

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 15 August 2011

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

Summary

The complainant requested the cost of investigating the former police officer Ali Dizaei. The public authority refused to comply with the request on the basis of section 12(1) of the Act (cost of compliance). However, during the Commissioner's investigation, the public authority submitted that the information was not held. The Commissioner found that, on a balance of probabilities, the requested information was not held.

The Commissioner however found the public authority in procedural breach of the Act.

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. On 16 March 2010 the complainant requested information from the public authority regarding its investigation of former police officer Ali Dizaei. The request was phrased as follows:

'With regard to each occasion the police investigated former officer Ali Dizaei please advise the cost of the enquiry.'

3. On 6 August 2010 the public authority responded. The request was denied on the basis of the provisions of section 12(1). Put simply, the public authority considered that the cost of complying with the request would exceed 18 hours and cost more than £450.
4. On 5 December 2010 the complainant requested an internal review.
5. On 5 January 2011 the public authority wrote back to complainant with the outcome of the internal review. It upheld the original decision to deny the request on the basis of section 12(1).

The Investigation

Scope of the case

6. On 5 January 2011 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:

'It was unlikely that the public authority failed to keep records of the cost associated with an investigation, particularly a high profile case. Given that the public authority regularly cites proportionality in its investigations, consideration must have been given to the cost to the public purse.

Other cases have resulted in costs being supplied

No attempt was made to provide 'approximations.'

Chronology

7. On 19 May 2011 the Commissioner wrote to the complainant. He outlined the scope of his investigation and invited the complainant to comment if necessary. The complainant did not respond.
8. On 24 May 2011 the Commissioner wrote to the public authority and requested submissions on the application of section 12(1). In view of the nature of the public authority's responses to the complainant (as explained in paragraph 11 below), the Commissioner also recommended that the public authority consider whether the information requested was in fact held.
9. On 27 June 2011 the public authority responded.

Analysis

Section 1 – General right of access to information held

10. The public authority withdrew its reliance on section 12(1) and explained that the information requested was not held. According to the public authority, its revised position is supported by the fact that the searches conducted would have ultimately produced an estimated cost as opposed to the actual cost of each investigation.
11. It explained (just as it had previously explained to the complainant albeit in the section 12 refusal notice), that it did not record costs against individual investigations and individual police officers who worked on the case would have also been involved in a number of different investigations and/or roles at the same time. Therefore, there was no way of providing the accurate time spent by each officer/staff on each of the relevant investigations. Consequently, the cost of the investigations would not have been held at the time of the request and could not also be accurately calculated from the available data.
12. To summarise, at the time of the request, the searches for which the public authority estimated would take it beyond the 18 hours threshold was to actually retrieve information to enable it provide an estimated cost of the investigations in question. There was simply no way it could provide the accurate cost of each investigation.
13. The public authority also clarified that the widely reported cost of 'Operation Helios', a relevant investigation in this instance, has always been based on estimates which, as far as it could ascertain, it had never confirmed. According to the public authority, this is illustrated by the fact that the figures cited by different media organisations as the estimated cost of Operation Helios vary considerably. In support, the public authority specifically referred to the following reports in relation to the estimated cost of Operation Helios:

http://entertainment.timesonline.co.uk/tol/arts_and_entertainment/books/book_extracts/article1448136.ece

<http://www.dailymail.co.uk/news/article-437547/The-dangerous-man-Met.html>

<http://www.telegraph.co.uk/news/uknews/1544903/Anger-as-Asian-police-chief-misses-promotion.html>

<http://www.independent.co.uk/news/uk/crime/senior-muslim-officer-charged-over-restaurant-scuffle-1688837.html>

<http://news.bbc.co.uk/1/hi/programmes/newsnight/3112472.stm>

http://en.wikipedia.org/wiki/Ali_Dizaei

<http://news.bbc.co.uk/1/hi/england/london/6724569.stm>

<http://www.telegraph.co.uk/news/uknews/1536478/Met-chief-facing-new-phone-tap-race-row.html>

14. In determining whether a public authority holds information requested by an applicant, the Commissioner applies the civil standard of proof which is based on a balance of probabilities.
15. In deciding where the balance lies, the Commissioner will consider the scope, quality, thoroughness and results of the searches carried out by the public authority as well as considering, where appropriate, any other reasons offered by the public authority to explain why the information is not held¹.
16. The Commissioner is satisfied on the basis of the public authority's explanation and in light of the factual evidence, that, on the balance of probabilities, the public authority did not hold the cost of each of its investigations of the former police officer, Ali Dizaei. Whilst it is possible that the public authority held data which could have been used to produce an estimated cost, the request was clearly for the actual cost of each investigation.
17. Having found that the public authority did not hold the requested information, the Commissioner did not go on to consider the applicability of section 12(1).

Procedural Requirements

18. Sections 1(1)(a) imposes a duty on a public authority to inform an applicant whether the information requested is held. It combines with section 10(1) to impose a duty on a public authority to respond to a request for information within 20 working days.
19. The Commissioner finds the public authority in breach of sections 10(1) for both responding to the request outside of the statutory time limit and not making it clear to the complainant within this timeframe that the requested information was not in fact held.

¹ These views were expressed in more detail by the Information Tribunal in *Linda Bromley & Others v The Information Commissioner & Environmental Agency – EA/2006/0072*

The Decision

20. The Commissioner's decision is that the public authority did not deal with the request for information in accordance with the Act. It incorrectly relied on section 12(1) when it was clearly evident to the public authority that the requested information was not held.

Steps Required

21. The Commissioner requires no steps to be taken.

Right of Appeal

22. 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: 0300 1234504

Fax: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

23. 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.
24. 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 15th day of August 2011

Signed

**Alexander Ganotis
Group Manager – Complaints Resolution
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."

Section 12(4) provides that –

“The secretary of State may by regulations provide that, in such circumstances as may be prescribed, where two or more requests for information are made to a public authority –

(a) by one person, or

(b) by different persons who appear to the public authority to be acting in concert or in pursuance of a campaign,

the estimated cost of complying with any of the requests is to be taken to be the estimated total cost of complying with all of them.”

Section 12(5) – provides that

“The Secretary of State may by regulations make provision for the purposes of this section as to the costs to be estimated and as to the manner in which they are estimated.”