

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 3 June 2020

Public Authority: Chief Constable of West Yorkshire Police
Address: West Yorkshire Police
PO Box 9
Laburnum Road
Wakefield
WF1 3QP

Decision (including any steps ordered)

1. The complainant has requested information about audio tapes from West Yorkshire Police ("WYP"). WYP advised that to comply with the request would exceed the cost limit at section 12 of the FOIA.
2. The Commissioner's decision is that WYP was entitled to rely on section 12(1) to refuse to comply with the request and met its obligations under section 16 of the FOIA. However, WYP breached section 10(1) of the FOIA by failing to respond to the request within the statutory time limit. No steps are required.

Request and response

3. On 3 December 2019, the complainant wrote to WYP and requested information in the following terms:

*"Over the last 10 years at Halifax Police Station, how many master audio tapes (from Police interviews) have been (a) destroyed and (b) rehoused from the stores to somewhere else, **prior** to the **expiry** of the retention period (which I understand is 6 years). I would like this data please broken down on a monthly basis and recorded as either (a), (b) or neither".*

4. WYP responded on 10 January 2020, referring to his request of '9 December 2019'. It refused to provide the requested information

advising that to do so would exceed the cost limit at section 12 of the FOIA.

5. Following an internal review WYP wrote to the complainant on 10 February 2020. It maintained its position.

Scope of the case

6. The complainant contacted the Commissioner on 10 January 2020 to complain about the way his request for information had been handled.
7. He asked her to consider timeliness and the recording of the date of his information request as '9 December 2019' rather than '3 December 2019'. He also disagreed with the citing of the cost limit. The Commissioner will consider these matters below.
8. 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 FOIA. The FOIA is concerned with transparency of information held by public authorities. It gives an individual the right to access recorded information (other than their own personal data) held by public authorities. The FOIA does not require public authorities to generate information or to answer questions, provide explanations or give opinions, unless this is recorded information that they already hold.

Reasons for decision

Section 1 – general right of access

Section 10 - time for compliance Reasons for decision

9. Section 1(1) of the FOIA states that an individual who asks for information is entitled to be informed whether the information is held and, if the information is held, to have that information communicated to them.
10. Section 10(1) of the FOIA provides that a public authority should comply with section 1(1) within 20 working days. Section 1(1)(a) initially requires a public authority in receipt of a request to confirm whether it holds the requested information.
11. In respect of the date of the request, WYP has confirmed to the Commissioner:

"The request was contained in an email sent to the Right of Access Team on 03.12.20 [sic] which referenced a number of previous

Right of Access requests, made a new Right of Access request, made this Freedom of Information request (FOI 7572/19) and which referenced two email attachments.

We recorded Freedom of Information request FOI 7572/19 on to our system on the 09.12.20 [sic]".

12. WYP therefore accepts that the request was dated 3 December 2019 rather than 9 December 2019.
13. As the complainant did not receive a response (which confirmed that WYP was in possession of the relevant information) until 10 January 2020, 25 working days later, the Commissioner finds that WYP breached section 10(1) by failing to comply with section 1(1)(a) within the statutory time period.
14. The Commissioner uses intelligence gathered from individual cases to inform her insight and compliance function. This aligns with the goal in her draft "Openness by design"¹ strategy to improve standards of accountability, openness and transparency in a digital age. The Commissioner aims to increase the impact of FOIA enforcement activity through targeting of systemic non-compliance, consistent with the approaches set out in her "Regulatory Action Policy"².

Section 12 – cost of compliance

15. Section 12(1) of the FOIA states that a public authority is not obliged to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit.
16. When considering whether section 12(1) applies, the authority can only take into account certain costs, as set out in The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ('the Regulations'). These are:
 - (a) *determining whether it holds the information,*
 - (b) *locating the information, or a document which may contain the information,*
 - (c) *retrieving the information, or a document which may contain the information, and*

¹ <https://ico.org.uk/media/about-the-ico/consultations/2614120/foi-strategy-document.pdf>

² <https://ico.org.uk/media/about-the-ico/documents/2259467/regulatory-action-policy.pdf>

(d) extracting the information from a document containing it.

17. The Regulations state that the appropriate cost limit is £600 for central government, legislative bodies and the armed forces, and £450 for all other public authorities. The cost limit in this case is £450, which, charged at £25 per hour, is equivalent to 18 hours' work.
18. Section 12 of the FOIA makes it clear that a public authority only has to estimate whether the cost of complying would exceed the appropriate limit. It is not required to provide a precise calculation. The task for the Commissioner here is to reach a conclusion as to whether the cost estimate made by WYP was reasonable; whether it estimated reasonably that the cost of compliance with the request would exceed the limit of £450, that section 12(1) therefore applied and that it was not obliged to comply with the request.
19. In its original refusal notice, WYP explained to the complainant that:

"Due to a change in the recording process in order to establish if a tape has been destroyed would require a manual search through each individuals record, during the ten year period there are 1,320,000 records, at 4 minutes per record this would equate to 88,000 hours.

It is estimated that the cost of providing / locating the information you seek within your request, would exceed the time threshold. When a reasonable estimate has been made that the appropriate limit would be exceeded, there are no requirements for a public authority to undertake the work".

20. When requesting an internal review, the complainant stated (his emphasis):

*"I contest, there would be **no point** whatsoever in WYP carrying out a manual search through "each individual's record", since the information, as I understand, is already readily available in a **single hard copy document** that is stored at Halifax Police station".*

21. At the same time, the complainant provided details of a subject access disclosure he had received when making a request for his personal information under the terms of the Data Protection Act 2018 ("DPA"). As a result of that request, he had been provided with some entries from a tape movement log which he believed would comprise the same source for the information he had requested in this case, under the FOIA. Based on what he had been provided with under the DPA, he extrapolated that WYP would only need to disclose approximately five pages of data from the same tape movement log in order to comply with this request.
22. In providing its internal review, WYP commented on this and explained:

"You have also provided a copy of a 'Master Tape Movement' record in order to demonstrate this. I have made further enquiries and identified that the book used to record master tape movement is used for a specific movement reason, it is not a record of the total number of master tapes held, moved or destroyed. If the entries in this book were to be searched it would not fulfil the request".

23. WYP further explained to the Commissioner that:

"The complainant has sent numerous correspondence to us relating to this and other ongoing similar requests (FOI and Right of Access) where he has gone beyond the scope of FOI 7572/19 [the request being considered in this notice] and where he refers to "Tape Issue and Master Tape Register – 923462" (the "Document")...

The Document contains information in relation to the movement of audio tapes held in the stores at Halifax Police Station.

It does not hold any information about audio tapes destroyed or rehoused from the stores at Halifax Police Station".

Number of records to be checked and cost estimate

24. As is her standard practice in cases where section 12 has been cited, the Commissioner raised various queries with WYP to ascertain the searches it had undertaken and why it had concluded that the cost limit would be exceeded in responding to this request.

25. It provided the following explanation:

"A master audio tape log is held which records the initial transfer of audio tapes to Business Support and which is for the purpose of logging master audio tape storage. The log does not include details of destruction or rehousing of audio tapes.

Information in relation to any audio tape destruction is held on individual Niche [crime recording system] records.

Audio tapes can be removed temporarily from stores for a legitimate purpose but must then be returned and booked back into stores. The Document is a manual record of the movement of audio tapes out of and back into the stores at Halifax Police Station. It records who removed the audio tapes, when and why and who logged them back into stores and when.

... In order to retrieve the number of master audio tapes destroyed over the last 10 years at Halifax Police Station every NICHE record for the 10 years period would need to be retrieved and opened.

Enquiries with the Niche team confirm that for the last 10 years this would involve manually opening approximately 1,320,000 Niche records.

... Each NICHE record would need to be opened and read to identify whether there was a record of master tape disposal and whether the audio tape was stored at Halifax Police Station and any relevant information extracted.

A reasonable time estimate which is based on the quickest method of gathering and a sampling exercise is:

1,320,000 records x 4 minutes per record = 88,000 hours".

26. The complainant's request covers records which are manually recorded within the log book referred to, which would appear to be relatively easy to access. However, this log book only records some of the requested information, the remainder requiring to be sourced elsewhere.
27. The Commissioner's guidance on section 12³ states that a public authority is not obliged to search for, compile or disclose some of the requested information before refusing a request that it estimates will exceed the appropriate limit. Therefore, WYP was not obliged to conduct searches up to the cost limit or to provide some of the information in isolation. It was entitled to interpret the request as being for the full data, as per the wording of the request.
28. Having considered the estimates provided, the Commissioner finds that they are realistic and reasonable. She therefore accepts that to provide the requested information would exceed the appropriate limit.

Section 16 – advice and assistance

29. Section 16(1) of the FOIA provides that a public authority is required to provide advice and assistance to any individual making an information request. In general where section 12(1) is cited, in order to comply with this duty a public authority should advise the requester as to how their request could be refined to bring it within the cost limit, albeit that the Commissioner does recognise that where a request is far in excess of the limit, it may not be practical to provide any useful advice.

³ https://ico.org.uk/media/for-organisations/documents/1199/costs_of_compliance_exceeds_appropriate_limit.pdf

30. In this case, WYP advised the complainant as follows when it initially refused to comply with the request:

"Please be advised West Yorkshire Police follow policy on the retention and destruction of tapes.

We may be able to provide the information for tapes held in Calderdale from 2002 to 2010.

Please note we are unable to break this down further to station level".

31. The complainant advised that he did not want this suggested revision to his request and that (his emphasis): **"My request therefore remains for the data I originally requested"**.
32. WYP clearly offered a suggested way of refining the request. Furthermore, the Commissioner understands that it is currently in the process of dealing with a further related request from the complainant.
33. The Commissioner is therefore satisfied that WYP complied with its duties under section 16 of the FOIA.

Other matters

34. Although they do not form part of this notice the Commissioner wishes to highlight the following matters of concern.

Informal resolution

35. When writing to both parties about investigating a complaint, the Commissioner initially encourages the parties to be open to informal resolution wherever practicable. Where appropriate, such resolution serves to satisfy both parties and minimise the amount of work required in investigating cases and the possibility of further requests being necessary. In the current climate of reduced working capacity due to the effects of COVID 19, she considers such an outcome to be particularly desirable.
36. The Commissioner went to some considerable lengths in an attempt to secure an informal resolution to both this case and a further related request which the complainant subsequently made. In doing so, she agreed with WYP that it would consider disclosing 10 years' worth of anonymised data from the tape movement log, which was specifically in line with what the complainant had subsequently advised her he required (albeit neither this request nor his subsequent request had specifically asked for this).

37. In order to accede to taking this forward, it was the intention to close this complaint without the requirement of a decision notice, to forego an internal review of the further request made, and to disclose to the complainant what he had latterly explained was all that he required. Such action would have resulted in less work for both the Commissioner and WYP and would have provided a positive outcome of timely disclosure for the complainant.

38. Unfortunately, having agreed a way forward with WYP, the complainant then expanded on his requirements. He told the Commissioner that he required further explanations, which would fall outside the scope of both requests, and a written apology from WYP, which is outside the remit of the FOIA. Furthermore, he advised (his emphasis):

*"I do require a full explanation as to **why** WYP believed the FOI tasks would take 88 000 and 20 hours respectively? Were these figures exaggerated in an attempt to **prevent** disclosure? Were WYP **unaware** of the existence of Register 202? If they were aware, their conduct may now trigger a conduct complaint. I require a clear **justification** as to why WYP believe the ledger log that is now being tendered (after ICO intervention for which I am grateful) was **insufficient** to satisfy my 2 FOI requests. WYP need to understand that, whatever obstacles they throw at me, I will overcome them".*

39. As this would effectively still require a full investigation of this case, as well as additional work to be done in respect of the internal review for the further request, informal resolution was therefore not deemed possible. Had the complainant's views regarding informal resolution been made clearer, then the extra work which had been done by both the Commissioner and WYP would not have been necessary.

40. The Commissioner understands that WYP is currently liaising with the complainant in respect of the later request.

Right of appeal

41. 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: 0870 739 5836

Email: grc@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

42. 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.
43. 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

Carolyn Howes
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Information Commissioner's Office
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