requires the Police to take any steps as a result of this decision notice.

### **Request and response**

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4. On 9 December 2021, the complainant wrote to the Police and requested information in the following terms:

- "1. Total cost to taxpayer of all combined surveillance/disruption/interference/influence operations performed by D&C Police in conjunction with other public-private-intelligence agencies, from 1997 to present day, including the cost of using actors/actresses for stages events as part of failed sting operations.
2. total amount of resources used in such operations as outlined above at point 1 for the respective dates identified.
3. provide all policies, practices, procedures and implemented processes, guidance, strategies which are legally applicable to the targeting of the 'requester/data subject' for the period identified above, to which the taxpayer has met the cost."
5. The Police responded on 11 March 2022. It stated that it holds some information falling within the scope of the request, however, it would likely take longer than 18 hours to retrieve it. The Police advised that it was withholding the information, citing section 12(3) of FOIA.
6. Following an internal review the Police wrote to the complainant on 27 June 2022. It stated that it upheld its original position in that it was relying on section 12(3) of FOIA.

### **Scope of the case**

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7. The complainant contacted the Commissioner on 20 May 2022 to complain about the way their request for information had been handled.
8. The Commissioner considers that that the scope of this complaint is to determine if the Police was correct to refuse to comply with the request under section 12 of FOIA. The Commissioner will also consider if the Police has fulfilled its obligation under section 16 of FOIA to provide advice and assistance.

### **Reasons for decision**

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9. The Police hasn't confirmed which subsection of section 12 it is relying upon, section 12(1) or section 12(2). These are two distinct, separate exemptions; section 12(1) exempts a public authority from communicating requested information if to do so would exceed the appropriate limit and section 12(2) exempts a public authority from confirming or denying that it holds the requested information if to do so would exceed the appropriate limit.

10. The Commissioner notes that the Police has referred to section 12(3) of FOIA. However, from the information provided, the Police appears to be relying upon section 12(1) and the Commissioner's investigation will consider whether it is entitled to do so.

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

11. 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 cost limit.
12. The public authority considers that the cost of complying with this request would exceed the appropriate limit under FOIA.
13. 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 the Council.
14. 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 the Council.
15. 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;
  - extracting the information from a document containing it.
16. 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*<sup>1</sup> 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

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<sup>1</sup> EA/20017/00041

determine whether the public authority made a reasonable estimate of the cost of complying with the request.

17. The Police has explained to both the complainant and the Commissioner that the complainant's request is for a wide range of information, from an exceptionally large timescale. It advised that it would not be able to identify all of the information in less than 18 hours.
18. The Police explained that there are over 50,000 operations linked to thousands of records held digitally. It advised that in addition, there are thousands of physical records across multiple locations but that a specific number is not known due to these locations being accountable to multiple staff.
19. The Police went on to explain that in order to identify the relevant operations for questions one and two, it would take approximately 10 minutes to locate and check each digital record for relevancy, as it would require a manual check of each record as there is not a search parameter within the database the information is held on.
20. The Police also advised that for physical records, it would take approximately 20 minutes to locate and review each record, which would fall under the parameters of the complainant's request.
21. The Police explained that it would take approximately 8,333 hours to review the digital records and based on one room which contains 7,000 physical records, it is estimated that it would take 2,333 hours to check these records. The Police advised that without accounting for additional physical records, the above totals 10,666 hours, which is significantly over the 18 hours identified as the appropriate limit.
22. The Police also advised that if they had the information, they would then need to establish the costs and resources involved to establish the 'cost to the taxpayer' and the total amount of resources used for this purpose, which would add additional time to the already exceeded appropriate limit.
23. The Commissioner considers that the Police's estimate of 10 minutes to locate and check the digital records, and the estimate of 20 minutes to locate and check each physical record to be reasonable. Even if the Police were to take half the estimated times to locate and review each record, due to the amount of operations and records held, it would still excessively exceed the appropriate amount of 18 hours.
24. The Commissioner's decision is that the Police estimated reasonably that the cost of complying with the request would exceed the appropriate

limit. Therefore, the Police is entitled to rely on section 12(1) of FOIA to refuse to comply with the request.

25. The Commissioner notes the complainant's arguments, however, any concerns regarding how the Police operate will need to be addressed with the relevant body. The Commissioner can only review the sections of FOIA cited for not responding to a request for information.
26. The Commissioner also advises the complainant that the Police is correct when it says that there is no requirement to carry out a public interest test when citing section 12 of FOIA. As explained, section 12 of FOIA does not fall under either a class-based or qualified exemption.

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

27. 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 practice<sup>3</sup> in providing advice and assistance, it will have complied with section 16(1).
28. In both the refusal notice and the internal review responses, the Police advised the complainant that it may be able to provide some information within the scope of the request if the complainant were to reduce the specified timeframe.
29. The Commissioner is satisfied that the Police provided advice and assistance and has therefore complied with the above obligation. The Police were not required to provide advice pointing to specific details within the advice and assistance.

**Right of appeal**

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**