

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 27 July 2009

Public Authority: National Policing Improvement Agency
Address: NPIA Headquarters
4th Floor
10 – 18 Victoria Street
London
SW1H 0NN

Summary

The complainant asked to be given 7 pieces of information associated with the recording of the offence of murder on the Police National Computer (PNC). The National Policing Improvement Agency (NPIA) complied with parts 1 to 5 of the request but determined that it did not hold information on the PNC under the provisions of section 3(2)(b) of the Act. The NPIA also determined that, if it did hold the PNC information, the provisions of section 12 would apply as compliance with parts 6 and 7 would exceed the appropriate limit.

The Commissioner finds that the NPIA holds information on the PNC otherwise than on behalf of the police forces, and therefore section 3(2)(b) does not apply. In failing to inform the complainant that it held PNC information, the NPIA breached section 1(1)(a) of the Act and in failing to do so within 20 working days it breached section 10(1). He agrees with the NPIA that the costs of complying with the request would exceed the appropriate limit and therefore it was not obliged to comply with the request under the provisions of section 12(1) of the Act.

The Commissioner's Role

1. 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 Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

The Request

2. The complainant wrote to the National Policing Improvement Agency (NPIA) on 22 September 2007 to request the following information:
- 1) What offence codes exist for the recording of murder on the Police National Computer (PNC)?
 - 2) How many offence codes are there in total for the offence of murder?
 - 3) What is the wording of each of the offence codes?
 - 4) For how long has the PNC been using the terms 'Murder (victim one year old or over)' and 'Murder (victim under one year)'?
 - 5) Are all murders recorded in this way or is this classification optional?
 - 6) For the year 2005 how many individuals have an arrest record on the PNC for Murder (victim one year old or over)?
 - 7) How many individuals have a PNC record for Murder (victim under one year) for the year 2005?
3. The NPIA responded to the complainant's request on 15 October 2007. The NPIA confirmed that it held some of the information the complainant had requested. It provided information in answer to parts 1 to 3 of the complainant's request in the form of a table. The table listed 35 categories of offence where murder is part of the offence description. Each offence category is given a code number according to the region where the offence takes place. Part of the table is reproduced below to illustrate the nature of the disclosed information:

Region	Code	Offence
England & Wales	1.2.1 COMLA03	Murder (Broken down to 1.2.1.1 or 1.2.1.2 as shown below)
England & Wales	1.2.1.1 COML025	Murder (victim one year old or over) Common Law
England & Wales	1.2.1.2 COML026	Murder (victim under one year old) Common Law
England & Wales	1.2.2	Soliciting for Murder
England & Wales	1.2.2.1	Soliciting for Murder Offences Against The Person Act 1861 (OF61)s4
Scotland	2.1.1.1	Murder Common Law (COML)

4. The NPIA informed the complainant that England and Wales is the only region which records murder using the 3 and 4 level codes and distinguishes the offence according to whether the victim is younger or older than one year.
5. The complainant was told that the NPIA does not hold information relating to how long the PNC has been using the terms 'Murder (victim one year old or over)' and 'Murder (victim under one year)'.

6. The NPIA informed the complainant that classification of the offence of murder is not optional but may change as a case passes through the criminal justice process to the point at which it is disposed of. The public authority added:

“The individual police forces are responsible for entering data onto the PNC and, under the terms of the Data Protection Act 1998, are classed as the data controllers for this data. Consequently the NPIA does not hold information relating to the circumstances of individual cases and is therefore unable to confirm all murders are recorded in this way”.

7. In its response to parts 6 and 7 of the request, the NPIA stated that:

“Under section 3(2)(b) of the Freedom of Information Act, information is deemed to be held by a public authority, if it is held otherwise than on behalf of another person. In this instance, the NPIA provide the PNC service but the data it contains is owned and controlled by the individual Police Forces. This information is therefore not readily accessible to the NPIA and, for the purposes of the Freedom of Information Act, is not held by the NPIA.

However, were the information to be deemed to held by the NPIA, to extract the statistical information you have requested from the PNC would necessitate the production of specific software for this purpose, which in all probability, would exceed the cost limit specified in the regulations to produce.

Section 12(1) of the Freedom of Information Act does not oblige a public authority to comply with a request for information if the cost for complying exceeds a cost limit, known as the ‘appropriate limit’...”

8. The complainant wrote to the NPIA on 15 October 2007 to complain about the way his request had been handled. He rebutted some of the assertions made by the NPIA and asked further questions prompted by the contents of the NPIA's refusal notice.
9. The NPIA wrote to the complainant in November 2007 (the exact date is not stated on the letter) to inform him that it had completed its internal review. The NPIA's review addressed each part of the complainant's request, either individually or grouped, according to the nature of the information sought. The NPIA also responded to points raised by the complainant in his 15 October letter.

The Investigation

Scope of the case

10. On 3 December 2007 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant's

letter focussed on parts 4 to 7 of his request and consequently the Commissioner limited his investigation to these parts.

11. The Commissioner has not considered parts 1 to 3 of the request. He considers that the provision of the table, referred to at paragraph 3, satisfactorily answers those parts of the request.

Chronology

12. The Commissioner wrote to the complainant on 4 July 2008 to confirm the scope of his investigation.
13. The Commissioner wrote to the NPIA on 21 July 2008. The Commissioner asked questions relating to the NPIA's use of the information contained within the PNC. He also made enquiries about the nature of that information and the scope of the searches that the PNC could accommodate. A number of other questions were put and the answers to these are referred to in the 'findings of fact' section of this notice.
14. The NPIA provided a full response to the Commissioner's enquiries on 18 August 2008.

Findings of fact

15. The Commissioner has established the following facts:
 - i. The NPIA maintains and delivers the PNC and acts as a central resource for police forces.
 - ii. Within the NPIA are a number of organisations such as the Missing Persons Bureau (MPB) and the Serious Crime Analysis Squad (SCAS). These use the PNC in limited ways for their specific functions. They do not input data into the PNC.
 - iii. The NPIA use information from the PNC for the purpose of operational research, for and on behalf of police forces.
 - iv. SCAS use PNC information to obtain intelligence on known offenders and on suspects for outstanding serious crimes.
 - v. The NPIA produces national plans. This does not involve interrogating data held on the PNC.
 - vi. The NPIA maintains the 'hardware' of the PNC.
 - vii. The requirement for the PNC to record different categories of murder is legislative. The NPIA does not determine policy in respect of the data recorded on the PNC. The NPIA's role in relation to the recording of offence codes is to ensure that the PNC has the facility to record offences in the prescribed manner.

- viii. The PNC is a dynamic database which is constantly updated. Information held in the PNC is subject to 'weeding', for instance when a data subject dies. This ensures that the PNC reflects the current situation.
- ix. The information held in the PNC is saved three times a week. Three 'generations' of data are kept at any given time. As a new generation of data is saved, the oldest generation is removed.
- x. The NPIA do not retain a 'snap-shot' of the data on the PNC for any particular time.
- xi. The NPIA have an audit trail of changes made to the PNC which allows the contents to be recovered to its last iteration.
- xii. The PNC is capable of recording more than 300 data items against an individual, including the offence, its code and the date it occurred.
- xiii. The PNC is an ADABAS (Adaptable Database System) management system. It does not use Structured Query Language (SQL) to search for information. Searches are carried out using 'natural coded software' using a QUEST (Querying Using Enhanced Search Techniques). QUEST enables searches of the names database to identify suspects through the use of gathered information such as physical description and personal features.
- xiv. The PNC cannot be searched using free text fields.
- xv. It is possible to interrogate the PNC by offence code, however the police forces have never asked for this facility and therefore it currently does not exist. Specialist software in natural code would have to be created to allow such a search.
- xvi. The National Identification Service (NIS) is responsible for notifying the NPIA of changes to the codes for crimes on the PNC. The NIS hold a database which records the date when the codes for murder were last amended. These dates are:
 - Code 1.2.1.1 (Murder (victim one year old or over)) last amended 27 May 1994, and
 - Code 1.2.1.2 (Murder (victim under one year old)) last amended 27 May 1994.

The Commissioner understands that the appropriate changes to the PNC would have been made within one calendar month on the NIS notification to the NPIA.

Analysis

Section 3 – Public Authorities

16. The NPIA argues that it holds and is responsible for the PNC in its capacity as Data Processor and it is the individual police forces who are the Data Controllers. The NPIA believes that it does not hold the information within the PNC under the provision of section 3(2)(b) of the Act.
17. Section 3(2) provides –
- “For the purposes of this Act, information is held by a public authority if –
- (a) it is held by the authority, otherwise than on behalf of another person, or*
- (b) it is held by another person on behalf of the authority.”*
18. The Freedom of Information Act does not define what is meant by the term ‘held’. It does however exclude from its disclosure requirements information held by a public authority on behalf of another person. By virtue of section 3(2), such information is not ‘held’ by the public authority for the purposes of this Act.
19. The NPIA does not dispute that it has the requested information in its possession: it asserts that it holds this information on behalf of the United Kingdom’s police forces. There is a service level agreement between the NPIA and PNC service users which states:
- “Under the terms of the Data Protection Act 1998, NPIA PNC Services are the ‘data processor’, responsible for application data processing, and ACPO/ACPO(s) are the data controller”.*
20. The NPIA PNC Services are responsible for ensuring the data owners are informed when it becomes evident that data is corrupt. In processing data, and providing it to authorised third parties, NPIA PNC Services agrees to abide by all provisions of the Data Protection Act 1998.
21. The Commissioner’s approach to section 3(2) is as follows. Where information is held by a public authority, to any extent for its own purposes, then it holds that information otherwise than on behalf of another person, and therefore it holds the information for the purposes of the Act. The only circumstance in which information would not be held by a public authority by virtue of section 3(2)(a) would be where information is only held on behalf of another person, and is not held to any extent for that public authority’s own purposes. The wording of s3(2)(a) does not contemplate two mutually exclusive situations; those in which information is held by the public authority, and those in which information is held by it on behalf of another person. The Commissioner has also adopted the approach of the Information Tribunal in its decision in *Ennis McBride v the Information Commissioner and the Ministry of Justice* [EA/2007/0105].

22. The Information Tribunal determined that the question of whether the requested information is held by the public authority is not one which turns on the status of the authority; on who owns the information; whether the authority has exclusive rights to the information; or, whether there is any statutory or other legal basis for the authority to hold the information. The question of whether the information is held, or not held, is simply a question of fact to be determined by the evidence.
23. The NPIA is, in its own words, the data processor of the PNC. This function cannot be carried out unless the NPIA holds the PNC and the data it contains.
24. Within the NPIA are agencies such as the Missing Persons Bureau and the Serious Crime Analysis Squad. Both these agencies use the PNC to access data relevant to their purposes. The NPIA confirmed that the PNC recorded 7,625 transactions by the NPIA SCAS and MPB during 2008.
25. These facts lead the Commissioner to find that the NPIA holds information relevant to the complainant's request. The facts of the case show that the information is held by the NPIA for its own purposes and thereby satisfies the 'otherwise' element contained in section 3(2)(a) of the Act.
26. The Commissioner finds that NPIA's failure to confirm it held this information was a breach of section 1(1)(a); and its failure to give this confirmation to the complainant within 20 working days, was a breach of section 10(1).

Part 4 of the request

27. The NPIA informed the complainant that it does not hold information concerning the length of time the PNC has been using the terms 'Murder (Victim one year or over)' and '(Victim under one year)'. The NPIA stated, *'The NPIA maintains records of changes made to the PNC but has no record of when the offence codes you have specified were added to PNC'*.
28. The Commissioner asked the NPIA to expand on the comments made to the complainant and to tell the Commissioner what records it holds in respect of the changes made to the PNC.
29. The NPIA provided the following explanation:

"Changes to PNC software and those at database level (not to be confused with updates to individual records made by police users) are recorded in hand over documents which are retained for approximately 3 years. These, however, do not include reference data such as new offence codes which are received from the National Identification Service and processed as required."
30. The Commissioner asked the NPIA whether it could interrogate the PNC to obtain the date of the first entry for 'Murder (victim under one year)'.

31. The NPIA informed the Commissioner that the PNC is an intelligence system, designed to support operational policing; it was not designed as a statistical database for the purpose of generating statistics. A QUEST is not designed as a statistical tool; it is an operational tool used to identify offenders by inputting various descriptive parameters.
32. The NPIA is able to run a QUEST to perform a tally of records within a set of given parameters. This function allows PNC operators to compare and contrast records within the descriptive parameters to define a search down to a reasonable number of responses. There is a display limit of 2000 responses for any tally.
33. At the time of the Commissioner's enquiries the PNC held 25,269 records of murder (code 1.2.1), 19,145 records of murder (victim one year old or over) (1.2.1.1) and 341 records of murder (victim under one year) (1.2.1.2). Due to the display limit of 2000 records, the PNC is not able to use a QUEST to identify those persons where either code 1.2.1 or 1.2.1.1 is recorded as the number of these records.
34. The NPIA emphasised that the figures generated by the QUEST represent **all** years where these offences were recorded in England and Wales. In order to find the first use of the codes for 'Murder (victim one year old or over)' and 'Murder (victim under one year)' each record would have to be individually accessed.
35. The PNC has no utility to combine a search for the year of an offence against an offence code.
36. The Commissioner accepts NPIA's assurance that it does not possess a specific record of when the required murder codes were first used. The Commissioner is satisfied that the NPIA does not hold the information sought at part 4 of the request: even if it were possible to find the earliest dates when the requested murder codes were used on the PNC, these dates would be not necessarily be dates when the requirement for the use of these codes came into being.
37. The Commissioner has considered the information held by the NIS in terms of the dates when the codes for murder were amended. He has concluded that this information while relevant to the complainant's request does not provide a definitive answer the specific question the complainant asked.
38. The Commissioner accepts that the NIS holds information which records the dates when the codes for murder were amended. He also accepts that the NIS would have informed the NPIA of the required changes to the codes for murder and that the NPIA are likely to have implemented the required changes on the PNC soon after they were informed of the changes.
39. The Commissioner understands that the NIS is a centrally funded organisation within the Metropolitan Police Operational Information Service
40. Whilst the NIS information does not completely answer the complainant's specific request, the Commissioner considers that this information is sufficiently relevant

to the request, combined with the fact that the changes to the PNC would have been made within one calendar month on the NIS notification to the PA. The Commissioner has determined that, under the provisions of part III of the Code of Practice issued under section 45 of the Act, the NPIA should have transferred this part of the complainant's request to the NIS on the basis that it knew the origin of the notification to change the codes for murder and that there was a likelihood that the NIS would hold a record of this information.

Part 5 of the request

41. Following the conclusion of the NPIA's internal review, the complainant was informed that:

"All police forces in England and Wales have the ability to record arrests and disposals on PNC using either three or four level offence codes.

Whilst a classification is mandatory to complete the record on PNC it is optional as to which code the owning force choose to populate that particular field with and would depend on the circumstances of the case.

It is outside of the NPIA's remit to dictate to police forces how data should be entered onto PNC; this is the responsibility of the Association of Chief Police Officers."

42. These statements, together with the figures illustrated at paragraph 26 above, illustrate that it is mandatory for the crime of murder to be recorded on PNC and optional for the crime of murder to be recorded using a four level offence code. The Commissioner is satisfied that the NPIA complied with this part of the complainant's request.

Section 12 – Exemption where cost of compliance exceeds the appropriate limit

43. The Commissioner has considered whether the NPIA has correctly applied section 12 of the Act.

44. Section 12(1) of the Act provides that:

"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."

45. The appropriate limit is set out in the Fees Regulations as £600 for public authorities listed in Part 1 Schedule 1 of the Act. For public authorities not listed in Part 1 the appropriate limit is £450. The appropriate limit for the NPIA is therefore £450.

46. The appropriate limit of £450 equates to 18 hours work in respect of the following activities:

- a) determining whether the requested information is held;

- b) locating the requested information;
 - c) retrieving the requested information from a document containing it; and
 - d) extracting the requested information from a document containing it.
47. The complainant is seeking two statistics in answer to parts 6 and 7 his request. There are two questions for the Commissioner to determine in relation the complainant's request:
- 1) does the NPIA hold the requested information; and
 - 2) if the requested information is held, would its provision exceed the appropriate limit?
48. The NPIA has not argued that the PNC does not hold the requested information. Indeed it has confirmed that the PNC holds 19,486 records of the required murder codes for all years. The Commissioner is satisfied that the PNC contains information from which the statistics could be extracted.
49. The Commissioner asked the NPIA whether it would be possible to extract the requested statistics by interrogating the PNC.
50. The NPIA confirmed that the PNC is an intelligence system designed to support operational policing and was not designed as a statistical database. Similarly a QUEST is not designed as a statistical tool: it is designed to identify offenders by inputting various descriptive parameters. The tally function allows PNC operators to compare and contrast the records with the chosen descriptive parameters and to define a search down to a reasonable number of responses for subsequent research.
51. The NPIA confirmed that the PNC could be searched to provide the requested statistics but this would require bespoke software to be written in Natural code.
52. The NPIA considers that it would take 10 days to design and produce the necessary software, including 10 hours to run the search of the 45,000,000 records on the PNC.
53. The 10 day estimate is based on the following breakdown provided by the NPIA:

<u>Activity</u>	
To agree and verify the software requirement so that the desired items are output in the required format.	1 day
To code the Natural program and conduct an initial test. It is necessary to test the program as it would be a new utility for a standalone requirement.	5 days
To test/trial the software and implement it. It is necessary to trial the software against the live pre-production database to ensure the required output is produced. To implement the utility in the live environment, run the software	4 days (including 10 hours run time)

and check the output	
<u>Total</u>	10 days.

54. The estimated run-time of 10 hours is extrapolated from actual timings of current database scans for different purposes.
55. The Commissioner is satisfied that the requested statistics cannot be extracted from the PNC without bespoke software being created.
56. In the Commissioner's view, where information can be retrieved through query tools within software or a query language, this operation should be regarded as retrieval or extraction. It is therefore legitimate for the NPIA to consider the creation of that software as an activity necessary for the retrieval and extraction of the requested information.
57. The Commissioner accepts the NPIA's estimate of 10 hours for the PNC run-time to produce the requested statistics. He also accepts that the NPIA would need to design, test and verify new software before using it on the live PNC.
58. The Commissioner is therefore satisfied that it would take longer than 18 hours to retrieve and extract the requested information and consequently he agrees with the NPIA's application of section 12 of the Act.

The Decision

59. The Commissioner's decision is that the public authority did not deal with the request for information in accordance with the Act.
60. The Commissioner finds that the NPIA did not breach the Act in relation to parts 1 to 5 of the complainant's request.
61. The Commissioner finds that the NPIA was incorrect to rely on section 3(2)(b) of the Act on the basis that it holds PNC information for its own purposes. By failing to inform the complainant that the NPIA hold information relevant to parts 6 and 7 of the request, the NPIA breached section 1(1)(a) of the Act. In failing to do so within the statutory time limit of twenty working days it breached section 10(1).
62. The NPIA did not breach section 1(1)(b) because under section 1(2) of the Act it was not obliged to comply with the request under the provisions of section 12(1).

Steps Required

63. The Commissioner requires no steps to be taken.

Failure to comply

64. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Right of Appeal

65. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal
Arnhem House Support Centre
PO Box 6987
Leicester
LE1 6ZX

Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@tribunals.gsi.gov.uk.
Website: www.informationtribunal.gov.uk

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.

Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is served.

Dated the 27th day of July 2009

Signed

**Steve Wood
Assistant Commissioner**

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

Legal Annex

General Right of Access

Section 1(1) provides 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.”

Section 1(2) provides that -

“Subsection (1) has the effect subject to the following provisions of this section and to the provisions of sections 2, 9, 12 and 14.”

Public Authorities

Section 3(1) provides that –

“in this Act “public authority” means –

(a) subject to section 4(4), any body which, any other person who, or the holder of any office which –

(i) is listed in Schedule 1, or

(ii) is designated by order under section 5, or

(b) a publicly-owned company as defined by section 6”

Section 3(2) provides that –

“For the purposes of this Act, information is held by a public authority if –

(a) it is held by the authority, otherwise than on behalf of another person,
or

(b) it is held by another person on behalf of the authority.”

Time for Compliance

Section 10(1) provides that –

“Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.”

Exemption where cost of compliance exceeds appropriate limit

Section 12(1) provides that –

“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.”

Refusal of Request

Section 17(1) provides that -

“A public authority which ... is to any extent relying:

- on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request, or
- on a claim that information is exempt information

must, within the time for complying with section 1(1), give the applicant a notice which –

- (a) states that fact,
- (b) specifies the exemption in question, and
- (c) states (if that would not otherwise be apparent) why the exemption applies.”