

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 12 March 2013

Public Authority: The Chief Constable of Gwent Police
Address: Gwent Police Headquarters
Croesyceiliog
Cwmbrân
NP44 2XJ

Decision (including any steps)

1. The complainant has requested information about complaints and claims for damages. Some information was provided but the remainder was withheld under section 12, the appropriate limit. The Information Commissioner's decision is that the public authority was entitled to rely on the appropriate limit to refuse compliance with the remaining parts of the request. He does not require any steps to be taken.

Background

2. This request can be followed on the '*what do they know*' website¹. The complainant has made a similar request to a number of other police forces. These can also be found on this site.

Request and response

3. On 26 August 2012, the complainant wrote to the public authority and requested information in the following terms:
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¹ http://www.whatdotheyknow.com/request/complaints_177

"I Request to know the following information under the freedom of information act

I Request to know how many complaints were made against Gwent Police between the 1st of January 2011 and 1st of January 2012

I Request to know how many Claims for damages were issued in the county court against Gwent Police

I Request to know how much was spent by Gwent Police in defending these cases for example in counsel fee's [sic] and solicitor fee's [sic]".

4. The public authority responded on 17 September 2012. It confirmed that it held relevant information but advised that to comply with all parts of the request would exceed the cost limit and provided an explanation.
5. The complainant asked for an internal review stating:

"Almost Every police force has provided this information so please release this information".
6. Following an internal review, on 24 September 2012 the public authority wrote to the complainant; it maintained its position about the application of section 12. However, in considering its duties to provide advice and assistance under section 16 of the FOIA, it decided to provide a response to the first part of the request as it was able to do so within the limit.

Scope of the case

7. On 14 October 2012 the complainant contacted the Information Commissioner to complain about the way his request for information had been handled. He advised that he believed the public authority was "duty bound" to release the information he had requested.
8. The Information Commissioner will therefore consider the application of section 12 to the latter two parts of the request.

Reasons for decision

Section 12 – cost of compliance

9. Section 12(1) 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.
10. When considering whether section 12(1) applies, the authority can only take into account certain costs, as set out in The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ('the Regulations').
11. Paragraph 4(3) of the 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."

12. The 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. The cost limit in its case is £450, which is equivalent to 18 hours' work.
13. Section 12 of the FOIA makes it clear that a public authority only has to estimate whether the cost of complying would exceed the appropriate limit. It is not required to provide a precise calculation.
14. When initially refusing his request the public authority explained to the complainant:

"Section 12(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.

In the case of a police force, the appropriate limit is set at £450, which is calculated at £25 per hour (i.e. 18 hours). The information relating to which particular cases proceeded to trial is not held in an electronic format and it would require the manual

checking of all potential litigation files which would fall within the relevant timescales. At conservative estimates there are at least 700 and with a minimum 10 minutes per file this would take in excess of 116 hours. This exceeds the 18 hours of staff time therefore we are unable to answer this question and the exemption is engaged”.

15. In subsequent correspondence with the Information Commissioner the public authority further explained that:

- ”1) I agree completely that we have the information requested.*
- 2) There are in excess of 100 files held per annum (the norm is 100-130) and these are retained for 7 full years plus the current year after closure.*
- 3) Whether each case was issued in the County Court is not held on the electronic support system whereas basic details such as Claimant, type of claim, settlements, costs etc are.*
- 4) Initially therefore we would need to examine each individual manual file to identify (3) above.*
- 5) Once this has been completed and the potential claims identified we could revert to elicit the defence costs from the electronic system. However, as shown above the key is to identify them in the first place by manual examination.*

To summarise:-

As indicated there is no dispute that we would be able to identify the information requested by physically examining the manual files and then extracting the information from the electronic system having identified the relevant cases.

However, we have attempted to apply realistic and reasonable timescales by indicating that it would take a conservative average of 10 minutes per file and applying this to a very conservative 700 files. This as we stated in our original response amounts to in excess of 116 hours.

16. The Information Commissioner understands that the public authority does not record the information it holds in a way which would easily allow for it to answer this request. He notes that it has located numbers of claims, as explained above, and that it would need to consider each one individually to gather the requested information.

17. The Information Commissioner also notes that the complainant has had some information provided by other police forces. However, it is important to understand that forces have different information systems. Therefore, although other forces may be able to provide information it does not follow that they can all provide similar responses.
18. Having considered the estimates provided the Information Commissioner finds that they are realistic and reasonable. He therefore accepts that to provide the information would exceed the appropriate limit.

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(1) 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 Information 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 this case the public authority has tried to explain to the complainant how its information is held and why compliance would exceed the limit. He also notes that when conducting its internal review, in an attempt to assist the complainant, it provided him with a response to the first part of his request as it was able to do so within the limit. He concurs that this this was good practice and showed compliance with section 16.
21. The Information Commissioner also notes that the public authority advised the complainant:

"... under Section 16 of the Freedom of Information Act 2000, we have a duty to assist you in relation to refining your request, where we may be able to answer some of your questions.

If you would like to contact this office to discuss this matter further, my contact details are on the accompanying email".

This again afforded an avenue for the complainant to obtain further advice and assistance if he so wished.

22. Consequently the Information Commissioner finds that the public authority met its obligations in respect of section 16.

Right of appeal

23. 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
Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

24. 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.
25. 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
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Wycliffe House
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