

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 26 May 2020

Public Authority: Chief Constable of Cheshire Constabulary
Address: Police Headquarters
Clemonds Hey
Winsford
Cheshire
CW7 2UA

Decision (including any steps ordered)

1. The complainant requested information relating to details of the company, or companies, providing private security to a Cheshire Hunt.
2. Cheshire Constabulary refused to comply with the request on the grounds that it would exceed the appropriate limit at section 12(2) (cost of compliance) of the FOIA to confirm or deny whether it held the requested information.
3. The Commissioner's decision is that Cheshire Constabulary was entitled to cite section 12(2). She also found that there is no breach of section 16(1) (advice and assistance) of the FOIA.
4. The Commissioner requires no steps to be taken as a result of this decision.

Request and response

5. On 27 December 2019 the complainant wrote to Cheshire Constabulary and requested information in the following terms:

"This Hunt is 'employing safety officers' who are assaulting people verbally and violently. It is just a matter of time before there is a serious incident.

I have asked them on several occasions, as have others if they are

SIA [Security Industry Authority] members. They always answer yes, but then refuse to answer as to which company employs them. SIA regulations require them to name their employer so complaints about their conduct can be made.

These 'safety officers' state their SIA numbers have been given to Cheshire Constabulary.

Please confirm this is correct. If this is correct please provide the details of the company or companies that all of these SIA/Safety Officers are employed by."

6. The request was made using the 'whatdotheyknow' website.
7. Cheshire Constabulary acknowledged receipt of the request on 27 December 2019. It provided its substantive response on 14 January 2020 in which it denied holding the requested information.
8. The complainant requested an internal review on 21 January 2020. In seeking clarification of Cheshire Constabulary's response, he referred to video evidence of his conversation with an officer on 19 January 2020.
9. Following an internal review Cheshire Constabulary wrote to the complainant on 27 January 2020. It revised its position, refusing to provide the requested information, citing section 12 (cost of compliance) of the FOIA.

Scope of the case

10. The complainant contacted the Commissioner on 30 January 2020 to complain about the way his request for information had been handled.
11. He sought assistance in response to his 'whatdotheyknow' request to Cheshire Constabulary:

"... to provide details of Cheshire Hounds Hunt private SIA security for the hunt since the season began in November 2019".
12. In his correspondence, the complainant raised other issues which are outside the scope of the Commissioner's remit. 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 I of the Freedom of Information Act 2000 (FOIA).
13. 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.

14. Having been notified by the Commissioner that she had received a complaint about its handling of the request, Cheshire Constabulary wrote to her confirming its application of section 12 in this case. It also confirmed that it was willing to discuss matters with the complainant.

15. The Commissioner made the complainant aware of Cheshire Constabulary's offer to discuss matters with him, but the complainant declined the offer. In his correspondence he told the Commissioner:

"I just require the name of the company that employed the SIA Officers that provided security services to Cheshire Hounds Hunt between November 2019 and February 2020".

16. The Commissioner is mindful of the timeframe suggested to her by the complainant. She also acknowledges that Cheshire Constabulary told the complainant:

"FOI requests relate to information held by the public authority as of the date in which the request was received".

17. For the purposes of this decision notice, the Commissioner considers the timeframe of the request in this case is 1 November 2019 to 27 December 2019 (the date of the request).

18. Although Cheshire Constabulary did not specify which subsection of the exemption it considered applied in this case, the Commissioner considers that its arguments relate to section 12(2) of the FOIA.

19. Accordingly, the analysis below considers Cheshire Constabulary's application of section 12(2) of the FOIA to the requested information. The Commissioner has also considered whether Cheshire Constabulary provided reasonable advice and assistance to the complainant at the time the request was made.

Reasons for decision

Section 12 cost of compliance exceeds appropriate limit

20. Section 12 of the FOIA allows a public authority to refuse to deal with a request where it estimates that it would exceed the appropriate limit to:

- either comply with the request in its entirety or;
- confirm or deny whether the requested information is held.

21. Regulation 3 of the Fees Regulations states that the appropriate limit for central government, legislative bodies and the armed forces (in other words, those bodies covered by Part 1 of Schedule 1 of the Act) is £600. For all other public authorities, the appropriate limit is £450.
22. All public authorities should calculate the time spent on the permitted activities at the flat rate of £25 per person, per hour. This means that the appropriate limit in this case is 18 hours work.
23. Section 12(2) requires a public authority to estimate the cost of confirmation or denial, rather than to formulate an exact calculation.
24. The Commissioner acknowledges that Cheshire Constabulary provided the complainant with an estimate of the work involved in responding to his request, and explained how it had arrived at that estimate. The estimate was "*in excess of 1620 hours*".
25. During the course of the Commissioner's investigation, Cheshire Constabulary revised its estimate downwards. However it maintained that it would exceed the appropriate limit to confirm or deny whether the requested information is held.
26. The issue for the Commissioner to decide is whether the revised cost estimate was reasonable. If it was, section 12(2) is engaged and Cheshire Constabulary was not obliged to confirm or deny whether the requested information was held.

Would confirmation or denial exceed the appropriate limit?

27. In estimating whether complying with a request would exceed the appropriate limit, regulation 4(3) of the fees regulations states that an authority can only take into account the costs it reasonably expects to incur in:
 - 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.
28. The four activities are sequential, covering the retrieval process of the information from the public authority's information store.
29. In correspondence with the complainant, Cheshire Constabulary told him:

"Cheshire Constabulary do not routinely record (in writing) SIA Numbers, the organisation name of SIA security officers in a central location on our recording systems"

30. Acknowledging his reference to a conversation with an officer, it did however accept:

"... it might be that the information may have been disclosed during an officers attendance to an incident at a hunt".

31. Similarly, Cheshire Constabulary told the Commissioner:

"... the information requested in the below is unknown if held, they [sic] only way the information could be held is via the Body Worn Videos of the officers that attended the hunts. To establish/locate this information would require a manual trawl through each officers BWV footage to establish if disclosure of SIA numbers and organisation worked for has been disclosed".

32. It confirmed what it had told the complainant, namely that the SIA numbers or organisation worked for by the SIA security officers in attendance at a hunt are not routinely recorded. In support of its original 'no information held' response, it advised that no information had been found after conducting numerous searches.

33. Acknowledging that such information may, however, have been disclosed to an officer attending a hunt, Cheshire Constabulary told the Commissioner:

"We explored the fact that the information may have been recorded on an officers Body Worn Video (BWV) who may have been in attendance at a hunt".

34. During the course of the Commissioner's investigation, Cheshire Constabulary was asked to provide more detail in respect of its application of section 12(2) to the requested information, taking into account the scope of her investigation.

35. Cheshire Constabulary confirmed the dates of eight hunts attended by Cheshire Constabulary that fell within the scope of the request, advising that each hunt lasted approximately 4.5 hours. As a result of that clarification, it revised its estimate of the cost of confirming or denying whether the requested information was held. It told the Commissioner:

"... on average 10 officers may attend any one hunt, there were 8 hunts during November and December of 2019 ... For 8 hunts which last approximately 4.5 hours, 10 officers equates to 360 hours of BWV that would require watching to establish if the information requested is held in force".

36. Cheshire Constabulary provided the Commissioner with an extract from its System Operating Procedure regarding BWV. It also confirmed:

"The operational order instructs:

Officers should activate Body Worn Video at the beginning of any incident they are sent to".

37. Clarifying how BWV is used when officers attend a hunt, Cheshire Constabulary told the Commissioner:

"BWV is not on for the entire duration of a hunt, it is usually the officer who makes the choice as to when it needs to be switched on".

38. In support of its application of section 12(2) in this case, Cheshire Constabulary told the Commissioner BWV *"may not have this information recorded"*. It said that it would be necessary to carry out the following activities in order to establish if the requested information was held:

- establish which officers were in attendance at the hunts;
- establish from each officer's Pocket Note book if their camera was active during any part of the hunt;
- establish if the BWV was uploaded for evidential purposes.

39. Cheshire Constabulary explained that BWV is only kept for 30 days if not required for evidential purposes.

The Commissioner's view

40. By virtue of section 12(2) of the FOIA a public authority is not required to comply with the duty in section (1)(1)(a) of the FOIA (ie to confirm or deny whether the requested information is held) if to do so would exceed the appropriate limit.
41. The Commissioner acknowledges that the complainant believes that Cheshire Constabulary is able to supply the information requested in his request.
42. However, when dealing with a complaint to her under the FOIA, it is not the Commissioner's role to make a ruling on how a public authority deploys its resources, on how it chooses to hold its information, or the strength of its business reasons for holding information in the way that it does as opposed to any other way. Rather, in a case such as this, the Commissioner's role is simply to decide whether the public authority can confirm, within the appropriate costs limit, whether information falling within the scope of the request is held.

43. Therefore, as set out in the Fees Regulations, the Commissioner has considered whether the estimated cost of responding to the request would exceed the appropriate limit.
44. As noted above, the appropriate limit in this case is 18 hours.
45. The Commissioner recognises in her guidance *'Requests where the cost of compliance exceeds the appropriate limit'*¹:

"A public authority does not have to make a precise calculation of the costs of complying with a request; instead only an estimate is required. However, it must be a reasonable estimate".

46. In accordance with the Information Tribunal, the Commissioner considers that a reasonable estimate is one that is:

"...sensible, realistic and supported by cogent evidence".

47. In this case, Cheshire Constabulary explained that it would require a review of all BWV footage for every officer that had been involved in a hunting incident to establish if the requested information was held. It also confirmed that it would take one hour of staff time per hour of BWV footage to carry out the review.
48. From the evidence she has seen, the Commissioner is satisfied that Cheshire Constabulary has identified the likely location of any information within the scope of the request. She accepts its position that, on average, 10 officers would have attended each hunt and that there were 8 hunts within the scope of the request. She considers that it was reasonable to estimate that it would take one hour of staff time per hour of BWV footage to go through the footage to determine whether it actually contained the information described in the request.
49. The Commissioner understands that Cheshire Constabulary justified its view that it would be necessary to watch 360 hours of BWV footage, to establish if the requested information was held, on the basis of each hunt being recorded fully by each officer.
50. In considering whether the estimate in this case was reasonable, the Commissioner has taken into account that Cheshire Constabulary advised that while each hunt lasts, on average, 4.5 hours, it also

¹ https://ico.org.uk/media/for-organisations/documents/1199/costs_of_compliance_exceeds_appropriate_limit.pdf

confirmed that it is usually the officer who makes the choice as to when BWV needs to be switched on.

51. The Commissioner considers that, on average, each officer would have to capture 13.5 minutes of BWV footage, per hunt, for there to be 18 hours of recorded BWV footage in this case.
52. The Commissioner accepts that hunting is a controversial activity. She recognises that the requested information in this case relates to the company or companies employed by the Hunt to provide security. She accepts Cheshire Constabulary's position that Cheshire Constabulary officers were in attendance at the hunts within the scope of the request. In the circumstances, she considers that there may have been occasion for BWV to be used.
53. However, in the absence of evidence that BWV was in use, by each officer, for the whole of the 4.5 hours of each hunt, the Commissioner is not satisfied that Cheshire Constabulary's estimate of the number of hours of recorded BWV footage is realistic.
54. Even if Cheshire Constabulary's estimate of the number of hours of recorded BWV footage per hunt was excessive, from the evidence she has seen during the course of her investigation about the number of hunts within the scope of the request, the number of officers involved and the steps required to locate and view the relevant BWV footage, the Commissioner is satisfied that Cheshire Constabulary has demonstrated that it would exceed the appropriate limit of 18 hours determine whether the requested information is held.
55. Section 12(2) does therefore apply and Cheshire Constabulary is not required to comply with the request.

Section 16 advice and assistance

56. 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 "*so far as it would be reasonable to expect the authority to do so*".
57. 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 recognises that where a request is in excess of the limit, it may not be practical to provide any useful advice.
58. In this case, Cheshire Constabulary did not provide the complainant with advice as to how he could refine the scope of his request. The Commissioner accepts, however, that it told him that while officers may be aware of the security company an individual works for, knowledge in

an individual's head did not comprise recorded information and was not therefore subject to the FOIA.

59. It also advised him, with respect to his reference to a conversation with an officer, that as his original request was received on 27 December 2019, any information that was received after that date would not fall within the remit of the request.
60. In the circumstances of this case, she is satisfied that Cheshire Constabulary fulfilled its duty at section 16(1) of the FOIA to provide advice and assistance as far as is reasonable.

Other matters

61. Explaining its original, higher, estimate in this case, Cheshire Constabulary noted that the complainant had not specified a timeframe in his request.
62. The Commissioner acknowledges that, following her intervention, the complainant specified the date-range that his request related to. As a result, Cheshire Constabulary revised its estimate on the basis of the clarified scope of the request.
63. The Commissioner's website includes a section entitled '*Information request dos and don'ts*'. She recommends that quick reference tool² to requesters who are considering making a request for information.

² <https://ico.org.uk/your-data-matters/official-information/>

Right of appeal

64. 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

65. 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.

66. 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

**Laura Tomkinson
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