

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 6 March 2024

Public Authority: Chief Constable of Bedfordshire Police
Address: Bedfordshire Police Headquarters
Woburn Road
Kempston
MK43 9AX

Decision (including any steps ordered)

1. The complainant requested information about training, including on matters relating to diversity and inclusion. Bedfordshire Police refused to comply with the request, citing section 12 (cost of compliance) of FOIA as its basis for doing so.
2. The Commissioner's decision is that Bedfordshire Police is entitled to refuse to comply with the request in accordance with section 12(1) of FOIA.
3. The Commissioner requires no steps to be taken as a result of this decision.

Request and response

4. Following earlier correspondence with the complainant, on 17 July 2023 Bedfordshire Police logged the following request for information under FOIA:

"Please note that the reference to Bedfordshire Police in the questions below should be taken to mean the force's Human Resources department (or similar) and or any employee (s) specifically charged with training officers on matters relating to inclusion and or diversity and or discrimination and or prejudice.

Please note that I am only interested in information which relates to uniformed employees (of all ranks).

1...Since 21 May 2022 has Bedfordshire Police issued newly recruited uniformed officers and or existing uniformed officers with any and or all of the following

(a)...A language guide or similar which advises employees on the most appropriate words, phrases, and terms to use when writing to and or communicating with and or referring to their colleagues and or members of the public and or the organisation's clients/customers/service users and or representatives and employees in the organisation's stakeholder and partner organisations. Typically, such a guide will outline words, terms, and phrases to avoid for whatever reason while providing more acceptable words, terms, and phrases. Such guidance could be included in a staff handbook (or similar) or it could be issued in the form of specific written advice. Alternatively, it could be included on the organisation's intranet site and or it could be issued/held digitally and or it could be included in any training/induction video/film.

(b)...A guide or similar which helps and encourages staff to promote diversity and inclusivity both in the workplace and or in their dealings with members of the public and or in their dealings with the organisation's clients/customers/service users and or in their dealings with employees in and or representatives of the organisation's stakeholders and any partner organisations. The guide will include but will not be limited to advice on best practice when it comes to diversity and or inclusivity and or antidiscrimination policies. It will encourage staff how to avoid discrimination on the grounds of race and or religion and or gender and or sexuality and or age and or disability and or political belief and or social class and or income and or social background. Such guidance could be included in a staff handbook (or similar) or it could be issued in the form of specific written advice. Alternatively, it could include on the organisation's intranet site and or it could be held / issued digitally and or it could be included in any training/induction film/video.

(c)...A guide or similar which alerts staff to the existence of microaggressions and or unconscious bias in the workplace. The guidance will extend to what the organisation and or staff can do to tackle the problems of microaggressions and unconscious bias.

2...If you have answered yes to any part (or indeed all of question one) can you please provide copies of the guidance irrespective of

the form in which it was issued or was shared. Please also include all relevant information shared with staff via the force's intranet".

5. Bedfordshire Police provided its substantive response on 14 August 2023. It cited section 12(1) (cost of compliance) of FOIA on the basis that it would exceed the cost limit to locate and provide all the information in scope of the request.
6. Following an internal review, Bedfordshire Police wrote to the complainant on 12 October 2023 maintaining its position.

Scope of the case

7. The complainant contacted the Commissioner to complain about the way their request for information had been handled. They disputed that disclosure of what they consider to be "very specific advice to uniformed officers" - advice that the complainant describes as relating to inclusion and or diversity and or discrimination and or prejudice - would breach the cost and time limits laid down by the legislation.
8. They also disputed that Bedfordshire Police had explained why complying with the request would exceed the appropriate limit.
9. From the details that the complainant provided in support of their complaint, the Commissioner is aware that there had been additional correspondence between the parties about the request under consideration in this case.
10. He notes that the complainant describes the request, which appears to have been submitted originally on 22 May 2023, but subsequently logged as being received on 17 July 2023, as:

"a revised request for information which took into account the guidance in your letter of 3rd February".
11. There is also reference to Bedfordshire Police having sought clarification of the request and providing advice and assistance under section 16 of FOIA about reducing the scope of the request to bring it within the cost limit.
12. The Commissioner notes, in that respect, that the complainant decided not to reduce the scope of the request and asked Bedfordshire Police to respond to it 'as it stands'.
13. The analysis below considers Bedfordshire Police's application of section 12 of FOIA to the requested information.

Reasons for decision

Section 12 cost of compliance

14. 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").
15. The appropriate limit is set at £600 for central government, legislative bodies and the armed forces and at £450 for all other public authorities. The appropriate limit for Bedfordshire Police in this case is therefore £450.
16. 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 in this case.
17. 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.
18. 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.
19. 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.
20. 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.

Would the cost of compliance exceed the appropriate limit?

21. In correspondence with the complainant, Bedfordshire Police told him:

"Following searches conducted within the Diversity and Inclusion Unit of the Force, it has been ascertained that in order to locate and provide all of the information you have requested would exceed the cost allowed for complying with FOI request".

22. With respect to the possibility of refining the request under consideration in this case, it said that even if the date range specified in the request was reduced "it would still require hundreds of records to be manually checked".

23. The Commissioner recognises that the complainant considers that Bedfordshire Police failed to provide any evidence that it would exceed the cost limit to comply with their request.

24. It was not until during the course of his investigation that Bedfordshire Police explained to the Commissioner:

"Initial searches within our organisation identified that the material requested was not held in the format requested. Therefore enquiries had to be made in several departments".

25. With respect to the nature of the requested information, Bedfordshire Police told the Commissioner:

"[the complainant] requests 'guide or guides' within this question. There are no such "guides" in existence. Instead the information is split across the BCH [Bedfordshire, Cambridgeshire, Hertfordshire] Diversity and Inclusion site on our internal intranet".

26. Bedfordshire Police provided the Commissioner with details of the 65 internal intranet links that it considered relevant to the request.

27. It told the Commissioner:

"For us [to] identify all relevant links on the internal intranet has taken in excess of an hour".

28. Bedfordshire Police also told the Commissioner:

"To locate any or all of the information above we would need to visit every one of the 65 links, and all of the sub-links on the pages below to read every page, sub-page, documents and or policies and watch every video contained within to locate and identify the entirety of the information he is requesting and then download, copy and collate it".

29. Bedfordshire Police confirmed that there are "numerous sub links" on each link, each of which would need to be visited in order to locate and identify the information in scope of the request.

30. Regarding an estimate of the time involved in complying with the request, Bedfordshire Police told the Commissioner:

"To read through the 65 links would take approximately 10 minutes per link which equates to 10.83 hours. We would then have to add the additional time for every single document to be identified as a 'guide or guides' and then downloaded..."
31. The Commissioner understands that Bedfordshire Police considers that it would take another 10 minutes per link to carry out that aspect of the work, ie an additional 10.83 hours:
32. Acknowledging that the complainant states that they are only interested in "information which relates to uniformed employees (of all ranks)", Bedfordshire Police told the Commissioner that it does not keep a list of every employee who wears a uniform.
33. It said that there are approximately 2,500 staff and officers within the organisation and that in order to satisfy the wording of the request, it would require them to read through the personnel file of every officer and staff member to establish if they have uniform issued and if it is used. At five minutes per file, it estimated this would take 208.33 hours.
34. The Commissioner also notes that, even were Bedfordshire Police to opt for what may be a quicker search by emailing every employee to ask them directly whether or not they wore a uniform, at a low estimate of 1 minute per employee to read and respond to the query, this would in itself exceed 41 hours.

The Commissioner's view

35. 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.
36. In essence, therefore, this case turns on whether the estimate provided by Bedfordshire Police was reasonable.
37. The Commissioner considers that a reasonable estimate is one that is "...sensible, realistic and supported by cogent evidence".
38. In this case, although Bedfordshire Police told the complainant that it considered that complying with the request would exceed the cost limit, from the evidence he has seen, the Commissioner is disappointed to

note that it failed to provide the complainant with an estimate of the actual work involved in complying with the request.

39. The Commissioner recognises that it is not a statutory requirement for a public authority to explain to the applicant how it has calculated the estimate. However, in this case, he considers it would have been beneficial to do so.
40. The Commissioner is mindful that the wording of the request variously refers to 'uniformed officers' and 'uniformed employees'. It also specifies 'newly recruited' and 'existing'.
41. He also recognises that the cost of compliance will be related to the way that the authority holds the information.
42. From the evidence he has seen, and mindful of the wording of the request, the Commissioner accepts that Bedfordshire Police does not hold records in a way that would easily fulfil the request.
43. The Commissioner considers that Bedfordshire Police estimated reasonably that it would take more than the 18 hour limit to respond to the request.
44. As complying with the request would exceed the appropriate limit, Bedfordshire Police was entitled to rely on section 12(1) of FOIA to refuse the request.

Other matters

45. 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).
46. As noted above, the Commissioner is aware that Bedfordshire Police had suggested ways in which the complainant could rephrase or refocus their request to bring it within the appropriate limit, but that the complainant chose not to do so.

¹ [Secretary of State for Constitutional Affairs code of practice on the discharge of public authorities functions under part 1 of the Freedom of Information Act 2000, issued under section 45 of the act HC 33 \(publishing.service.gov.uk\)](http://publishing.service.gov.uk)

Right of appeal

47. 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

48. 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.
49. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Carolyn Howes
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF