

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 27 January 2023

Public Authority: Chief Constable of Thames Valley Police

Address: Headquarters
Oxford Road
Kidlington
OX5 2MX

Decision (including any steps ordered)

1. The complainant requested from Thames Valley Police (TVP) information relating to disability hate crimes. TVP refused to comply with the request and cited section 12(1) (cost of compliance) of FOIA.
2. The Commissioner's decision is that TVP was entitled to refuse to comply with the request in accordance with section 12(1) of FOIA. The Commissioner also finds that TVP complied with its obligations under section 16(1) of FOIA to offer advice and assistance. Therefore, the Commissioner does not require TVP to take any steps as a result of this decision.

Request and response

3. On 23 May 2022, the complainant wrote to TVP and requested information in the following terms:

"1. For the period of the last two financial years, 2020/21 and 2021/22 please supply the outcome data for disability hate crime which didn't result in a charge

2. Has your police force employed any trained specialist disability liaison officers in each in each financial year, 2020/21 and 2021/22?

3. A breakdown of where disability hate crimes took place in each in each financial year, 2020/21 and 2021/22 (for example on transport, in public, in the workplace)
 4. How many disability hate crimes recorded by your police services during each financial year (2020/21 and 2021/22) concerned mate crime (i.e., the financial, physical, and or sexual exploitation of a vulnerable person)?
 5. How many recorded disability hate crimes in each financial year (2020/21 and 2021/22) were reported to your police service by women victims?
 6. What is the breakdown of disability hate crimes recorded by your police service during each financial year (2020/21 and 2021/22) on an urban-rural basis?
 7. What is the breakdown of victims of disability hate crimes recorded by your police service during each financial year (2020/21 and 2021/22) along the following age brackets - under 18 years old, 18-24 years old, 25-34 years old, 35-44 years old, 45-54 years old, 55-64 years old, 65-74 years old, and over 75 years old?"
4. On 8 June 2022 TVP responded and refused the request under section 12(1) (cost of compliance) of FOIA.
 5. On 30 June 2022 the complainant asked TVP for an internal review. She also narrowed her request to questions 1, 2, 5 and 7 if the whole request could not be completed in full by TVP.
 6. On 20 July 2022 TVP provided its internal review response and maintained its original position to refuse the request under section 12(1) of FOIA. TVP also informed the complainant it would be able to answer question 2 of the request if this was submitted as a new request for information.

Reasons for decision

7. The following analysis focuses on whether TVP was entitled to refuse to comply with the request in accordance with section 12(1) of FOIA. It will also consider whether the TVP met its obligation to offer advice and assistance under section 16(1) of FOIA.

Section 12 – cost of compliance

8. 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”).
9. The Regulations state the appropriate cost limit is £600 for central government, legislative bodies and the armed forces, and £450 for all other public authorities. The appropriate limit for TVP in this case is £450.
10. The Fees Regulations also specify the cost of complying with a request must be calculated at the rate of £25 per hour, meaning section 12(1) effectively imposes a time limit of 18 hours for TVP.
11. 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.

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*¹, the Commissioner considers any estimate must be “sensible, realistic and supported by cogent evidence”. The task for the Commissioner in a section 12(1) matter is to determine whether the public authority made a reasonable estimate of the cost of complying with the request.

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

TVP's position

12. TVP determined the costs regulations are engaged in this instance due to the broad scope of the request, even with question 6 of the request being withdrawn. TVP explained that the cost of complying would exceed the appropriate limit. It also said it had calculated that it would need to manually review 674 occurrence reports to extract the information requested. TVP worked out it would take approximately ten minutes per occurrence to identify and extract the information requested, and this would exceed the appropriate 18 hour time and £450 cost limits.
13. During the Commissioner's investigation, TVP confirmed that the figure which it previously calculated to manually review occurrence reports – 674, was actually 930. TVP explained that it had 386 disability crimes in 2020/21 and 544 in 2021/22. It apologised for the incorrect figure used in its calculation and maintained its reliance on section 12(1) of FOIA.
14. TVP conducted a sampling exercise based on its crime recording system retrieving all Disability Hate Crimes via a Flag Field search. TVP said that following this, it located six crime occurrences which fell into the scope of the request (disability hate crime which didn't result in a charge). TVP confirmed it took 60 minutes to conduct a reasonable search of the relevant occurrences and to extract the additional data requested. It described to the Commissioner what was involved to arrive at the estimate; $930 \times 10 \text{ minutes} = 155 \text{ hours}$.

The complainant's position

15. The complainant argued that "other police forces have been able to advise at least to some degree the information requested. In particular information that is recorded and doesn't need to be manually reviewed."

The Commissioner's view

16. With regard to the complainant's position about advice on the requested information from other police forces, the Commissioner cannot comment on information provided by other public authorities. He can only comment on the circumstances on a case by case basis. It is important to note that whether or not section 12(1) of FOIA can be relied upon by a public authority, it is not affected by how the information should be held, or if a public authority should have a better records management system. The Commissioner can only base his decision on the way the information is, as a matter of fact, held.
17. The Commissioner considers TVP estimated reasonably the cost of complying with the request which would exceed the appropriate limit. He accepts TVP's reasonable explanation of its search strategy and its sampling estimates.

18. The Commissioner is satisfied that compliance with this request would exceed 18hours/£450. TVP was therefore entitled to rely on section 12(1) of FOIA to refuse the complainant's request.

Section 16 – advice and assistance

19. Section 16(1) of FOIA provides that a public authority is required to provide advice and assistance to any individual making an information request. In general, where section 12(1) is cited, in order to comply with this duty, a public authority should advise the requester as to how their request could be refined to bring it within the cost limit, albeit that the Commissioner does recognise that where a request is far in excess of the limit, it may not be practical to provide any useful advice.
20. The Commissioner recognises that TVP had attempted to comply with section 16(1) of FOIA by providing the complainant with a link² to information. TVP informed the complainant that it publishes information about disability hate crimes by Local Policing Area online. The Commissioner acknowledges that given the broad scope of the request, TVP was unable to offer any suggestions or advice which would bring the request under the 18 hour limit. Although TVP was unable to assist with narrowing the request sufficiently in order to bring it within the appropriate limit, the Commissioner accepts this has not been practicable in this instance.
21. It is also noted that TVP provided an explanation to the complainant about how the information is held and why compliance would exceed the cost limit.
22. In conclusion, the Commissioner considers the advice and assistance the Council offered the complainant was adequate. Therefore, the Commissioner is satisfied TVP complied with its obligations under section 16(1) of FOIA in its handling of this request.

² <https://www.thamesvalley.police.uk/foi-ai/af/accessing-information/published-items?q=notifiable>

Right of appeal

23. 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

24. 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.
25. 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

Joanna Marshall
Group Manager
Information Commissioner's Office
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Water Lane
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Cheshire
SK9 5AF