

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 6 July 2023

Public Authority: Chief Constable of Humberside Police
Address: Police Headquarters
Priory Road
Hull
HU5 5SF

Decision (including any steps ordered)

1. The complainant requested information relating to operating procedures and FOI compliance. Humberside Police relied on section 12 (cost of compliance) of FOIA to refuse the request.
2. The Commissioner's decision is that Humberside Police has properly relied on section 12(1). It has also met its advice and assistance obligations under section 16 of FOIA.
3. However, the Commissioner finds that Humberside Police breached section 10 (time for compliance) of FOIA in its handling of the request.
4. The Commissioner does not require any steps to be taken as a result of this decision.

Request and response

5. On 22 December 2022 the complainant made a multi-part request to Humberside Police about its handling of, and operating procedures in relation to, requests for information:

"1. Please provide the current version of the Humberside police standard operating procedure with regards to your duty to provide information with regards to internal review process. Further would you please confirm or deny whether this information is published on your official website.

2. Please provide the current version of the Humberside police standard operating procedure with regards to your duty to provide advice and assistance to applicants requesting information. Further would you please confirm or deny whether this information is published on your official website.

3. Please provide the current version of the Humberside police standard operating procedure with regard to compliance statistics in relation FOIA, namely;

The number of requests received from January 2020 until December 2022;

The number of the received requests that were not processed due to stopped clock or extended deadlines for clarification or a fee notice since 1st January 2020 to December 2022;

The number of the received requests that were processed in full (including numbers for those that were met within the statutory deadline, those where the deadline was extended and those where the processing took longer than the statutory deadline), since 1st January 2020 until December 2022;

The number of requests where the information was granted in full since 1st January 2020 until December 2022;

The number of requests where the information was refused in full since 1st January 2020 until December 2022;

The number of requests where the information was granted in part and refused in part since 1st January 2020 until 2022;

The number of requests received that have been referred for internal review since 1st January 2020 until December 2022;

The number of requests for internal review that were upheld since January 2022 until December 2022;

The number of FOIR [sic] requests that received an automated outcome decision since 1st January 2020 until 31st December

The number of internal review that received an automated outcome decision since 1st January 2020 until 31st December 2022;

Further would you please confirm or deny whether this information is published on your official website.

5. Please provide the current version of the Humberside police standard operating procedure with regards to communicating with a

requestor. Further would you please confirm or deny whether this information is published on your official website.

6. Please provide the current version of the standard operating procedure with regards to the advice and assistance that you should give to members of the public in relation to the FOIA and the DPA. Further would you please confirm or deny whether this information is published on your official website.

7. Please provide me with all working links that are currently available to members of the public seeking information about freedom of information requests, subject matter requests and data protection requests”.

6. There was further correspondence between the parties, including on 31 January 2023, when the complainant wrote to Humberside Police with a follow-up request:

“To assist the process please disclose all internal and external communications relating to this information request, including meeting notes, briefing notes, pocket book, day book and diary entries”.

7. Humberside Police provided its substantive response on 13 March 2023. It refused to comply with the request, citing section 12 (cost of compliance) of FOIA. However, as a gesture of goodwill, it provided some information that had been retrieved, or was available, before it was realised that the fees limit would be exceeded.
8. Following an internal review, Humberside Police wrote to the complainant on 13 April 2023, confirming its application of section 12 of FOIA.

Scope of the case

9. Following earlier correspondence, the complainant contacted the Commissioner on 13 April 2023 to complain about the way their request for information had been handled.
10. During the course of the Commissioner’s investigation, Humberside Police confirmed that it considers section 12(1) applies in this case.
11. The Commissioner has considered whether Humberside Police was entitled to apply section 12 to the request for information. He has also considered the timeliness of its response.

Reasons for decision

Section 12 cost of compliance

12. Section 12(1) of 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.”

13. This limit is set in the Fees Regulations at £450 for public authorities such as Humberside Police. 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 Humberside Police may refuse the request for information under consideration in this case if it estimates that it will take longer than 18 hours to comply with it.

14. In estimating whether complying with a request would exceed the appropriate limit, the Fees Regulations state 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 containing it;
- retrieving the information, or a document containing it; and
- extracting the information, or a document containing it.

15. Section 12 states that public authorities are only required to estimate the cost of compliance with a request, and are not required to give a precise calculation. 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”.

16. In correspondence with the complainant, Humberside Police explained that, “due to how the system records the Freedom of Information requests and the disposal action”, each record within scope would need to be checked manually to retrieve the requested information. It said that this task “would take over the appropriate time limit”.

17. However, although explaining in general terms why it considered that complying with the request would exceed the cost limit, Humberside

Police failed to provide an estimate of the actual work involved in complying with the request.

18. It was not until its submission to the Commissioner that Humberside Police explained that it considered that it had applied section 12(1) to the request for "the number of the received requests that were not processed due to stopped clock or extended deadlines for clarification or a fee notice since 1st January 2020 to December 2022". This was because 3219 requests had been received in the timeframe specified and each would need to be manually checked to determine if they fell within the scope of this request.
19. It provided the Commissioner with an estimate of the time that would be required to manually check those 3219 requests.
20. Based on an estimate of 5 minutes per FOI request, Humberside Police said that the cost of manually checking those requests would be 15,645 minutes (or 260.75 hours).
21. When dealing with a complaint to him under FOIA, it is not the Commissioner's role to make a ruling on how a public authority deploys its resources, on how it chooses to hold its information, or the strength of its business reasons for holding information in the way that it does as opposed to any other way. Rather, the Commissioner's role is simply to decide whether the requested information can, or cannot, be provided to a requestor within the appropriate costs limit.
22. In essence, therefore, this case turns on whether the estimate provided by Humberside Police was reasonable.
23. The Commissioner understands that, due to the way in which its case management system works, Humberside Police is "unable to immediately determine whether a request had been stopped or had extended deadlines applied to them".
24. Even if Humberside Police's estimate of the time taken, per request, to manually check the received FOIs was excessive, from the evidence he has seen, the Commissioner is satisfied that the cost limit is met due to the volume of records needed to be reviewed, and the fact that a manual review is required.
25. Section 12(1) does therefore apply and Humberside Police is not required to comply with the request.

Section 16 advice and assistance

26. Section 16(1) of FOIA provides that a public authority is required to provide advice and assistance to any individual making an information

request. Section 16(2) clarifies that, providing an authority conforms to the recommendations as to good practice contained within the section, it will be taken to have complied with its obligations.

27. The Commissioner accepts that Humberside Police did not provide the complainant with advice to help them reframe their multi-part request to bring it within the appropriate limit. However, he recognises that Humberside Police clearly considered whether there is any information it can provide within the cost limit and free of charge.
28. In that respect, he acknowledges that it provided a response to a number of questions within the multi-part request and that, where it was able to retrieve figures in relation to other questions, it provided them to the complainant.
29. As such, the Commissioner is satisfied that there was no breach of section 16(1) of FOIA.

Section 10 time for compliance

30. Under section 1(1) of FOIA, anyone who requests information from a public authority is entitled under subsection (a) to be told if the authority holds the information and, under subsection (b), to have the information communicated to them if it is held and is not exempt information.
31. Section 10(1) of FOIA states that a public authority must respond to a request promptly and "not later than the twentieth working day following the date of receipt".
32. From the evidence provided to the Commissioner in this case, Humberside Police did not deal with the request for information in accordance with FOIA as it failed to provide a full response to the requestor within 20 working days. The Commissioner finds that Humberside Police breached section 10(1) by failing to respond to the request within 20 working days.

Right of appeal

33. 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
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

34. 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.
35. 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

Laura Tomkinson
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF