

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 3 July 2012

**Public Authority:** Chief Constable of Northumbria Police  
**Address:** Police Headquarters  
North Road  
Ponteland  
Newcastle Upon Tyne  
NE20 0BL

#### Decision (including any steps)

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1. The complainant initially requested information concerning complaints about its officers. The public authority directed him to some information and applied the cost limit to the remainder, as well as providing advice as required under section 16. The complainant sent in further requests which included information sought about a named officer; the public authority cited section 40(5) in respect of this request. The Information Commissioner's decision is that the public authority dealt appropriately with the requests. He does not require any steps to be taken.

#### Background

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2. The request can be followed on the "What Do They Know" ("WDTK") website<sup>1</sup>.

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<sup>1</sup>[http://www.whatdotheyknow.com/request/complaints\\_against\\_northumbria\\_p](http://www.whatdotheyknow.com/request/complaints_against_northumbria_p)

## Request and response

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3. On 3 July 2011, the complainant wrote to the public authority and requested information in the following terms:

*"Can you please forward me the following information under the FOIA;*

*1, Please supply number of police officers who are currently serving in Northumbria Police.*

*2. Please supply full details of the number of those officers who have one or more complaints made against them.*

*3. Please supply full details of how many of those officers have proven complaints against them.*

*4. Please supply full details on what is the percentage of complaints against officers that are then proved.*

*Please also provide the above information by rank of officers".*

4. The public authority responded on 8 July 2011. It directed the complainant to its website where the response to part (1) was held. It advised that it would exceed the appropriate limit to respond to parts (2) and (3) and suggested how the complainant may be able to refine his request to allow it to be met within that limit. It advised that it didn't hold the information for part (4), but that if the complainant were to refine his request then he may be able to calculate this from the results.

5. On 9 July 2011 the complainant responded with the following additional requests:

*"1. Are NP saying they do not record such complaints on a Conduct and Discipline system or even a similar system. If not please explain why not.*

*2. How are such records kept, recorded by NP regards public complaints against its officers.*

*3. Are NP saying that such records are only held in manual form, if so, please give full details.*

*4. Do NP have full records of all recorded complaints under the*

*term 'case to answer' under the Police (Conduct) Regulations 2008. If so, please supply full details.*

*5. How many complaints, if any, have been made and recorded against [name removed], the now head of PSD, and what was the nature and outcome of such complaints".*

6. The public authority provided a response to the second set of requests on 2 August 2011. It provided information about its systems in respect of parts 1 to 4 of the request and neither confirmed nor denied holding any information about its officer by virtue of section 40(5).
7. On 3 August 2011 the complainant wrote back to the public authority saying:

*"I am not requesting an Internal Review at this stage.*

*Dear Northumbria Police,*

*You have have [sic] still not dealt with this request.*

*On the 3rd of July 2011 I made the following request, as above;*

*"Can you please forward me the following information under the FOIA;*

*1, Please supply number of police officers who are currently serving in Northumbria Police.*

*2. Please supply full details of the number of those officers who have one or more complaints made against them.*

*3. Please supply full details of how many of those officers have proven complaints against them.*

*4. Please supply full details on what is the percentage of complaints against officers that are then proved.*

*Please also provide the above information by rank of officers."*

*Please will you now deal with this request and stop delaying this Matter".*

8. On 4 August 2011 the public authority directed the complainant to its earlier response (as outlined above).
9. On 5 August 2011 the complainant wrote again stating:

*"I am not requesting an Internal Review at this stage. I am asking that you deal with following.*

*You will recall that I asked, number 5 in my request, for the following;*

*5. "How many complaints, if any, have been made and recorded against [name removed], the now head of PSD, and what was the nature and outcome of such complaints,"*

*You did not deal with this nor did you supply me with information.*

*Please can you now deal with 5 above".*

10. On 8 August 2011 the public authority advised the complainant of the response it had previously given on 2 August 2011, as outlined above.
11. On 10 August 2011 the complainant asked for an internal review; he did not specify what he wanted reviewing.
12. On 25 November 2011 the public authority provided an internal review of the request dated 9 July 2011. It again provided a response in respect of parts 1 to 4 of that request and advised that part 5 was exempt under section 40(5).
13. The complainant originally passed this case to the Information Commissioner on 18 November 2011. His complaint was, at that time, that the public authority had not provided an internal review. However, the internal review was subsequently completed, so the Information Commissioner advised the complainant that he was unable to take the case forward unless the complainant supplied his grounds of complaint following this internal review. The complainant initially refused to do so, expecting the Information Commissioner to peruse the lengthy correspondence on this and several other cases in order to identify potential grounds for complaint. The Information Commissioner refused to do so and closed his original complaint.
14. There is considerable further correspondence which can be followed on the WDTK website.

### **Scope of the case**

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15. On 8 February 2012 the complainant contacted the Information Commissioner again to outline his complaint. The Information

Commissioner clarified with the complainant that the following were the issues he wished to have addressed:

- a lack of response to each numbered request;
  - how compliance would exceed the cost limit;
  - the application of section 40(5);
  - the length of time taken to provide an internal review.
16. The Information Commissioner has read the request in full, and it may also be followed online. He concludes that the public authority has provided a response to each request, although these may not have been the responses that the complainant was hoping for. Therefore, in the absence of a complaint concerning each response received and why the complainant believed it had not been answered, the Information Commissioner has not further considered this point.
  17. The Information Commissioner also notes that the public authority has only provided an internal review in respect of the request dated 9 July 2011; the earlier request of 3 July 2011 was not reviewed. Whether an additional review was required by the complainant is not apparent as he did not specify to the Information Commissioner which of his request/s he wished to have considered. However, as the complainant has raised the cost limit as an area of complaint, which was only applied to the initial request, the Information Commissioner has used his discretion and will consider the response to the first request in the absence of a review.
  18. The complainant also raised the application of section 40(5), which has been cited in respect of the request of 9 July 2011. For simplicity, the Information Commissioner will consider this issue at the same time rather than raising a separate complaint.
  19. The Information Commissioner has referred to the length of time to conduct an internal review in "*Other matters*" at the end of this notice.
  20. The complainant also raised other issues which fall outside of the Information Commissioner's remit.

## Reasons for decision

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### Section 12 – cost of compliance exceeds appropriate limit

21. Section 12 of 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.

22. When considering whether section 12(1) applies, the authority can only take into account certain costs as set out in statutory instrument number 3244 – “The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004” (the “Fees Regulations”).

23. Paragraph 4(3) of the Fees Regulations states:

*“In a case in which this regulation has effect, a public authority may, for the purpose of its estimate, take account only of the costs it reasonably expects to incur in relation to the request 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”.*

24. The Fees Regulations state that the appropriate cost limit is £600 for central government, legislative bodies and the armed forces and £450 for all other public authorities, which includes police forces. This £450 limit is equivalent to 18 hours’ work.

25. In its response to the complainant the public authority has explained the cost limit as follows:

*“To provide information which meets the criteria of your request would entail a member of staff manually searching each officers records to ascertain whether or not they have had any complaints made against them.*

*Currently we have over 4000 officers, some of which have many years of service. Even at a conservative estimate of 2 minutes per record, which we have considered as reasonable, we have estimated that to extract this information would take over 133 hours, therefore Section 12 of the Freedom of Information Act would apply. This section does not oblige a public authority to comply with a request for information if the authority estimated that the cost of complying with the request would exceed the appropriate limit of 18 hours, equating to £450.00*

*You should consider this to be a refusal notice under section 17 of the Act for that part of your request.*

*However, in order to provide you with some assistance, under Section 16 of the Freedom of Information Act 2000, I can advise that if you refined your request with a search period for cases recorded, e.g. for the year 2009 or other, this may bring your request under the prescribed time limit".*

(Further assistance was also provided, as can be viewed via the WDTK site).

26. The public authority has also advised the Information Commissioner that its "Centurion system" is currently used for recording complaints and has been in use since approximately 1998. It explained that it could only conduct very simple searches based on the following criteria.

- Case reference number
- Cases created/modified between dates, this can be filtered on case type i.e. complaint or conduct etc.
- Case status
- Notepad text can be searched for keywords held in this field
- Complainant surname/forename
- Subject surname, and collar number

It also advised:

*"We can search for an officer based on collar number, surname, forename, date of birth, rank, and location. This will bring up the officers history which includes all cases to which they have been attached, all cases for which they have been an Investigating Officer (IO) and suspension history.*

*Complainants can also be searched on by forename, surname, date of birth, address. This will give details of all the cases which the complainant as been involved in.*

*There is also the function to search for cases relating to an agent. This search would show results for cases in which the agent has been involved."*

*"All of the searches above are based on very simple search criteria and the product returned does not include all of the relevant information that we would use to respond ... using any of the searches above would require, in most cases, going into the electronic case files in order to obtain more detailed information".*



27. The public authority also explained to the Information Commissioner that each record on the Centurion system is a separate complaint with its own reference number and that each complaint may involve more than one officer. Since January 2008 until the end of 2011, there are 2,508 cases recorded, each of which may contain several allegations about several officers. Without looking into each case it would not be possible to ascertain the full facts and numbers of complaints.
28. The Information Commissioner also asked whether or not the public authority could write and run a report to ascertain any further information about the number of officers and outcomes of complaints. He was advised:

*"We can, but when you do this, it only attaches the name of the first Officer involved in the case. Again, you would need to manually go into each case and ascertain how many officers were involved and what the outcome was".*
29. The Information Commissioner further notes that the request is 'open-ended', ie not date specific. Therefore, it would encompass all records held on the electronic system since its commencement as well as any records pre-dating the system, which are all held manually on individual personnel files. The public authority has more than 4,000 officers.
30. Due to the nature of the information requested by the complainant and the way in which it is recorded and held by the public authority, it is the Information Commissioner's view that the public authority has provided adequate explanations – as referred to above – to demonstrate that it would significantly exceed the appropriate limit of 18 hours to locate, retrieve and extract the requested information. The conclusion of the Information Commissioner is, therefore, that section 12(1) was appropriately applied by the public authority and that it was not obliged to comply with the request.

## **Section 16 – duty to provide advice and assistance**

31. Section 16(1) of FOIA states that:

*"It shall be the duty of a public authority to provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made, requests for information to it."*

32. Advice and assistance provided by public authorities in relation to requests that have engaged section 12(1) usually involves some form of communication with the applicant in order to help him or her refine



the request so that it can be answered under the appropriate costs limit.

33. With regard to this case, the Information Commissioner notes that the public authority attempted to provide advice and assistance, as shown above, and he therefore concludes that it complied with its duty.

#### **Section 40 – personal data**

34. Section 40(5)(b)(i) provides that a public authority is not obliged to confirm or deny whether requested information is held if to do so would:
- constitute a disclosure of personal data; and
  - this disclosure would breach any of the data protection principles or section 10 of the Data Protection Act 1998.

*Would confirming or denying whether information is held reveal personal data of the data subject?*

35. The complainant has requested any information relating to any complaint about a named police officer. As this information clearly relates to an identifiable individual, the Information Commissioner accepts that any information would constitute his personal data. Furthermore, the Information Commissioner considers that confirming or denying whether any information is held would inevitably constitute a disclosure of that officer's personal data.

*Would disclosure of this personal data be unfair and in breach of the first data protection principle?*

36. The first data protection principle states that: *"Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless at least one of the conditions in Schedule 2 is met..."*.
37. When assessing whether it would be fair to process personal data, it is important to consider the data subject's expectation of disclosure. The Information Commissioner would consider it reasonable that a officer would have an expectation that information which reveals whether or not they have been the subject of any complaints should not be disclosed widely under the FOIA.
38. The Commissioner's conclusion is that confirming or denying whether the requested information is held would constitute an unfair disclosure of personal data. Therefore, the exclusion from the duty to confirm or deny provided by section 40(5)(b)(i) is engaged.

## Other matters

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39. Although they do not form part of this decision notice the Information Commissioner wishes to highlight the following matters.

### *Internal review*

40. Part VI of the section 45 Code of Practice makes it desirable practice that a public authority should have a procedure in place for dealing with complaints about its handling of requests for information, and that the procedure should encourage a prompt determination of the complaint. As he has made clear in his *'Good Practice Guidance No 5'*, the Information Commissioner considers that these internal reviews should be completed as promptly as possible. While no explicit timescale is laid down by the Act, the Information Commissioner has decided that a reasonable time for completing an internal review is 20 working days from the date of the request for review. In exceptional circumstances it may be reasonable to take longer but in no case should the time taken exceed 40 working days.
41. The Information Commissioner does not consider this case to be 'exceptional', so is concerned that it took over 20 working days for an internal review to be completed.

## Right of appeal

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42. 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: 0116 249 4253  
Email: [informationtribunal@hmcts.gsi.gov.uk](mailto:informationtribunal@hmcts.gsi.gov.uk)  
Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

43. 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.
44. 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** .....

**Jon Manners**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**