

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 1 February 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 requested information from West Midlands Police ("the public authority") in relation to how many staff had been dismissed since 2012/2013. The public authority refused to comply with the request, citing section 12 of FOIA – cost of compliance exceeds the appropriate amount.
2. The Commissioner's decision is that the public authority was entitled to refuse to comply with the request in accordance with section 12 of FOIA. The Commissioner also finds that the public authority has complied with its obligations under section 16 of FOIA to offer 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 17 December 2021, the complainant wrote to the public authority and requested information in the following terms:

"Further to this request that was made, how many staff from the West Midlands Police since 2012/2013 have been dismissed? Please provide statistical data to why, how, when and where?"

5. The public authority responded on 21 December 2021, asking the complainant to provide proof of their identity. The public authority also asked the complainant to clarify their request: does it include all Police staff, or just to Police Officers. The complainant was also asked to clarify the years that they wanted the information from.
6. The complainant responded on the same date, confirming their identity and clarifying their request. Within the clarified request, they explained that they want all staff dismissals, not just police officers. The public authority acknowledged the responses, however, it asked for further clarification on the request itself. The complainant provided the further response on 6 January 2022; clarifying the request to the following:

"Where they dismissed through the disciplinary process?
Where they dismissed at the place of work and what is the address?
From 2013/2014 – 2021/2022."
7. On 28 January 2022, the public authority refused to comply with the clarified request, citing section 12 of FOIA. Under section 16 of FOIA, the public authority did provide the complainant with the information that it was able to retrieve during its initial search.
8. Following an internal review the public authority wrote to the complainant on 17 February 2022. It stated that it upheld its original position.

Scope of the case

9. The complainant contacted the Commissioner on 19 February 2022, to complain about the way their request for information had been handled.
10. The Commissioner considers that the scope of this case is to determine whether the public authority is entitled to rely on section 12(1) of FOIA to refuse to comply with the request. The Commissioner will also go on to consider if the public authority provided adequate advice and assistance in accordance with section 16 of FOIA.

Reasons for decision

Section 12 – Cost of compliance

11. Section 1(1) of FOIA states:

"Any person making a request for information to a public authority is

entitled to –

(a) to be informed in writing by the public authority whether it holds the information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him.”

12. Section 12 of FOIA states:

“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.”

13. The appropriate limit is set at £450 for the public authority by the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (‘the fees regulations’)

14. 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’ work) for the public authority.

15. 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.

16. 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 decision in the case of *Randall v IC & Medicines and Healthcare Products Regulatory Agency EA/20017/00041*, 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

17. The public authority has explained to both the complainant and the Commissioner that the information is not in a readily retrievable format. It advised that specific details of employee dismissals are not held in an electronically searchable format and, as such, would require a manual review of case records in order to identify all the information requested

in relation to location of dismissal and specific details of why individuals were dismissed.

18. The public authority explained that there are 162 cases for the years requested and each of these would have to be manually reviewed in order to identify the relevant information within scope of the request.
19. The public authority explained to the Commissioner that it estimated that it would take approximately 20 to 30 minutes to review the records for the 162 cases identified, which would equate to between 53 and 80 hours of work, which would be in addition to the work that has already been expended on this request.
20. Additionally, it explained that the database it uses does not allow for easily retrievable information.
21. The public authority advised that each case which has reached disciplinary proceedings will contain a large number of documents. It added that these documents are not always named and stored in an orderly format and, as such, each individual document would need to be viewed.
22. The Commissioner is satisfied that the public authority's arguments above are justified, as it has explained that lengthy manual searches would be required due to the way its system works and, as such, the estimated costs for obtaining the information are reasonable and would clearly be in excess of the cost limit. Even if the estimates were to be halved, the request would still exceed the cost limit.
23. The Commissioner's decision is that the public authority were correct to apply section 12(1) of FOIA to the request.

Section 16 – advice and assistance

24. 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).

¹ <https://www.gov.uk/government/publications/freedom-of-information-code-of-practice>

25. The public authority provided the complainant with some information that it was able to retrieve during its initial search. Within the internal review response, the public authority advised the complainant that all of those dismissed were done so through the disciplinary process. The public authority also advised it is unable to provide all locations for where disciplinary hearings took place, but it did confirm a few that it was aware of.
26. A public authority does not need to provide any information if any part of a request falls under section 12 of FOIA. As such, the public authority has gone beyond the expectation of section 12 and section 16 of FOIA to assist the complainant.
27. The Commissioner is satisfied that the public authority did meet its obligations under section 16 of FOIA.

Right of appeal

28. 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

29. 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.
30. 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
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