

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 23 April 2013

Public Authority: Chief Constable of Hampshire Constabulary
Address: West Hill
Romsey Road
Winchester
Hampshire SO22 5DB

Decision (including any steps ordered)

1. The complainant has requested information about the type of drugs confiscated by Hampshire Constabulary (the "Constabulary") at the 2012 Bestival festival and the 2012 Isle of Wight festival and their street value. The Constabulary refused to provide this information citing section 12 (Exceed costs limit) as a basis for doing so. It provided some information within the scope of the requests after internal review but refused to provide the remainder, reiterating reliance on section 12. The complainant also raised concerns about the Constabulary's compliance with section 16 (Duty to advise and assist).
2. The Commissioner's decision is that the Constabulary is entitled to rely on section 12 as a basis for withholding the remainder of the requested information. He has also decided that the Constabulary satisfied its obligations under section 16.
3. No steps are required.

Request and response

4. The complainant made a request for information under the FOIA to the Constabulary which was received on 8 October 2012. The request was for information of the following description:

"I would like to receive details on drugs confiscated by Hampshire Constabulary during the 2012 Bestival festival.
This information would preferably be divided by Type of Drug,

Quantity of Drug (e.g. grams), and Street Value of total quantity.

I would like this information to be presented as follows:

Type of Drug	Quantity	Street Value
(e.g.)Cannabis	xxx grams	£xxxx

I would like to receive this information electronically.”

5. For ease of future reference, this notice will refer to this as the "Bestival request".
6. On 31 October 2012, the Constabulary responded. It explained that shortly prior to receiving the Bestival request, it had just received a substantively similar request from the same requester about confiscation of illegal drugs at the 2012 Isle of Wight festival (the "Isle of Wight request"). In its response it reproduced the text of the Isle of Wight request which is as follows:

“I would like to receive details on drugs confiscated by Hampshire Constabulary during the 2012 Isle of Wight festival. This information would preferably be divided by Type of Drug, Quantity of Drug (e.g. grams), and Street Value of total quantity”.¹
7. The Constabulary refused to provide the requested information. It explained that it was aggregating the Bestival request with the Isle of Wight request. It said it had received one within 60 days of receiving the other.² It argued that the two requests were substantively similar. It argued that compliance with both requests would exceed the appropriate limit of £450. It also explained that at the time of the Bestival request final figures relating to the Bestival festival were still being prepared. It estimated that it would take 16.5 hours work to respond to the Isle of Wight request. Assuming it would take the same amount of time, ultimately, to provide a response to the Bestival request, the Constabulary argued that it would take over 30 hours to comply with the aggregated requests.
8. The complainant requested an internal review in relation to both Bestival request and the Isle of Wight request. In the request for internal review, the complainant argued that this information had

¹ The text is not disputed by the complainant.

² The complainant did not dispute the Constabulary's assertion that the Isle of Wight request was sent within 60 days of the Bestival request although he did not provide a dated copy of this request. The Constabulary has asserted that it was, in fact, sent on the same day.

been provided for previous years. He also sought advice and assistance under section 16 and asked for Hampshire Constabulary's reasoning behind the fact that it did not now record information that it used to record. He noted that other forces apparently did provide 2012 data similar to that which he had requested here.

9. Hampshire Constabulary sent the complainant the outcome of its internal review on 30 November 2012. It revised its position in respect of complying fully with the request and was able to provide a list of the types of drugs seized at each of the festivals. It also provided the complainant with an approximate total combined street value of drugs seized at each festival.
10. During this period, the Constabulary also spoke to the complainant by telephone to explain why it no longer recorded information about drug seizures in the way it used to.

Scope of the case

11. The complainant contacted the Commissioner on 18 December 2012 to complain about the way his request for information had been handled. Specifically, he disputed the Constabulary's reliance on section 12 and also complained about the extent to which he had received advice and assistance under section 16 of the FOIA.
12. The Commissioner has considered the above two elements of this complaint, namely:
 - whether the Constabulary is entitled to rely on section 12 as a basis for refusing to provide the remainder of the requested information; and
 - whether the Constabulary has provided adequate advice and assistance in accordance with its obligations under section 16 of the FOIA.
13. The Commissioner has construed the remainder as being:
 - a. The quantity of each type of drug seized at the Bestival festival and at the Isle of Wight festival.
 - b. The total street value of each type of drug seized at the Bestival festival and at the Isle of Wight festival.

Reasons for decision

14. Section 12 of the FOIA provides that a public authority is not obliged to comply with a request for information if the cost to it of doing so would exceed the appropriate cost limit.
15. This limit is set in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the Fees Regulations) at £450 for bodies such as Hampshire Constabulary. The Fees Regulations also state that the cost of a request must be calculated at the rate of £25 per hour, meaning that section 12 effectively provides a time limit for fulfilment of a request of 18 hours.
16. A public authority can take the following activities into account when calculating the cost of compliance with a request:
 - determining whether the information is held;
 - locating the information, or a document which may contain the information;
 - retrieving the information, or a document which may contain the information; and
 - extracting the information from a document containing it
17. Section 12 also allows public authorities to aggregate the cost of compliance where it receives more than one request of a broadly similar nature or which follow an overarching theme from the same requester in a short time period. This is established in Regulation 5 of the Fees Regulations. Similarly, if the cost of complying with one of a set of aggregated requests would exceed the cost of compliance established in the Fees Regulations, a public authority is not obliged to comply with any of the requests in a set.
18. In practical terms and in the circumstances of this case, this means that the Constabulary is not obliged to comply with either request if the cost of compliance with both of them or one of them exceeds the limit described above.
19. The Commissioner is satisfied that the requests in this case follow an overarching theme (seizure of illegal drugs at festivals held in the region during 2012) and were received within 60 days of each other. He is therefore satisfied that the Constabulary can aggregate the cost of compliance with both of them when replying to either of them.

20. Section 12 makes it clear that a public authority does not have to make a precise calculation of the costs of complying with a request. Only an estimate is required.
21. To determine whether the Constabulary applied section 12 of the FOIA correctly the Commissioner has considered the submissions it provided to him during his investigation. The Constabulary stated that, by its estimates, it would take a minimum of 10 minutes per record to retrieve the information and that there were 99 such records for the Isle of Wight Festival. This would constitute 16.5 hours for the cost of compliance with the Isle of Wight request.
22. It explained that when replying to the requests, the figures for the Bestival festival had yet to be finalised but that it had worked on the assumption that the cost of compliance with the Bestival request would be similar to the cost of compliance with the Isle of Wight request. Adding the two together would constitute 33 hours' work. This is in excess of that stipulated in the Fees Regulations, namely 18 hours' work.
23. It explained to the Commissioner that the figures for the Bestival festival turned out to be higher than those for the Isle of Wight festival – 171 records. Using the same parameters, it had calculated that it would, in fact, take 28.5 hours to comply with the Bestival request. Taken together it calculated that it would take 45 hours to comply with both requests (16.5 plus 28.5).
24. It also set out further detail of what a 10 minute search would involve and suggested that this would perhaps be an underestimate. It described which records it would need to search and that this may very well include manual records such as officers' pocket notebooks. It said that where it needed to contact officers about their notebooks, this would increase the time taken to locate relevant information, particularly if the notebooks had been sent to its Central Archive Facility. It also contended that even if it did conduct such a search, it is far from clear that it would be able to locate a street value of each drug as described in the request from the information it held. Arguably, it would then need to create new information in order to answer the request. It said was not obliged to do this as part of its obligations under FOIA.
25. The Commissioner is satisfied that the Constabulary's estimate is cogent and reasonably arrived at. Even if, for the sake of argument, it only took 5 minutes to examine each record, this would still take 22.5 hours to comply with both requests. Given that the Commissioner is satisfied that the cost of compliance with the

requests can be aggregated, he accepts that the costs limit would be exceeded.

26. The Commissioner is therefore satisfied that it would exceed the £450 cost limit under section 12 FOIA to comply with these requests for information.

Section 16 – advice and assistance

27. 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.
28. In this case, the complainant has asserted that the Constabulary should hold the information in a readily accessible format because it used to and other police forces still do. The Constabulary has explained that it reassessed its operational priorities following the retirement of certain staff and has refocused them. One consequence of this is that it no longer records information in the way that the complainant expects.
29. The Constabulary said that it contacted the complainant by telephone during the life of the request (prior to the complaint) to discuss the requests and to explain the above. It also drew the Commissioner's attention to the fact that it had provided what information it could to the complainant within the scope of his requests without exceeding the cost limit.
30. At the same time, the Commissioner understands why the complainant remains frustrated by the fact the information he used to obtain from the Constabulary is no longer recorded in a manner that makes it accessible in the terms described in his request.
31. However, the Commissioner is satisfied with the Constabulary's explanation as to why it no longer records information described in the request in the way it used to. As such, it would not be available as described in the request. He is satisfied that its reasoning is based on operational priorities. He considers that the Constabulary is not obliged under section 16 to refocus its operational priorities in order to comply with the requests where they are made using the

wording set out above. He is also satisfied that the complainant has been given an opportunity to refine his requests.

32. Where considerable interest is regularly expressed in the detail of drug seizures at festivals held annually within the Constabulary's area, the Constabulary may wish to give further thought to what information it can publish proactively about this. However, in light of the above, the Commissioner finds there was no breach of section 16 in this case.

Right of appeal

33. 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

34. 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.

35. 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

Alexander Ganotis
Group Manager – Complaints Resolution
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