

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 17 September 2007

Public Authority: Chief Constable West Midlands Police
Address: PO Box 52
Birmingham
West Midlands
B4 6NQ

Summary

The complainant requested information relating to the numbers of Notices of Intended Prosecutions issued by West Midlands Police (WMP) over a twelve month period. The information sought concerned instances where non-service of the notice was alleged and instances where the notice had been issued more than 13 days after an alleged offence. The Commissioner has determined that WMP may hold information connected with the first part of the request. However, he accepts that in order to determine whether information relevant to that part of the request is actually held, it would be necessary to manually search 93,000 records relating to alleged speeding offences. In relation to part 1 of the request, the Commissioner has concluded that WMP was not under an obligation to comply with section 1(1)(a) because to do so would have exceeded the appropriate limit in section 12 of the Act. The Commissioner has decided that WMP inappropriately denied holding relevant information. He considers that, in accordance with section 17(5), the police should have issued a Refusal Notice refusing to comply with section 1(1)(a), citing the appropriate limit. Further, he considers that WMP failed to provide sufficient advice and assistance in relation to this part of the request as required by section 16.

The Commissioner has also determined that WMP does not hold information relevant to the second part of the request. The Central Ticket Office computer cannot generate a Notice of Intended Prosecution after 13 days and the computer would reject an attempt to do this after that period of time. The initial response by WMP that it did not hold this information was in fact correct and complied with section 1(1)(a) of the Act.

In relation to both parts of the request the Commissioner has determined that WMP breached section 10 in failing to respond within twenty working days.

However, the Commissioner has not ordered WMP to take any remedial steps in this decision notice.

The Commissioner's Role

1. The Commissioner's role is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 ('the Act'). This Notice sets out his decision.

The Request

2. On **5 December 2005** the complainant made the following two part request to the public authority:
 - *"The number of instances where someone alleged to have been served with a notice of intended prosecution with respect to an alleged speeding offence alleges non-service of the notice, over the last twelve months".* (part 1)
 - *"The number of instances where notices of intended prosecution for alleged speeding offences have been issued to the registered keepers of the vehicles concerned, more than 13 days after the date of the alleged offence, over the last twelve months".* (part 2)
3. Notices of Intended Prosecution (NIPs) are issued to the registered keepers of vehicles that are detected by speed cameras and are alleged to have been exceeding the speed limit in a particular area. The Commissioner understands that police forces are required to serve NIPs on the registered keeper of a vehicle within 14 days of an alleged offence. The police are permitted to issue a NIP via registered or recorded delivery or via first class post, following an amendment to the Road Traffic Offenders Act 1988 that was made in 1994.
4. WMP wrote to the complainant on **10 January 2006** informing him that it did not hold the requested information.
5. On **10 January 2006** the complainant asked WMP for an internal review. In his email he gave his reasons for his belief that the public authority must hold information relevant to the second part of the request and asserted that a simple interrogation of its computer system could provide the information within the appropriate limit. He also cited section 16 of the Act, pointing out that the public authority had not provided any advice regarding what related information was currently available.
6. On **12 January 2006** WMP informed the complainant that its internal review may take up to three months to complete.
7. On **13 April 2006** WMP informed the complainant that it had concluded its internal review. It confirmed that it held no information relating to the first of the complainant's requests. It accepted that it did hold information concerning the dates of offences and the issue of the NIPs. However, this information is only used when prosecution files are prepared and to comply with the request would

entail searching through more than 93,000 individual records. Consequently the cost of locating and retrieving the information would exceed the appropriate limit. Therefore the public authority was not obliged to comply with the request by virtue of section 12 of the Act.

The Investigation

Scope of the case

8. On **4 May 2006** the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider the following points:
- The complainant could not accept that WMP could not run a 'simple interrogation programme' on its computer system to meet his request.
 - The public authority's response to the request exceeded the statutory time limit by four working days.
 - Subject to section 16 of the Act, WMP failed to provide advice and assistance in relation to his request.
 - The public authority's initial response that it did not hold the requested information was incorrect.
 - The public authority's refusal to provide the information sought in the second part of the request, failed to give any basis for its determination that it would exceed the appropriate limit.
 - The internal review conducted by the police was not concluded within its own time limits and that this was unreasonably long.
9. The Commissioner has investigated the first five points of complaint listed above and has explained his conclusion about each of them in this Decision Notice. He has not included a decision about the time taken to conduct an internal review in this notice, however he has commented on this aspect of the complaint in the 'Other Matters' section below.

Chronology of the case

10. The caseworker wrote to WMP on **20 June 2006**. WMP was asked to confirm that it did not hold the information sought in the first part of the complainant's request. It was asked to consider what advice and assistance it could have provided in relation to the request and whether it would be feasible to make a computer based search for the requested information. It was also asked how it determined that the likely costs of making a search would exceed the appropriate limit.

11. On **28 July 2006** WMP confirmed its position in relation to the complainant's first request by stating it did not hold this information. The public authority explained that it held the information asked for in the second part of the request. WMP stated that: *'The data requested by the complainant are not readily accessible and are not collated by West Midlands Police. The data are held on computer but in the absence of a specific search programme, it would be necessary to examine each individual record to obtain the information. For the period requested by the complainant, there were more than 93,000 records created and a sample checked by the Central Ticket Office identified it took four minutes to search ten records'*.
12. The Commissioner understands that the Central Ticket Office (CTO) records details of NIPs issued on a central database. During the period relevant to the request, the CTO generated 93,000 files on its database. Information from these records is used on a case-by-case basis in the preparation of prosecution files. A costs estimate made on the basis of the examination of ten records indicated that a search of all its relevant records would have taken in excess of 620 hours. WMP then stated that it does not possess a specific search programme which would easily access and collate the information sought by the complainant.
13. The caseworker telephoned WMP on **1 August 2006** enquiring about the availability of general information relating to NIPs, which could have been provided to the complainant. Further questions were put to the public authority on 3 August in relation to section 16 of the Act.
14. The police responded to the caseworker's enquiries on **16 August 2006** listing the type of statistical information that it does record in relation to speeding offences. This included the number of: NIPs issued, conditional offers issued, prosecution statements prepared, camera activations and cancelled tickets.
15. On **31 August 2006** the caseworker wrote to the complainant outlining the police responses to his enquiries. The letter contained a list of information which WMP would be prepared to consider releasing, should a further request be made by the complainant.
16. The complainant wrote to the caseworker on **11 September 2006**. He accepted the police position in relation to the first part of his request, that it did not hold that information. However in relation to the second part of the request he contended that the public authority should have in-house staff to analyse its computer systems in order to produce bespoke reports, and further, that this would be a simple operation.
17. The complainant wrote to the caseworker on **28 September 2006**. He asserted that a 'simple interrogation programme could be written in a matter of a few minutes'. The complainant noted that the database recorded the date of the alleged offence and the date that the NIP was issued. Therefore it should, in his opinion, have been possible to determine instances where the date of issue exceeded 13 days with relative ease. He cited the information published on WMP's website, which he asserted demonstrates that the authority has the technical ability to produce the information requested from its databases.

18. The caseworker wrote to WMP on **3 October 2006**. Enquiries were made about its ability to write a simple interrogation programme to retrieve data relevant to the second part of the request and the likely cost of undertaking this task.
19. WMP responded to the caseworker on **29 November 2006**. WMP addressed the caseworker's enquiry in relation to the allegation of non-issue of NIPs. It failed to address the caseworker's enquiry in terms of the number of NIPs issued by the police after 13 days.
20. On **30 November 2006** the caseworker clarified his enquiry with WMP.
21. WMP wrote to the caseworker on **12 December 2006**. It confirmed that the CTO computer does not allow the production of a NIP more than 13 days after an alleged offence and any attempt to produce a NIP beyond this time limit would be rejected by the computer. The Commissioner understands that all NIPs are electronically generated and not manually created. The Commissioner notes that the police would have to generate a NIP on or before the 13th day following the alleged offence in order to comply with the 14 day deadline for service of the notice.
22. The caseworker telephoned the complainant on **12 December 2006** to inform him of the police statement he had received earlier that day. The caseworker asked the complainant if he could provide the dates on which the NIPs served on his wife had been issued and the dates when they had been received. The caseworker requested this information as he understood that the complainant was alleging that his wife had been issued with a NIP after 13 days. Therefore the caseworker was attempting, to some degree, to verify the explanation given by WMP about the process for issuing NIPs, using evidence apparently available to the complainant. However, the complainant stated that he would probably not be able to provide this information due to the time which had elapsed since making his FOI request.

Analysis

Allegations of non –service (part 1 of the request)

23. In the course of the investigation the caseworker established that, contrary to the reply given by West Midlands Police, it may in fact hold details about persons alleging the non-service of a NIP. If such allegations had been made they may have been recorded on the central database. However, WMP stated that it is also possible that letters alleging non-service of a NIP could have been received in a number of different departments.
24. WMP performed a sampling exercise, manually searching ten of its computer records which indicated that it would take approximately 620 hours to search all of its files. It explained that the database used to record NIP related information does contain some mandatory fields, such as the date of the alleged offence. However, it also has free text fields and it is possible that if an allegation of non-service were received by WMP, details may have been entered into one of the free text boxes on the database. However, this is not a mandatory field as it is not data that the police collate for their own monitoring purposes. WMP explored the possibility of writing a computer programme to search free text

fields to try to determine whether any information relevant to part 1 of the complainant's request was held. It found that to write such a programme would exceed the 18 hour limit within section 12 of the Act. If a programme were written it would be required to 'second-guess' what may have been written by the original inputter.

Section 1

25. The Commissioner acknowledges that the request for information specified that the complainant was interested in the number of alleged cases of non-service of a NIP. He recognises that such a statistic is not collated by WMP. However, he is mindful that complainants are unlikely to be aware of exactly what information is held by a public authority or how it is recorded when making a request under the Act. In this case, he considers that if information about allegations of non-service was held within the computer files or elsewhere within the public authority, this would be material relevant to the request, albeit that it has not been collated into an overall statistic. In adopting this approach the Commissioner is mindful of his decision in case FS50067992. In paragraph 4.18 of that decision he stated that, "a public authority's failure to organise information in a way which would allow for easy retrieval does not mean that the information is not held". This position is further supported by the Information Tribunal's decision in Michael Leo Johnson and The Information Commissioner and the Ministry of Justice (EA/2006/0085).
26. WMP has indicated that it may hold details of allegations of non-service of NIPs in a number of places including the CTO database. The Commissioner considers that such information would be within the scope of the request because if WMP were to retrieve all of that information it would be able to answer the complainant's request or at least supply him with material so that he could calculate the total himself.

Section 12

27. Notwithstanding that the Commissioner considers that WMP may hold information relevant to the request, he is satisfied that, in this case, it would not be possible to determine whether or not information is actually held within the appropriate limit of £450. This is on the basis of the explanation detailed in paragraph 24 of this notice. Therefore, he considers that WMP was not in fact obliged to comply with section 1(1)(a) in relation to part 1 of the request by virtue of section 12.
28. Section 12 of the Act allows a public authority to refuse to comply with requests for information, where it estimates the cost of doing so would exceed the appropriate limit. It states that, "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".
29. Section 12(2) states that, "subsection (1) does not exempt the public authority from its obligation to comply with paragraph (a) of section 1(1) unless the estimated cost of complying with that paragraph alone would exceed the appropriate limit".

Section 17

30. The Commissioner has determined that WMP inappropriately denied holding information within the scope of part 1 of the request in its response to the complainant. In failing to inform the applicant that it was not obliged to comply with section 1(1) (a) because of the cost of doing so, it failed to comply with section 17(5) of the Act.

Section 16

31. Section 16 places a duty on public authorities to provide advice and assistance to persons who have made or intend to make, requests to them. The complainant has asserted that WMP failed to consider the requirements of this section when processing his request. WMP confirmed to the Commissioner that it considered the request to be very specific in nature and therefore it did not need to clarify what information the complainant required. Further, it did not think it necessary to determine whether any alternative information could have been provided to the complainant.
32. As previously mentioned, the Commissioner considers that WMP was wrong to advise the complainant that information relevant to his request was not held. In the Commissioner's view, it would have been reasonable for WMP to have contacted the complainant to explain how, if held, NIP related information might be recorded, for example in free text boxes within the database. In addition, WMP could have provided the complainant with an explanation of the type of related NIP information it does routinely collate which he may have been interested in requesting as an alternative.
33. In the Commissioner's view, as WMP did not give the complainant any explanation as aforementioned, he considers that it did not comply with its obligation to provide advice and assistance set out in section 16 of the Act. However, in view of the detail provided in this Decision Notice, the Commissioner has not ordered any remedial steps in this instance.

Number of NIPs issued after 13 days (part 2 of the request)

34. The Commissioner notes that WMP originally denied holding this information. However, when requesting an internal review, the complainant suggested that it would be possible to determine the number of times that a NIP was issued beyond 13 days. He asserted that this would be possible because the computer must record the dates of alleged offences and dates that NIPs are issued. The response by WMP suggested that it did hold data that would enable it to ascertain this information, however to do so would exceed the appropriate limit. The caseworker therefore corresponded with WMP on this point. However, WMP later confirmed that in fact the computer would not permit the generation of a NIP beyond 13 days. It explained that the computer would reject an attempt to generate a NIP on or beyond the 14th day following an alleged offence.
35. The Commissioner considers that the response provided to the complainant at the internal review was somewhat misleading. Unfortunately it led to an unnecessary investigation into the ability of WMP to retrieve information

relevant to part 2 of the request, using the dates recorded on the database. However, WMP later clarified that no information relevant to part 2 of the request could have been held because the computer system does not allow the generation of a NIP after 13 days. The Commissioner has concluded that WMP complied with section 1(1)(a) of the Act, when, in its initial response, it denied holding information relevant to part 2 of the request.

Section 10 (Parts 1 and 2 of the request)

36. Section 10 of the Act requires a public authority to comply with section 1(1) no later than 20 working days after it receives the request. The Commissioner notes the failure of WMP to satisfy this requirement. He also notes that it exceeded this time limit by three working days and that the compliance time covered the Christmas period. The Commissioner considers that this is a relatively minor breach of the Act in the circumstances and one which in any event cannot now be remedied.

The Decision

37. The Commissioner's decision is that WMP breached section 10 in relation to parts 1 and 2 of the request. In relation to part 1 of the request WMP also failed to comply with sections 17 (5) and 16. However, the Commissioner has not specified any remedial steps that the public authority must take in this notice.

Other matters

38. The Freedom of Information Act does not stipulate a time limit for the completion of internal reviews by public authorities. The complainant's statement at paragraph 8 relating to the police internal review is not part of this decision. The Code of Practice, under section 45 of the Act, states that: 'Authorities should set their own target times for dealing with complaints; these should be reasonable, and subject to regular review. Each public authority should publish its target times for determining complaints and information as to how successful it is with meeting those targets'. The Commissioner is aware that Association of Chief Police Officers has now revised its guidance to police forces regarding internal reviews. This now stipulates that internal reviews should be completed within two months. This is consistent with the Commissioner's published guidance.
39. Where it appears to the Commissioner that a public authority is failing to comply with the Code of Practice, he can issue a practice recommendation under section 48 of the Act. This would specify the steps which, in the Commissioner's opinion, the public authority should take in order to promote conformity with the code. The Commissioner has not considered issuing a practice recommendation in relation to this specific case. However, he will continue to monitor the time taken by WMP to conduct its internal reviews. In the event that further complaints were received by the Commissioner on this point, he may consider whether it would be appropriate to issue a practice recommendation to WMP.

Steps Required

40. The Commissioner requires no steps to be taken by WMP.

Right of Appeal

41. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal
Arnhem House Support Centre
PO Box 6987
Leicester
LE1 6ZX

Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@tribunals.gsi.gov.uk

Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is served.

Dated the 17th day of September 2007

Signed

**Graham Smith
Deputy Commissioner**

**Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Legal Annex

General Right of Access

Section 1(1) provides that -

“Any person making a request for information to a public authority is entitled –

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him.”

Time for Compliance

Section 10(1) provides that –

“Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.”

Exemption where cost of compliance exceeds appropriate limit

Section 12(1) provides that –

“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.”

Section 12(2) provides that –

“Subsection (1) does not exempt the public authority from its obligation to comply with paragraph (a) of section 1(1) unless the estimated cost of complying with that paragraph alone would exceed the appropriate limit.”

Section 12(3) provides that –

“In subsections (1) and (2) “the appropriate limit” means such amount as may be prescribed, and different amounts may be prescribed in relation to different cases.”

Duty to provide Advice and Assistance

Section 16(1) provides that -

“It shall be the duty of a public authority to provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made, requests for information to it”.

Refusal of Request

Section 17(5) provides that –

A public authority which, in relation to any request for information, is relying on a claim that section 12 or 14 applies must, within the time for complying with section 1(1), give the applicant a notice stating that fact.