



ON APPEAL FROM:

The Information Commissioner's Decision Notice No:
FS50501418

Dated: 13th. November, 2013

Appeal No. EA/2013/0264

Appellant: Mohammed Hassan

First Respondent: The Information Commissioner ("the ICO")

Second Respondent: The Chief Constable of the South Wales Police

Before

David Farrer Q.C.

Judge

and

Malcolm Clarke

and

Michael Hake

Tribunal Members

Date of Decision: 20th. May, 2014

Date of Promulgation: 3rd June 2014

The Appeal was determined on written submissions

Subject matter:

FOIA s.12 Cost of compliance with a request.

s.16 Advice and assistance .

DECISION OF THE FIRST-TIER TRIBUNAL

The Tribunal dismisses the appeal.

Dated this 20th. day of May, 2014

David Farrer Q.C.

Judge

[Signed on original]

REASONS FOR DECISION

The Request

1. The Appellant (“MH”) is a taxi driver in South Wales.
2. On 26th. December, 2012 he made the following request of South Wales Police (“SWP”)

“I would like to request . . .for the last five years, How many complaints and actions were taken against taxi drivers in South Wales (Hackney and private hire) ? How many of these were from ethnic minority origin ? The outcome of these complaints, actions and their nature per local licensing authority in South Wales. ... ”.

3. SWP replied on 21st. January, 2013, refusing to provide the requested information in reliance on s.12 of FOIA, which places a cost limit on the duty to comply. Since the limit applicable to SWP was £450 for a request, based on a charge of £25 per hour, the time limit for compliance was 18 hours. The response stated that for 2012 alone, it was estimated that 73 hours would be required, based on 20 minutes’ work per record. It cited its obligation under s.16 to provide advice and assistance in the presentation of an acceptable request but stated that SWP could not suggest a practical modification of the request which would permit compliance within the cost limit. MH requested an internal review, which elicited the same response.

The Complaint

4. He complained to the ICO on 14th. June, 2013
5. During the ICO’s ensuing investigation SWP revised its estimate of costs for 2012, stating that it could provide that much information within the cost limit. It duly provided it to MH, though, in the event, the time required exceeded 18 hours, hence the cost limit. Based on the figures referred to below, it would have been around 33 hours. The

ICO excluded 2012 from his investigation into SWP's reliance on s.12.

6. SWP disclosed that it had notified local authorities of 393 drivers who had committed offences from 2008 to 2011 inclusive. It conducted a sample information retrieval exercise using the cases of ten taxi drivers from the 2012 list. Though the calculations in the Decision Notice are slightly confusing, it is apparent that the average search took at least 9 minutes, probably more for the early records in 2008 and 2009. That would result in a commitment of over 58 hours for a four - year survey, involving costs far above the statutory ceiling.
7. The ICO noted the procedures that an authority may take into consideration when estimating costs, namely, determining whether it holds the information, locating it, retrieving it and extracting the responsive information from the record within which it is contained. He accepted that SWP's estimate of costs was reasonable. In his Decision Notice he concluded that s.12 had been correctly invoked and did not require any steps to be taken.
8. As to s.16, the ICO observed that, had SWP calculated its costs accurately at the outset, it might have been able to suggest some part of the requested information that could be provided within the limit. However, noting that the 2012 figures had been provided voluntarily, he did not find a breach of s.16.

The Appeal

9. MH appealed on three grounds -
 - (i) If, on receiving the request, it had calculated accurately the cost of providing the 2012 figures alone, then, in accordance with FOIA s.16, SWP could have advised MH to confine his request to 2012 so as to stay within the cost limit, as demonstrated by its

voluntary provision of that information during the ICO's investigation.

- (ii) There was a significant and unexplained difference between SWP's initial estimate of 73 hours for 221 records in 2012 and the subsequent figure of about 58 hours for 393 records from 2008 - 2011. The first was a gross overestimate based on an unexplained calculation of 20 minutes per record.
- (iii) SWP wrongly provided the figures for 2010, not 2012.

10. In his response the ICO invites the Tribunal to vary his Decision Notice by finding a breach of s. 16, His reasoning is that the SWP's revised cost estimate would have permitted a proposal to limit the request to a year or certain months of a year as selected by MH. In failing to advise accordingly. SWP breached s.16, especially as regards paragraph 14 of s. 45 of the Code of Practice. SWP submits that the Decision Notice should stand unaltered in relation to this ground. Both Respondents ask the Tribunal to dismiss or strike out the other two grounds of appeal.

The law

11. FOIA s.12 reads -

“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 .

Regulations set that limit at £450 for SWP, which, at a charging rate of £25 per hour, provide a maximum of 18 hours for compliance.

12. FOIA s.16(1) obliges a public authority to *“provide advice and assistance, so far as it would be reasonable to expect the authority to do so . . . “* to those who request information. S.16(2) provides that conformity with the code of practice under s.45 is to be taken

as satisfying this obligation. Paragraph 14 of the code enjoins a public authority to assist the requester in refining or restricting his request so as to bring it within the cost limit.

Our Decision

13. , Notwithstanding the formulation of the grounds of appeal, the Tribunal has to decide simply -
 - (i) Did SWP correctly rely on s. 12, that is to say, would compliance with MH's request have exceeded the cost limit ?
 - (ii) Did SWP fail to comply with its obligations under s.16 ?

14. SWP sets out in its Response the explanation for its initial overestimate of cost based on 20 minutes per record. We accept it, though our acceptance has no bearing on the outcome of this appeal.

15. In any case, it is plain that a response to this request demanded much more time than the cost limit allowed even on the revised 9 minute calculation. To provide only the 2012 information clearly involved far more than 18 hours work. So the answer to (i) is "Yes".

16. As to s.16, we agree with SWP that the ICO was right in his original assessment. A request for information covering five years of notification of offences cannot sensibly be satisfied by the provision of statistics covering a random period within the five years, whether a whole year or, still less meaningful, a few months, which happen to keep costs within the limit. It is not difficult to envisage the scepticism which would greet conclusions drawn from such a sample, especially where the sensitive question of ethnic origin is a critical measure in the exercise.

17. If that assessment were wrong and a single year's figures, costing below the limit, should have been proposed, then the subsequent provision of the 2012 figures, at a cost above the limit, would make a finding that s.16 had been breached wholly disproportionate.

18. Any suggestion that SWP should have advised a series of requests, each covering a year or some lesser period, would amount to an assertion that it should assist in a plain circumvention of FOIA, to the detriment of its own funds. Moreover, such a modification of the essentially unified original request would plainly require aggregation of the requests, pursuant to regulation 5(1) of the The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations, 2004, as the ICO submits.

19. Accordingly, we dismiss the appeal based on a breach of s.16. We should add that any other decision would have been a harsh response to SWP's voluntary provision of the 2012 figures at a cost beyond the compliance limit, though such provision does not affect our reasoning on this issue.

20. MH's first ground of appeal relates to s.16. As to ground (ii) (paragraph 9 above), the disparity between the original and revised estimates of cost for the 2012 statistics is irrelevant to our decision on s.12, in that either estimate justifies SWP's refusal. Even if we had not accepted SWP's explanation, our decision would have been the same. Ground (iii) relates to the voluntary provision of one year's statistics, which has no bearing on any decision on s.12 or s.16, although we note that SWP denies any mistake as to which figures were provided.

21. For these reasons we dismiss this appeal.

22. Our decision is unanimous.

David Farrer Q.C.

Tribunal Judge

20th. May, 2014