

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 4 June 2024

**Public Authority:** Chief Constable West Midlands Police  
**Address:** PO Box 52  
Lloyd House  
Colmore Circus Queensway  
Birmingham  
B4 6NQ

#### **Decision (including any steps ordered)**

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1. The complainant has requested information regarding vehicle crime and exchanges of correspondence regarding the Vehicle Crime Taskforce. The above public authority ("the public authority") relied on section 12 of FOIA (cost of compliance) to refuse the request.
2. The Commissioner's decision is that the public authority was not entitled to rely on section 12(2) of FOIA to refuse the request.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
  - Issue a fresh response that does not rely on section 12 of FOIA.
4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

#### **Request and response**

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5. On 29 September 2023, the complainant wrote to the public authority and requested information in the following terms:

" I am seeking the information your constabulary possesses in relation to your PCC taking the lead on vehicle crime in 2019. WMP and Crime Commissioner agreed to help the government tackle car crime by making contributions to its new Vehicle Crime Taskforce. The information will run from the date of the agreement. It appears the information will run from 01/2018.

The subject matter relates to vehicle theft, vehicle security (as fitted by manufacturers), theft methodology (security compromise).

The information is exchanges between WMP with your PCC, the Home Office (Vehicle Crime Taskforce), manufacturers and the Society of Motor Manufacturers, about vehicle security/theft. This will include notes of meetings attended and action to be taken, the dates and notes of briefings between WMP and PCC relating to vehicle security compromise' ; opinions and evidence.

The PCC appears to have written to 'Mike' in 2019, it is possible WMP's exchanges will extend to Kit Malthouse, then Minister of State for Crime and Policing. WMP's officer associated is believed to be [Officer name]."

6. On 2 October 2023, the public authority responded. It relied on section 12 of FOIA to refuse the request – a position it upheld following an internal review.

## Reasons for decision

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### Section 12 – cost of compliance

7. The following analysis covers whether complying with the request would have exceeded the appropriate limit.
8. 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" as set out in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ("the Fees Regulations")
9. The appropriate limit is set in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 at £600 for central government, legislative bodies and the armed forces and at £450 for all other public authorities. The appropriate limit for the public authority is £450.

10. The Fees Regulations also specify that the cost of complying with a request must be calculated at the rate of £25 per hour, meaning that section 12(2) effectively imposes a time limit of 18 hours for the public authority.
11. Regulation 4(3) of the Fees Regulations states that a public authority can only take into account the cost it reasonably expects to incur in carrying out the following permitted activities in complying with the request:
  - 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.
12. When a public authority relies on section 12(1), it should also confirm that it holds information within the scope of the request. However, a public authority can rely on section 12(2) to refuse a request, without providing a confirmation that information is (or is not) held, if the cost of determining whether information is held would, on its own, exceed the cost limit.
13. 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. 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.
14. Section 12 is not subject to a public interest test; if complying with the request would exceed the cost limit then there is no requirement under FOIA to consider whether there is a public interest in the disclosure of the information.
15. Where a public authority claims that section 12 of FOIA is engaged it should, where reasonable, provide advice and assistance to help the requester refine the request so that it can be dealt with under the appropriate limit, in line with section 16 of FOIA.

## **The public authority's position**

16. The public authority explained to the Commissioner that:

" Information relating to `Exchanges` between WMP and the PCC, the Home Office (Vehicle Crime Taskforce), manufacturers and the Society of Motor Manufacturers, about vehicle security/theft is not held centrally or in an electronically, or any other searchable format. It would require the FOI unit to contact every employee that was in service from January 2018 and ask them to search all records held by them in order to establish if any relevant information was held.

Please be advised that `exchanges` would include all written and electronic correspondence, including emails, letters, text messages, WhatsApp messages, minutes from meetings etc. However, correspondence may also be saved onto other force systems, dependent on its usage, or printed and saved into a paper format or scanned and saved in an electronic format. The scope of this request is so broad that in order to determine any and all `exchanges` and communication on this subject matter, we would need to conduct multiple manual searches of force systems and physical locations used by West Midlands Police.

Additionally, as you have asked for correspondence between West Midlands Police and the Office of the Police and Crime Commissioner, this would encompass any/all employees of the force as a whole, and any/all employees of the OPCC, however, to approach all employees in relation to this request would be a massive undertaking. Similarly, a force-wide search of all email correspondence would need to be conducted, however, emails pertaining to the requested subject matter may not be easily or immediately identifiable, therefore, an additional manual review of emails would need to be conducted in order to determine which emails fell within the scope of this request. Conducting these searches however, would exceed the appropriate limit. In addition, you have not provided the names or contact details for any of the other organisations that fall within the scope of the request - the Home Office (Vehicle Crime Taskforce), manufacturers and the Society of Motor Manufacturers and so we could not even start to conduct searches in relation to these organisations.

Due to the generic nature of the request and the number of correspondents listed, in addition to the lack of specific named individuals, and the nearly 6 year time-frame that the request covers means that to try and identify relevant information that may be held for all aspects of the request would require the searches outlined in our response to you, and this is why Section 12(2) is engaged"

## **The Commissioner's view**

17. As with any FOIA complaint, the burden of proof is on the public authority to demonstrate that it has complied with the Act and that any exemptions it has cited have been properly applied. In the Commissioner's view, the public authority has not done that.
18. The complainant has a clear idea of what they want to receive but, perfectly understandably, does not know exactly what records exist and where. The complainant has therefore cast a wide net in order to capture everything that is of interest to them.
19. On the one hand, the Commissioner appreciates that such a request seems broad. Requests covering a wide timespan often require a considerable amount of records to be reviewed for relevant information.
20. The Commissioner also notes, from his own experience, that organisation to organisation contact rarely takes place through a single channel. Rather, communication will take place at multiple levels across each organisation and therefore correspondence may be held in multiple locations.
21. However, although the public authority has stated that the scope of the request is 'too broad' in terms of 'exchanges', it appears to have made no attempt to identify possible search options to locate the information. Its response amounts to a bare assertion that the request would exceed the appropriate limit – with no attempt to quantify what might actually be involved.
22. The Commissioner wrote to the public authority on 7 December 2023 and asked it a series of questions about the evidence on which its refusal had been based. This should have been taken as an indication that he was not satisfied that the public authority had justified its use of section 12 yet. Rather than provide more detailed reasoning or evidence, the public authority instead quoted its previous responses.
23. It is not the Commissioner's responsibility to make a public authority's case if it has failed to do so itself. Although on the face of it, the request seems broad, in practice that might not be the case.
24. For example, whilst the Commissioner does not accept that the complainant narrowed the scope of their request, in their correspondence with the public authority, they did provide some contact names of people who (the complainant believed) might hold relevant information.
25. Hypothetically, if the public authority had approached one of those individuals (assuming they could be identified and were still employed),

that individual might have been able to confirm that the organisation's involvement in the Taskforce had been limited to just one or two small projects and a quarterly meeting – in which case the information may be easily retrievable. The Commissioner does not know whether that was in fact the case but then, neither does the public authority because, on the basis of the available evidence, it has made no effort to check.

26. Equally, it is not clear why a “force-wide” search would be necessary. It seems unlikely that most ordinary police constables would need to contact the Home Office or the Police and Crime Commissioner in their official capacity - unless they were part of specialist team. Whilst the public authority may need to cast a wide net to be assured of identifying all relevant information, it does not appear to have made any effort to understand how wide that net needs to be.
27. If the public authority had attempted to carry out some form of sampling exercise, it would have been to get a more accurate sense of the overall scope of the request. That in turn would have provided it with the data to demonstrate that the appropriate limit would have been exceeded. The public authority has not calculated any costs regarding this request and therefore the Commissioner cannot say which side of the appropriate limit the request would fall.
28. The Commissioner cannot say definitively that complying with the request **would not** exceed the cost limit, only that the public authority has failed to demonstrate that it **would** – and the burden of proof lies with the public authority to demonstrate that the exemption is engaged.
29. Consequently, the Commissioner finds that the public authority was not entitled to rely on section 12(2) of FOIA to refuse the request.

## **Other Matters**

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### **Section 16(1) – The duty to provide advice and assistance**

30. Section 16 of FOIA requires a public authority to provide advice and assistance where it is reasonable to do so. Had the Commissioner found that section 12 of FOIA was engaged, he would have found that the public authority had failed to provide adequate advice and assistance.
31. Where a public authority claims that section 12 of FOIA is engaged it should, where reasonable, provide advice and assistance to help the requester refine the request so that it can be dealt with under the appropriate limit, in line with section 16 of FOIA. If there is no reasonable way in which the request could be refined, the public authority should inform the requester that the request cannot be meaningfully refined.
32. The Commissioner is not persuaded that the complainant could not have reduced the cost of complying with their request by reducing the time parameters, limiting the external stakeholders involved or restricting the search to specific areas or individuals within the organisation.
33. The public authority should think more carefully about the advice and assistance it can provide when it relies on section 12.

## Right of appeal

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34. 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](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

35. 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.
36. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Roger Cawthorne**  
**Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**