

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 26 March 2014

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

Decision (including any steps ordered)

1. The complainant requested information about inspections of HGV lorries carried out by Hampshire Constabulary's Commercial Vehicle Unit for specified time periods. Hampshire Constabulary refused the request, and the subsequent refined request, on the basis that it would exceed the cost limit set out in section 12 of FOIA.
2. The Commissioner's decision is that Hampshire Constabulary correctly applied the exclusion at section 12, and offered advice and assistance in accordance with section 16. He does not require the public authority to take any steps.

Request and response

3. On 5 August 2013 the complainant wrote to Hampshire Constabulary and requested information in the following terms:

"1. Could you tell me about the inspection operations which have been performed by Hampshire Constabulary's Commercial Vehicle Unit in 2011/2012, 2012/2013 and 2013/2014 (to date) please? I would appreciate the answer in a table format with these columns:

Inspection Date, Road Name, Town, no. HGVs & drivers inspected, No. having a t least 1 infraction, No. infractions on worst offender

2. Overall, what were the kinds of breaches that were found? How did you deal with the offenses [sic]?
3. Is there information available about the Commercial Vehicle Unit? That is, how many officers are in it and what is their annual budget 2011/2012, 2012/2013, 2012/2013, 2013/2014?"
4. On 21 August 2013 Hampshire Constabulary issued a refusal notice citing section 12. It suggested the complainant consider refining his request by narrowing the search parameters: *"for example, allowing the force to choose five driving complaints relating to the term 'commercial vehicle' at random, thereby significantly reducing the number of records that would need to be manually searched to retrieve the information that you are seeking"*.
5. On 26 August 2013, having received Hampshire Constabulary's refusal on cost grounds, the complainant refined his request to the following:
- "I will gladly reduce the scope of my FOI parts 1 & 2 – say to just a couple of recent crackdown operations (my preference is for ones done on the A34) – so that you can provide at least some transparency into the claims made by [name redacted] about his Commercial Vehicles Unit. He says there has [sic] been some great results and I very much would like to hear about them in detail!*
- In regards to part 3, is there budget/staffing info online that you can provide a link to? Or maybe would the elected police & crime commissioner be able to supply this info? I appreciate your guidance."*
6. There followed an exchange of emails in which the complainant confirmed that the question about staffing could be removed if that put the request over the cost limit. Hampshire Constabulary also suggested that it could provide the requested information for three random commercial vehicle checks on the A34; the complainant replied as follows:
- "Has there been specific 'blitz' sessions targeting HGV inspections? Reporting on 3 random HGV inspections is not the same – see the reference to the other police force's operation which inspected 43 HGV in one operation. Has Hampshire Constabulary done anything similar to that?"*
7. After some further clarification about what was meant by the term 'blitz', ie *"a couple of recent crackdown operations"*, with the complainant's preference being for those done on the A34, Hampshire Constabulary wrote to the complainant on 28 August 2013 to confirm his refined request as being:

"Has there been specific 'blitz' sessions targeting HGV inspections?"

I will gladly reduce the scope of my FOI parts 1 & 2 – just to say a couple of recent crackdown operations (my preference is for ones done on the A34).

Chief Inspector [name redacted] tweets indicate several operations targeting HGVs in the past year."

8. The complainant responded stating, *"Remember this was an appeal, not a new FOI. I expect an answer ASAP"*.
9. On 17 September 2013 Hampshire Constabulary provided the complainant with its internal review result. It upheld its original position but said that the Sergeant who leads on traffic operations would be happy to discuss the decision with the complainant in more detail, and offered to collate the information the complainant required on any future operation.

Scope of the case

10. The complainant contacted the Commissioner on 1 October 2013 to complain about the way his request for information had been handled.
11. The Commissioner has considered whether Hampshire Constabulary correctly relied on section 12 of FOIA. The complainant also asked the Commissioner to adjudicate on the following :

"Note that instead of an appeal they created a brand new FOI, even after I had pointed out to them that I was appealing, not asking a new question."

The Commissioner has considered this aspect of the complaint under 'Other matters'.

Reasons for decision

Section 12 – The cost of compliance

12. Section 12(1) of the FOIA states that:

"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 Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ("the Regulations") sets the appropriate limit at £450 for the public authority in question. Under the Regulations, a public authority may charge a maximum of £25 per hour for work undertaken to comply with a request. This equates to 18 hours work in accordance with the appropriate limit set out above.
14. A public authority is only required to provide a reasonable estimate or breakdown of costs and in putting together its estimate it can take the following processes into consideration:
 - determining whether it holds the information;
 - 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.

Would the cost of compliance exceed the appropriate limit?

15. As is the practice in a case such as this, the Commissioner asked Hampshire Constabulary for a detailed estimate of the time/cost taken in relation to the requested information.
16. In its refusal notice Hampshire Constabulary had said that the information the complainant had requested would require:

"a large manual review over various recording pathways which would include a range of operations and occurrences relating to commercial vehicles being inspected. A wide spectrum of offences are identified within these types of checks, meaning that a list of data is not retrievable within the 18 hours we're obliged to spend on this request. Everything relating to stop checks surrounding vehicles and any driving complaints recorded that might relate to commercial vehicles breaching any regulations would also have to be manually reviewed".
17. Hampshire Constabulary explained that due to the high number of cases which fell into the criteria for last year alone (4,600) it was unable to provide the complainant, or the Commissioner, with an estimate of the time involved in retrieving all of the information requested and was satisfied that the 4,600 records would engage the cost regulations.
18. It explained that the figure of 4,600 was taken from its Records Management System using the search criteria 'driving complaint' and that the figure relates to driving offences committed on a public road. Hampshire Constabulary said it would need to interrogate each individual record to retrieve the information requested and ensure that it

came under the criteria requested by the complainant, explaining that not all traffic offences are identified by an inspection operation. It calculated that this aspect alone would take a minimum of five minutes per record for the user to retrieve the information requested for each case, which equates to 383 hours.

19. Additionally, Hampshire Constabulary confirmed the above exercise would be necessary as the Commercial Vehicle Unit (CVU) participate in operations "*almost every day*" and assist other Traffic Officers, but do not have a complete register which includes all of the vehicles they actually stop.
20. Hampshire Constabulary also told the Commissioner that the "*only complete data the CVU have is for specific national operations where the force are obliged to send returns to the Home Office*".
21. Given Hampshire Constabulary's explanation of the time which would be required in responding to the complainant's request in its current form, the Commissioner formed a preliminary view that compliance with the request would far exceed the appropriate limit. He therefore wrote to the complainant on 24 January 2014 setting out his view and asked the complainant to consider withdrawing his complaint.
22. The complainant responded querying whether five minutes per record seemed reasonable. Having contacted Hampshire Constabulary, the Commissioner advised the complainant that because the information on its Records Management System is stored on worksheets, such that it is not obvious whether the record would fall under the specific terms of his refined request, five minutes per record was realistic. The officer details and vehicle details would need to be checked, together with the particular offence/issue and whether the CVU was involved. The information comes through various recording pathways.
23. The complainant also said he had "*provided very specific information about the dates that inspections occurred and so any search which includes those dates would necessarily reduce the number of results returned from the 4600*". The Commissioner also raised this point with Hampshire Constabulary, who explained that, because of the way it records this information, it is not able to isolate the dates requested by the complainant without going through all the records.
24. Hampshire Constabulary reiterated its offer of speaking with the complainant about this case and said that the relevant Sergeant would agree forthcoming operations with the complainant and provide the statistics for those. The Commissioner wrote to the complainant asking him to contact Hampshire Constabulary. In view of the large amount of information concerned and the way in which it is held by Hampshire

Constabulary, the Commissioner is satisfied that it has correctly estimated that to comply with the request, or the refined request, would readily exceed the appropriate limit.

Section 16(1) – The duty to provide advice and assistance

25. Section 16(1) of FOIA provides that a public authority should give advice and assistance to any person making an information request.
26. In this case, Hampshire Constabulary's refusal notice explained why the information could not be provided within the appropriate limit and suggested how the complainant could narrow his request to potentially bring it under the cost limit.
27. Although Hampshire Constabulary was unable to deal with the complainant's refined request within the cost limit, the Commissioner is satisfied that it provided advice and assistance and therefore complied with section 16(1).
28. The Commissioner also notes that Hampshire Constabulary offered to speak directly to the complainant to explain in more detail why it had refused his refined request on cost grounds. The complainant has not advised the Commissioner whether he took up Hampshire Constabulary's suggestion.

Other matters

29. The Commissioner is aware that Hampshire Constabulary, of its own accord and outside of the requirements of FOIA, agreed a date of a then forthcoming inspection date of 26 February 2014 and provided the complainant with the associated information.
30. As set out in paragraph 11, the complainant asked the Commissioner to consider whether Hampshire Constabulary was correct in wanting to treat his refined request as a new request rather than as an appeal or internal review. The Commissioner's guidance on cost¹ states:

¹

http://ico.org.uk/for_organisations/guidance_index/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/costs_of_compliance_exceeds_appropriate_limit.ashx

"The Commissioner considers that the implication of the original estimate remaining valid is that the refined request becomes a new request. This means that the statutory time for compliance commences on the date of the receipt of that new request."

31. The Commissioner also asked Hampshire Constabulary why it had provided an internal review on 17 September 2013, rather than treating the refined request of 28 August 2013 as a new request. It explained that it had had *"every intention of trying to deal with the refined request as an internal appeal"* but that the complainant had specifically asked it to deal with the request as an internal review (please refer to paragraph 8).
32. The Commissioner considers that Hampshire Constabulary initially adopted the correct approach in its intention to deal with the complainant's refined request as a new request; however, he notes that it ultimately dealt with the refined request as an internal review on the basis of the complainant's instruction.

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: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

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

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