

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 29 March 2012

Public Authority: Home Office
Address: 2 Marsham Street
London
SW1P 4DF

Decision (including any steps ordered)

1. The complainant requested information relating to criminal records disclosure requests made to the Criminal Records Bureau ('the CRB').
2. The Information Commissioner's decision is that the CRB correctly relied on section 12(1) of the FOIA in relation to the request. The Commissioner finds, however, that the CRB breached section 16(1) of the FOIA by not providing appropriate advice and assistance.
3. The Commissioner requires the public authority to contact the complainant to provide appropriate advice and assistance, such that the request may be clarified and refined in an attempt to provide some of the information sought. The CRB would thereby comply with its obligations under section 16(1) of the FOIA.
4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as contempt of court.

Request and response

5. On 28 March 2011 the complainant made a request for information regarding CRB procedures and its dealings with police forces. The request comprises 33 questions separated into four categories and is set out in full in Annex 1.
6. The CRB responded on 6 April 2011 relying on the exclusion provided by section 12 of the FOIA, and stating that the cost of compliance with

the request would exceed the cost limit of £600 as specified in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004. The CRB suggested to the complainant:

"If you refine your request, so that it is more likely to fall under the cost limit, we will consider it again. If you were able to narrow your query to encompass the information of greatest interest to you then we may be able to process the request within the cost limit."

7. On 15 September 2011 the complainant requested an internal review of the response and stated:

"My disappointment under the circumstances I think and believe justify the thirty two questions to be answered in full."

8. The Home Office provided its review on 13 October 2011 and upheld the original response. The Home Office reiterated the suggestion that a refined request could be submitted and also suggested that the complainant could make a subject access request under the Data Protection Act 1998 in respect of the first point of his request. The internal review also explained the following:

"FOI requests should relate to recorded information only and neither updates nor opinions are usually kept as recorded information."

Scope of the case

9. The complainant contacted the Commissioner on 23 October 2011 to complain about the handling of his request for information and the application of section 12(1). The complainant particularly contested the Home Office's estimates of the time required to provide the requested information.
10. The Commissioner understands that the complainant considers that he has not requested updates or opinions as referenced by the Home Office; he believes that he is asking why procedures are not being followed. However, the Commissioner points out that if recorded information is not held then it cannot be provided. In this instance the CRB would be likely to hold information on the 'following of procedures' only if a specific report into the matter had been written.

Reasons for decision

Section 12 – exemption where cost of compliance exceeds appropriate limit

11. 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.”

12. A public authority may refuse to comply with a request if to do so would exceed the appropriate limit. In the case of the CRB this limit is £600, representing 24 hours work at a charge of £25 per hour. The only activities that a public authority can take into account are set out in The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations (the ‘Fees Regulations’) and are the following:

- determining whether it holds the information;
- 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.

13. When refusing a request on the basis of section 12 a public authority does not need to have made a precise calculation of the costs of complying with the request, rather it only needs to have made an estimate of the cost. However, in the Commissioner’s opinion, such estimates need to be sensible, realistic and supported by persuasive evidence.

14. The Home Office explained to the Commissioner its difficulty in fully understanding the exact meaning of some of the questions comprising the complainant’s request. Requests for information must be objective and clear. The section 45 Code of Practice explains that:

“A request for information must adequately specify and describe the information sought by the applicant.”

15. The Commissioner agreed with the Home Office that many of the questions lacked clarity which resulted in difficulty in discerning exactly what information was required. This matter is considered further in paragraphs 23 to 30.

16. The Home Office explained to the Commissioner why it considered 21 out of 33 of those questions were unclear. The Home Office did not provide this information to the complainant. The Commissioner accepts that the questions can be open to different interpretations and in order

to respond the Home Office would be assuming what information was sought.

17. The Home Office provided the Commissioner with a breakdown of its estimates of the time and resulting costs of complying with six points of the request numbered 6, 11, 19, 20, 22, and 23, which it considered to be valid requests which were more clearly identified. However, these points had not been identified to the complainant. The total time required to respond to these questions was estimated at between 20 hours and 33 minutes and 25 hours and 33 minutes. The Commissioner notes that the lower requirement stated would fall within the cost of compliance and could be achieved by a slight refinement of reducing the time period covered by question 11.
18. In its internal review the Home Office considered all 33 questions and made broad estimates of the time that would be required to respond to the request by assuming its interpretation of the questions to be correct. In considering the request in this way the Home Office explained to the complainant that the limit of the cost of compliance would be significantly exceeded.
19. The Commissioner agrees that in considering responses to the entire request the time taken would be in excess of 24 hours' work. However, the Commissioner's view is that - due to the lack of clarity and difficulty in determining exactly what the complainant sought - the Home Office could not accurately estimate the time that would be required to provide the requested information.
20. The Commissioner's guidance informs public authorities that they are not obliged to provide information up to the appropriate limit as set out in paragraph 12. However, in this case the Commissioner considers that the CRB could have provided the information sought in the questions it identified to the Commissioner as those it clearly understood; namely, questions 6, 11, 19, 20, 22 and 23 in the Annex.
21. The Code of Practice clearly advises that an authority:

"...should disclose any information relating to the application which has been successfully identified and found for which it does not propose to claim an exemption."

Section 16 Duty to provide advice and assistance

22. 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."

23. The Commissioner's view is that, although the CRB suggested that the complainant refine his request in order that it could be handled within the appropriate limit, it did not suggest any way in which this could be achieved and therefore did not provide adequate advice and assistance.

24. The Commissioner has determined that, if the complainant had responded, without appropriate guidance, to the suggestion of refining his request by citing a limited number of his questions, the CRB would not have had any clearer understanding of his requirements. The Commissioner considers that it would have been helpful for the CRB to ask the complainant for clarification of the information sought and to engage with the complainant regarding what information is held and might be disclosed under the FOIA.

25. The section 45 Code of Practice states:

"Authorities should, as far as reasonably practicable, provide assistance to the applicant to enable him or her to describe more clearly the information requested."

26. Paragraph 10 of the Code of Practice gives examples of the type or assistance which may be appropriate such as:

"providing an outline of the different kinds of information which might meet the terms of the request;

... and public authorities should be flexible in offering advice and assistance most appropriate to the circumstances of the applicant."

27. In this case, with reference to the points of the request numbered 21, 24, 26 and 28 seeking information regarding 'standard' CRB checks and police force handling, the CRB could have explained that standard checks are not sent to the local police forces for input except in exceptional cases. This would have taken little time and would have been helpful assistance.

28. In this case the Commissioner considers that the CRB could have offered assistance in clarifying exactly what was sought by the complainant, in particular by reference to the specific points of the request as it provided to the Commissioner. The Commissioner accepts that this clarification could still have resulted in the request exceeding the appropriate limit; however, the reliance on section 12 would then

not be based on conjecture of what was required to enable disclosure of the requested information.

29. The Commissioner accepts that the complainant did not refine his request when asked. In his complaint to the Commissioner the complainant provided a lengthy and detailed submission explaining his reasoning why he considered that the complete request could be provided within the appropriate time limits. In his submission the complainant questions on several occasions why the CRB had not contacted him to ask for clarification. He asks:

"...if they was not sure why did they not ask? [a repetitive theme as we shall see]."

30. The complainant provided the Commissioner with examples of clarification of some of his questions which he created in response to the internal review. The Commissioner's view is that the rephrasing of the questions would have helped the CRB determine what information the complainant sought. However, he also accepts that the clarified point would not necessarily have resulted in the provision of information.
31. The Commissioner understands that the complainant considers that he has not requested updates or opinions as referenced by the Home Office; he believes that he is asking why procedures are not being followed. However, the Commissioner points out that if recorded information is not held then it cannot be provided. In this instance the CRB would be likely to hold information on the 'following of procedures' only if a specific report into the matter had been written.
32. The Commissioner has concluded that the complainant could have benefitted from advice and assistance from the CRB in both the refinement and clarification of his request, and that that advice and assistance should now be provided..

Right of appeal

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: 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

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.

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

Signed

Jon Manners
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Annex

The complainant’s request:

“To the data controller,

Under the Freedom of Information Act 2000: Data Protection Act (19998): Environmental Information Regulations. I request the following information identified below. For ease of reading, subheadings are offered.

Data controller, it is requested that you consider the current position that I find myself in to provide cost for the disclosure to be waived as I am currently unemployed, if proof is required please do not hesitate to contact me via any of the above medias.

Yours sincerely,

Notes:

1. When providing adapt, please use raw data only no means, no %, no medians etc.
2. Due to the nature of the request, please use a CD disc.
3. Please use Microsoft Excel format, in addition, please use the ‘template’. For each question [where applicable below] please use a separate worksheet.

<u>Target</u>	Jan	Jan	Jan	Jan	Jan	Feb	Feb	Feb	Feb
<u>date</u>	10	14	25	60	60+	10	14	25	60
	days	days	days	days	days	days	days	days	days

Police
Force
Name

Self

1. With regards to self, it is requested that all communication between self and CRB staff respectively held by CRB and its sister organisations whether electronically/paper/audible or other form of media past and present to be discharged to one’s self.

Procedures

2. What agreed procedures for each period that are mandatory (must follow) which are in place by the CRB to respective Police Forces to prevent further delay of **standard** disclosure for each period?
3. What agreed procedures for each period that are mandatory (must follow) which are in place by the CRB to respective Police Forces to prevent further delay of **enhanced** disclosure for each period?
4. Related under FOI request number 16172 a request is made with regards to the study conducted a full copy of the study in figure (not percentages) for example, sample population, sample size, questions presented... ..and attachment is requested.
5. I would like to know how many individuals have had more than two CRB checks for different organisations that have taken longer than a period of eight weeks?
6. A copy of code of practice(s) for CRB from 2006 to 2011.
7. Legislation changes applicable to CRB with regards to code of practice from 2006 to 2011 in layman's language please.
8. What procedures are in place/have CRB taken against Police Forces who do not fulfil agreement targets.
9. Requested under FOI request number 16172 what are the policies and procedures?
10. Related under request number 16172 who/whom makes the decision (bodies/and/or regulated) (i) internally decided (ii) externally decided?
11. How many disclosures from an individual for different employers has the CRB on its record?
12. CRB holds information bases upon each application [Number: 15669] , I was given a 'unique' reference number to prevent delay if further CRB clearances are requested, please can you reduce the disparity with what I was told to that of reference request number 15669?
13. Taking the changing market forces into account, the need for individuals to have a CRB clearance on more than one occasion, why does the CRB not hold 'key' information for example passport/finger prints for repeated applications from the applicant that can be identified on the CRB originally issued thus reducing cost?

14. Why did CRB not follow their own procedure, that is, the reference given by CRB to one's self to prevent such an incident happening again?
15. What are the formal procedures laid down by the CRB with regards to informing the acting agency for example capita for each period identified that is, eight weeks, nine weeks, ten weeks, eleven weeks, twelve weeks, thirteen weeks, fourteen weeks, beyond fourteen weeks, with regards to **standard** disclosure?
16. What are the formal procedures laid down by the CRB with regards to informing the acting agency for example capita for each period identified that is, eight weeks, nine weeks, ten weeks, eleven weeks, twelve weeks, thirteen weeks, fourteen weeks, beyond fourteen weeks, with regards to **enhanced** disclosure?
17. What are the formal procedures laid down by the CRB with regards to informing the end user for example one's self for each period identified that is, eight weeks, nine weeks, ten weeks, eleven weeks, twelve weeks, thirteen weeks, fourteen weeks, beyond fourteen weeks, with regards to **standard** disclosure?
18. What are the formal procedures laid down by the CRB with regards to informing the end user for example one's self for each period identified that is, eight weeks, nine weeks, ten weeks, eleven weeks, twelve weeks, thirteen weeks, fourteen weeks, beyond fourteen weeks, with regards to **enhanced** disclosure?

Fees

19. What is the arrangement related to cost paid to respective Police Forces, that is, are each Police Force 'per disclosure' or paid a standard rate per month, or paid a standard fee per year?
20. Related to the above question, do respective Police Forces get paid whether they meet agreed targets?
21. For each year requested (January 1st 2005 – 1st December 2010) what was the total financial cost charged per year by respective Police Forces for **standard** checks (alternatively financial cost paid by CRB to respective Police Forces please identify)?
22. For each year requested (January 1st 2005 – 1st December 2010) what was the total financial cost charged per year by respective Police Forces for **enhanced** checks (alternatively financial cost paid by CRB to respective Police Forces please identify)?

23. What fees are paid to CRB by respective forces for providing: (i) standard disclosure (ii) enhanced disclosure?

Raw Data Request

24. Using the template provided, please produce for each period, that is eight weeks, nine weeks, ten weeks, eleven weeks, twelve weeks, thirteen weeks, fourteen weeks, beyond fourteen weeks during January 1st 2005 to 1st December 2010 the total number of **standard** request made to respective Police Forces?
25. Using the template provided, please produce for each period, that is eight weeks, nine weeks, ten weeks, eleven weeks, twelve weeks, thirteen weeks, fourteen weeks, beyond fourteen weeks during January 1st 2005 to 1st December 2010 the total number of **enhanced** request made to respective Police Forces?
26. Using the template provided, please produce for each period, that is eight weeks, nine weeks, ten weeks, eleven weeks, twelve weeks, thirteen weeks, fourteen weeks, beyond fourteen weeks during January 1st 2005 to 1st December 2010 the total number of **standard** request *completed* to respective Police Forces?
27. Using the template provided, please produce for each period, that is eight weeks, nine weeks, ten weeks, eleven weeks, twelve weeks, thirteen weeks, fourteen weeks, beyond fourteen weeks during January 1st 2005 to 1st December 2010 the total number of **enhanced** request *completed* to respective Police Forces?
28. Using the above template provided, please show using Microsoft Excel in figures only for each period, that is eight weeks, nine weeks, ten weeks, eleven weeks, twelve weeks, thirteen weeks, fourteen weeks, beyond fourteen weeks (January 1st 2005 to 1st December 2010) the financial tariff imposed at each stage if targets was not met by respective Police Forces for **standard** checks set by CRB?
29. Using the above template provided, please show using Microsoft Excel in figures only for each period, that is eight weeks, nine weeks, ten weeks, eleven weeks, twelve weeks, thirteen weeks, fourteen weeks, beyond fourteen weeks (January 1st 2005 to 1st December 2010) the financial tariff imposed at each stage if targets was not met by respective Police Forces for **enhanced** checks set by CRB?
30. Related to FOI number: 15669 since CRB have disclosed (intentionally) what checks have been competed at each stage, that is 1 week, 2 weeks, 3 weeks, 4 weeks, 8 weeks, 9 weeks, 10 weeks,

11 weeks, 12 weeks, 13 weeks, 14 weeks, beyond 14 weeks for individuals on CRB register for the period 2006 > 2011?

31. Using the template provided, please show using Microsoft Excel in figures only, between the periods Jan 1st 2005 – 1st December 2010 the number of Police Forces having an agreement with CRB to provide information each Police Force not attaining its target.
32. In figures only, per period per year [9 weeks, 10, weeks, 11 weeks, 12, weeks and beyond] , how many other applicants since CRB became an entity has an individual have to wait for clearance for: (i) **standard disclosure** (ii) **enhanced disclosure**.
33. Taking '33' into account, it is requested raw data in Excel format show for each disclosure respective Police Force who failed to meet deadlines per period per year.

End of request, Thank you"