

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 21 August 2018

**Public Authority:** Commissioner of the Metropolitan Police Service

**Address:** New Scotland Yard  
Broadway  
London  
SW1H 0BG

#### Decision (including any steps ordered)

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1. The complainant has requested information about correspondence and e-mails with two named Members of the European Parliament (MEPs) from the Metropolitan Police Service (the "MPS"). The MPS applied section 12(2) (cost of compliance exceeds appropriate limit) to the request, advising that to ascertain whether or not it holds any information would in itself exceed the cost limit threshold. The Commissioner decision is that it was entitled to do so. No steps are required.

#### Request and response

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2. Following two earlier requests, on 9 March 2018 the complainant wrote to the MPS and requested information in the following terms:

*"... please provide urgently copies of all correspondence and e-mails and all correspondence in any other form, including all the lunches and meetings, between all and any Metropolitan Police officers and officials at the OCU [Operational Command Unit] Westminster, including following police officers if they have been moved from the OCU Westminster: [eight named officers] and anyone else associated with these police officers with Gerard Batten MEP from 11 March 2011 until today, 09 march 2018.*

*I am also requesting you start your searches, and please provide urgently copies of all correspondence and e-mails and all*

*correspondence in any other form, including all the lunches and meetings, between all and any Metropolitan Police officers and officials at the OCU Westminster, including following police officers if they have been moved from the OCU Westminster: [eight named officers] and anyone else associated with these police officers with Nigel Farage MEP from 11 March 2011 until today, 09 March 2018”.*

3. On 10 April 2018 the MPS responded. It refused to provide the requested information, citing the cost limit at section 12 of the FOIA as its basis for doing so.
4. Following an internal review the MPS wrote to the complainant on 24 April 2018. It maintained its position, clarifying that it was relying on section 12(2) of the FOIA.

### **Scope of the case**

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5. The complainant contacted the Commissioner on 24 April 2018 to complain about the way her request for information had been handled. As she had submitted correspondence relating to more than one request the Commissioner advised her that she had only provided adequate evidence which would allow her to investigate the request above. She advised the complainant that if she required any further investigations she would need to provide additional information. The Commissioner received no response so she has only investigated the above complaint.
6. The Commissioner will therefore consider the citing of section 12(2) to the above request, below.

### **Reasons for decision**

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#### **Section 12 - cost of compliance exceeds appropriate limit**

7. Section 12(2) of FOIA provides that a public authority is not obliged to confirm or deny whether requested information is held if it estimates that to do so would incur costs in excess of the appropriate limit. In other words, if the cost of establishing whether information of the description specified in the request is held would be excessive, the public authority is not required to do so.
8. The appropriate limit is set at £450 for the MPS by the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the fees regulations).
9. The fees regulations also provide that a cost estimate must be calculated at the rate of £25 per hour, giving an effective time limit of

18 hours, and specify the tasks that can be taken into account when forming a cost estimate as follows:

- 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.
10. Section 12(2) requires a public authority to estimate the cost of confirming or denying whether information is held, rather than to formulate an exact calculation. The question for the Commissioner here is whether the cost estimate by the MPS was reasonable. If it was, then section 12(2) was engaged and the MPS was not obliged to confirm or deny whether the requested information was held.
11. In its initial refusal notice the MPS advised the complainant as follows:

*"To answer these questions would exceed the cost threshold because to locate, retrieve and extract this information I would need to contact all 32 boroughs as well as all Operational Command Units (OCU) within the MPS.*

*The MPS employs thousands of officers. Each and every officer within every borough and OCU would need to conduct searches, which is a very time consuming task. You have requested ALL forms of correspondence and e-mails, thus correspondence you seek can be in any form such as e-mails, letters, fax etc and be held in paper format or electronic format.*

*The date range is very large (11 March 2011 - 26 February 2018), further adding to the amount of work required to answer the request. Therefore section 12 is engaged as it is not possible, given the size of the MPS to ascertain whether ALL correspondence has been retrieved to fully answer your request.*

*We therefore estimate that the cost of complying with this request would exceed the appropriate limit. The appropriate limit has been specified in regulations and for agencies outside central Government; this is set at £450.00. This represents the estimated cost of one person spending 18 hours [at a rate of £25 per hour] in determining whether the MPS holds the information, and locating, retrieving and extracting the information".*

12. In her response, the complainant did not try to narrow or refine this request. She requested an internal review and made a further similar request. She also said:

*"Are you trying to say that these 2 MEPs in their individual offices have been for the past 7 years bombarding Metropolitan Police with unlawful requests for harassment of their political opponents or other illegal practices?"*

*Is your response based on evidence of illegal contacts that existed and still exist between those two MEPs and MPS based on your unwillingness to provide the information, in breach of the Freedom of Information Act 2000?"*

13. Having conducted an internal review the MPS wrote to the complainant to explain:

*"You [sic] request is extremely broad as it encompasses all members of the MPS and covers a 7 year time period.*

*You have asked for **all** correspondence and e-mails from named individuals to the MPS. The MPS does not have an automatic means of searching for the information you seek. The information is not held on a central, searchable database. Unfortunately, there is no simple means of searching for this information given the scope of your request. Even if your request were limited to E mail correspondence, it would still be an onerous task for an individual to undertake given that the Met employs over 44,000 members of staff:*

*<https://www.met.police.uk/about-the-met/structure/>*

*As part of my enquiries, I have contacted MPS Technology & Digital Policing and I have been advised that in respect of searching for emails, it is not a simple task nor a single search to obtain the requested information because there are over 50,000 mailboxes in the MPS each of whom could have sent an email and each would need to be searched.*

*I am guided by the following ICO guidance which states:*

***Requests which are unreasonably broad***

*79. If the authority can identify and locate the information but regards the request as unreasonably broad, then it should consider refusing it under Section 12 (cost limits) and offering advice and assistance to help the requester narrow down the scope of their request.*

*The Information Manager has provided you with information how to narrow your request ...*

*Whilst I appreciate this is not the response you would have hoped*

*to receive, I hope the explanation provided clarifies why on this occasion the MPS has upheld its original Section 12 (2) - Excess Costs exemption”.*

14. In response to the Commissioner’s enquiries the MPS further explained that not only does the request seek access to records from almost a seven year period with the named officers, but it also specifies “*anyone else*” associated with those officers. It advised her:

*“There is no list of MPS employees or other persons associated with the aforementioned officers. To answer this request, a search for all correspondence with Gerard Batten MEP and Nigel Farage MEP from 11 March 2011 to 09 March 2018 is therefore required”.*

15. It added the following explanation about how the requested information would be held and the systems it would need to search:

**“How the MPS Records Correspondence and Meetings**

*The MPS records correspondence and meetings in a number of different ways. These have been set out, in broad terms, below:*

**a. Microsoft Outlook**

*Microsoft Outlook is the platform used by the MPS to send and receive emails. The MPS has a 3-year retention policy for emails retained within Microsoft Outlook (implemented on 18 June 2018). Emails over three years old are deleted automatically and cannot be recovered.*

**b. MetRIC**

*MetRIC is the MPS correspondence register. It is used to record correspondence (letters, faxes and some emails). MetRIC has been the Met’s correspondence register from 11 March 2011 to 09 March 2018 and retains a record of correspondence registered over this period.*

**c. Local Correspondence Registers**

*Local correspondence registers are used by the MPS to register correspondence alongside, or in place of, MetRIC. For example, a department may use a local correspondence register where their correspondence is too sensitive to be recorded on MetRIC or it is decided that the functionality of MetRIC is unsuited to manage the correspondence received by that department.*

**d. Crime Files**

*Emails, letters and faxes are printed and retained within crime files and complaint files by the MPS.*

### **e. Meetings**

*Meetings are recording in a number of different ways by the MPS. For example, a meeting in connection with an allegation of crime would be recorded on the Crime Report Information System (CRIS) or within a crime file whilst a meeting about a public complaint would be recorded in a complaint file. A meeting in connection with the professional role of an MP could also, for example, be recorded in a registered file or within the minutes of a meeting. If hospitality is received by a police employee, the meeting and the hospitality provided would be recorded within a locally held 'Gifts and Hospitality' register.*

### **Searches Required to Locate the Information Requested**

#### **a. Microsoft Outlook**

*The High Tech Crime Unit of the Met's Directorate of Professional Standards has confirmed that it is technically possible to search for keywords across the email system. This unit has also confirmed that as of 15 June 2018, there were 72,000 retained emails accounts containing up to three years of email data in each account. These email accounts are retained over 172 'journal servers and as of 15 June 2018, held 384,312,453 emails.*

*The figures for the emails would have been different at the point the request was initially made to the organisation.*

*Recently, the organisation has under gone a thorough review of the data it held and, has been employing processes to ensure that all email data is compliant to its three-year retention policy this is prior to the deployment of a replacement email system, (O365).*

*The figures quoted for June 2018 have been provided to assist the ICO with scale and, to provide some idea of the size of the undertaking.*

*A search can be completed across the 172 journal servers based upon 'unique search terms' such as an email address or name. A search can also be completed using a 'boolean search'. This would allow for example, all emails to be returned that contained the terms 'Nigel' and 'Farage' in a single email. Once a search criteria has been decided upon and that search run, the returned data has to be mounted on the eDiscovery platform. The eDiscovery platform allows data to be interrogated. Once mounted on eDiscovery, the returned data can be sifted and searched.*

**b. MetRIC**

*Correspondence is manually recorded on MetRIC by the end-user. The end-user is required to describe the correspondence received which includes setting out who the correspondence is from and its purpose. Correspondence can also be sent via MetRIC. MetRIC can be searched using keywords and the dates that correspondence was recorded. Keyword searches can therefore be conducted on MetRIC to identify all records where the names 'Gerard Batten' and 'Nigel Farage' are present. Any identified correspondence will then have to read to determine whether it is relevant to this request.*

**c. Local Correspondence Registers**

*There is no list of MPS departments that use a local correspondence register. Therefore to answer this request, a member of staff would have to write to each of the Met's boroughs and Operational Command Units (OCU) to determine whether any of their departments use a local correspondence register. Where a correspondence register is used, searches would have to be completed across the requested period to determine whether letters, faxes or emails are held that are relevant to the applicant's request.*

**d. Crime/Complaint Files**

*Emails, letters and faxes are retained within crime files and complaint files by the MPS.*

**d.1. Crime Files**

*To determine whether correspondence is held within crime files, a search can be completed on the Crime Report Information System (CRIS) to identify whether a 'Gerard Batten' or a 'Nigel Farage' are referred to in a crime report (a report created on the CRIS to record and manage the investigation of a criminal offence). Any associated crime file can then be located and any relevant correspondence retrieved.*

**d.2. Complaint files**

*Public complaints are recorded upon the MPS Complaints, Conduct and Discipline System (Tribune). To determine whether correspondence is held within any complaint file, a search can be completed on Tribune to establish whether a 'Gerard Batten' or a 'Nigel Farage' have made a public complaint. Any associated complaint file can then be located and any relevant correspondence retrieved.*

**e. Meetings**

*To determine whether a meeting has been held with Gerard Batten MEP and Nigel Farage MEP, searches would have to be conducted*

*with each borough and OCU across this MPS. These have been set out below.*

**e.1. Crime Files**

*To determine whether records of meetings are held within crime files, the process set out at d.1. of this notice would have to be followed.*

**e.2. Complaint Files**

*To determine whether records of meetings are held within complaint files, the process set out at d.2. of this notice would have to be followed.*

**e.3. Minutes of Meetings**

*A number of the meetings held by the MPS are minuted. The department within the borough or OCU that held the meeting typically retains the minutes of a meeting. To answer this part of the request, searches would be required with each MPS borough or OCU.*

**e.4. Gifts and Hospitality' Registers**

*Each borough and OCU holds a gifts and hospitality register within which a record of gifts or hospitality (within set criteria) offered, accepted and/or declined are made. To answer this part of the request, searches would be required with each MPS borough or OCU".*

16. The MPS also confirmed that it had undertaken a sampling exercise as follows:

*"The MPS believes that the searches described at points a, c and e of the section of this notice titled 'Searches Requested to Locate the Information Requested', would each (independently) exceed the research limit of the Act.*

*However, for the purpose of this appeal, a sampling exercise has been completed that involved searching email accounts across the MPS to evidence the time required to answer this part of the request.*

*The High Tech Crime Unit of the Met's Directorate of Professional Standards has completed a search based on the search term 'Nigel' and 'Farage' across each email within the 172 journal servers. The High Tech Crime Unit confirmed that this search took 36 hours and at the point that the search was stopped, it was incomplete. This unit also confirmed that once this search was complete, the mounting of the data to the eDiscovery platform to enable its*



*interrogation, would take between 6 and 8 hours. This work is required prior to reviewing the material for emails relevant to the applicant's request".*

17. The Commissioner is satisfied with the explanations provided by the MPS in support of its position that compliance with the request would involve searching the various systems it has identified. She notes that the request covers a considerable time frame of almost seven years and the way it is worded could include any number of the ten thousands of staff over that considerable time period.
18. Having considered the estimate above, and with a lack of any argument to the contrary from the complainant, the Commissioner considers this estimate to be a reasonable one. The Commissioner therefore concludes that section 12(2) is engaged and the MPS was not obliged to confirm or deny holding any of the information requested.

### **Section 16 – advice and assistance**

19. 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. 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 does recognise that where a request is far in excess of the limit, it may not be practical to provide any useful advice.
20. In its refusal notice the MPS advised the complainant that it may be able to assist her if she specified a particular department or document type. She did not do so.
21. In this case the MPS has explained to the complainant how its information is held and why the work involved in confirming or denying whether the requested information is held would in itself exceed the cost limit. Although it has been unable to assist with narrowing the request sufficiently to allow disclosure of any information, the Commissioner recognises that, on this occasion, this has not been practicable.

## Right of appeal

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22. 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@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

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

23. 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.
24. 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

**Carolyn Howes**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
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