

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 27 April 2020

Public Authority: Commissioner of the Metropolitan Police Service

Address: New Scotland Yard
Broadway
London
SW1H 0BG

Decision (including any steps ordered)

1. The complainant has requested information about fabricated crime reports from the Metropolitan Police Service (the "MPS").
2. The MPS advised that to confirm or deny whether it holds the requested information would exceed the appropriate limit at section 12(2) of the FOIA. The Commissioner's decision is that the MPS was entitled to cite section 12(2) but she does find a breach of section 16(1) (advice and assistance). No steps are required.

Request and response

3. On 7 December 2019, the complainant wrote to the MPS and requested information in the following terms:

"[Reference redacted] is a fabricated CRIS [Crime Reporting Information System], referring to an incident which never occurred.

How many other fabricated CRISs have been detected in FY16, FY17, FY18 and FY19?

What steps do MPS take to detect and prevent such CRIS fabrication".
4. On 17 December 2019, the MPS responded. It provided the requested information.

5. On 2 January 2020, the complainant requested an internal review, advising that what he wanted was something different. He said:

"Thank you for this, but it is not what I asked for. You have provided me with figures for a member of the public making a false allegation which is recorded in a CRIS.

What I asked about was how many CRISs have been fabricated by MPS personnel, as with the one I cited (but which has been omitted from the FOIA summary despite my permission to cite the number.)

The CRIS I cited is a reworking of an incident which happened (although not the way it is reported) the day before, and for which a separate [sic] CRIS was raised.

There is one name which is common to both CRISs, who is presumably responsible for both CRISs.

Please answer the questions actually asked: "How many fabricated CRIS's [ie CRISs fabricated by MPS staff over nonexistant [sic] events] have been detected in FY16, FY17, FY18 and FY19?"

What steps do MPS take to detect and prevent such CRIS fabrication".

6. The MPS provided its internal review on 30 January 2020. It maintained its position with regard to its interpretation of the wording of the original request. In respect of the revised wording above, it said that to ascertain whether any information is held would exceed the cost limit. It also cited sections 40(5A) and 40(5B)(a)(i) (personal information) of the FOIA, in respect of the revised request, but later removed reliance on this.

Scope of the case

7. The complainant contacted the Commissioner on 30 January 2020 to complain about the way his request for information had been handled. The Commissioner required clarification in respect of his grounds of complaint, which was provided on 8 April 2020.
8. During the Commissioner's investigation, the MPS liaised further with the complainant in an effort to informally resolve the case. It offered to speak to him, which he declined, and provided a further explanation. It advised him that:

"In short, we have no coded marker on our CRIS system that would display any falsified records by a member of MPS staff ... Matters of

falsified records really only come to light if a specific complaint was made to police by a member of public about the specific conduct of a member of staff. It would then be logged and dealt with by our Department of Professional Standards (DPS). DPS would therefore technically need to go through every complaint allegation and read the summary in order to determine if the complaint was relevant or not to your request of fabricating CRIS reports (as we have no markers). We have around 10,000 complaints each year therefore under the Act in order to confirm for the four years you have requested we would have no choice but to exempt under section 12(2) as it would mean going through the reports”.

9. Whilst the complainant accepted the explanations provided he nevertheless remained dissatisfied. On 22 April 2020, he asked the Commissioner to consider the following points which she has responded to in turn.
10. Firstly, he was unhappy that: *“The information has indeed been provided, but in an informal email to me, not published for all to see”.*
11. The Commissioner initially notes that the response was sent to the complainant in an ‘informal’ email by way of trying to informally resolve the case. The MPS has simply explained why any information, if held, would be unavailable within the cost limit. Such an approach is encouraged by the Commissioner on commencing an investigation. She advises that, where possible, she prefers complaints to be resolved by informal means, and asks both parties to be open to compromise. In saying that *“The information has indeed been provided”* the complainant seems happy to accept the MPS’s rationale above, albeit it is not clear what actual “information” he considers to have now been provided. The MPS’s response only clarifies its position and states that it is still relying on section 12(2) of the FOIA.
12. From information the complainant provided to her, the Commissioner notes that he asked the MPS to publish its response on its website and provided wording of how he would like it to be presented. The Commissioner is not able to require this under the terms of the FOIA. However, it is noted that this decision notice will be published so its content will be available to the public on the Commissioner’s website.
13. Secondly, the complainant advised that he was not happy with how the MPS had dealt with his request as he considered that to claim section 12(2) was *“manifestly false”*, adding that: *“I’d like the fact that IRU [Information Rights Unit] made a wrongful claim of exemption to be formally recorded”.*
14. This is in contradiction to his comment in paragraph 10 where he says that he considers the information to have now been provided. However,

the MPS is clearly still relying on section 12(2) to refuse to comply with the request; its position has not changed since internal review.

15. The Commissioner will consider the citing of section 12(2) of the FOIA below.
16. 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 and provides for the disclosure 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 12 – cost of compliance exceeds appropriate limit

17. Section 12(2) provides that a public authority is not obliged to confirm or deny whether requested information is held if it estimates that to do so would incur costs in excess of the appropriate limit. In other words, if the cost of establishing whether information of the description specified in the request is held would be excessive, the public authority is not required to do so.
18. The appropriate limit is set at £450 for the MPS the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the fees regulations).
19. The fees regulations also provide that a cost estimate must be calculated at the rate of £25 per hour, giving an effective time limit of 18 hours, and specify the tasks that can be taken into account when forming a cost estimate as follows:
 - determining whether the information is held;
 - 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.
20. Section 12(2) requires a public authority to estimate the cost of confirmation or denial, rather than to formulate an exact calculation. The question for the Commissioner here is whether the cost estimate by the MPS was reasonable. If it was, then section 12(2) was engaged and the MPS was not obliged to confirm or deny whether the requested information was held.

21. In respect of the searches for information which it has undertaken, the MPS has advised the Commissioner as follows.

"Having looked at this complaint afresh, I contacted our Information and Insight Team within Strategy and Governance who provided the below explanation:-

"As there is not a specific allegation type for this offence we would have to do a keyword search of the summaries and then read through them to see which relate to fabrication of CRIS entries. This would not be 100% accurate as it a free text field and it limited by the level of information inputted.

This type of misconduct could be raised by either a public complaint (from a member of the public) or a conduct matter (raised internally by management). Therefore we would have to do keyword searches on both case types. The figures below show the number of allegations we would have to read when searching on 'CRIS' and 'CRIME Report' as well as the total of all allegations

Public Complaints	2016/17	2017/18	2018/19	2019/20	Grand Total
Total Complaint Allegations	12758	10869	10697	10628	44952
Keyword CRIS/Crime Report	103	127	155	160	545
Conduct Matters	2016/17	2017/18	2018/19	2019/20	Grand Total
Total Conduct Allegations	1740	1512	1513	1104	5869
Keyword CRIS/Crime Report	69	65	69	47	250

If we estimate that is [sic] takes 5 minutes to read each record, with the total of 795 allegations this would exceed the 18 hours limit".

In short, the MPS do not have a coded marker on our CRIS system (Crime Reporting Information System) that would display any falsified records by a member of MPS staff, police officers or police staff. Matters of falsified records really only come to light if a specific complaint is made by a member of public about the specific conduct of a member of staff. If a complaint was made it would then be logged and dealt by our Department of Professional Standards (DPS). DPS would therefore technically need to go through every complaint allegation and read the summary in order

to determine if the complaint was relevant or not to this request, of fabricating CRIS reports (as we have no markers).

If the MPS based its findings on the total complaint allegations for all four years, this gives us a total of 50,821. A member of staff would have to manually read each CRIS report in order to establish if the CRIS report related to falsified records by members of the MPS. This would involve reading through every allegation summary.

If a member of staff took on average 5mins per CRIS report this would equate to 4,235 hours. Even with a generous estimate of 3 minutes, it would take a member of staff 2,541 hours:-
 $50,821 / 60\text{mins} = 847 \times 5 \text{ mins} = 4,235 \text{ hours}$
 $50,821 / 60\text{mins} = 847 \times 3 \text{ mins} = 2,541 \text{ hours}$

If a member of staff conducted a keyword search (which would not be accurate, as it would be based on CRIS or crime report), it would still exceed the appropriate limit set as follows:-
 $795 / 60\text{mins} = 13.25 \times 5 \text{ mins} = 66.25 \text{ hours}$
 $795 / 60\text{mins} = 13.25 \times 3 \text{ mins} = 40 \text{ hours}$

A sampling exercise has not been carried out, as not only does [the complainant] accept we have no coded marker to undertake the search, he also accepts in order to respond to his request would exceed the appropriate limit.

The MPS is unable to comply with the request by virtue of section 12(2) of the Act, as in order to determine if the information is held would exceed the 18hours time limit”.

22. Having considered the estimate above, the Commissioner considers this estimate to be a reasonable one. Even were the MPS to only consider the lower figure of 795 allegations which are identified in the table, this would clearly exceed the appropriate limit. The Commissioner therefore concludes that section 12(2) of the FOIA is engaged and the MPS was not obliged to confirm or deny holding the requested information.

Section 16 – advice and assistance

23. 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 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.

24. At internal review the MPS maintained that it had interpreted and answered his original request appropriately and maintained its position; this is not a matter which the complainant has asked the Commissioner to consider. In respect of the revised request, the complainant was told:

"In regards to your new request for 'fabricated CRIS's [ie CRISs fabricated by MPS staff...]' enquiries were made within the Information and Insight (I&I) team, who run statistical data for the MPS. The I&I have confirmed that this information is not held in the format being requested nor in any readily extractable manner. This is because there are no flags or reason codes to match your criteria. This means that a member of police staff would have to manually read through potentially thousands of crime reports to determine if this information was held. This would clearly exceed the appropriate threshold of 18 hours under the Act.

Additional enquiries were made within the MPS to determine (if held) how many members of staff may have been investigated for falsifying a crime report and if so would it be possible to determine the number of crime reports that were falsified over the 4 years requested.

In order to determine if this information was held, would firstly involve manually reading through thousands of allegation summaries held within MPS complaint records. This again would exceed the appropriate threshold under the Act".

25. The MPS did not specifically cite section 12(2) in respect of the revised request, albeit the inference is implicit in the wording of its response and it does refer to the "appropriate threshold".
26. The Commissioner also notes that whilst the MPS tried to explain why compliance with the request would exceed the appropriate limit, the simple explanation provided during her investigation has been more helpful to the complainant; earlier provision of such wording may have resulted in a formal investigation being unnecessary. It would also have been helpful if the information contained in the more detailed response the MPS provided to the Commissioner during the investigation had been previously provided to the complainant.
27. In failing to clearly explain how compliance would exceed the appropriate limit the Commissioner finds a breach of section 16(1) of the FOIA. However, as this has now been rectified no steps are required.

Right of appeal

28. 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

29. 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.

30. 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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