

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 26 April 2023

Public Authority: Chief Constable of West Mercia Police
Address: Hindlip Hall Police Headquarters
Hindlip Hall
Worcester
WR3 8SP

Decision (including any steps ordered)

1. The complainant has requested information from West Mercia Police ("the public authority"), in relation to referrals made to the Independent Office for Police Conduct ("IOPC") between 1 January 2017 and 31 August 2022. The public authority refused to provide the information, relying on section 12(1) of FOIA – cost of compliance exceeds the appropriate limit.
2. The Commissioner's decision is that the public authority was entitled to apply section 12(1) of FOIA to refuse the request. The Commissioner is also satisfied that the public authority provided sufficient advice and assistance to the complainant and, as such, it has met its obligations under section 16 of FOIA – advice and assistance.
3. The Commissioner does not require the public authority to take any steps as a result of this decision notice.

Request and response

4. On 29 November 2022, the complainant wrote to the public authority and requested information in the following terms:

"I'm writing to you under the Freedom of Information Act (2000) to ask that you please disclose to me how many IOPC

referrals have been sent from your force between Jan 1 2017 and 31st August 2022.

I'd also like to know what percentage of these were 1) complaints 2) DSI referrals, or 3) RCMs. I would specifically (you may have to ignore DSI referrals for this) like to know how many of these were relating to matters of potential misconduct, and the amount of them that were upheld, and what action this resulted in. If you are unable to achieve this within the cost limit, then I would like the same but for the last three years up to the end date (2020, 2021, 2022).

I've already received information from the IOPC regarding the amount of referrals there have been overall during this timeframe, and they've instructed me that the best way to find out more information as to the nature and status of them would be to contact the individual forces, which I am now doing."

5. On 2 December 2022, the public authority wrote to the complainant to ask if the complainant would be happy to receive any data held in a numerical form, as this would avoid a 'no information held' response. The complainant agreed that a numerical format would be ideal.
6. The public authority responded on 19 December 2022. It stated that to comply with the request, it would exceed the appropriate limit of 18 hours or £450 and, as such, it was relying on section 12(1) of FOIA. It also explained to the complainant that it has a duty, under section 16 of FOIA, to provide advice and assistance. However, in this instance, it was unable to identify information that could be supplied within the fees limit.
7. Following an internal review the public authority wrote to the complainant on 1 March 2023. It stated that it upheld its original position.

Scope of the case

8. The complainant contacted the Commissioner on 12 March 2023 to complain about the way his request for information had been handled.
9. The Commissioner considers that the scope of this complaint is to determine if the public authority was correct to rely on section 12(1) of FOIA. He will also consider if the public authority has provided advice and assistance as required under section 16 of FOIA.

Reasons for decision

Section 12 – cost of compliance

10. Section 1(1) of FOIA states that:

“Any person making a request for information to a public authority is entitled –

- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
- (b) if that is the case, to have that information communicated to him.”

11. Section 12 of FOIA states that:

- (1) 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.
- (2) Subsection (1) does not exempt the public authority from its obligation to comply with paragraph (a) of section 1(1) unless the estimated cost of complying with that paragraph alone would exceed the appropriate limit

12. The “Appropriate Limit” is defined in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (“the Regulations”) and is set at £450 for a public authority such as Humberside Police. The Regulations also state that staff time should be notionally charged at a flat rate of £25 per hour, giving an effective time limit of 18 hours.

13. When estimating the cost of complying with a request, a public authority is entitled to take account of the time or cost spent in:

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

14. 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. In accordance with the First-Tier Tribunal in the case of *Randall v Information Commissioner & Medicines and Healthcare Products Regulatory Agency EA/2007/0004*, the Commissioner considers that any estimate must be “sensible, realistic and supported by cogent evidence”. The task for the Commissioner in a section 12 matter is to determine whether the public authority made a reasonable estimate of the cost of complying with the request.
15. In this case, the public authority explained that the referrals sent to IOPC are not accurately captured in a particular field in its system. As such, it advised that each case would need to be manually checked.
16. The public authority went on to explain that there have been 11,070 cases created between 1 January 2017 and 31 August 2022 and that even if each file only took 1 minute to review, it would equate to 184 hours.
17. The public authority advised that in its system, cases are in three categories, but that IOPC referrals could be in any of those. It also explained that the referral forms for the IOPC are saved as a variety of different file names and, as such, each folder would need to be looked into.
18. The public authority has also stated that even if it took 30 seconds to review each document, this would still exceed the appropriate limit as it would be between 50 to 100 hours. It also advised that the time of 1 minute to check each document would not realistically be sufficient.
19. The Commissioner is satisfied that the public authority’s arguments are justified as it has explained how its system works and what it would need to do to obtain the requested information. It has also provided a reasonably estimated cost for obtaining the information.
20. The Commissioner notes that the complainant has advised that other police forces have given the requested information to them. Whilst this may be the case, not all of the forces will use the same systems for recording information and/or they may have different ways of storing such information.
21. The Commissioner’s decision is that the public authority was correct to apply section 12(1) of FOIA to the request.

Section 16 – advice and assistance

22. Section 16(1) of FOIA provides that a public authority should give advice and assistance to any person making an information request. Section 16(2) clarifies that, providing an authority conforms to the recommendations as to good practice contained within the section 45 code of practice¹ in providing advice and assistance, it will have complied with section 16(1).
23. In this case, the public authority advised that due to the volume of records that would need to be reviewed, it was unable to identify information that could be supplied within the fees limit.
24. The Commissioner is satisfied that the public authority complied with the requirements of section 16(1) of FOIA.

¹ [CoP FOI Code of Practice - Minor Amendments 20180926 .pdf \(publishing.service.gov.uk\)](#)

Right of appeal

25. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

26. 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.
27. 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

Michael Lea
Team Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF