

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 31 January 2023

Public Authority: Chief Constable of West Midlands Police
Address: Lloyd House
Colmore Circus
Birmingham
B4 6NQ

Decision (including any steps ordered)

1. The complainant has asked West Midlands Police ('WMP') about requests to have information deleted from the Police National Computer ('the PNC'). WMP responded to part of the request, but refused the remainder, citing section 12 (cost of compliance exceeds appropriate limit) of FOIA.
2. The Commissioner's decision is that WMP was entitled to apply section 12(1) of FOIA to refuse the second and third parts of the request.
3. The Commissioner requires no steps as a result of this decision.

Request and response

4. On 24 May 2022, the complainant wrote to WMP and requested information in the following terms:
 - "1. Please provide the number of applications you received in the last financial year from or on behalf of individuals seeking to have the information you hold on them deleted from the PNC.
 2. Please provide the number of these requests you (i) refused; (ii) agreed to in part or (iii) agreed to in full.
 3. Please also specify how many of the applicants already had either their DNA or fingerprints deleted in accordance with the provisions of

the Protection of Freedoms Act 2012 at the time their application was received.”

5. WMP responded on 17 June 2022. It provided the information requested at part (1) of the request (82). It refused to comply with parts (2) and (3) of the request, saying that the information was not held in a readily retrievable format and would take excessive time to compile for disclosure. It suggested that the complainant contact the Criminal Records Office¹ ('ACRO') for the remaining information.
6. Following an internal review, WMP corrected the figure it had disclosed for part (1) of the request (revising it upwards, to 87). It maintained that it was entitled to apply section 12 of FOIA to refuse the remainder of the request.

Reasons for decision

7. This reasoning covers whether WMP was entitled to apply section 12(1) of FOIA to refuse parts (2) and (3) of the request. The complainant disagrees with its claim that section 12(1) is engaged, as the number of records it is being asked to consult is small.
8. Section 12(1) of FOIA states that a public authority is not required to comply with a request for information if it estimates that the cost of doing so would exceed the appropriate cost limit.
9. The appropriate limit is set in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ('the Fees Regulations') at £450 for public authorities such as WMP, or 18 hours work. If, on receipt of a request, a public authority estimates that it would take longer than 18 hours to comply with a request, it is entitled to refuse it under section 12(1) of FOIA.
10. The Fees Regulations state that a public authority can only take into account the costs it reasonably expects to incur in carrying out the following activities:
 - determining whether the information is held;
 - locating the information, or a document containing it;
 - retrieving the information, or a document containing it; and

¹ <https://www.acro.police.uk/Record-deletion>

- extracting the information from a document containing it.
11. WMP says that the cost of carrying out these tasks would exceed the appropriate cost limit. It says that each of the 87 records would need to be located, retrieved and then read to see if they contained the required information.
 12. It has conducted a sampling exercise of eleven of the records, which took 2 hours, 44 minutes to complete, giving an average time per record of just under 15 minutes. Based on that, WMP estimates that it would take approximately 21 hours and 45 minutes to comply with parts (2) and (3) of the request in respect of 87 records.
 13. The complainant disagrees with the estimate, saying: "Where a request has been refused, only two or three minutes would be required to find this out."
 14. The Commissioner acknowledges that the number of records to be consulted is quite small. However, compliance with the two remaining parts of the request is not a simple matter of establishing if a request for deletion has been refused. The requests have multiple parts to them and it will clearly require individual records to be read carefully in order to determine the extent to which a request for deletion has been complied with, and to cross reference them with any information WMP may hold about whether these actions had already been undertaken under the Protection of Freedoms Act 2012. WMP has not already conducted this analysis and the records are not held in a format whereby the requested information can be extracted automatically, as a report. Furthermore, WMP has actually carried out the required tasks to assess the time it would take to provide the required information, so it is able to give a reasonable estimation.
 15. The Commissioner therefore considers that WMP has estimated reasonably that the cost of complying with the request would exceed the appropriate limit. Therefore, the Commissioner's decision is that WMP was entitled to apply section 12(1) of FOIA to refuse the request.
 16. Although WMP did not offer the complainant advice on how the request might be revised so as not to exceed the cost limit, the Commissioner considers it obvious from its explanation of the sampling exercise that reducing the time frame specified in the request would likely avoid engaging section 12. He also notes that WMP referred the complainant to ACRO, which is responsible for handling PNC deletion requests. The Commissioner therefore finds no failure to provide advice and assistance, and, therefore, no breach of section 16 of FOIA.

Right of appeal

17. 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

18. 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.
19. 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

Samantha Bracegirdle
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF