

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 4 October 2010

Public Authority: Commissioner of the Metropolitan Police Service
Address: New Scotland Yard
Broadway
London
SW1H 0BG

Summary

The complainant requested copies of guidance issued to police officers in connection with public order policing at the 2009 G20 summit held in London. The public authority initially refused the request under section 30 (information held for the purposes of investigations). During the Commissioner's investigation the public authority changed its stance to claim that compliance with the request would exceed the cost limit and so section 12(1) of the Act provided that it was not obliged to do so. The Commissioner has upheld the application of section 12(1), but decided that the public authority failed to comply with the duty imposed by section 16(1) to provide advice and assistance by not advising the complainant how his request could be refined to bring it within the cost limit. The public authority is now required to provide such advice and assistance to the complainant. The Commissioner also finds that the public authority failed to comply with the requirement of section 17(5) in its handling of the request.

The Commissioner's Role

1. The Commissioner's duty 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. The complainant made the following request on 17 April 2009:

"(a) copies of any guidance issued to officers relating to the G20 demonstration

(b) copies of any guidance issued to the Territorial Support Group on public order at the G20."

3. The public authority responded to this on 7 July 2009, outside 20 working days from receipt of the request. The request was refused, with the public authority citing the exemption provided by section 30 (information held for the purposes of investigations). No subsection of section 30 was specified at that stage, but from the wording of the refusal notice it appeared that the public authority believed that either or both of sections 30(1)(a)(i) or (ii) were relevant.
4. The complainant responded to this on 15 July 2009 and requested an internal review. The public authority responded with the outcome of the internal review on 10 September 2009. This response made reference to section 31 (prejudice to law enforcement), but concluded that section 30 had been cited correctly. Again no subsection from section 30 was specified. The complainant was also referred to publicly-available information concerning the policing of the G20 summit.

The Investigation

Scope of the case

5. The complainant contacted the Commissioner initially on 28 October 2009. The complainant disputed the refusal to disclose the information requested on the grounds of the significance and high profile of the G20 demonstrations and the public concern about the policing of these.
6. As covered below, during the Commissioner's investigation, the public authority changed its justification for the refusal of the request to being that the cost of compliance would exceed the appropriate cost limit, so section 12(1) applied. During an exchange of correspondence between the Commissioner's office and the complainant, the complainant confirmed that she wished the Commissioner to consider whether section 12(1) had been applied correctly. The complainant also

objected to the citing of section 12(1) at that late stage and requested that the Commissioner not allow this.

7. Despite the objections of the complainant, the Commissioner has chosen to exercise his discretion in this case to accept the late citing of section 12(1) by the public authority. However, section 17(5) of the Act requires that the complainant should be informed of a claim that section 12(1) applies within 20 working days of receipt of a request. The public authority failed to comply with this requirement in this case as recorded below at paragraph 27 and the public authority should seek to avoid similar breaches of the Act in future.
8. As to the reasoning for the decision to allow the late citing of section 12(1), when drafting the Act Parliament intended that a public authority should not be obliged to comply with a request where the cost of doing so would exceed an appropriate cost limit (subsequently set at £600 for central government and £450 for all other public authorities). Whether the estimate of the cost of the request made by the public authority is, as is required, reasonable is not altered by the timing of the initial reliance on section 12(1), given that the estimate should be based on factors as they applied at the time of the request.
9. In this case the Commissioner has taken the approach that to refuse to accept the late citing of section 12(1) would contradict the intention of Parliament that a public authority is not obliged to comply with a request if to do so would exceed the appropriate cost limit. The Commissioner has, therefore, considered section 12(1) in this Notice.

Chronology

10. The Commissioner contacted the public authority initially on 5 February 2010 and asked that it respond with further explanation for the citing of section 30. The public authority responded to this on 12 April 2010 and indicated that it now wished to amend its stance and cite section 12(1).
11. The Commissioner responded to this on 14 April 2010 and asked the public authority to provide an estimate of the cost of compliance with the request and a breakdown of how this estimate was formed in connection with its wish to now cite section 12(1). The public authority responded with the necessary explanations on 10 May 2010.

Analysis

Substantive Procedural Matters

Section 12

12. The public authority has cited section 12(1), which provides that a public authority is not obliged to comply with an information request if the cost of doing so would exceed the appropriate limit. The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the “fees regulations”) provide that the limit for non-central government public authorities is £450. The fees regulations also provide that the cost must be calculated at the rate of £25 per hour, providing an effective time limit of 18 hours, and that the tasks that can be taken into account as part of a cost estimate are as follows:
 - determining whether the information requested is held.
 - locating the information.
 - retrieving the information.
 - extracting the information.
13. The task for the Commissioner in considering whether section 12(1) has been applied correctly is to reach a decision as to whether the cost estimate made by the public authority is reasonable. The analysis below is based upon the description provided by the public authority in support of its cost estimate.
14. The complainant has made two requests and the cost estimate made by the public authority covers these jointly. Regulation 5 of the Fees Regulations provides that the cost of complying with multiple requests can be aggregated where two or more requests are received within the same 60 working day period and relate to any extent to the same, or similar, information. This provides a wide definition of related requests and the Commissioner considers it clear that the requests in question here are sufficiently closely linked that it is accurate to characterise these as related in accordance with this definition. It was appropriate, therefore, for the public authority to aggregate these requests for the purpose of its cost estimate.
15. Moving to whether the estimate made by the public authority was reasonable, the first part of the estimate relates to the cost that the public authority believes would be incurred through determining whether information falling within the scope of the request is held. Section 12(2) provides that the cost limit can be applied in relation to

- the duty to confirm or deny imposed by section 1(1)(a) if the cost of confirmation or denial alone would exceed the limit. If the cost of compliance with section 1(1)(a) alone would not exceed the limit, section 12(2) is not relevant.
16. The public authority has estimated the time that would be taken in determining whether it holds relevant information at 1 hour and 10 minutes (1h10m), giving a cost estimate of approximately £29. As the public authority estimates that the cost of compliance with section 1(1)(a) would be less than the appropriate limit, section 12(2) is not relevant. In any event, the Commissioner does not accept that it was the case that the public authority was unaware of whether it held information falling within the scope of the request; instead, he believes that the public authority was aware that it held relevant information, but that work was required to identify exactly what information was held, and to locate and extract it. For this reason, the Commissioner does not believe that it was reasonable to include the sum of £29 in the overall costs estimate, and has disregarded it.
 17. Turning to the estimate made by the public authority in relation to section 1(1)(b), the introduction of section 12(1) by the public authority during the Commissioner's investigation was motivated by a reconsideration of the scope of the request. In the letter to the Commissioner of 10 May 2010, the public authority advised that there were 19 separate demonstrations that related to the G20 summit. It stated that it believed that an objective reading of the scope of the requests was that these were for guidance issued in relation to any of these demonstrations. The breakdown of the cost estimate provided by the public authority was based upon that reading of the scope of the request and the Commissioner agrees with this reading.
 18. The public authority has estimated that it would take a total of 95h38m to comply with the request. The Commissioner has already concluded that the estimate for the time that would be taken in establishing if relevant information is held cannot be taken into account, reducing the estimate to 94h28m. This gives a cost estimate of approximately £2,362.50. The breakdown of this estimate and the Commissioner's analysis of this is as follows.
 19. The public authority has estimated that approximately 22 hours would be taken in locating relevant information. The large majority of this time would be taken in identifying individual officers who filled particular roles during the policing of the G20 demonstrations. The public authority acknowledged that some information will be held centrally by the Public Order Unit Planning Team and by the Territorial Support Group and that this information could be located quickly.

20. In explanation as to why it would be necessary to identify the police officers who performed particular roles in relation to the G20 protests, the public authority has stated that 'Bronze Commanders' would have delivered briefings to Inspectors and that the record of these briefings would be held by each Bronze Commander. In turn, Inspectors will have briefed Sergeants and the record of these briefings could be held by Inspectors and Sergeants. The public authority has stated that there were 70 Bronze Commanders and a minimum of 150 Inspectors and 300 Sergeants. The public authority has stated that some of the information needed to identify the police officers who filled particular roles is held electronically, but that the majority of this information is held in paper form. It has also stated that Bronze Commanders' briefings were *'specific to their own remit'*, suggesting that the various briefings differed, rather than being a cascaded version of the same briefing.
21. In relation to retrieving the information, the public authority has estimated that this would take a total of approximately 43 hours. This estimate is again based upon relevant information being held locally by individual officers. The public authority has referred again to the numbers of Bronze Commanders, Inspectors and Sergeants given above and stated that some information will be held electronically and that it is likely that additional information will be held in paper form. The estimate is of the total time that it believes the individual officers would spend in retrieving relevant information. The public authority has not provided an estimate of the time that would be taken in retrieving the information held centrally, rather than by individual officers, but has stated that this would not be 'onerous'.
22. The public authority also believes that it would be necessary to extract information relevant to the requests and estimates that this would take approximately 30 hours. The public authority has identified three classes of information from which it may be necessary to extract information: Strategic and Tactical Plans, Briefing Documents, and Decision Logs. It has stated that this information, whilst relating to the policing of the G20 summit, may not concern demonstrations or public order issues. The public authority has stated that the Strategic and Tactical Plans and Briefing Documents are held in electronic form, and that the Decision Logs are handwritten and held in paper form. Its estimate is based on 8 minutes per Strategic and Tactical Plan, 2 minutes per Briefing Document and 15 minutes per Decision Log and it has stated that there are 72 Strategic and Tactical Plans, 70 Briefing Documents and 72 Decision Logs.

23. The Commissioner accepts that the estimate of the public authority for the time and cost of complying with the complainant's requests is reasonable. In particular he notes that an objective reading of the scope of the requests is broad, particularly once it is established that information falling within the scope of the requests is held by individual police officers. As the Commissioner has accepted that the cost estimate in excess of the appropriate limit is reasonable, his conclusion is that section 12(1) does apply and so the public authority is not obliged to comply with the complainant's requests.
24. The Commissioner does note, however, that it appears that the cost to the public authority of providing only that information held centrally would be considerably less once the costs associated with information held by individual officers has been discounted. The Commissioner comments further on this point in the section 16(1) analysis below.

Section 16

25. Section 16(1) provides that public authorities are under a duty to give advice and assistance to individuals making information requests. Where section 12(1) is cited, the Commissioner considers it essential that advice is provided to the applicant as to how their request could be refined so that it may be possible to supply some information without exceeding the cost limit. The Commissioner also considers it good practice for the public authority to inform the applicant of their total cost estimate and to provide a breakdown of how this estimate was formed. As section 12(1) was not cited prior to the Commissioner's investigation, clearly the public authority did not provide to the complainant advice and assistance in this case and, therefore, breached section 16(1).
26. At paragraph 29 below, the public authority is required to provide to the complainant appropriate advice and assistance as to how his request could be refined in order that it may be possible to supply some information without exceeding the cost limit. The Commissioner has noted that the excessive cost of this request is in large part due to information being held by individual officers. Given this, it would be appropriate for the public authority to consider whether it should advise the complainant to refine her request to cover only that information held centrally, or that part of the information held centrally that it may be possible to provide without exceeding the cost limit.

Procedural Requirements

Section 17

27. In failing to cite section 12(1) within 20 working days of receipt of the request, the public authority did not comply with the requirement of section 17(5).

The Decision

28. The Commissioner's decision is that the public authority dealt with the requests for information in accordance with the Act in that section 12(1) provided that it was not obliged to comply with these requests. However, the Commissioner has also found that the public authority failed to comply with the requirements of sections 16(1) and 17(5) in its handling of the requests.

Steps Required

29. The Commissioner requires the public authority to take the following steps to ensure compliance with the Act:
- provide to the complainant appropriate advice and assistance to refine the request so that it might fall within the appropriate limit.
30. The public authority must take the steps required by this notice within 35 calendar days of the date of this notice.

Failure to comply

31. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Other matters

32. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern:

The Commissioner's published guidance on internal reviews states that a review should be conducted within 20 working days, unless there are exceptional circumstances, in which case the review period may be extended to 40 working days. In this case the Commissioner notes that there appeared to be no exceptional circumstances, but that the public authority failed to provide the outcome to the review within 20 working days. The public authority should ensure that internal reviews are carried out promptly in future.

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,
Arnhem House,
31, Waterloo Way,
LEICESTER,
LE1 8DJ

Tel: 0845 600 0877

Fax: 0116 249 4253

Email: informationtribunal@tribunals.gsi.gov.uk.

Website: www.informationtribunal.gov.uk

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.

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

Dated the 4th day of October 2010

Signed

**Jon Manners
Group Manager**

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

Legal Annex

Section 12

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 16

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.”

Section 17

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.”